

**Board of Adjustment
Thursday, August 2, 2012
7:00 PM
Hood Room, Matthews Town Hall**

AGENDA

- I. CALL TO ORDER**
- II. INVOCATION**
- III. APPROVAL OF MIINUTES: July 12, 2012**
- IV. VARIANCE REQUEST: 7- Eleven, 1700 Windsor Square Dr.**
- V. VARIANCE REQUEST: Renfrow Property, 400 West John St.**
- VI. ADJOURNMENT**

**MINUTES
BOARD OF ADJUSTMENT
THURSDAY, JULY 12, 2012
HOOD ROOM, MATTHEWS TOWN HALL**

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

ABSENT: Member Derek Morgan; Alternate Members Jeanne Moore and Cecil Sumners

CALL TO ORDER/INVOCATION

Chairman Welsh called the meeting to order at 7:21 pm and gave the invocation.

APPROVAL OF THE MINUTES

Vice Chairman Lee made a motion to approve the minutes of the June 7, 2012 meeting. Mr. Mortimer seconded and the motion was unanimously approved.

VARIANCE REQUEST: Case 2012-7: 157 North Trade Street, Parcel ID 193-262-06; Café 157

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

SWEARING IN

The following were sworn in: Jay Camp, Jim King, George Poriortis

STAFF REPORT

Planner Jim King explained the property is located at 157 North Trade Street, parcel number 193-262-06. The applicant, George Poriortis, is the owner of the business at that location - Café 157. The Millers, who are the property owners, have authorized Mr. Poriortis to apply for this variance.

The applicant is seeking relief from the requirement to replace a fence or wall behind the right of way (ROW) for the café-style building along the 100 block of North Trade Street pursuant to Section 153.064(H)(1)

The building was erected in 1979 and designed as a bank. It was constructed prior to the adoption of Historic Urban Core (HUC) regulations and the Downtown Overlay. A change of use occurred in 2004 when it became a coffee shop/office. The change of use triggered the need for a variance from Section 153.064(H)(1). That section states that buildings used for café-type uses may be located up to ten feet off the right of way line (ROW) as long as a fence or wall is provided and any other use aside from café-type uses must be built to the ROW line. The intent is to allow café to have outdoor seating while not disturbing the normal flow of pedestrian activity along the sidewalk. The building is set back more than ten feet so a variance was requested and granted and a white picket fence was added at the ROW line. In 2007 another change of use occurred. That tenant requested the same variances. Those variances were granted with the stipulation that the fence be maintained.

Over time the fence deteriorated. The current tenant removed the fence. Upon removal, the Town's Code Enforcement Officer issued a Notice of Violation requiring the reestablishment of the fence. The applicant is now requesting an amendment to the previous variance – the building still exceeds that allowed ten feet, so that variance still needs to remain in effect – but the applicant requests that the fence stipulation be dropped to allow him to use living vegetation instead of actual fence material to provide that wall or fence-like definition to the property line.

Mr. King read from the minutes of the 2007 Board of Adjustment meeting during which the previous variance had been granted: “The Chair moved to grant the variance to section 153.064(H)(1) – building line no greater than ten feet 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.”

Section 153.064(H)(1) of the Zoning Ordinance states that 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 a majority of historic commercial structures set at or near the sidewalk, shall not exceed 10 foot 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.

Mr. King displayed photographs of the subject property (photographs 1 and 2 as included in the staff report) which were taken approximately two weeks prior to the meeting. The building is roughly twenty-five feet from the sidewalk and various vegetative plantings approximately two feet behind the ROW line with other plants and art elements throughout the front setback. He also displayed an older image of the property with the old fence in existence, taken from a Google Earth image dated October 2011 photograph 3 as included in the staff report).

Chairman Welsh asked if any other businesses on that block had received variances or were noncompliant. Mr. King said no – aside from Café 157, the bike shop, greenhouse and farmer's market are the only other locations that are recessed from the sidewalk. The greenhouse and farmer's market locations have white picket fences and the bike shop has a partial white picket fence at its location that covers the grassy area between the two adjacent buildings.

Chairman Welsh said he was coming back to the ordinance with its exception that allows a fence or wall at the ROW line and asked what the Town was trying to accomplish with that provision. Mr. King explained the intent is to have uniformity or continuation from the adjacent buildings, so as pedestrians walk down the street they see a consistent boundary at the back of the sidewalk, be it a building's wall or fencing material at the same setback as the existing buildings. It offers a feeling of continuation. Chairman Welsh asked if the Town felt that a continuation of foliage would accomplish the same effect. Mr. King said the Zoning Ordinance does not include a definition of a fence or wall. The Code Enforcement Officer's interpretation is that the existing landscaping would not be sufficient to meet the intent of the ordinance.

Mr. Mortimer asked about the bicycle shop. Mr. King said that structure has a partial fence. Mr. Camp noted that fence was probably put up simply to keep people from walking on the grass and that it was probably not a requirement.

Attorney Laura Budd represented Café 157 and addressed the Board. She explained that she represented not only George Poriotis, the owner of Café 157, but also the Millers, who are the property owners and who gave consent for their tenant to make this variance request, as well as the newspaper and café that was located in the subject property in 2004.

Ms. Budd said the restaurant is a local business, not a chain, and is a big draw to the Town of Matthews with regard to residents. It has recently begin to collaborate with other businesses in downtown Matthews, which increases foot traffic in downtown Matthews.

The building houses a restaurant and is set back from North Trade Street. The Zoning Code does require some sort of fence or boundary that makes it look as if it is hugging the sidewalk since the setback is so large. What was in place before, the white picket fence, was in place since at least 2004 if not earlier and which was not maintained well. It was deteriorating, was in danger of collapse and was not repairable. It needed to be removed. Mr. Poriotis knew he was required to replace the fence so he worked with a landscape designer to determine what would look best there, keeping in mind that the Town of Matthews is seeking to be a green community. He has effectively installed a green fence. He has created a boundary between the building and the sidewalk, which creates the impression that that building is now hugging the sidewalk.

This green fence is of the required height and located at the required setback and consists of new plantings and standing large flowerpots with a fountain. It achieves the proper delineation between the use of green materials and the creation of that boundary, just like a traditional fence would do. The fence is aesthetically pleasing to the eye and adds to the aesthetic curb appeal of downtown Matthews. It does not fight with the adjacent properties in terms of their architectural styles, both of which are brick, as the white picket fence almost did.

This is not a hardship that Café 157 brought on itself. It inherited the fence and was required to keep the fence. When it was time to replace it, Mr. Poriortis looked at all the options and determined that the landscaping fit not only with Matthews' long term Strategic Plan and its Downtown Master Plan, but also fit within the Zoning Code because the code does not actually say what a fence or wall must consist of. If one considers the typical and conventional definition of a fence or wall, it is to create a boundary and that is what this vegetation does.

There was much discussion earlier with regard to other properties in downtown Matthews that are subject to this same requirement. Ms. Budd said the bike shop is not in compliance with the requirement since there is no fence on one corner. One could make the argument that the vegetation that has been planted on that corner of Trade and Charles Streets also creates a boundary with the use of vegetation. The fence that is in front of Renfrow's fits is perfectly as does the picket fence in front of the Farmer's Market.

Ms. Budd said this is a special and unique circumstance. This is one of only three properties in downtown Matthews that must meet this requirement and the conditions do not result from the actions of the property owner or tenant. If the Board grants the variance there will be special advantage or privilege because again, only three properties are subject to this requirement and all three have a different approach to meeting the requirement. It is not materially detrimental to the health, safety or welfare of any citizen and will not result in an expansion of any nonconformity with regard to the restaurant or any of the surrounding properties.

Ms. Budd introduced five photographs showing close-ups of the vegetation and other materials (Exhibits 1-8 hereby referenced and made a part of these minutes).

Chairman Welsh asked who the actual applicant was. It was confirmed that Mr. Poriortis was the applicant and the property owners have given their written consent for this application. Ms. Budd said the tenant worked with the owner regarding the takedown of the fence and the installation of the new materials. All of their interests are in line and the owners gave their consent and are in essence asking for this variance while allowing the tenant to speak for them. Chairman Welsh said it seems that there are different issues that pertain to Café 157 than the owner, because every time a different tenant comes in they could come in and claim there was a lack of hardship to them. Hardship has to be determined based upon who is the ultimate applicant, and since the variance runs with the land it seems that the ultimate applicant should be the owner of the property. Ms Budd said she would address any issues if there was a particular hardship question between owner and tenant since she represents

the tenants in lease negotiations. The lease requires the tenant to remain in compliance with every ordinance and regulation of the Town of Matthews. So the replacement of the fence is a tenant expense, not an owner expense, and the cost of fixing or replacing the fix is borne completely by Café 157.

Chairman Welsh asked Ms. Budd to explain the difference between a green fence and a hedge. Ms. Budd said she just used the term green fence and that Café 157 didn't put in a hedge, which would be effectively one seamless continuation of greenery all the way across. That's the standard conventional definition of a hedge. What Café 157 has created is a green fence because it is a boundary that separates the building from the sidewalk. She said she used the term "fence" because it has gaps in it, somewhat like a picket fence, to create depth and attracts people to the restaurant.

Chairman Welsh clarified that Ms. Budd is saying that a hedge or green fence would both be barriers and that she labeled it a green fence because it has gaps or spacing in it. Ms. Budd agreed but said perhaps a better way to look at it would be to call it a vegetative border that is used to create a boundary. She said one could make the argument that a vegetative fence is in compliance with the Zoning Code since there is no definition of a fence within it.

Chairman Welsh asked when the fence was taken down and Mr. Poriotis said it was removed approximately three months ago. He explained some of the history of his work on the property and said he has received many compliments about his new landscaping.

There was some discussion of the bike shop and why a fence is not required there. Mr. Camp offered an opinion that they may have received a variance or that the businesses in that location may have been grandfathered in and as such not required to install a full fence. He explained he would have to do some research to come up with a definitive answer. Mr. King pointed out that the exterior renovations to the subject property may have been what triggered the original variance request.

DELIBERATIONS

Chairman Welsh said he was not prepared to make a judgment on the issue of green fences and whether or not they would be in compliance with this ordinance so will look at this issue from the perspective of a standard variance request. Mr. Mortimer agreed. Vice Chairman Lee said he thought vegetation could be construed as a fence but that the intent in this situation is to replicate a building line and shrubbery would not fit into that particular definition.

Chairman Welsh said he thought the applicant has put in a great deal of effort to have something that looks becoming and is attractive for the Town and to him that is a significant issue. It's not a fence but he has done something very attractive for this location. He referred to the previous situation with the picket fence and said it looks a bit odd to have a fence and then a wall only six feet behind it, so the new arrangement is more pleasing.

He said he heard no evidence that the option to install another fence would cause an undue hardship, so the question now is whether or not this vegetation is acceptable to the Board or if a fence should be reinstalled.

Mr. Mortimer said the code doesn't say what a fence is and that this is a very attractive alternative. Mr. Jiles said this provides the downtown feel to the block visually, aesthetically and probably physically. He said he thinks it serves the purpose very well and meets the intent of the ordinance.

Vice Chairman Lee agreed and said this provides a better façade and streetscape. He thinks of fences as boundaries and an actual fence would probably be a boundary to customers, while this vegetation is more inviting and attractive. From the standpoint of the ordinance, he said he doesn't believe a white picket fence accomplished that either. In that respect the vegetation accomplished as much or more visual continuity as a white picket fence.

Mr. Mortimer said the ordinance is ambiguous and the applicant's landscaping is more attractive than a fence. Vice Chairman Lee said he would vote to grant the variance based on that ambiguity.

There was some discussion of the condition and verbiage related to the granting of a variance. Chairman Welsh said he was concerned that future tenants may not maintain the existing landscaping but did not want to cause the applicant to be in violation if one of the existing shrubs grows too large, dies or otherwise changes. He suggested adding a condition that the tenant would have to replace vegetation if any died, and Vice Chairman Lee suggested requiring the plantings to be maintained with reasonable care.

Chairman Welsh made a motion to grant the variance request for relief from the requirement to install a fence or wall behind the right of way for a café-style building along the 100 block of North Trade Street, pursuant to Section 153.064(H)(1), provided that what has been referred to as a green fence – foliage, trees, planters - be maintained and continued in a substantially similar form as depicted in photos as presented as evidence at this hearing. Mr. Mortimer seconded and the motion was unanimously approved.

Chairman Welsh read the findings of fact. The Board was presented with evidence that granting the variance would be consistent with the general purpose and intent of the ordinance. The line of foliage with the line to the street is attractive, beneficial to the town by continuing that line of continuity down the block while being pedestrian friendly. The Board also heard evidence of hardship should the variance not be granted since a

significant amount of effort and financial resources were undertaken to plant this vegetation, which were borne by the applicant. An additional burden was imposed on the applicant and his business with regard to the fence requirement. The property has changed uses a few times which has resulted in this particular ordinance coming onto play and the dilapidated quality of the fence was not caused by the applicant but was corrected by him. The property owner and the business owner do have somewhat divergent issues but nevertheless hardship exists which are not the applicant's doing.

ADJOURNMENT

Mr. Jiles made a motion to adjourn. Mr. Monestere 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: 193-302-03
Address: 1700 Windsor Square Dr.
Applicant: 7-Eleven, Sami I Nafisi
Applicant Address: 7935 Council Pl., Ste 200
Matthews, NC 28105
Date of Hearing: Thursday, August 2, 2012
Case Number: 2012-8

Request:

The applicant seeks a variance to reduce the transitional setback requirement to 10 ft. to build an addition to an existing building at 1700 Windsor Square Dr. The transitional setback is 40 ft. from the transitional right-of-way requiring relief of 30 ft from the required 40 ft. transitional setback in order to construct the addition.

Background:

The property at 1700 Windsor Square Dr. was constructed in late 1980s as a convenience store mimicking typical architecture and design for the era in which it was built. The owner would like to renovate the structure making it more up-to-date and increase the overall square footage. The property is being rezoned from the old Conditional category to B-2 (CD), (Rezoning Case 588). Before the Town Board can render a decision on the rezoning, the site must meet all the requirements of the Zoning Ordinance. The Town Board is scheduled to take action on the rezoning at their regularly scheduled meeting on August 13, 2012. The current structure is approximately 950 sq. ft. with fuel islands on both sides covered by a single canopy. The proposed building expansion will stay under the existing canopy. The owner proposes to increase the retail space to 1900 sq ft. and relocate one of the fuel islands. The existing canopy will be enlarged and will match the building.

A portion of the addition (see attached plan) is within what is known as the transitional setback. The existing building as well as many others along this portion of Independence Blvd. are located partially within the transitional setback. The transitional right-of-way and transitional setback at this location was established in 2000, after the existing structure was built. Transitional right-of-way was established to preserve land adjacent to roadways for future expansion and to reduce the need for building relocations and teardowns when roadways are widened. The canopy is currently 85 ft. from the edge of the recorded right-of-way for Independence and setback 10 ft. from the transitional right-

of-way. The addition does not increase the level of encroachment and will be located beside the existing front façade of the current structure.

Transitional Right-of-Way: land area reserved for future potential expansion of a thoroughfare beyond the existing recorded right-of-way.

Transitional Setback: the area between the existing required setback/yard and the line established when measured from the future widened right-of-way.

How Zoning Ordinance Provisions Affect This Request

§ 153.095 SPECIAL REQUIREMENTS FOR LOTS ALONG THOROUGHFARES.

(4) An affected property owner shall have the right to request a variance to transitional setback or yard requirements to the Board of Adjustment.

Summary of Variances Necessary for Approval Of This Request

In granting relief, the Board of Adjustment may impose reasonable and appropriate conditions and safeguards to protect the interest of neighboring properties.

1. Section 153.095, Requirements for lots on thoroughfares

The minimum yard or setbacks prescribed for each zoning district which abuts a proposed but not yet constructed thoroughfare, shall be measured from the proposed right-of-way line established for each classification of thoroughfare as designated on the Thoroughfare Plan.

Request: Allow for portions of a building expansion to be located within the transitional setback..

2. Section 153.222 (C) (1) Renovation and Expansion Of Nonconforming Structures Prohibited

(C) A nonconforming structure may undergo a change of use or renovation without having to bring the structure into conformity with the requirements of these regulations, provided that:

1. The change in use or renovation does not increase the floor area of the structure

Request: Allow a nonconforming structure to be both renovated and expanded

3. Section 153.222 (D) Location Of Expansions To Nonconforming Structure

A nonconforming structure may be expanded, without bring the nonconforming structure into conformity with these regulations, only if part of the structure to be expanded and the area of the lot into which the expansion is taking place are brought into conformity with the requirements of these regulations.

Request: Allow a portion of a building expansion to a nonconforming structure to be built without bringing that area of the structure into conformity with the regulations

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.)

The building may still be used as a convenience store/gas station without the proposed additions.

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.)

The building is impacted by the transitional setback requirements like many buildings in Matthews. However, the Ordinance makes clear allowances for variances to be granted to lessen the impact of these requirements.

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

The property predates the transitional setback requirements.

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 variance seeks to allow an addition that does not further the extent of the encroachment into the transitional setback and keep the building at its same overall setback as when built.

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 Zoning Ordinance specifically points to a variance as a relief for property owners affected by these regulations.

Virtual
Charlotte

1700 WINDSOR SQUARE

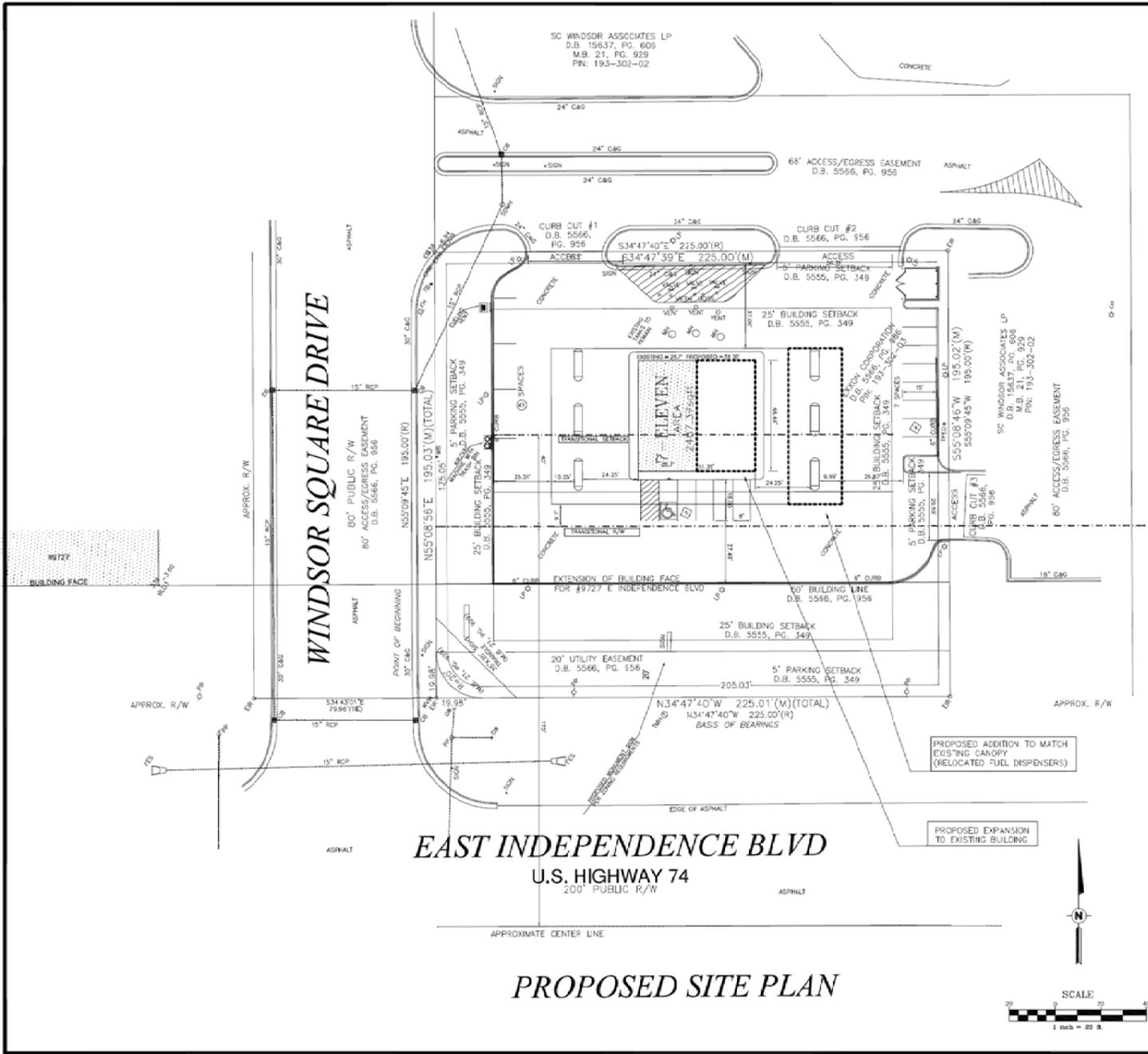
Go!

[Show search options](#)

Find Address (e.g. 6W E 4TH ST), Parcel (e.g. 12502501), or Intersections (e.g. Ballantyne Commons Pkwy & Ros Rd)

[Measure](#)





- SITE NOTES**
1. Parking to meet the parking requirements is shown with spaces located outside of the ROW. The parking shown in the ROW is only shown for the maximum requirements.
 2. See sheet C2 for existing site plan.
 3. The maximum required building egress doors to be installed at the site will be 4 doors. The same as the existing site.
 4. The site access is restricted to existing curb cuts / no drive access.
 5. Calculated parking using actual vehicle floor space and maximum number of employees per shift. The employees per shift just shown for a 2000 sq ft sales floor area.
 6. The signage and building construction shall be limited to 30% of the total area.
 7. Proposed front entrance material construction shall match the existing brick.
 8. For work, all work will be adjacent to the site.
 9. The number of columns shall be 100 or other type of lighting lighting or the canopy shall be limited to 1000 sq ft.
 10. The building elevations on the existing site will have face windows with exterior lights to "mirror" the appearance from the site.
 11. A monument sign will be installed to replace the existing "sign" sign.
 12. The existing trees along the street frontage will remain.
 13. There is no change in the existing easement area for the site.
 14. The existing underground fuel storage tanks are to remain in place.
 15. The proposed building and canopy will match the existing structure and be constructed with materials meeting the requirements of Windsor Square Shopping Center and Main Street ordinances.
 16. The proposed site lighting will be in accordance with Main Street lighting ordinances.
 17. A permit is required for the 40' set back requirements from East Independence Blvd. The existing structure is not conforming. The addition to the structure will conform to the existing and will be non-conforming. The proposed addition within the building setback of the adjacent structure is located to the west of the site on Windsor Square Drive (as shown on the drawing).

SITE SUMMARY

ZONING	C - CONDITIONAL
BUILDING HEIGHT	---
LOT AREA	1.81 ACRES 41,881 SF
STANDARD PARKING	
BUILDING (See Sheet)	1000 SF
RATIO PROVIDED	5.00 / 1000 SF
CUSTOMER PARKING	12 SPACES
EMPLOYEE PARKING	2 SPACES
TOTAL REQUIRED	12 SPACES
TOTAL PROVIDED	14 SPACES
ACCESSIBLE PARKING	
TOTAL PROVIDED	1 SPACES
VAN	1 SPACES
TOTAL REQUIRED	1 SPACES
LANDSCAPING	
TOTAL PROVIDED	419,289 (44K)
TOTAL REQUIRED	---

NOTE: THE SITE INVESTIGATION REPORT WAS NOT AVAILABLE AT THE TIME THIS SITE PLAN WAS CREATED. LANDSCAPING, SETBACKS AND PARKING REGULATIONS WILL NEED TO BE VERIFIED BY THE SR AND UPDATED ON THE SITE PLAN.

THIS DRAWING IS FOR CONCEPTUAL PURPOSES ONLY AND SHOULD NOT BE USED FOR CONSTRUCTION.

PROPOSED SITE PLAN





J. Dean Prevette
Professional Engineer
2923 South Tryon Street, Suite 120
CHARLOTTE, N.C. 28203 - 704.941.6613

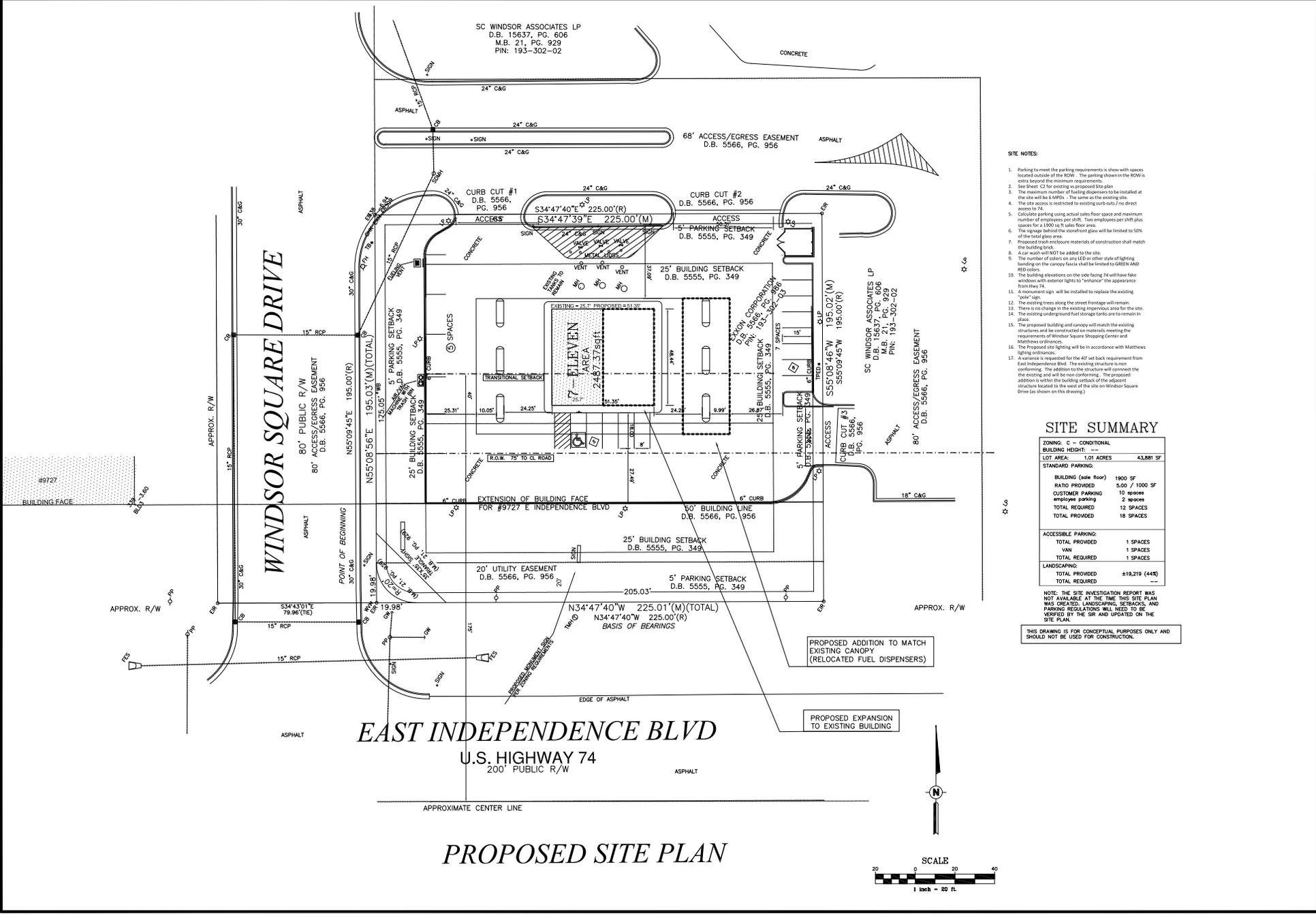
PROJECT TITLE:
C-STORE - WINDSOR SQUARE
1700 WINDSOR SQUARE DRIVE
MATTHEWS, NC

DATE: MARCH 28, 2012

DESIGNER:
REVISIONS:
DRAWN BY: J. PREVETTE
CHECKED BY:

SHEET
C-1
OF 1

PROPOSED 7-ELEVEN SITE PLAN



- SITE NOTES:**
1. Parking to meet the parking requirements is shown with spaces located outside of the ROW. The parking shown in the ROW is extra beyond the minimum requirements.
 2. See Sheet C2 for existing or proposed site plan.
 3. The maximum number of fueling dispensers to be installed at the site will be 6 (6) - The same as the existing site.
 4. The site access is restricted to existing curb cuts / no direct access to 74.
 5. Calculate parking using actual sales floor space and maximum number of employees per shift. Two employees per shift plus spaces for a 1500 sq ft sales floor area.
 6. The signage behind the storefront glass will be limited to 50% of the total glass area.
 7. Proposed trash enclosure materials of construction shall match the building front.
 8. A car wash will NOT be added to the site.
 9. The number of colors on any LED or other style of lighting hanging on the canopy fascia shall be limited to GREY, RED and RED colors.
 10. The building elevations on the side facing 74 will have face windows with exterior lights to "enhance" the appearance from Hwy 74.
 11. A monument sign will be installed to replace the existing "7-Eleven" sign.
 12. The existing trees along the street frontage will remain.
 13. There is no change in the existing impervious area for the site.
 14. The existing underground fuel storage tanks are to remain in place.
 15. The proposed building and canopy will match the existing structures and be constructed on materials meeting the requirements of Windsor Square Shopping Center and Matthews ordinances.
 16. The proposed site lighting will be in accordance with Matthews lighting ordinances.
 17. A variance is requested for the 40' set back requirement from East Independence Blvd. The existing structure is non-conforming. The addition to the structure will connect the existing and will be non-conforming. The proposed addition is within the building setback of the adjacent structure located to the west of the site on Windsor Square Drive (as shown on the drawings).

SITE SUMMARY

ZONING: C - CONDITIONAL	
BUILDING HEIGHT: ---	
LOT AREA: 1.01 ACRES	43,681 SF
STANDARD PARKING:	
BUILDING (sole floor)	1900 SF
RATIO PROVIDED	5.00 / 1000 SF
CUSTOMER PARKING	10 spaces
EMPLOYEE PARKING	2 spaces
TOTAL REQUIRED	12 SPACES
TOTAL PROVIDED	18 SPACES
ACCESSIBLE PARKING:	
TOTAL PROVIDED	1 SPACES
VAN	1 SPACES
TOTAL REQUIRED	1 SPACES
LANDSCAPING:	
TOTAL PROVIDED	\$19,219 (44%)
TOTAL REQUIRED	---

NOTE: THE SITE INVESTIGATION REPORT WAS NOT AVAILABLE AT THE TIME THIS SITE PLAN WAS CREATED. LANDSCAPING, SETBACKS, AND PARKING REGULATIONS WILL NEED TO BE VERIFIED BY THE SR AND UPDATED ON THE SITE PLAN.

THIS DRAWING IS FOR CONCEPTUAL PURPOSES ONLY AND SHOULD NOT BE USED FOR CONSTRUCTION.

PROPOSED SITE PLAN



232 Matthews Station Street
Matthews, NC 28105
704.847.4411

APPLICATION FOR A ZONING VARIANCE

DATE FILED July 16, 2012

HEARING DATE AUGUST 2, 2012 TIME 7:00 PM

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

To the Matthews Board of Adjustment:

I, SAMI I NAFISI (print name), 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:

Expansion of the existing convenience store . +

The property is located at 1700 Windsor Square Drive (address)
and is shown on the Mecklenburg County tax map as parcel number(s) 19330203.

The section(s) of the Zoning Ordinance which affect this ruling is/are _____
Matthews Zoning Code -page 6, Section 153.095 A 4 addresses the transitional setback relief for property owners.

The present zoning of the property is CONDITIONAL.

APPLICATION FOR A ZONING VARIANCE, PAGE 2

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. By law, the Board is required to reach three conclusions as a prerequisite to issuing a variance: (1) that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance; (2) that the variance is in harmony with the general purposes and intent of the ordinance and preserves its spirit; and, (3) that in the granting of the variance the public safety and welfare have been assured and substantial justice has been done. In the spaces provided below, indicate the facts that you intend to show and the arguments that you intend to make to convince the Board that it can properly reach these three required conclusions. IT WILL BE YOUR RESPONSIBILITY TO PRESENT THESE FACTS BY SWORN TESTIMONY AND COMPETENT EVIDENCE.

(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 owner 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 makes the property less valuable.)

The transitional r/w requirements prevent expansion of the existing "non-conforming" structure. +

No additional incroachment into the r/w is planned, merely expansion of the existing condition. +

- (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.)

The transitional r/w requirements prevent expansion of the existing "non-conforming" structure +

No additional incroachment into the r/w is planned, merely expansion of the existing condition. +

- (c) The hardship is not the result of the applicant's own actions.

The building was erected prior to the transitional r/w being created by zoning. +

(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.)

The transitional r/w requirements prevent expansion of the existing "non-conforming" structure

No additional incroachment into the r/w is planned, merely expansion of the existing condition.

Increasing the building foot print will permit a more consumer friendly environment on the interior of the facility.

(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 is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.)

If the variance is not granted, it would not be possible to enlarge the store foot print to better service the customers and neighbors of the region. Public hearing on the proposed expansion of the store have meet with favorable comments for the Windsor Square Shopping center, and no opposition from any of the neighbors.

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.

SAMI I NAFISI
Print applicant name

704-567-8424 X 135
Telephone number of applicant

704 941 6613
Telephone number of representative

J. Dean Prevet, PE
Print representative's name

July 16, 2012
Date

Signature of applicant

7935 COUNCIL PL SUITE 200 MATTHEWS, NC 28105
Mailing address of applicant

Signature of representative

2923 S. Tryon Street, Suite 120, Charlotte, NC 28203
Mailing address of representative

July 16, 2012
Date

19323104

MATTHEWS THE CROSSING SHOPPING CENTER,
270 COMMERCE DR,
ROCHESTER, NY, 14623
9920 MATTHEWS PARK DR MATTHEWS, LA M27-752, 14225, 919, 10.31 AC

19323125,

BEFREIT INC,
3776 S HIGH ST,
COLUMBUS, OH, 43207-4012
1625 WINDSOR SQUARE DR MATTHEWS, L2 M31-487, 10425, 266, 1.887 AC

19323134

CHICK-FIL-A INC,
5200 BUFFINGTON RD,
ATLANTA, GA, 30349
9905 MATTHEWS PARK DR MATTHEWS, L4 M25-73 & M27-752, 06988, 015, 1.462 AC

19323138,

AJM PROPERTIES LTD AND C/O FACTOR MEDIATION,
PO BOX 56607,
ATLANTA, GA, 30343
9950 E INDEPENDENCE BV MATTHEWS, LC M27-752, 19348, 171, 1.264 AC

19330202

SC WINDSOR ASSOCIATES LP,
340 ROYAL POINCIANA WAY
#316, PALM BEACH, FL
33480, 9949 E INDEPENDENCE BV MATTHEWS, M21-929, , , 33 AC

19330202A,

SC WINDSOR ASSOCIATES LP,
340 ROYAL POINCIANA WAY
#316, PALM BEACH, FL, 33480
9949 E INDEPENDENCE BV MATTHEWS, M21-929, 15637, 606, 27.5 AC

19330202B

SC WINDSOR ASSOCIATES LP AND C/O JC PENNEY CORPORATION INC,
6501 LEGACY DR,
PLANO, TX, 75024-3698

E INDEPENDENCE BV MATTHEWS, LEASED LAND, 27396, 591, 5.5 AC

19330203

S L & E INVESTMENTS LLC
ATTN: SAMI I NAFISI,
7935 COUNCIL PL SUITE 200,
MATTHEWS, NC, 28105

1700 WINDSOR SQUARE DR MATTHEWS, M21-929, 25918, 557, 1.0074 AC

19330304,

PMPJL LLC,
112 EAST WILLIAM DAVID PKWY,
METAIRIE, LA, 70005

9721 E INDEPENDENCE BV MATTHEWS, M21-930, 25105, 347, 0.973 AC

19330311

CARROLL FAMILY INVESTMENTS LTD,
2340 INTERSTATE 20 WEST SUITE 100,
ARLINGTON, TX, 76017

9727 E INDEPENDENCE BV MATTHEWS, NA, 26935, 51, 1.209 AC

19330314

TMB VENTURES LLC,
245 OLD HICKORY RD,
LOCUST, NC, 28097

1725 WINDSOR SQUARE DR MATTHEWS, M21-930, 16676, 921, 0.573 AC

Town of Matthews Board of Adjustment Staff Analysis

Parcel Numbers: 193-251-23, 193-251-24, 193-251-40
Address: 400 West John St.
Applicant: David Blackley
Applicant Address: P.O. Box 2329
Matthews, NC 28106
Date of Hearing: Thursday, August 2, 2012
Case Number: 2012-9

Request:

The applicant seeks variances to exceed the height requirements for a fence in a residential district. The property is located on West John Street and is zoned R-20 (Single Family Residential). Fences are an allowed uses in residential zoning districts provided they do not exceed four feet in height within the front setback and six feet in height for the side and rear yards. The applicant proposes to erect a seven foot fence around an urban farm and is seeking a variance of three feet to exceed the four foot height requirement for the portion of the fence to be located within the front setback and a variance of one foot to exceed the six foot height requirement for the remainder of the proposed fence.

Background:

The property is located at 400 West John St. and consist of three parcels that front both W. John St. and Charles St. that extends to the railroad tracks. The property is approximately 5 acres that is roughly 1000 ft deep. The site is best known as the old Renfrow property and in 2010 following the death of Mr. Renfrow, the property and store was willed over to his business partner, David Blackley. The only stipulation of the will was that the old homeplace will be demolished following the transfer of ownership. Mr. Blackley intends to utilize the property as an urban farm to grow fresh produce and sell at Renfrows Hardware Store to cover the cost of property taxes on the five acres. The property was originally utilized by farming operations up till the early 1960's. Mr. Blackley's intentions are to return the property to its original use. The use proposed complies with the regulations of the zoning ordinance with the exception of the desired fence Mr. Blackley intends to erect. Mr. Blackley contends that there is an overwhelming deer population in the area and that they tend to use the railroad right-of-way at the back of his property as a means of travel. He believes that such a fence will protect his crop and allow him the ability to maximize his square footage to farm. The initial trial crop grown this past year has been very successful and he has donated over 4000 pounds of vegetables to area charities; however, he is limited in planting staples that are not part of the local deer dietary desire. If

the variance is granted, the portion of the property fronting West John Street will remain residential in character.

How Zoning Ordinance Provisions Affect This Request

§ 153.091 FENCES AND WALLS IN RESIDENTIAL DISTRICTS.

In a residential district, fences and walls shall not exceed four feet in height within the front setback and six feet in height when located in the side and rear yard. The proposed fence would be 7 feet tall.

Summary of Variances Necessary for Approval Of This Request

In granting relief, the Board of Adjustment may impose reasonable and appropriate conditions and safeguards to protect the interest of neighboring properties.

1. Section 153.091 FENCES AND WALLS IN RESIDENTIAL DISTRICTS.

Request: variance to exceed the four foot height requirement in the front setback and six ft. height requirement in the side and rear yard.

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.)

The property can still be utilized as a farm operation but the applicant will be limited to the height requirements set forth in Section 153.091. Evidence exist that deer are able to jump such a six foot tall fence and that the industry standard for deer fencing is seven feet.

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.)

One could say that the hardship exist because of unique circumstances related to the applicant's land due to the fact that the property is located adjacent to a railroad right-of-way which like utility easements are commonly used by deer as a means to travel.

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

The hardship is a result of the applicants own actions; however the applicant has no control over the local deer population and their feeding habits.

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 in regulating fence height in a residential district is to protect adjacent properties from welfare and blight. In this particular case, the fence will not be visible from West John St. and the adjacent residential property is under the same ownership as the applicant otherwise the property is flanked by commercial uses or industrial zoned property.

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.)

If granted, the variance will not harm the safety or welfare of the public therefore the substantial justice outweighs any harm if any created.

Parcel Information
 Parcel Description Summary
 Parcel ID: 19120184 468 ADD 19120184
 Owner Name: TRAVIS L BIV
 BENEFICIARY AND BV
 Mailing Address: PO BOX 47
 MATTHEWS, NC 28106
 ZIP
 Property Characteristics
 Legal Desc: 1/4 AC
 Land Area: 0.25 AC
 Fire District: TRAMMATHWEAS
 Special District: FIRE SERVICE 2
 Assesment Type: RDP/SC/MS
 Municipality: MATTHEWS
 Property Use: VACANT
 Best Professional and Sales Price
 \$12,200,000.00
 Show Addresses Tied to This Parcel
 00, 2000, 3000, 4000
 Choose an address from this list above and click on the link below for more information.
 Links to More Information
 Planning, Zoning & Ordinance Info.
 Assessment, Tax, Environmental Info.
 Address, Contact, Email
 Tax Values & Billing Info. Tax Bill Info.

3 parcels involved

Map Layers

- Streets, Public Utilities
- Census Tracts
- Lake Features
- Soil Limitation Status
- National Landmarks
- National Zoning
- ZIP Codes
- Governmental Jurisdiction
- Utility Lines
- Political Boundaries
- Tax Zones, Government
- Municipal District Lines
- Schools
- 1400 Center
- Metropolitan
- Water Service Status
- Community Services
- Flood Potential
- Schools
- Public Safety
- National Wetlands
- National Forests
- State-Owned Land
- Tax Parcel Lines
- National Wetlands
- Air Quality
- Tax Parcels
- State-Owned Land

Refresh Map

The information provided by this program is prepared by the counties and is compiled from various public data, for map services, and other public records and data. Some of the map data are for informational purposes only and should not be used for navigation or other critical applications. Matthews County and its mapping contractors are not responsible for the information contained herein.

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polaris.mecklenburgcountync.gov/website/redsign/viewer.htm

Meck County POSSE - ... Meck County POSSE - ... Statistics POLARIS - Version 3.1 Virtual Charlotte, Char... Town of Matthews > ... Previous Tuesdays at ... North Carolina Genera... North Carolina Chapt... American Planning Ass... CareerBuilder Monk... LUESA South Previous Tuesdays at ...

Charlotte-Meck CDBG

POLARIS
Property Ownership and Land Records Information System

Geo-Portal

A Service Provided by Mecklenburg County Government

Refresh Map

Visible Map Layer

- Charlotte-Douglas Airport
- Parcel Number Labels
- Lot Dimensions
- 10 Foot Contours
- County Boundary
- 6/30/11 Charlotte Annexation Areas
- Zoning-Towns
- Zoning-Charlotte
- Charlotte Historic Districts
- Census Tracts
- Voter Precincts
- Post-Construction Districts
- Historical Cemeteries
- Historical Properties
- ZIP Codes
- Engineering Preliminary Plans
- Utility ROW
- Railroad ROW
- Tax Parcel Easements
- Miscellaneous Parcel Lines
- Streets
- L485 Corridor
- Greenways
- Water Quality Buffers
- Community Floodplain
- FEMA Floodplain
- Streams
- Water Bodies
- Regulated Watershade
- Building Footprints
- Sales by Dead Year
- Tax Parcel Landuse
- Spheres of Influence
- Jurisdictions

Map Tools

- SEARCH
- ANALYSIS
- PARCEL INFO
- LEGEND
- LAYERS
- AREA MAP
- ADDRESS ON
- Map Tools
- Zoom In
- Zoom Out
- PMH
- FULL EXTENT
- ID PARCEL
- IDENTIFY
- CLR SELECT
- MEASURE
- CLR MEASURE
- PRINT MAP
- HELP
- DISCLAIMER

start

Inbox (2) - fmg@me... POLARIS - Version 3... Refrfo

Staff Analysis - Micro...

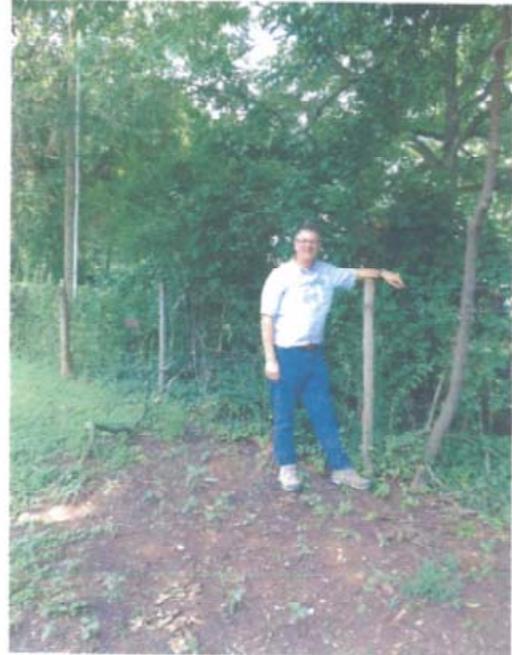
2:01 PM

 Industrial Zoning

 Residential Zoning



Existing fence on property line, Charles Street



Existing fence on property line, John Street, 52"



APPLICATION FOR A ZONING VARIANCE

DATE FILED 7/18/12

HEARING DATE 8/2/12 TIME 7pm

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

To the Matthews Board of Adjustment:

I, DAVID BLACKLEY (Frank Renslow by will) (print name), 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:

- 1) R-20 plot between John St. & Charles Street. 153.091 Rear and Side Yard woven wire fence height of seven feet
- 2) I-1 plot between Charles Street and Rail Road. Woven wire fence along side property lines replacing existing fence. Street side fence set back from street proper distance

The property is located at 400 Charles Street (address) and is shown on the Mecklenburg County tax map as parcel number(s) 193-251-23, 24, 40

The section(s) of the Zoning Ordinance which affect this ruling is/are 153.091, 153.075 (6)(8)
Supplemental Reg's Landscaping

The present zoning of the property is R-20, I-1

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. By law, the Board is required to reach three conclusions as a prerequisite to issuing a variance: (1) that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance; (2) that the variance is in harmony with the general purposes and intent of the ordinance and preserves its spirit; and, (3) that in the granting of the variance the public safety and welfare have been assured and substantial justice has been done. In the spaces provided below, indicate the facts that you intend to show and the arguments that you intend to make to convince the Board that it can properly reach these three required conclusions. IT WILL BE YOUR RESPONSIBILITY TO PRESENT THESE FACTS BY SWORN TESTIMONY AND COMPETENT EVIDENCE.

(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 owner 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 makes the property less valuable.)

- 1) R-20 plot between John St & Charles St. I request woven wire fence height of seven feet in some areas for crop protection from Deer. All adjoining properties are not residential.
- 2) I-1 plot between Charles Street and Rail Road. I request that woven wire fence replace existing fence along property lines, and where there is no existing fence, also continue along property lines. There will be appropriate setback from Charles street

(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.)

- 1) R-20 plot between John street and Charles street. There will be no fencing from sight of John street. Deer are too destructive to crops and nursery type plants (Berries etc). Seven feet is industry minimum for deer protection.
- 2) I-1 plot between Charles street and Rail Road. The eight foot setback would result in over 5000 sq ft. of non crop area. The setback and landscaping requirements are unnecessary because the whole area will be landscaped. The "No man's Land" outside the fence would be difficult to maintain.

(c) The hardship is not the result of the applicant's own actions.

(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.)

1) R-20 plot. I am asking for 1 additional foot in height in some areas. All surrounding properties are something other than residential

2) I-1 plot. I am asking to relax the fence setback requirement since all the area inside the fence will be land sloped. There will be difficulty maintaining the 8' buffer. There will be loss of workable crop land.

(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 is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.)

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.

DAVID BLACKLEY
Print applicant name

C) 704 533 1468
Telephone number of applicant

Telephone number of representative

Print representative's name

6/15/12
Date

David Blackley
Signature of applicant

P.O. Box 2729 Matthews 28106
Mailing address of applicant

Signature of representative

Mailing address of representative

Date