

Board of Adjustment
Thursday, July 12, 2012
7:00 PM
Hood Room, Matthews Town Hall

AGENDA

- I. CALL TO ORDER
- II. INVOCATION
- III. APPROVAL OF MIINUTES: June 7, 2012
- IV. VARIANCE REQUEST: 157 North Trade Street
- V. ADJOURNMENT

**MINUTES
BOARD OF ADJUSTMENT
THURSDAY, JUNE 7, 2012
HOOD ROOM, MATTHEWS TOWN HALL**

PRESENT: Chairman Eric Welsh, Vice Chairman Stephen Lee, Members Walter Monestere and Jim Mortimer; Alternate Members Jim Jiles and Jeanne Moore; Attorney Robert Blythe; Senior Planner Jay Camp and Zoning Technician/Deputy Town Clerk Lori Canapinno

ABSENT: Member Derek Morgan; Alternate Member Cecil Sumners

CALL TO ORDER/INVOCATION

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

APPROVAL OF THE MINUTES

Mr. Monestere made a motion to approve the minutes of the April 19, 2012 meeting. Mr. Jiles seconded and the motion was unanimously approved.

VARIANCE REQUEST: Case 2012-3; Spring Creek Restaurants, 9727 East Independence Boulevard

Chairman Welsh designated Alternate Member Jeanne Moore to act as a voting member for this case.

SWEARING IN

The following were sworn in: Jay Camp, Robert Hubbard

STAFF REPORT

Mr. Camp explained this request coincides with a current rezoning request. The property at 9727 East Independence Boulevard was built in 1991 and housed the former Meadowview Steakhouse. The current owners plan a full renovation which will house at least one restaurant. The property will be subdivided with another restaurant or retail shop in the other half. It is currently zoned Conditional, which is an old zoning designation. The Town has a policy of working with property owners to convert properties from this old zoning to more current designations. The owner has elected to rezone it to B-1SCD. A decision date by the Town Board is scheduled for this coming Monday. That approval hinges on the receipt of the requested variance.

The property owner is proposing a full rebuild of the exterior of the building, essentially gutting it to the studs and doing a full new façade. They will be removing some portions of the building and will also be adding to portions of

the building to make it better work for their tenants. There are two additions in question. These two lateral additions are on either side of the building and do not bring the building further forward on the site.

Mr. Camp discussed transitional rights of way and transitional setbacks. In 2000 the Town adopted new transitional right of way (ROW) requirements. Independence Boulevard currently has a two hundred foot ROW. In working with the State it was determined that three hundred fifty feet was the appropriate future ROW need for this road. At the time it was unknown if there was going to be a transit land running down the middle of the road, service roads or similar requirements. There may ultimately be a need for that so the state has reserved an additional seventy five feet of future ROW area on either side of the center line that the state may need to expand for future lanes. If a building has a forty foot setback, like the building currently under discussion, that ROW requirement essentially creates a one hundred fifteen foot setback from the edge of the existing ROW for any new construction. Mr. Camp has included a diagram in the staff report for further explain the situation.

Mr. Camp displayed the site plan included in the staff report. The proposed additions have been displayed ne addition is 15'x 89' and the other 9'x 62'. The additions come along the side of the building and are even with or behind the existing front façade. The area in pink represents the area needing a variance. Without a variance any building additions could be placed only on the back quarter of the site, making it difficult to do any additions.

Mr. Camp read Zoning Ordinance section 153.094(A)(4), which states, "an affected property owner shall have the right to request a variance to transitional setback or yard requirements to the Board of Adjustment." The Town's code calls for variances in situations where there may need to be relief. This is something you find very rarely in the code but this serves as recognition that there could be the need for variances in the future.

Mr. Camp suggested three separate variances for each applicable section of the code that would be affected. Section 153.095 refers to requirements for lots on thoroughfares. The variance would allow for a portion of the building expansion to be located within the transition ROW. Section 153.222(C)(1) refers to the renovation and expansion of nonconforming structures. The variance would allow a nonconforming structure to be renovated and expanded. The final variance deals with section 153.222(D), which refers to the location of expansions to nonconforming structures. This variance would allow the area of expansion to not be in conformance with the setback requirements. These three individual variances are necessary in order to allow the expansion to take place.

There was some discussion of the current setback and ROW lines. Mr. Camp explained that the existing building predates this ordinance so is a legal nonconforming structure. Chairman Welsh asked if there were any other legal nonconformities that needed to be addressed. Mr. Camp said staff is aware of no other issues.

Applicant Robert Hubbard addressed the Board. He said the building is approximately 7,500 square feet in area and is too large for any restaurants the applicant operates. They wish to divide it in half and put in two separate tenants, but the current configuration will not allow for that. The proposed additional square footage will be added on either side. The smaller addition on the left side of the plan replaces an existing structure that will come down and be rebuilt. The existing structure comes out twelve feet and the new structure would come out nine feet. The other side would come out fifteen feet but that still leaves enough room for the required twenty five foot setback off Windsor Square Drive. The fifty foot setback off East Independence Boulevard would be maintained as well.

Mr. Hubbard said if the state does come in and reclaim the ROW the whole building will be gone anyway. The building additions don't make it any worse than it is today as far as ROW since they would not expand past the current fifty foot setback.

Chairman Welsh asked if there was any indication that the state will come in and widen the road. Mr. Hubbard said he was not aware of any indication of that.

Vice Chairman Lee asked if any of the vegetation along Windsor Square Drive would be affected by the addition. Mr. Hubbard said the street trees would not be affected since they are within the twenty five foot setback.

Mr. Mortimer asked about the potential impact of approved variances to East Independence Boulevard when or if it is eventually expanded. Mr. Camp said the state has been planning this widening for decades but we still don't know how wide the road will be or if service roads will be used in certain areas, if transit will be located in the center median...there are a lot of unknowns. The applicant has, as part of their rezoning application, volunteered to remove any additions at their cost if necessary in the future.

DELIBERATION

Vice Chairman Lee said he finds the hardship to be clear – the transitional ROW line runs right through the building. Chairman Welsh agreed and noted that the building existed before the ordinance.

Chairman Welsh stated the variances would be addressed separately. The first variance is with respect to section 153.095 and would allow portions of the building expansion to be located within the transitional right of way. Ms. Moore made a motion to approve the first variance. Mr. Monestere seconded and the motion was unanimously approved.

Variance two refers to section 153.222(C)(1) and would allow a nonconforming structure to be both renovated and expanded. Mr. Monestere made a motion to approve the second variance. Ms. Moore seconded and the motion was unanimously approved.

Chairman Welsh noted the need to amend the first motion to include a condition that the variance to section 153.095 is approved conditioned upon conformity with the site plan as presented to the Board of Adjustment. Mr. Monestere made a motion to approve that amendment. Ms. Moore seconded and the motion was unanimously approved.

Chairman Welsh noted the need to amend the second motion to include a condition that the variance to section 153.222(C)(1) is approved conditioned upon conformity with the site plan as presented to the Board of Adjustment. Vice Chairman Lee made a motion to approve that amendment. Ms. Moore seconded and the motion was unanimously approved.

Variance three refers to section 153.222(D) and would allow a portion of a building expansion to a nonconforming structure to be built without bringing that area of the structure into conformity with regulations, conditioned upon conformity with the site plan as presented to the Board of Adjustment. Ms. Moore made a motion to approve the third variance. Mr. Mortimer seconded and the motion was unanimously approved.

Chairman Welsh read the findings of fact. He said the Board heard evidence about the hardship that has occurred with respect to this property. It is a legal nonconforming property and existed before the ordinance was put into place. This is not a hardship that the owners brought upon themselves. Without the variances being approved and due to the circumstances of Highway 74 and the setback requirements the applicant won't be able to receive a significant use of or reasonable return from the property. By granting these variances, it will be in conformity with the general purposes of the statute, which does expressly say that variances are contemplated and could be approved on an as-needed basis. The Board heard nothing to indicate that there would be any sort of problem or

that this would be contrary to the spirit of the ordinance or that substantial justice would not be done by granting the variances – in fact the opposite is true.

VARIANCE REQUEST: Case 2012-4; Matthews Executive Center, 325 Matthews-Mint Hill Rd

Chairman Welsh designated Alternate Member Jim Jiles to act as a voting member for this case.

SWEARING IN

The following were sworn in: Garry Smith, Mike Lash

Mr. Camp explained this is a request for a variance to the storm water detention requirements to allow for the construction of a second structure at the Matthews Executive Center site at 325 Matthews-Mint Hill Road. The site was rezoned in 1984 from Residential to O-9(CD). It was a two building site plan. The building on the bottom, an approximately 6,000 square foot office building, was built in 1985. The other side stalled and there has been no construction there since. The site has a blank building pad and is very over parked for the single structure that is in place.

The applicants are potential future owners. They wish to go ahead and follow through with the 1984 site plan and construct the mirror office building, but Matthews storm water requirements, which went into effect in 2000, require any impervious area on a site over 20,000 square feet and constructed after 1979 to provide storm water detention. There are issues on this site and the applicant's engineer will be able to address those issues with the Board.

Mr. Camp noted that the ordinance states that anything pre-1979 is not required to have storm water detention, which in theory was when Mecklenburg County was to have been requiring it during plan approval and permitting. Through research it has become known that properties developed pre-1995 generally do not have storm water detention. There are very few sites that were developed between 1979 and 1995 that storm water detention was actually required – the requirement was upheld in a spotty manner at best. Technically this site should have had it when it was developed in the mid-1980s but it was not required.

He explained that the existing site has 25,071 square feet of impervious surface area. The proposed impervious surface, which would be accomplished by removing the parking area on the site plan that is shaded at the back of the site, would create an impervious surface area of 24,666 square feet - a net loss of 405 square feet. This plan would actually bring the impervious surface area down over what is there today.

Had the site been developed as planned in 1985, the impervious surface area would have been approximately 29,000 square feet. The proposed plan has a reduction of more than 4,000 square feet of impervious surface area.

Mr. Camp suggested that should the Board grant the variance, they should allow for some flexibility for the proposed site layout. The owner should have the flexibility in going for Planning and Zoning approval to shift the building as necessary – he should not be tied to this exact site plan or else he may need to seek additional variances in the future.

Chairman Welsh asked about the site's nonconforming status. Mr. Camp said it is hard to say but he would err toward it being legal nonconforming. It's hard to say if the original builder did something that wasn't supposed to be done or not, but if the County didn't require storm water detention here and was not doing it almost universally in Matthews then he would say it is not a violation – it seems like it was built as designed from the rezoning.

Mr. Camp noted a fairly recent turn of events – the Town has been working with the County to modify that date up to the year 2000, which is when the Town's storm water requirements took effect. That will basically grandfather in any property with existing impervious area built prior to 2000. That process will take three or four months and doesn't fit in with the applicant's timeframe. The Town does see the discrepancy and realize the hardship on property owners. A huge majority of the property in Matthews was developed in that time frame. Mr. Jiles asked if that text change would affect any of state requirements or other related requirements, and if the Town was looking to change the ordinance requirements for current development. Mr. Camp said it would not affect the Post Construction Storm Water ordinance that is in effect for Mecklenburg County. This site is a good example of what it would affect – the impervious area that exists would be allowed to remain and they could add up to 20,000 square feet of new impervious surface area without providing detention.

Chairman Welsh asked for information about the topography of the site and whether adjacent properties are impacted. Mr. Camp said the site is fairly flat but will defer to the applicant's engineer for additional details.

Mike Lash of Lash Engineering represented the applicant and addressed the Board. Mr. Lash referenced the site plan included in the staff report and explained that a portion of the area drains to an 8-12 inch side ditch along the road. Another portion drains elsewhere. The new Presbyterian Hospital parking lot was recently built on the adjacent lot and that property is higher than the subject property so water drains down. Water comes off the parking lot in sheet flow and drains into a grove of trees and works its way back. There is no outfall along the property line – you have to go further back before you get to a creek or outfall or drainage structure to drain into, so it's all sheet flow. That is one of the problems they discovered when they looked at adding detention to the site – there is no outflow to empty it into.

Mr. Jiles said he understands that conditions on the adjoining property cause sheet flow but said that if the applicant was forced to put detention in there they'd have to outfall in some way anyway. Mr. Lash said a cavity would have to be created for everything to drain into. For example, everything would drain into the cavity with a 36 inch pipe and then a small 8 inch pipe would drain out. The small pipe wouldn't be able to keep up with the input of the larger pipe so it would build up. The smaller pipe continually lets water out and eventually over time the cavity is drained. A large amount of drainage area is concentrated into a cavity with one outfall out of that detention structure. The problem with this site is there is no place to release the detention pond into – everything is coming off the site in sheet flow so there is not one location out there.

Mr. Grimmer, the original owner/developer, came to Mr. Lash a few years ago wanting to build the second structure. He didn't have any time frame but wanted to look at the plan. He couldn't get the building in there because of the detention ordinance. He knew there was no outfall area so he gave up on the idea and didn't pursue it any further. It's just a peculiarity of the site. Almost every site Mr. Lash has ever worked on has an outfall of some sort. This site is at the top of the ridge and because it's at the top, not enough water exists there to concentrate enough to cause the erosion of a creek and so you just don't have that much water available, so no creek or outfall was ever developed.

Chairman Welsh asked what alternatives there are if no outfall area exists. Mr. Lash said if it had been construction then an outfall could be built. In this particular case, the Funderburke property to the left of the site has not been developed. Another piece is owned by the hospital and another adjoining piece is owned by the

Phillips sisters. This area hasn't been developed much on either side, but downstream it has been. The Urgent Care and Mecklenburg Medical facilities are downstream and they have a drainage system as part of their parking lot. There is nothing natural in between. Mr. Lash said one could try to come to some sort of agreement with each of the downstream property owners and come up with a drainage easement of some type and then physically put something in, but that would change the character of the land. Mr. Jiles said it sounds like there is a physical possibility, although it would be difficult. Mr. Lash agreed. It would have to cross multiple properties and travel about 200 feet or more to an outfall area.

There was some discussion of maps and aerials showing the site. Chairman Welsh asked if the property currently has a direct impact on the property directly above where the trees are. Mr. Lash confirmed that sheet flow comes of the parking lot and drains there.

Chairman Welsh asked if notice was given to the adjacent property owners. Mr. Camp confirmed it was.

Mr. Lash explained more about drain flow and map contours. The contour indicates water flow and the ridgeline. The property is right at the top of the ridge and that's why there isn't enough water to generate a creek or a swale. He explained some of the PCCO requirements. When rainfall hits a parking lot, part of those detention requirements asks for an 85% reduction in the quality of the water. What they would be doing is taking parking lot effluent - which is a lower quality of water than a rooftop effluent - out and replacing it with rooftop effluent, so the water would be cleaner. They would also make landscape areas so instead of the adjacent property having water coming straight off would have to come through landscaped areas first, so it would be a better situation. That would not be true detention but would have the character of detention by having the water work its way through the landscaped area first.

Vice Chairman Lee asked if the existing parking lot was going to remain as is or if it would be resurfaced. Mr. Lash said the existing drive and portions of the existing parking lot does need some repair since it hasn't been used much and asphalt that hasn't been used much gets cracked. An asphalt company will have to determine the level of necessary repairs. In addition some new parking is planned and some of the parking area in the back will be removed. Right now water sheets off the parking lot.

Chairman Welsh asked if there was any issue with required parking since the parking lot area was going to be reduced. Mr. Camp said required parking will ultimately depend of the final mix of uses but that it looks like they will have enough. Mr. Lash said they deliberately sized the building smaller to make sure they'd be able to meet the parking requirements.

Vice Chairman Lee asked what would happen if the variance was granted, future development took place in the area and water from this lot ran into those other lots. Mr. Lash said that each property stands on its own. If they were developing the Funderburke lot now and the subject lot stood as is, they would design their parking lot to receive the sheet flow that comes off the curb into their lot - that would happen whether or not the subject property was developed. This development actually helps them in the future.

Mr. Camp noted that the Town has plans for a Matthews Station Street connection. This property could be affected by the future road development. Mr. Jiles if that that new roadway could impact the overall drainage pattern through there anyway. Mr. Lash said there is a fairly nice drainage system and culvert that comes up under Sam Newell Road. That drainage system would be brought up along with the street and any improvements to the Funderburke property would drain into that drainage system. The street drainage would have to be sized to accommodate all the off-site water that would come through it.

DELIBERATIONS

Chairman Welsh said they are looking at a unique situation with the topography and this site's location at the top of the ridge. He said he had been worried about the adjoining properties, but after hearing testimony that the adjoining properties would still have to deal with runoff and that it would actually improve their situation makes him more comfortable with that issue. In addition, the Funderburkes were given notice of this meeting and didn't feel it necessary to attend perhaps indicates no concern on their part.

There was some discussion of the proper way to condition the variance. Mr. Mortimer said the landscaping and parking should be referenced. Chairman Welsh agreed and said that since there is no site plan the Board will have to be specific with the wording. Mr. Lash pointed out that there is verbiage written on the plan: "the total impervious area for the site has been reduced. The existing parking is to be removed and landscaping will be constructed in its place. Some of the exiting pavement that is being removed is being replaced with rooftop impervious area, which is far less pollutant-ladened."

Vice Chairman Lee said there was mention of the possibility of the building location shifting a bit and possibly capping the impervious surface area. The site plan currently states "proposed impervious area." Vice Chairman Lee suggested instituting a cap on that number. Mr. Jiles agreed with that suggestion.

Vice Chairman Lee said they heard that the former owner didn't build on the property but that's not necessarily a hardship. He said to him the hardship is overcome by the net loss of impervious area. Chairman Welsh agreed and noted the quality of the runoff will be improved as well. He said he did believe there is some hardship – the topography is so difficult that the prior owner couldn't do anything with it.

Mr. Jiles made a motion to grant a variance to the storm water detention requirements conditioned upon a maximum of 24,666 square feet of impervious area and subject to the other conditions of the site plan as presented, which indicates the pavement removal area and additional pavement areas as indicated on the exhibit, and landscaping shall be provided in the area of the removed parking along the back of the lot line. Mr. Mortimer seconded and the motion was unanimously approved.

Chairman Welsh read the findings of fact. The Board heard sufficient evidence that the problem was not one that was a result of the applicant's actions. The land has a difficult topography for development. The variance as granted will improve the existing situation as it relates to the adjoining property lines with the improvement of both the quality of the runoff as well as potentially a reduction of runoff. That is in accord with the overall purpose of the ordinance and the overall good of the community. The Board also heard evidence of hardship in the past due to the topography of the property and that it has prevented any sort of development by the prior owner. Alternatives are not readily available for dealing with this if the property is developed, which adds to the overall hardship. Evidence was presented from the Town that this property should be considered a legal nonconforming property.

VARIANCE REQUEST: Krispy Kreme, 9301 East Independence

Chairman Welsh appointed Jeanne Moore to act as a voting member.

SWEARING IN

The following were sworn in: John Connelly

Mr. Camp explained that this case deals with the transitional right of way (ROW) and setbacks. The applicant has requested relief from the 40 foot required front setback for buildings in the B-2 zoning district. Krispy Kreme wishes to perform a complete site rebuild. The site was developed in 1992, prior to the Town's transition ROW requirements went into effect. The applicant previously obtained a variance from this Board in 2003 for the setback requirement and parking. They have since modified that so the second variance is no longer required, so today's variance is only for the building location itself. The original variance expired and the site plan has completely changed so it necessary to come before the Board again.

This proposal locates the building approximately 32 feet further back from the ROW and puts it right on the edge of the 75 foot line, so it essentially will have a zero foot setback. There will be no improvements built in the future ROW, so is in essence a lesser request than what the Board heard earlier today. The property is very impacted by the ROW requirements and makes it very difficult to do the rebuild the applicants wish to do.

One thing staff has worked with them on is their seat count and total parking counts. Except for the drive aisle, there are no structures in the ROW line.

Mr. Mortimer asked if the proposed drive through calls for the vehicles to go around the building. Mr. Camp confirmed that was correct.

Mr. Camp displayed map imagery to show that the building would be situated at a plane similar to nearby structures – the IHOP and former Hooters restaurant buildings.

Engineer John Connelly with Britt, Peters and Associates represented the applicant and addressed the Board. He explained that when they first started looking at the site, they weren't sure exactly what that 75 foot transitional ROW was, especially with the existing 200 foot ROW already in place. Once staff worked with them, they understood that their building and required parking had to be behind the transitional ROW. One useful thing is that Krispy Kreme doesn't require a large amount of parking, so all of the parking was able to be located appropriately.

The existing drives are maintained so the current customer will be very familiar with the site layout. The building has been situated about 32 feet back further than the existing building and has been moved over a bit to center it on the property. In lesser traffic, customers will be able to enter the drive through immediately, and in busier times they will be able to queue up around the building because there is plenty of room for on-site stacking. This layout was preferred by Krispy Kreme, and even if the worst case scenario occurred and the ROW was taken, the company would still be able to maintain its business.

Ms. Moore asked if the plan called for outdoor tables. Mr. Connelly confirmed there would be two on the side of the building. Mr. Mortimer asked about inside seating and Mr. Connelly said there would be about 20 seats inside – the new building is not much bigger than the original. Ms. Moore asked what the purpose of moving the building is if it's not going to be bigger. Mr. Connelly explained that they wanted to respect the transitional ROW and also to center the building on the site to allow for circulation around the building.

Mr. Jiles asked if the site met parking requirements. Mr. Camp confirmed it did and there are no other outstanding issues. He explained that in working with the corporation, staff has learned that their revenue is driven primarily by the drive through. Because of that they have reduced the number of seats in the building and outside to be sure they meet the requirements.

Vice Chairman Lee asked about the expiration of the previous variance. Mr. Camp explained that in the Board's rules of procedure there is a requirement to act within 6 months. The applicants didn't act on the variance within that time frame so it expired.

DELIBERATIONS

Vice Chairman Lee said this would be an obvious improvement in the sense of car flow. Getting into the store now means cutting in between the drive-through line and can be dangerous. This looks like a great proposal to fix that. Chairman Welsh agreed and said this is a safer layout. Mr. Jiles said the plan is well organized in terms of vehicular traffic and pedestrian safety and is a much improved layout.

Vice Chairman Lee made a motion to approve the variance from the 40 foot required front setback, conditioned upon the submitted site plan. Ms. Moore seconded and the motion was unanimously approved.

Vice Chairman Lee read the findings of fact. If the applicant complies with the provisions of the ordinance, they cannot secure a reasonable return from or make reasonable use of the property. The building was constructed in the early 1990s and since then a 75 foot transitional ROW was enacted, thereby creating a restriction or burden on the property. The hardship is not the result of the applicant's actions. There are extenuating circumstances resulting from the adoption of the 75 foot transitional ROW. The variance is in harmony with the general purpose and intent of the ordinance. The new design improves pedestrian safety and improves the general traffic flow in that vicinity with the removal of an egress point. The variance does improve public safety and welfare and will do substantial justice.

Chairman Welsh said he wished to commend the applicant and the Town on the way they worked together. He said it is really nice to see that kind of cooperation, and he greatly appreciates that as a member of the Board and as a citizen of the Town.

ADJOURNMENT

Mr. Monestere made a motion to adjourn. Ms. Moore seconded and the motion was unanimously approved. The meeting adjourned at 8:30 pm.

Respectfully submitted,

Lori Canapinno
Zoning Technician/Deputy Town Clerk

Town of Matthews Board of Adjustment Staff Analysis

Parcel Number: 193-262-06
Address: 157 N. Trade St.
Applicant: George Porioritis; Café 157 business owner
Chrisoula Miller; property owner
Applicant Address: 1216 Reverdy Ln.
Matthews, NC 28105
Date of Hearing: Thursday, July 12, 2012
Case Number: 2012-7

Request:

The applicant is requesting a variance for relief of replacing the fence/ wall behind the right-of-way for a café style building along the 100 block North Trade Street pursuant to Section 153.064 (H) (1).

Background:

The property located at 157 North Trade Street was constructed in 1979 and designed to function as a financial institution with tellers, offices and a drive thru facility. The structure was built prior to the adoption of the HUC (Historic Urban Core District) and Downtown Overlay District which now employ design and dimensional guidelines for the historic downtown area. In 2004 the use of the property changed from office/institutional to retail/commercial for the operation of a coffee shop and office space. In order to comply with requirements of Section 153.064 (H) (1) a white picket fence was installed along the right-of-way. In 2007 the use changed to a restaurant and the new occupant retrofitted the existing drive thru facility into an outdoor sitting and dining area. The white picket fence was required to be extended along the right-of-way in the area that was previously maintained as the drive thru. Over the years the fence became weathered and deteriorated and was removed by the tenant who operates Café 157. On April 30, 2012 the Town of Matthews Planning Department issued a Notice of Violation for the removal of the picket fence. The applicant is requesting a variance granting relief from installing the fence/wall as required by the last zoning variance granted in 2007 and by the Matthews zoning ordinance Section 153.064 (H) (1).

March 2007 BOA Motion for Café 157

Chair Vallandingham moved to grant the variance to Section 153.064 (H) (1) – Building line no greater than 10 ft. from sidewalk right-of-way as long as the building remains a restaurant and the continuation of the fence including the extension on both sides. Mr. Welsh seconded the motion. Chair Vallandham said the supporting evidence to grant is that a variance is needed for the property to be used as a restaurant. The existing variance is tied to the coffee shop. It secures the welfare and safety of the public with the improvements that have been

shown. It is in harmony with the general purpose and intent of the ordinance in order to get the pedestrian feel in downtown. The variance was granted unanimously.

Section 153.064 (H) (1) Structure Design Standards

Build-to lines are established for most existing streets in the Overlay district. As new streets are proposed, they will be assigned a street type category and build-to lines shall be assigned. Any new construction in the 100 block of North Trade St., because it contains a majority of historic commercial structures set at or near the sidewalk, shall not exceed 10 ft. setback from the right-of-way, except for outdoor café-type or other outdoor uses when a fence or wall is carried across the right-of-way to continue the visual continuation of building faces.

Board of Adjustment Worksheet

Findings of Fact

This form can be used by the Matthews Board of Adjustment during deliberations on zoning variance cases to assist in developing required findings of fact to support approval for, or denial of, a variance request. Staff comments are provided here for each finding listed in the state statute. Board members may choose to use the information provided by staff, the applicant, other sworn testimony, and personal observations mentioned in the hearing in making their determinations on these findings.

1. If the applicant complies with the provisions of the ordinance he can/cannot secure a reasonable return from, or make reasonable use of, his property. (It is not sufficient that failure to grant a variance simply makes the property less valuable.)

A new fence to replace the aging one could be installed at the same location. A different style or color could be more consistent with the architecture of the site.

2. The hardship of which the applicant complains does/does not result from unique circumstance related to the applicant's land. (Hardship common to an entire group of properties resulting in overly restrictive regulations should be referred to the Planning Board. Unique personal or family hardships cannot be considered since a variance applies to, and runs with, the land.)

This is one of several sites in the 100 block of N. Trade St. that does not have a building meeting the sidewalk.

3. The hardship is/is not the result of the applicant's own actions.

Previous hardships upon this property and the original use were not the result of the applicant's own action and created by the adoption of new rules and regulations; however, once the property changed from an office institutional use to a mercantile establishment following the newly adopted regulations with the addition of an outside café, the hardship became a result of the applicant's own actions.

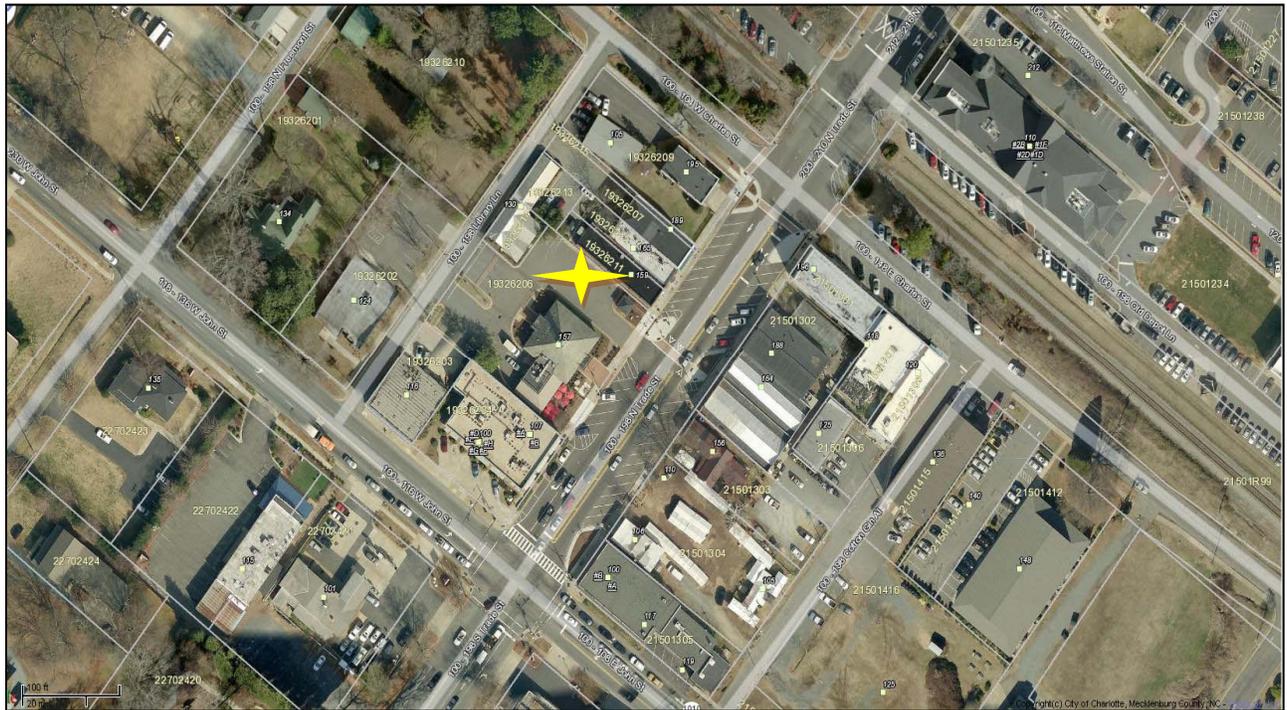
4. The variance will/will not be in harmony with the general purpose and intent of the ordinance and will/will not preserve its spirit. (Any variance granted should be the least possible deviation from the ordinance standards that will allow a reasonable use of the land without sustainability detracting from the character of the neighborhood.)

The intent of the ordinance is to maintain a pedestrian friendly atmosphere and continue the visual continuity to the building faces with a wall or fence along the right-of-way line when structures are recessed or set back a distance greater than 10 feet behind the right-of-way. The landscaping proposed in place of a fence or wall is not a consistent hard line across the property frontage.

5. The variance will/will not secure the public safety and welfare and will/will not do substantial justice. (Any decision on a variance request should consider that the benefit to the public will be substantially outweighed by the harm suffered by the applicant.)

The request if granted will not cause the public any injury or harm or result in any substantial injustice





April 30, 2012

Nick & Chrisoula Miller
1216 Reverdy Lane
Matthews, NC 28105

**RE: NOTICE OF ZONING VIOLATION
1216 Reverdy Lane - Tax Parcel 215-124-07**

Dear Mr. & Mrs. Miller,

During an inspection of the above-referenced property, Town Staff observed that you had removed a fence that was required in Downtown Overlay District by the Town of Matthews Zoning Ordinance 153.064.

Downtown Overlay District:
153.064(H) *Structure design standards.*

(1) Build-to lines are established for most existing streets in the Overlay district. As new streets are proposed, they will be assigned a street type category and build-to lines shall be assigned. Any new construction in the 100 block of North Trade Street, because it contains the majority of historic commercial structures set at or near the sidewalk, shall not exceed 10' setback from the right-of-way, except for outdoor café-type or other outdoor uses when a fence or wall is carried across the right-of-way to continue the visual continuity of building faces.

The Town of Matthews requires you to replace the fence or bring it within compliance within 30 days of the day of this notice.

If these violations are not corrected, the Town of Matthews can issue a citation with fines up to \$500 per day.

You may request an appeal before the Zoning Board of Adjustment if you submit a written application of appeal within 30 days of this Notice of Violation.

Your prompt response to this matter is appreciated and will prevent any further action by the Town of Matthews. If you have any questions, please do not hesitate to contact me in person, via phone at 704-847-4411, extension 234, or via email at cmckoy@matthewsnc.com.

Sincerely,



Carlo McKoy
Code Enforcement Officer

CC: Café 157
157 N. Trade St
Matthews, NC 28105

APPLICATION FOR A ZONING VARIANCE

DATE FILED _____

HEARING DATE _____ TIME _____

LOCATION: Hood Road, Matthews Town Hall, 232 Matthews Station Street, Matthews, NC 28105

To the Matthews Board of Adjustment:

I, George Poriortis on behalf of Café 157, hereby petition the Board of Adjustment of the Town of Matthews for a VARIANCE from the literal provisions of the MATTHEWS ZONING ORDINANCE because I am prohibited from using the parcel of land described below in the following manner:

Café 157 removed the old decaying farmhouse style white picket fence and replaced it with a "green" fence.

The property located at: 157 N. Trade Street Matthews, NC 28105 and is shown on the Mecklenburg County tax map as parcel number(s): 19326206

The section(s) of the Zoning Ordinance which affect this ruling is/ there: §153.064(H)
regarding building to the line for properties in the 100 block of North Trade Street.

The present zoning of the property is: Business/Restaurant

APPLICATION FOR A ZONING VARIANCE, PAGE 2

FACTORS RELEVANT TO THE ISSUE OF A VARIANCE

(1). THERE ARE PRACTICAL DIFFICULTIES OR UNNECESSARY HARDSHIPS IN THE WAY OF CARRYING OUT THE STRICT LETTER OF THE ORDINANCE. The courts have developed three rules to determine whether in a particular situation “practical difficulties or unnecessary hardships” exist. State facts and arguments in support of each of the following:

(a) If he/ she complies with the provisions of the ordinance, the property owners can secure no reasonable return from, or make no reasonable use of his /her property. (It is not sufficient that failure to grant the variance simply make the property less valuable.)

Cafe 157 removed an aging fence that was in need of replacement. There is no added value to the Town of Matthews or Café 157 to replace the fence in the same color or style.

(b) The hardship of which the applicant complains results from unique circumstances related to the applicant’s land. (Note: Hardships common to an entire neighborhood resulting from overly restrictive zoning regulations should be referred to the Planning Board. Also, unique personal or family hardships are irrelevant since a variance, if granted, runs with the land.)

Cafe 157 is subject to the structure design standards for the 100 block of North Trade Street set forth in the Matthews Zoning Code § 153.064 (H), which requires it to have a fence or wall “carried across the right of way to continue the visual continuity of building faces.” In order to remain in compliance with the structure design standards, the owner had to replace the aging fence, it was removing. The owner opted to use a “green” vegetation fence as the replacement. This “green” fence is made up of small shrubs and flower pots. This in conjunction the existing knee wall in front of the outdoor eating patio maintains the visual continuity of the building faces, while supporting the efforts the Town of Matthews to remain a greentown.

(c) The hardship is not the result of the applicant’s own action.

The hardship is not the result of actions taken by Café 157.

(2) THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ORDINANCE AND PRESERVES ITS SPIRIT. (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood.)

As set forth above, Café 157 is subject to the Structure Design Standards in the Matthews Zoning Code. The Café has an outdoor eating patio with an existing knee wall in front of it. The prior fence was a white farmhouse style picket fence that extended from the corner of the knee wall to the sidewalk leading to the entrance of the restaurant and then continued to the driveway to the restaurant. (See attached Exhibit A). In addition with being an architectural contradiction to the Williamsburg style building the Café occupies, the fence was old, aging, and in need of replacement. Repair was not an option. Café 157 opted to replace the fence with the vegetation border fence for three reasons; 1) It supports Matthews Downtown Master Plan to be pedestrian friendly and compatible with the surrounding properties; 2) it supports the Town of Matthews Long Term Strategic Plan to be a "Green" city; and 3) it It has an aesthetic curb appeal while creating the impression the building hugs the sidewalk in compliance with the Zoning Code. The vegetation border also meets the height and setback requirements in the Zoning Code and is historically accurate.

(3) THE GRANTING OF THE VARIANCE SECURES THE PUBLIC SAFETY AND WELFARE AND DOES SUBSTANTIAL JUSTICE. (State facts and arguments to show that, on balance, if the variance were denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.)

The use of the green fence in conformance with the Matthews Zoning requirements on height and setback do not cause the public any injury or harm or result in any substantial injustice

I certify that all of the information presented by me in this application, including attachments, is accurate to the best of my knowledge, information and belief.

CHRISOULA V. MILLER

GEORGE PORIOTIS
Print applicant name

704 846-4480
Telephone number of applicant

704 841 0760
Telephone number of representative

Laura H. Budd, Esq.
Print representative's name

5-14-12
Date

Chrisoula P Miller

George Poriotis
Signature of applicant

1216 REVERDY LN MATTHEWS
Mailing address of applicant

Laura H. Budd, Esq.
Signature of representative

10550 Independence Blvd Pkwy Ste. 301
Matthews, NC 28105
Mailing address of representative

5-14-12
Date

THE BUDD LAW GROUP, PLLC

10550 Independence Pointe Pkwy, Ste 301, Matthews, NC 28105

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Telephone: 704-841-0760

Facsimile: 704-844-8936

Laura H. Budd, Attorney
lbudd@laurabuddlawoffice.com

James H. Carter, Of Counsel
jcarter@laurabuddlawoffice.com

May 18, 2012

Mr. Jay Camp
Town of Matthews
Planning Board/ Board of Adjustment
232 Matthews Station St.
Matthews, NC 28105

Re: Variance Application for Café 157 located at 157 N. Trade Street Matthews, NC

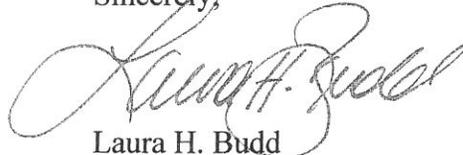
Dear Mr. Camp,

Enclosed please find the Variance Application and required attachments for Café 157 located in downtown Matthews.

If I have inadvertently not included a document or you require additional information, please do not hesitate to contact me at the above information. Please note, I will be out of the country the week of May 21st and returning to the office on May 29th, but have requested my office provide additional assistance as you may require.

Thank you.

Sincerely,



Laura H. Budd

Cc: *George Poriortis, Café 157 Owner*
Chrisoula Miller, Property Owner
John Miller

**Café 157 Variance Application
Adjoining Property Information**

1. Matthews Ale House
107-A North Trade St.
Matthews, NC 28105
Tax Parcel ID #: 19326204

2. Holiday Haus
159 N. Trade Street
Matthews, NC 28105
Tax Parcel ID #: 19326211

3. Matthews Farmer's Market
208 N. Trade Street
Matthews, NC 28105
Tax Parcel ID #: 21501302

