

**MINUTES
BOARD OF ADJUSTMENT
THURSDAY, OCTOBER 2, 2014
HOOD ROOM, MATTHEWS TOWN HALL**

PRESENT: Members Chair Jim Jiles, Walter Monestere, Cecil Sumners, Jim Mortimer, and Jeanne Moore; Alternate Members Peter Tuz and Gary Smith; Attorney Robert Blythe; Planner II David Nelson, and Zoning Technician/Deputy Town Clerk Mary Jo Gollnitz.

ABSENT: Alternate Member Jerry Meek

CALL TO ORDER/INVOCATION

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

Jeanne Moore made a motion to approve the minutes of the September 4, 2014 meeting. Walter Monestere seconded and the motion was unanimously approved.

SWEARING IN

The following were sworn in: David Nelson, Matt Jones and Stephen Benson

VARIANCE REQUEST: Stephen Benson, 505 Team Road

Staff Report

Planner II David Nelson provided the Board with information about the variance request for the property at 505 Team Road. He noted that the applicant has a storage building for his vintage car collection. Mr. Nelson provided a description of the property. He noted how the property is accessed by a gravel road on the eastern boundary of the property. He showed how the property gains about 40ft in elevation.

He continued stating that the building was developed in 2005 with two approved variances. He stated that one variance was for vehicular parking in the front yard which is not allowed in the Highway Overlay. The property is adjacent to Hwy 51. The second variance allowed gravel surfacing of the vehicular use area. The Town's ordinance requires that all non-residential vehicular use areas be paved. The variances were approved based on the elevation change which limited the placement of the structure. The applicant sought to use the existing gravel driveway which minimized unnecessary clearing the site and grading.

Mr. Nelson stated that the applicant is seeking to add a second storage building to the property and additional vehicular use areas serving both buildings at the front and rear. He showed an illustration from the 2005 variance application, noting location of the gravel driveway and placement of the building. He then provided an illustration of the proposed site plan improvements. He stated that the original building location was moved slightly from the approved 2005 site plan.

He continued stating that the applicant is currently proposing to reroute the gravel drive further to the east and allow for the installation of the second building. The second building will be located over the existing drive and the applicant wished to add in rear yard vehicular access.

Mr. Nelson said that the proposed site plan necessitates the granting of two variances that are similar to the two variances granted in 2005. He provided the specific text reference for the variance requests. One is for the location of off street parking, loading, and storage areas which references front yard placement along the Highway Overlay district. He read Section 155.504.2.B.6.e.i describing the paving requirement. The variance would be for the gravel area in front of the two buildings. He read the provisions that allow for specific exemptions to paving requirements. This section was referenced in 2005 in granting the variance. The applicant stated in 2005 that he could not access the building without the front yard access.

The second variance is to code Section 155.607.1.C.8 for the surface treatment in vehicular use areas. Mr. Nelson read the section language for the Board. This section requires the parking to be paved. He also read the provisions for exemptions to the requirements. He noted that in 2005 the applicant stated that the gravel drives were primarily to access the building.

Mr. Nelson explained the intent of the zoning code provisions. He stated that locating vehicular use areas outside the front yard along NC 51 is to maintain a substantial tree buffer. There is an unusual grade elevation at this location and there is an additional 40 feet of elevation climb up hill to NC 51. The substantial right-of-way provides the tree buffer. He provided images for the Board showing the tree buffer.

He stated that the paving requirements in vehicular use areas, is to provide for the safety of the public and commercial interest. The second is to protect the ground from being contaminated by the discharge of fluids from vehicles. He stated that if the Board is inclined to grant the variance by allowing the gravel, then they must place conditions in order to up hold the intent of this provision. He provided a couple examples for the Board to consider. The gravel surfacing should only be utilized for private use. If the property was turned to commercial use, then having a gravel drive no longer guarantees the safety and protection of the public.

He continued noting that parking shall not be permitted along the gravel driveway. He made one final note concerning the front yard exception to allow on the current proposed site plan the applicant is demonstrating that rear yard access is possible and desirable. That renders the argument of needing front yard access moot. He showed the current conditions of the property with existing rear yard access.

Mr. Jiles asked if rear yard access is allowed. Mr. Nelson stated yes it is allowed; however front yard access is not allowed unless you can demonstrate that rear yard is not viable.

Ms. Moore asked when the variance was granted in 2005 did it have the condition if the property is used for commercial purposes, then the variances are no longer valid. Mr. Nelson stated that the minutes did not explicitly state that, but staff believes that was the intent.

Mr. Mortimer said that the applicant received the variance for gravel driveway in 2005, would the Board be granting variance for the new construction, part of the driveway or all of the driveway? Mr. Nelson stated that the Board would be granting a variance for the new section of gravel drive. He showed the Board where the location of the realignment would be and the rear yard access points.

Chairman Jiles asked if there are any problems with setbacks on the property. Mr. Nelson said no there is no concern with setbacks. The applicant has realigned the drive in order to place the new building and meet all setback requirements.

Mr. Jiles asked if the access comes off a private property at the present time. Mr. Nelson said yes. There was discussion how the property cannot be accessed off of NC 51 and access comes from the adjoining property. Mr. Nelson stated that part of the reason for using the gravel drive, was to avoid any more impact to the SWIM buffer on the east side of the site.

Steve Benson 5301 Hardison Rd Charlotte 28226. His business headquarters of Morningstar Properties has been in Matthews for 37 years. He stated he is asking for the two variances that relate to building a second building on site. The building is predominately for an old car collection. There are approximately 25 cars stored there and old signs to be reused. He needs access at both ends of the building and driving through the building is critical. He stated that it would take a much bigger building to be able to get vehicles out that often do not run. Pictures of the property were handed out to the Board. He explained the location of the pictures. Pictures 1 and 2 were for orientation. He stated that these two pictures show the dramatic change in grade for the property. Picture 3 showed the entrance to the steel gate that CMUD has for the control tower adjacent to the subject property. He noted that picture 4 showed the location of the building via Team Road and foliage that hides building from the road.

Mr. Benson continued describing picture 5 that shows the entrance gate to his property and CMUD's property. The main gate is only open two days a week. He informed the Board that his road has a gated entrance that he was required to install for the access easement. He pointed out that the road is currently gravel. He showed the next two pictures which provided the connection off of CMUD's road and how the driveway goes up through the woods to his building. The next picture showed where the location of the proposed building would be located. The building is smaller than what he had originally planned because of grading costs. He described the existing building and the terrain of the area it is located on. He stated that there is little parking need because the cars are inside and they normally only have four round trips per day during the week.

He provided a picture of the existing building and described the interior. The last picture showed the aerial view of the property and adjoining property. He described the surrounding area in detail including how dense the trees are during the summer. He stated that he is asking for the variances to maintain the road as gravel and the siting of the building needing a front and rear door entrances.

Matt Jones of 334 Sandymead Rd Matthews addressed the Board. He stated that he is here to explain the engineer issues with the project. He stated that one variance being requested is for the material to be gravel based on the exception in the ordinance. He noted that the gravel drive is not used for parking. The driveway location variance to allow the driveway on the front of the building because there would be substantial clearing of tree to relocate the building 90 degrees to the right. He noted that the grade change to the east toward Team Road drops off quickly. To get proper access for vehicles there would be a lot of tree clearing. Effectively it would make the building inaccessible due to grade change.

He discussed the proposed conditions that the Board could apply to the variance. He stated that Mr. Benson is agreeable to the condition that variance apply to private use only or until the property was sold. At that time the driveway could be paved and driveways in the correct location. The second suggested condition of no parking along the driveway, the applicant is fine with. He noted that the applicant normally parks under the canopy attached to the building.

Mr. Jones stated that the reason for the access to the front of the building is because there is no room for vehicle to turn around inside the building. He described the type of vehicles inside the building and are they are located within the building.

Mr. Jiles asked if the gravel road way seems to be holding up well. Will the new driveway be installed with the same thickness and format? Mr. Benson said that they would install the same type of material. They do not want to have a muddy driveway. He stated that the road did get washed away earlier this year. They did repair the road after the rains. Mr. Jones noted that the area where the SWIM buffer is located washout the gravel drive.

Mr. Jiles asked is there any agreement in place to use the access road. Mr. Benson stated that he received a letter from CMUD stating that they control the road. He provided some background history regarding the road. Mr. Jiles stated that you are accessing your property through someone else's property. Mr. Benson has a letter from CMUD with assurance he could access the property. There are verbal agreements regarding the opening and closing of the gates that access both properties.

Mr. Blythe stated that there are two variances and not necessarily interdependent. The Board can deliberate the variances together however, the Board needs to separate the actions.

Deliberation

1. *That special or unique circumstances or conditions or practical difficulties exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts.* Ms. Moore stated that there are special or unique circumstances or conditions, they are different.

2. *That the special conditions or circumstances or practical difficulties do not result from the actions of the property owner or applicant, their agent, employee, or contractor. Errors made by such persons in the development, construction, siting or marketing process shall not be grounds for a variance except in cases where a foundation survey submitted to the Planning Director, or designee, before a contractor proceeds beyond the foundation stage has not revealed an error which is discovered later.* Ms. Moore stated that special circumstances have not resulted from the actions of the applicant.

3. *That the unique hardship situations cited by the applicant are not hardships resulting from personal or household members' circumstances which would no longer be applicable to the location if the applicant or household was no longer present at the property.* Ms. Moore said no.

4. *That the strict enforcement of this Title would deprive the owner or applicant of reasonable use of the property that is substantially consistent with the intent of this Title.* Mr. Jiles stated that strict enforcement would not necessarily deprive use but would make it difficult to use the property.

5. *That the granting of a variance will not result in advantages or special privileges to the applicant or property owner that this Title denies to other land, structures, or uses in the same district, and it is the minimum variance necessary to provide relief.* Mr. Jiles said that if the Board applies the conditions requiring private use only and parking not permitted along the driveway, they reduce the question of giving advantages or special privileges.

6. *That the proposed use and the appearance of any proposed addition or alteration will be compatible with, and not negatively impact, nearby properties.* Ms. Moore said that yes it is. Mr. Jiles noted that the buildings cannot be seen from adjacent properties.

7. *That the variance shall not be materially detrimental to the health, safety or welfare of persons residing or working in the neighborhood. Consideration of the effects of the variance shall include but not be limited to increases in activity, noise, or traffic resulting from any expansion of uses allowed by the variance.* Mr. Jiles said that it would not.

Mr. Blythe said that the Board may wish to state how they came to these conclusions. Mr. Jiles asked if they could be in the findings of facts. Mr. Blythe stated that would be appropriate.

Finding of Facts

Mr. Jiles stated that dealing with the location of off street parking, loading, and storage areas; a variance to Section 155.504.2.B.6.e.i he would entertain a motion. Jim Jiles moved to approve the variance for Section 155.504.2.B.6.e.i for location with the following conditions shall apply: 1) the variance will be only for private to use and will revert to original zoning requirements upon any change; and 2) parking will not be permitted along the driveways. In reaching the justification for the variance the following finding of facts apply:

1. There would be unnecessary hardship from strict application of the ordinance.
2. Hardship does result from the conditions that are peculiar to the property, without granting the variance.
3. The hardship did not result from actions taken by the applicant or property owner.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, because public safety is secured and justice is achieved.

Jeanne Moore seconded the motion and it carried unanimously

Finding of Facts

Chairman Jiles stated that the second variance is for surface treatment of vehicle areas Section 155.607.1.C.8. Jeanne Moore made a motion to approve the variance and Cecil Sumner seconded the motion. Ms. Moore stated that the motion is based on the same evidence as the first variance, along with the same findings and conditions.

The following conditions shall apply: 1) the variance will be only for private to use and will revert to original zoning requirements upon any change; and 2) parking will not be permitted along the driveways. In reaching the justification for the variance the following finding of facts apply:

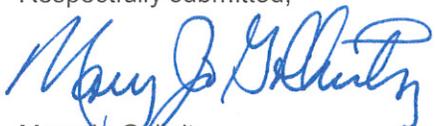
1. There would be unnecessary hardship from strict application of the ordinance.
2. Hardship does result from the conditions that are peculiar to the property, without granting the variance.
3. The hardship did not result from actions taken by the applicant or property owner.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, because public safety is secured and justice is achieved.

The motion passed unanimously. Mr. Blythe stated that the formal notice will be provided to the applicant that will start the time on the variances.

ADJOURNMENT

Jeanne Moore made a motion to adjourn. Walter Monestere seconded the motion which carried unanimously. The meeting adjourned at 7:55 pm.

Respectfully submitted,



Mary Jo Gollnitz
Zoning Technician/Deputy Town Clerk