

**MINUTES
BOARD OF ADJUSTMENT
THURSDAY, November 3, 2016
HOOD ROOM, MATTHEWS TOWN HALL**

PRESENT: Vice Chairman Jerry Meek; Members Jeanne Moore, and Cecil Summers; Alternate Members Thomas Lawing, Gary Smith and Peter Tuz; Attorney Robert Blythe; Senior Planner Jay Camp and Administrative Assistant/Deputy Town Clerk Shana Robertson

ABSENT: Chairman Jim Jiles, Member Jim Mortimer, Alternate Member Peter Tuz

CALL TO ORDER/INVOCATION:

Vice Chairman Jerry Meek called the meeting to order at 7:00 PM

Thomas Lawing and Gary Smith were voting members for tonight's meeting.

Mr. Gary Smith gave the invocation.

APPROVAL OF THE MINUTES:

Jeanne Moore made a motion to approve the minutes of the April 11, 2016 meeting. Cecil Summers seconded the motion and the motion passed unanimously.

SWEARING IN:

Senior Planner Jay Camp and Mr. Daniel Hicks were sworn in by Vice Chairman Jerry Meek.

VARIANCE REQUEST: BA 2016-3, Commercial Vehicle at 2915 Windsor Chase

STAFF REPORT:

Mr. Camp addressed the Board. He stated that the owner of the property at 2915 Windsor Chase Drive, tax parcel number 193-461-16 was requesting a variance to continue parking a large commercial vehicle at the residence. Code Enforcement Officer, Carlo McKoy, noticed the truck parked at the location while conducting other business in September 2016 and a Notice of Violation was issued. The owner, Mr. Daniel Hicks, stated that he had parked the truck at the location for ten years. Staff cannot verify how long but images on Google Earth confirmed the truck in the driveway since 2007. The Town has never allowed large commercial vehicles in residential neighborhoods and only several years ago added language that allows one medium sized commercial vehicle to be parked overnight at a residence. Mr. Hicks is a Rapid Response Technician for Caterpillar Commercial Generators. He is an on call employee required to have a take home vehicle.

Mr. Camp read into record Section 155.607.1.C.14.f on the Town of Matthews Unified Development Ordinance that stated "In the single family residential districts, one mid-range commercial vehicle may be parked overnight (9 PM to 7 AM) on the same lot as an occupied dwelling unit." The definition stated that the maximum height allowed is eight feet. Mr. McKoy measured the truck to be nine feet, two inches. Documents were presented to the Board including photographs of the truck and its location and the Notice of Violation that was issued on September 19, 2016. The notice was sent to the property owners by US mail and they were given thirty days to appeal. Property owners did meet the variance request timeframe for appeal.

Mr. Camp stated that it could be possible for the Board to issue a sunset clause to allow the vehicle to remain until it is replaced with a smaller truck. Caterpillar indicated that a smaller truck that would fit the

Town ordinance could be ordered for Mr. Hicks. If this is the case, it could be possible for the Board of Adjustment to grant a variance with a sunset clause to allow the vehicle to remain until it is replaced

Mr. Meek asked about time parameters or conditions in regards to the proposed sunset variance. Attorney Robert Blythe answered that the Board could consider a variance with a condition that could be a one year time frame for replacing to a conforming or removing the vehicle that was in violation.

Ms. Moore asked if notices were sent to neighbors. Mr. Camp noted that notices were sent per State Statue to all adjacent owners and those across the street. A letter was received by the Town in support but could not be submitted into record as it is considered hearsay. The neighbor who sent the letter was unable to attend in person due to scheduling conflict.

Mr. Tom Lawing confirmed the height of the vehicle and asked what the gross vehicle weight rating (or GVRW) was for the commercial truck. Mr. Camp referred the question to the applicant.

Mr. Daniel (Danny) Hicks, 2915 Windsor Chase Drive addressed the Board. Mr. Hicks stated that the truck weighed twenty three to twenty four thousand pounds. Mr. Hicks added into record a letter from his Supervisor regarding job responsibilities. Mr. Hicks stated that he is a rapid response technician and on call twenty four hours a day, seven days a week. His job requires him to maintain and service emergency backup generators at hospitals, banks, and high-rise buildings. Most generators in Charlotte are serviced through his company. He had been in his current position since 2007 with the commercial sized vehicle at his residence. Because of his close proximity to Novant Matthews Hospital and always being on call he is required to have his service vehicle at his home.

Mr. Sumners asked if most buildings have back up generators as part of the stricter building code. Mr. Hicks answered that hospitals, banks, and high-rise buildings are required to have a lifesaving backup generator system. Mr. Hicks said his job is to service those generators when they go down, provide maintenance, and inspect quarterly. Mr. Sumners asked where the main office location was. Mr. Hicks answered that the office was located at Sunset Road and W.T. Harris.

Ms. Moore asked how often he is called to respond outside of normal work hours. Mr. Hicks said that he gets called at night two to three times a week and it was not uncommon for him to arrive home for the day at 10:00 PM. Ms. Moore asked if a request had been made to his employer for a smaller vehicle Mr. Hicks stated that he had requested and his supervisor would consider. At the time when Mr. Hicks received the Notice of Violation, a midsized truck was not available. The company will need to order a smaller vehicle for Mr. Hicks and it could take up to a year to be delivered.

Mr. Meek clarified that it was Mr. Hicks understanding that the Company would grant him another truck that was in compliance with the Town Ordinance. Mr. Hicks stated that was correct. It would be the same 750 class of truck that he currently had but a smaller weight class. Mr. Meek asked if any discussion has been made with the employer as to what would happen if the variance was denied. Mr. Hicks stated that he did not know what would happen but that it would be up to the administration and he was unsure what their options would be. Mr. Meek asked how long Mr. Hicks has lived at the property located at 2915 Windsor Chase Drive. Mr. Hicks had been a resident at the address for 20 years.

Mr. Sumners ask how many Rapid Response Technicians had large home trucks. Mr. Hick stated there were thirty five total technicians with trucks and eight of the thirty-five were his size or larger.

DELIBERATION:

Ms. Moore said that the large truck was a violation and if exchanged for a smaller vehicle, the large truck could be still usable to the Company. She felt that a request should be made for a smaller truck that would be compliant with the Town ordinance and place a time frame on completion of that action. Mr. Lawing said that he agreed. Mr. Sumners said that Caterpillar is a large company and should be able to comply with the request.

Mr. Meek asked the Board members if there was a time frame. Ms. Moore felt eighteen months should give adequate time for the request and arrival of a compliant vehicle. Mr. Meek asked Mr. Blyth if something were to happen could the applicant return after the eighteen months. Mr. Blythe said that they could.

FINDING OF FACT

1. Unnecessary hardship would result from the strict application of this Title. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

Mr. Meeks stated that the applicant has had this vehicle on the property for ten years. It is necessary to his job duties and benefits the community by allowing emergency response efforts.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. (Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.)

Peculiarities with the size and shape of the lot makes it difficult to store the vehicle on the parcel and to make it unseen from other homes and compliance with the Ordinance.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

Mr. Hicks has lived at the residential location for twenty three years. Ten of those years has had a nonconforming truck.

4. The requested variance is consistent with the spirit, purpose, and intent of the Title, because public safety is secured and justice is achieved.

The spirit of the Ordinance will be enhanced by the temporary time variance that would be conditional on Mr. Hicks replacing the nonconforming truck with a conforming vehicle in an eighteen month time period.

Ms. Moore motioned that the variance request be granted to allow a commercial vehicle at 2915 Windsor Chase with a condition that within eighteen months the applicant will replacing the nonconforming commercial vehicle with a conforming vehicle. Mr. Lawing seconded the motion which carried unanimously.

VARIANCE REQUEST: BA 2016-4, Budd Law Group at 352 E Charles

Laura Budd was sworn in by Mr. Meek.

STAFF REPORT:

Mr. Camp reviewed the property at 352 E Charles Street and stated that the lot is currently under consideration for the construction of a new office building that will total approximately 4,000 square feet. The rezoning decision is scheduled for November 14, 2016. Before a decision can be made, the proposal must meet all applicable requirements within the Unified Development Ordinance (UDO). Staff has identified three independent aspects of the proposal that do not meet code.

The first variance request is for front setback within the Downtown Overlay District. Properties within the Downtown Overlay must adhere to special architectural and site plan requirements. Front setbacks are determined by the Downtown Streetscape Plan. For Charles Street, a maximum setback of twenty nine

feet from the back of the curb. The CSX right-of-way of two hundred feet encroaches onto the front portion of the site making it impossible to build a new structure where code dictates. The proposed front setback as shown on the plans is approximately thirty five feet from the back of curb to the front porch wall of the building. This represents a variance of six feet.

The second variance request is for the driveway width. The applicant proposed an eighteen foot wide driveway that is flared out to twenty four feet where it intersects with Charles Street. Standard driveway width for two way traffic is twenty four feet. The applicant wanted to keep an office cottage feel and stated that due to the low volume of traffic anticipated, a two way drive would not be necessary.

The final variance is requesting a lot width adjustment to current Town Ordinance. The UDO code requires that 75% of lot frontage must be occupied by the building. With the current lot width of 99.68 feet it would be difficult to get the building to occupy seventy five percent plus the driveway and a landscape buffer. Town staff had recognized this being a problem and in 2008 a text amendment was approved that would allow an applicant to subtract out twelve feet of driveway width and the landscape buffer from the 75% requirement. It was discovered after the application was submitted that the approved text amendment was not included into the 2014 adopted UDO.

Mr. Lawing asked if other properties are in violation of the missing text amendment. Mr. Camp said that those would be considered legal nonconforming and a text amendment will be added soon to the UDO to correct the issue.

Ms. Moore asked if the third variance request depended on the second variance request. Mr. Camp stated that they were inter related. He added that the Town Engineer had been consulted on the driveway reduction. Their suggestion was to flair the driveway width at the street to allow for cars to pass safely from street. The requested eighteen feet is wide enough to allow cars to pass slowly the flair would help entering and exiting safely from Charles Street. Parking was added due to Town Council and Planning Board concerns. The site will have thirteen spaces including a two car residential style garage.

Mr. Sumners noted that the sidewalk seemed narrow and level with the street. Mr. Camp stated that the applicant had plans to clean up the overgrowth on the front that has covered the five foot wide sidewalk. Staff will also look into the concern.

Mr. Lawing asked if the two hundred foot CSX right-of-way affected other property setback requirements down Charles Street. Mr. Camp said that this parcel was the last in the Downtown Overlay and was required to build per Downtown Overlay standards of a twenty nine foot maximum setback.

Mr. Meek asked if explanation was made as to why an eighteen foot verses the twenty four foot driveway should be allowed. Mr. Camp stated that the applicant wanted to split the difference in the residential driveway standard of twelve feet and the commercial required twenty four feet. If the variance is not approved the applicant will be required to reduce the size of the structure and it may give a feeling of more asphalt and less building structure. Mr. Camp continued that it was the applicants wish to save the mature trees and green space in the rear of the property. Due to this they were not wanting to push the structure back.

Laura Budd with The Budd Law Group, 10550 Independence Pointe Parkway, Suite 301, Matthews, NC 28105 stated that she had been a Lawyer and practicing in Matthews for fifteen years. It is her wish to move her practice back to Downtown. Images were presented to the Board of the current structure and the proposed new site plan and elevation. It was Ms. Budd's wish to preserve the current structure but due to conditions was unable to do so. Regarding the first variance request for increased maxim setback within the Downtown Overlay, the CSX right-of-way is considered federal property and if built upon Ms. Budd noted that she would be forced to remove. The Driveway request coincides with Ms. Budd's wish to add an eight foot landscape buffer to hide the neighboring post office. She continued that the requested eighteen foot driveway with the twenty four foot flair at the base was a six foot difference between the standard for a residential and a commercial driveway. The request was not to just accommodate the landscape buffer but the traffic flow expected. The business does not have many drop in clients and most

are by appointment only. Ms. Budd stated that they were a smaller firm having only seven to nine employees in the office daily.

Ms. Moore clarified that this property was the last within the Downtown Overlay District and asked about the adjacent property that was held by a trust. Mr. Camp stated that the adjacent trust parcel was just outside the Downtown Overlay.

Mr. Meek pointed out that the three variances had to all be approved as they were linked together. One variance would not work without the approval of the others.

DELIBERATION:

Ms. Moore stated that it needs to be considered that it is the last parcel in the Overlay District and the applicant is trying to make it work. The Railways right-of-way was the factor in stopping the applicant from being compliant with the first request.

Mr. Lawing stated that he was comfortable with the first and third variance request being the hardship that the railroad was causing and the missing approved text that would have made the third request nonexistent. The second request would need to be thought through.

Ms. Moore asked if the applicant had to comply with the twenty four foot wide driveway, how their plans would be effected. Mr. Camp stated that it would not allow the desired eight foot screening buffer. Mr. Meek stated it would come down to having a twenty four foot drive or having a landscape buffer. Mr. Smith said they could do the driveway and buffer but it would take the building structure down from sixty five feet to fifty foot frontage width. Ms. Moore stated that the building structure looks like a home. And felt the twenty four foot driveway width would throw off the feel. Mr. Sumners agreed that the eighteen foot wide driveway fit with the feel of the structure. Mr. Lawing said that he esthetically liked look of the eighteen foot wide driveway but questioned the criteria that would allow them to vote for the eighteen verses the twenty four. Mr. Camp added that Charles Street was twenty feet wide and only two feet wider than the requested variance width. Mr. Smith stated that based on the setbacks the placement of the driveway at twenty four feet wide would be against the building. This would be the location of the Handicap ramp and presents an unsafe situation.

All motions are to be contingent on the site plan as presented. Changes that could not be approved administratively would need to be refiled through the Board of Adjustments.

Findings of Fact

Variance One- Extend the maximum front setback

1. Unnecessary hardship would result from the strict application of this Title. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

It is the determination of The Town of Matthews Board of the existence of the CSX right of way and the property cannot be redeveloped and meet the maximum build-to line causing unnecessary hardship.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. (Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.)

The hardship results from the nature of the property and in particular to the CSX right of way.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

The hardship did not result from actions taken by the applicant.

4. The requested variance is consistent with the spirit, purpose, and intent of the Title, because public safety is secured and justice is achieved.

The requested variance is consistent with the spirit, purpose, and intent of the Town of Matthews Unified Development Ordinance.

Mr. Lawing motioned to extend the maximum front setback to no more than three feet beyond the CSX right-of-way contingent on the site plan as presented to the Town of Matthews. Ms. Moore seconded the motion and it passed unanimously.

Variance Two- Driveway width

1. Unnecessary hardship would result from the strict application of this Title. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

The Unnecessary hardship would result from the requiring a twenty four foot wide driveway by virtue of the nature of the property and where it is located and a reduction in the amount of building space or reduction of landscape buffer.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. (Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.)

The hardship results from conditions that are peculiar to the property.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

The hardship did not result from actions taken by the applicant.

4. The requested variance is consistent with the spirit, purpose, and intent of the Title, because public safety is secured and justice is achieved.

The requested variance is consistent with the spirit, purpose, and intent of the Title, because public safety is secured and allowing for development of the property that will appear appropriate to the location.

Ms. Moore motioned to approve the variance to allow an eighteen foot driveway that would flair to twenty four feet where it intersects Charles Street in lieu of the standard twenty four feet contingent on the site plan as presented to the Town of Matthews. Mr. Smith seconded the motion which carried unanimously.

Variance Three- Allow less than a 75% lot frontage

1. Unnecessary hardship would result from the strict application of this Title. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

The Unnecessary hardship would result from the strict application of 75% lot frontage requirement.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. (Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.)

The hardship results from conditions that are peculiar to the property.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

The hardship did not result from actions taken by the applicant.

4. The requested variance is consistent with the spirit, purpose, and intent of the Title, because public safety is secured and justice is achieved.

The requested variance is consistent with the spirit, purpose, and intent of the Ordinance.

Mr. Lawing motioned to approve the variance to allow less than a 75% lot frontage requirement contingent on the site plan as presented to the Town of Matthews. Mr. Sumners seconded the motion and it passed unanimously.

ADJOURNMENT:

Ms. Moore made a motion to adjourn the meeting at 8:09 PM. Mr. Lawing seconded the motion and the motion passed unanimously.

Respectfully submitted,



Shana Robertson
Administrative Assistant/Deputy Town Clerk