

Project Summary

Location:	9016 & 9024 Boyd Dr
Owner:	Lawrence and Lora Hendricks
Agent:	None
Current Zoning:	B-2 (CD)
Proposed Zoning:	B-2 (CD) Change of Conditions
Existing Use:	Single family home, transmission shop
Proposed Use:	Change of conditions and continuation of transmission shop business
Community Meeting:	January 18, 2014

Summary of Request

The owners of the transmission shop request changes to the conditional notes from the 1989 rezoning so that they may not only remove an unmet requirement to construct an indoor repair facility but also lease the property to a future new business owner.

Staff Recommendation

The business has operated at this location within a residential community for 25 years in a manner similar to that of a home based business. However, the proposal now would be to allow this to become a non owner occupied rental home with a new person taking over the existing business. There are fundamental flaws with some of the existing conditional notes for the site. Staff supports modernizing the conditions for the property so that they are legal and appropriate for conditional zoning today. Some examples of modifications would be limiting delivery hours, hours of operation and updating the list of allowed uses.

Planning Staff Review

Background And History

The site of Busters Transmission was rezoned from R-9 (MF) to B-2 (CD) in 1989 and has since been the location of the business. Under the conditions of the original rezoning, the property is to revert to R-9 whenever the owners sell the property. There is also a requirement that a new garage be constructed to house the transmission shop. This garage was never built and today the work is performed outside with two lifts in the rear parking area. Staff was not aware of the zoning violation at the site until a site inspection in November 2012 was performed in response to a complaint from a neighbor. The owners initially explored an appeal of the Notice of Violation and were potentially considering closing the building. We worked through 2013 towards resolution of the issue and when it became apparent that a rezoning would be requested, moved in that direction with the full cooperation of the owners. The rezoning would have been submitted sooner but the election season created further delay this past Fall.

Details of the Site Plan

No changes are proposed to the site

Summary of Proposed Conditions

1. Change conditions to allow property to be rented or sold and business to continue
2. Update site plan to remove requirement to construct garage

Planning Staff Review

Outstanding Issues/Staff Comments

1. Buffers adjacent to residential were not required in 1989 when the property was rezoned thus it is currently legal non conforming with regard to screening between commercial and residential.
2. The property has been in zoning violation for many years due to the lack of a garage that was required. Unless that requirement is removed or a garage is built, the business will remain in violation and subject to future fines depending on the outcome of this rezoning request.
3. Some of the original conditions, including the “revert” clause that would have the property revert to R-9 are not appropriate according to case law.
4. Conditional zoning does not address who owns the property therefore no conditions that refer to occupancy by an owner or a leasee should be used.
5. Based on concerns from adjacent owner, some conditions could be added to address hours of operation, hours for deliveries and adherence to the Noise Ordinance

Day time hours of operation , no deliveries after hours

Move away from property line

Consistency with Adopted Plans and Policies and Town Vision Statements

The property is unusually located in the midst of a primarily residential community a block off of Independence Blvd. The neighborhood has been considered a transitional area since the 1980's with an anticipated change from single family residential to nonresidential.

Reports from Town Departments and County Agencies

Matthews Police

N/A

Matthews Fire

N/A

Public Works

N/A

Matthews Parks and Recreation

N/A

Charlotte Mecklenburg Schools

N/A

PCO Concept Plan Approval Required?

No

Charlotte Area Transit

N/A

Aerial Imagery of Site Boundaries





TOWN OF MATTHEWS

P.O. Box 398
224 N. Trade Street
Matthews, North Carolina 28106
704/847-4411

J. Shawn Lemmond — Mayor
BOARD OF COMMISSIONERS
Ted F. Kiker — Mayor Pro-Tem
Cindy G. Benton
M. David Bland
R. Lee Myers
Alex J. Sabo
Kenneth H. Wise

**MINUTES
BOARD OF COMMISSIONERS
EXECUTIVE SESSION AND REGULAR MEETING
MONDAY, JANUARY 23, 1989
6:30 P.M.
MATTHEWS TOWN HALL**

PRESENT: Mayor J. Shawn Lemmond; Commissioners Cindy Benton, Ted Kiker, Lee Myers, Alex Sabo; Town Manager/Clerk Juanita H. Jordan; Town Attorney Charles R. Buckley, III.

ABSENT: Commissioners Bland and Wise.

EXECUTIVE SESSION

An executive session was held by the Board at 6:30 p.m. The purpose of the executive session was to discuss legal matters.

MEETING CALLED TO ORDER

The regular meeting of the Board of Commissioners was called to order by Mayor J. Shawn Lemmond at 7:35 p.m.

INVOCATION

Mayor Lemmond gave the Invocation.

RECESS REGULAR MEETING FOR PUBLIC HEARING

Commissioner Myers made a motion to recess the regular meeting for a public hearing on petition to amend the Zoning Ordinance of the Town of Matthews as follows:

Petition No. 132: To change the zoning classification from R-9MF to B-2(CD) on that certain property belonging to Lawrence C. Hendricks and wife, Lora C. Hendricks as designated as 9016 and 9024 Boyd Drive and being more particularly described as being Lots 43 and 44 as shown in Map Book 7 at Page 335 in the Mecklenburg Public Registry.

Commissioner Benton seconded and the motion carried unanimously.

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PUBLIC HEARING

Ms. Lora Hendricks stated that she and her husband were requesting conditional district zoning on their property due to the transitional nature of the area and so that they can operate their auto repair business. Ms. Hendricks presented a petition from neighborhood residents supporting the rezoning.

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RECONVENE REGULAR MEETING

Commissioner Myers made a motion to reconvene the regular meeting. Commissioner Benton seconded and the motion carried unanimously.

ZONING BOARD REPORT

Deputy Town Clerk Breck H. Smith gave the Planning and Zoning Board Report. (See Exhibit #1)

Town Attorney Buckley stated that the Luxbury signs were granted administratively by the Planning Board and should not have been written as a recommendation to council.

ACTION, IF ANY, ON ZONING BOARD'S RECOMMENDATIONS

504

Mayor Lemmond made a motion to zone the following parcels R-15 and R-15(CD):

215-164-01	R-15(CD)
215-165-01	R-15(CD)
215-165-03	R-15(CD)
215-165-05	R-15(CD)
215-165-08-09	R-15(CD)
215-152-03	R-15
215-152-34	R-15
215-152-36-46	R-15
215-152-49-51	R-15
215-152-53-55	R-15
215-152-57-64	R-15

Commissioner Kiker seconded and the motion carried unanimously.

Mayor Lemmond made a motion to adopt the amendment to the Zoning Ordinance to amend the permitted use tables within the B-1 classification to eliminate drive-thru restaurants as a permitted use. Commissioner Kiker seconded and the motion carried unanimously.

Town Attorney Buckley stated that Dr. Black had one year to find a medical "user" for the building before it reverted back to mandatory conformance to residential district regulations (see Section 1505.5 of the Zoning Ordinance).

2492 Mr. Hazel Stewart spoke against the rezoning.

PUBLIC HEARING - PETITION NO. 134

Mr. Steve McNair stated that he was requesting an amendment to his initial zoning plan to allow a left turn in and left turn out of Northeast Court. He presented a plan (dated 05/12/88, revised 01/12/89) to council which included turn lanes and widening of Sam Newell Road.

General discussion followed. It was requested that the Manager's office and Transportation Board review this issue. The Transportation Board can review this at their meeting on Tuesday, February 28, 1989.

New
Tape The public hearing was continued to the March 13th regular meeting in order to review the mechanics of the intersection plan.

RECONVENE REGULAR MEETING

Commissioner Wise made a motion to reconvene the regular meeting. Commissioner Myers seconded and the motion carried unanimously.

AWARDS PRESENTATION

Mayor Lemmond stated that the two (2) individuals were not present to receive the awards. He requested that the certificates be sent to them.

70 ZONING BOARD REPORT

Deputy Town Clerk Breck H. Smith gave the Zoning Board Report. (See Exhibit #1)

170 ACTION, IF ANY, ON ZONING BOARD'S RECOMMENDATIONS

Mayor Lemmond made a motion to approve Rezoning Petition #132 (Mr. and Mrs. Hendricks) and that if the business is sold or there is any change of ownership, the zoning would revert to R-9MF. Commissioner Benton seconded and the motion carried unanimously.

589 Mayor Lemmond made a motion to grant a variance on Section 19-19 A.5.c. of the Subdivision Ordinance in order to allow the outer edges of the sidewalks within Habersham subdivision to be 10 ft. from the edge of the curb. Commissioner Wise seconded and the motion carried unanimously.