

**MINUTES
BOARD OF ADJUSTMENT
THURSDAY, JANUARY 5, 2012
HOOD ROOM, MATTHEWS TOWN HALL**

PRESENT: Vice Chairman Stephen Lee; Member Walter Monestere; Alternate Members Jim Mortimer and Cecil Sumners; Attorney Robert Blythe; Planner II Jay Camp; Zoning Technician/Deputy Town Clerk Lori Canapinno

ABSENT: Chairman Eric Welsh; Member Derek Morgan

CALL TO ORDER/INVOCATION

Vice Chairman Lee called the meeting to order at 7:00 pm and rendered the invocation.

APPROVAL OF THE MINUTES

Mr. Monestere made a motion to approve the minutes of the November 3, 2011 meeting. Mr. Sumners seconded and the motion was unanimously approved.

SWEARING IN

The following were sworn in: Jay Camp

CASE 2011-10: VARIANCE; 9715 East Independence Boulevard – signage for Captain D’s Restaurant

STAFF REPORT

Mr. Camp explained the variance request is for currently legal signage to remain in place after the property at 9715 East Independence Boulevard - the Captain D’s restaurant - is rezoned from Conditional to B-2(CD). The Town is working on an ongoing project to upgrade those properties zoned Conditional and replace that with a current zoning classification. This section of Windsor Square plaza is a sub-development with six parcels and six different owners. The Town contacted all six owners and has received approval from three so far. Mr. Camp is representing both staff and the property owner in this hearing.

A rezoning application cannot be approved if there are any outstanding zoning violations on the property. Under the old Conditional zoning there was no maximum sign area. In 1994 Captain D’s made a request and was approved for a 135 square foot sign. Under the proposed B-2 zoning the maximum sign area is 80 square feet, so there is an excess of 55 square feet for the existing sign. The sign is legal now – it is the rezoning action itself that triggered the need for the requested variance.

It is important to note that under the old Conditional zoning, any change in signage would require a rezoning action. This Board may wish to look at conditions for any motion, to essentially grandfather in the existing sign and require new signage to meet the 80 square foot maximum limit. He suggested stating that refacing the sign would be permissible but not new signage for Captain D's or signage for a different tenant. The intent would really be to allow the current tenant to keep what is currently in existence.

Mr. Mortimer asked if a rezoning action would be necessary if the tenant wanted to simply move the sign. Mr. Camp explained that would be predicated on how the Board formed its motion. It could allow minor shifting of placement due to remodeling or something of that nature. Attorney Blythe suggested another option that would grant the variance for the specific sign where it is currently located or with permissible changes as specified in the motion. Mr. Mortimer said he was afraid of unintended consequences. Mr. Camp explained that new corporate logos often trigger the need for a new sign face or minor remodeling may require a slight change in sign location.

Vice Chairman Lee asked if this request could be included as a condition in the rezoning to B-2(CD). Mr. Camp explained that conditions that go against the ordinance are not allowed. In this case the ordinance would allow only 80 square feet. Attorney Blythe noted that it is true that the intent of conditional zoning is generally to impose additional conditions to a specific site rather than loosen the conditions of the overall district.

Mr. Camp noted that these property owners are working with the Town to update the old zoning and have in good faith been allowing the Town to act on their behalf. He said if the Board chose to allow it, leaving them the flexibility to at least shift signs would be a good thing.

After reviewing aerial and street level imagery, Vice Chairman Lee noted that the sign is comprised of individual letters and that there's not really any other place for them to be moved. He said it seems like there is a low risk of future changes as long as the current tenant remains in that location.

DELIBERATION

Vice Chairman Lee said he understands the need to address potential future changes to the sign. He said he did not have a problem with allowing them to move the sign if necessary. It's not a box sign so it's not going to be easy to change anyway. Mr. Mortimer said he supported that point of view.

Mr. Mortimer made a motion to approve the variance request to maintain the existing signage on the Captain D's building at 9715 East Independence Boulevard after it is rezoned to B-2(CD), and to allow movement within the same elevation and and/or repair of the sign. Mr. Sumners seconded.

Vice Chairman Lee read the findings of fact. If the applicant complies with the provisions of the ordinance he can secure a reasonable return from or make reasonable use of his property. As stated, the variance allows the property to be converted to B-2 and retain the signs until such time as they are replaced with conforming signs, and also allows for some flexibility for the tenant to make some repairs and slight movement of the signs.

The hardship of which the applicant complains does result from unique circumstance related to the applicant's land. The property is proposed to be rezoned to a current zoning classification by action of the Town of Matthews along with other parcels in Windsor Square.

The hardship is not the result of the applicant's own actions. The sign is currently legal and was approved by the Town Board in the original Conditional zoning at Windsor Square.

The variance will be in harmony with the general purpose and intent of the ordinance and will preserve its spirit. The variance does not make any noticeable change to any other property owners or customers will allow the property owner to avoid incurring additional costs. It also prevents the nonconformity from being expanded at a later date.

The variance will secure the public safety and welfare and will do substantial justice. There is no known detriment to public safety or welfare. Future changes to signs or tenants will be made easier by the change in zoning and those future changes will be in keeping with Matthews' current zoning ordinance.

The motion to approve to approve the variance request to maintain the existing signage on the Captain D's building at 9715 East Independence Boulevard after it is rezoned to B-2(CD), and to allow movement within the same elevation and and/or repair of the sign was unanimously approved.

ADJOURNMENT

Mr. Mortimer made a motion to adjourn. Mr. Sumners seconded and the motion was unanimously approved. The meeting adjourned at 7:27 pm.

Respectfully submitted,

Lori Canapinno
Zoning Technician/Deputy Town Clerk