

**MINUTES
BOARD OF ADJUSTMENT
THURSDAY, APRIL 7, 2016
HOOD ROOM, MATTHEWS TOWN HALL**

PRESENT: Chairman Jim Jiles, Members, Jim Mortimer, Cecil Sumners, Jerry Meek, and Jeanne Moore; Attorney Robert Blythe; Senior Planner Jay Camp and Planner/Zoning Administrator Mary Jo Gollnitz

ABSENT: Alternate Members Gary Smith, Peter Tuz and Tom Lawing

CALL TO ORDER/INVOCATION:

Chairman Jiles called the meeting to order at 7:00 pm and gave the invocation.

APPROVAL OF THE MINUTES:

Jim Mortimer motioned to approve the minutes of the January 7, 2016 meeting. Cecil Sumners seconded the motion. The motion passed with four members approving and Ms. Moore abstention.

SWEARING IN:

The following were sworn in: Jay Camp, Carlton Burton, Chase Burton, and Mike Chapman.

VARIANCE REQUEST: BA 2016-2, Pike Nursery Sign at 1016 Devore Lane

STAFF REPORT:

Senior Planner Jay Camp addressed the Board. He stated that the applicant is requesting a variance to the Highway Overlay Buffer for the installation of a monument sign. Mr. Camp provided some background history on the Highway Overlay Buffer. He stated that in 1991 when Hwy 51 was being built, the Town wanted to make sure that the road would be attractive and not become another Independence Blvd. The buffer was put in place to ensure a more parkway style road with a view shed buffer. The buffer requires a minimum of 30 foot tree save area along the right-of-way, with an extra 15 feet before any buildings can be constructed.

He further noted that when Sycamore Commons was built, an agreement with the Town was made that the property in question would not have a new driveway access to Hwy 51. Access would come from Devore Lane. When the site was rezoned by Pike Nursery in late 2015, the drawings showed the driveway off the rear. Within the Highway Overlay, in order to preserve as many trees as possible, our ordinance requires the utility connection, signs, and driveways to go into one generalized area.

Mr. Camp stated that there is no driveway along Hwy 51. The UDO states that you can have the monument sign in the buffer if you are clearing for a driveway. The applicant will clear a small area in the buffer for utility lines. There is no way to access the utilities from the back of the site. He noted that the clearing was approximately 30 ft. for the utility connections to the building. He continued showing the Board the site location and describing the area. He noted that the sign in the package would not be allowed. He showed the sign that would be allowed by the UDO sign requirements.

Ms. Moore wanted to know the size of the sign. Mr. Camp stated that the maximum size allowed is 100' sq. ft. and Pike Nursery has shown the size to be 75.4 sq. ft. Ms. Moore asked if the applicant would have another sign at the driveway entrance. Mr. Camp noted that the UDO does allow for directional signage and the applicant is still in the permitting process for signage.

Chairman Jiles asked if the landscape plan has been approved by the Planning Board. Mr. Camp stated that the rezoning was approved in December 2015. He continued noting that the plans are in the permitting process through EPM. He explained that EPM is the Electronic Plan Management system for reviews by the Town and County staff. Mr. Jiles asked if the utilities coming through the buffer also needed a variance. Mr. Camp stated that the UDO does not limit the connection for utilities. The ordinance recognizes that utilities have to be connected. The only restriction is for signs.

Mr. Jiles noted that the Ordinance states that location of utilities shall only be located in the portion that is disturbed for driveway access. Mr. Camp informed the Board that staff did examine this section of the Ordinance to make sure there was no variance for utilities. He continued stating that staff's interpretation of that section is that you could not clear two sections of the buffer, one for driveway and one for utilities.

Ms. Moore asked if these are the utilities for the nursery as well as the sign. Mr. Camp stated yes and that the sign would be located over the utility connection area.

Ty Shaffer with Robinson Bradshaw & Hinson 101 N Tryon St Charlotte representing the applicant addressed the Board. He stated that the applicant is asking for the variance to the signage standards that are applicable in Hwy NC 51 Overlay District.

He provided evidence including an aerial showing the site. He showed the overlay buffer and the approved rezoning site plan from December 2015. He continued stating that access to the property will be from Devore Lane. The plan is to develop and operate a greenhouse and nursery on this site. He stated § 155.504.2.B.13 is the relevant section of the UDO that the applicant is requesting the variance for. He read the language for the Board. The variance request is to place the sign in the area where the land will be disturbed for utility access.

Mr. Shaffer went onto to state that unlike other sites along NC 51, the applicant does not have driveway access across the buffer. This was a consequence from a prior rezoning in 2000. The Town granted easement through Devore Ln which the property owner will use. He continued stating that the easement makes this site different from other sites along NC 51. There are visibility issues for the site that makes it a hardship.

He continued noting that the current sign location will not be visible to west bound traffic and difficult for east bound traffic to see. He asked that the Board keep in mind that this is not a request to clear any additional area in the buffer. The applicant is asking to place the sign in the utility access clearance that is already allowed.

Carlton Burton with Burton Engineering Assoc. 5950 Fairview Rd Suite 100 Charlotte approached the Board. He introduced Chase Burton and stated that Chase has been with their office for seven years completing site work on projects such as this.

Carlton Burton stated that the allocated sign area is not allowed on Devore Lane because the easement is only for the driveway. He noted that there is not a good location at the corner of Northeast Parkway and Devore Lane because the area is largely covered with trees. There is a culvert and retaining wall that goes to the creek at that location. He further noted that someone may be able to see the sign at the corner while in one of the turning lanes. You would be looking across two rows of traffic. It would also be difficult to clear for the sign because you would have to limb-up real high.

Mr. Burton continued stating that if the sign is placed at the corner, and you are driving west bound, you would not be able to see the sign until you are past the property. There is basically non existing sign visibility at that location. They understand the highway overlay reasoning and requirements.

He stated that the distance from Devore Lane to Hwy 51 is approximately 485 ft. It would be difficult to see a sign from that distance. He noted that they did look into providing the utilities from Devore Ln. However, the requirement for backflow preventers and meters not on their property severely limited where they could be located. Mr. Burton informed the Board that the middle of the site had bedrock. They could not get the water across the site and could not did a trench for a fire line. The fire department required a hydrant be located along NC 51.

Mr. Burton did point out where the utility corridor would be across the buffer. He noted that it is very close to where a driveway would be. He believes there will be less clearing than if there was a driveway across the buffer. He noted that, including the shoulders, they would need close to 40 ft. clearing for the driveway. They are currently closer to 20 feet of clearing. They are not trying to take advantage of the situation. He stated that they need to been seen in order to run a business.

Mr. Burton further explained and showed the elevations along Hwy 51. He showed how the sign would be at the back of the right of way. There is still limited visibility of the sign in the cleared area. He described the road elevations. They had considered placing a sidewalk along NC 51, but because of the elevations they would have had to place a bridge to add a sidewalk. He continued explaining that the trees align with the sign on the side of the building. The height of the vegetation blocks the building wall sign.

Mr. Shaffer asked Mr. Burton to confirm the proposed building signage showing the view from NC 51 and Northeast Parkway. Mr. Burton did. Mr. Shaffer asked Mr. Burton to clarify, that due to the tree line, there is no way for traffic to see the signs on the building from Hwy 51. Mr. Burton showed the current image of the vegetation on the site. He noted that the vegetation had just started to bloom and that it is very thick making it difficult to see through. He continued noting that if you went 30 or so feet behind the sidewalk, it would be difficult to see the wall signage.

Chase Burton 5950 Fairview Rd Charlotte addressed the Board. Mr. Shaffer asked Mr. Burton if he was personally familiar with the tree survey shown to the Board. Mr. Burton answered yes. Mr. Shaffer asked if the nature of the tree line is heavily pined in evergreen. Mr. Burton stated yes. Mr. Shaffer asked if, in Mr. Burton's opinion, would there be any relief from the canopy to visibility in winter. Chase Burton stated no.

Mr. Shaffer asked Carlton Burton to answer a few more questions. He stated that coming east bound on Hwy 51, could Mr. Burton explain again the visibility issue to see signage on the site. Mr. Burton stated that the current sign location is approximately 485 feet from the traffic lane. He continued noting that you have to look over two lanes of traffic when you are east bound to see the sign. He noted that there are very dense vegetation along the edge of the property. It is difficult to clear underbrush because of the retaining wall and topography. He further stated that near the corner of the property there are two creeks that converge and culverts that go under the road.

Mr. Shaffer asked Mr. Burton to tell the Board what the image is depicting that was being shown. Mr. Burton stated that it is Hwy 51 where they will be adding a turn lane on the left hand side. You can see the vegetation, not quite to the stop light. Someone would have to look around the edge of the vegetation and look down Northeast Parkway to see the entrance.

Mr. Shaffer asked Mr. Burton that being involved in this project, would you be able to see signage on the property without any difficult. Mr. Burton answered that someone would have to know what they are looking for to see it. It is not obvious. In his opinion it would be difficult to see the sign.

Mr. Shaffer asked Mr. Burton is it his understanding that the site conditions were present on the site and not created by the applicant or his proposed use. Mr. Burton answered that all of the conditions were existing. He showed the utility clearance area for fire service, irrigation line and water service line for the project. He stated that the sign will be between the two water lines and entirely within the utility access area. The applicant is not requesting to clear any additional property.

Mr. Shaffer asked Mr. Burton if the proposed signage will have to comply with all the applicable dimensions of the UDO. Mr. Burton answered yes and based on the preliminary sketches it is less than the maximum allowed.

Mr. Shaffer asked if there were any questions. Mr. Jiles asked if the capacity of utility lines had an impact on which direction they could be accessed from. Carlton Burton stated that there were concerns with extending an eight inch line a long distance for water service. He noted that CMUD would not allow extension beyond the right-of-way. He explained the complexity of fire service lines.

Mr. Jiles asked if they considered what the sight line would be and sign visibility along Hwy 51 in both directions. Mr. Burton stated that they would prefer to have a wider space, but at least they have a sign identifying their business. They would like to perform selective under clearing and have landscaping around the sign. Mr. Jiles noted that even though you reduce the screening you will add back landscaping around the sign and still end up with screening that does not impact your sign visibility. Mr. Camp stated that the UDO allows for hand clearing of brush, invasive weeds and underbrush in the buffer.

Mike Chapman with Pike Nurseries 3555 Kroger Blvd, Duluth GA 30096 approached the Board. He stated that he has a Bachelor of Science Degree in Landscape Design and has worked for Pike Nurseries for 23 years. He continued noting that they are excited about the project and this land is perfect for their use. They do like the buffers, but the buffers are challenging. They believe this will be a perfect setting for the environment of a nursery.

Mr. Chapman went on to explain that they need the sign. They are not asking to expand the size of the clearing, they wish to use the space that they have to clear for utilities. This will allow for visibility to the location. He further noted that they are dependent on signage when they come into a new market. They currently only have one location in the Charlotte area in Ballantyne. He noted that they appreciate the Board's time.

Mr. Shaffer summarized noting that Section 155.208.C.1.b of the UDO, states that the Board shall make findings upholding each of these criteria in order to grant a variance. He stated that the first is unnecessary hardship would result from strict application of the Title. Mr. Shaffer said that because the applicant is not providing a driveway across the buffer, strict application of the signage provisions would not allow the applicant to place a monument sign along NC Hwy 51. This makes the use largely invisible on the road. He further stated that the Planning staff memo notes this. He continued stating that the wall sign is going to be screened by trees. Planning staff memo also noted that other properties along NC Hwy 51 do have driveways along this road. As a result of this, strict application of the Ordinance, would cause a hardship.

Mr. Shaffer continued stating that number two is that the hardship is peculiar to the property, such as location, size, or topography. He reiterated that the hardship results from the peculiarity of the property. Planning staff memo states that this is not anything that the applicant has done. The trees in the buffer have to be protected.

He continued noting that the hardship did not result from actions taken by the applicant or property owner. He stated that they have covered this and the staff memo also states this.

Mr. Shaffer finished stating that the requested variance is consistent with the spirit, purpose, and intent of the Title, public safety is secured, and substantial justice is achieved. He noted that the applicant is not asking for any additional disturbance or clearance. They are asking for the least possible deviation of the Ordinance. To allow the signage would not detract from the character of the surrounding land uses. No additional encroachments into the buffer is being requested and all applicable dimensional standards of the sign ordinances will be met.

He further stated that the applicant would be harmed if the variance would be denied. There is no corresponding benefit to the public. The clearing will be there and they wish to make use of such. He noted that they wish to be in compliance with the spirit of the ordinance by protecting as much of the buffer as possible.

Mr. Shaffer noted that there are standards that the Board must also consider. He mentioned that they are in Section 155.403.3 of the UDO. First, that special or unique circumstances or conditions exist which apply to the land, which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts. He said that the evidence is that the hardship is caused by conditions on the site.

He said second that the special conditions or circumstances do not result from the actions of the property owner. Again, both the evidence and planning staff memo shows that this is the case. He continued stating, third that the hardships are not resulting from personal or household members' circumstances or use that would not be applicable if this property owner is no longer present at the site. Whoever develops this site will be faced with the same limitations of having no driveway. Yet they will have utility access to the site.

He continued noting the fourth requirement, that the strict enforcement would deprive the owner of reasonable use of the property. The UDO allowance for sign in the driveway clearance intent is to not disturb any more area than is necessary within the protected buffer. He stated that is all the applicant is asking, to use only what has to be disturbed. He further stated that "E" says that the granting of a variance will not result in advantages or special privileges. This property is already different along NC 51 because there is no driveway access. They are not asking to clear anything more than what is already allowed, so they are not any different from any other property.

Mr. Shaffer said that standard six notes that the proposed use and the appearance of any proposed addition or alteration will be compatible with, and not negatively impact, nearby properties. He pointed out that there is no evidence that other properties would be harmed by this use. Many of the other properties can take advantage of their driveway use to install similar signage. Finally that the variance shall not be materially detrimental to the health, safety or welfare of persons residing or working in the neighborhood. He noted that this is a request for the least possible deviation from the Ordinance. They will be leaving the same area of protected buffer intact. Because this is intended to increase visibility, this will increase safety by giving motorists advance notice of the use.

Mr. Shaffer asked the Board if they had any questions and they believe they have satisfied the requirements to approve the variance.

DELIBERATION:

Jim Mortimer said that he feels this is a straight forward request. Ms. Moore agreed. Jerry Meek stated that he believes it meets all the criteria to grant a variance. He continued noting that the Ordinance is not an anti-sign ordinance, rather a pro-tree ordinance. He noted that there is a legitimate reason to remove the trees for utility lines. There does not appear to be a reason for disallowing a sign where the trees have already been removed. Mr. Jiles stated that the utility portion does meet the ordinance standards and the variance request is only for the sign. He believes it is well thought out. He does think that there should be high visibility of the sign traveling in both directions.

The Board concurred with the seven Standards for Findings of Fact for Zoning Variances that was presented by Mr. Shaffer during the hearing.

Findings of Fact

1. Unnecessary hardship would result from the strict application of the Title. Mr. Jiles stated that the owner is not constructing a driveway therefore the monument sign can be constructed on that property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Mr. Jiles stated that the property is peculiar in topography. He further noted that they are under the prior agreement and they cannot have access off of NC 51. Mr. Meek stated the applicant's options to locate a sign on the back portion of the property are very limited.
3. The hardship did not result from actions taken by the applicant or the property owner. Mr. Jiles stated that the conditions were existing and not self-created.
4. Mr. Jiles stated that the requested variance is consistent with the spirit, purpose, and intent of this Title, public safety is secured, and substantial justice is achieved.

Attorney Blythe asked if the applicant's attorney wished to propose any additional finds for the record. Mr. Shaffer answered no.

Jerry Meek motioned that the variance request to allow for a monument identification sign within the highway overlay buffer be approved. Jim Mortimer seconded the motion which carried unanimously.

ADJOURNMENT:

Ms. Moore moved for adjournment. Cecil Sumner seconded the motion and the meeting adjourned at 7:50 pm.

Respectfully submitted,



Mary Jo Gollnitz
Planner/Zoning Administrator