

Board of Adjustment
Thursday, September 5, 2013
7:00 PM
Hood Room, Matthews Town Hall

AGENDA

- I. CALL TO ORDER
- II. INVOCATION
- III. APPROVAL OF MINUTES
- IV. VARIANCE REQUEST: 316 E. Matthews St
- V. REVIEW AND DISCUSSION: New Statutes affecting Board of Adjustment actions
- VI. REVIEW AND ADOPTION: Changes to Rules of Procedure
- VII. ADJOURNMENT

**MINUTES
BOARD OF ADJUSTMENT
THURSDAY, APRIL 4, 2013
HOOD ROOM, MATTHEWS TOWN HALL**

PRESENT: Chairman Eric Welsh, Vice Chairman, Members, Walter Monestere, Jim Jiles, and Cecil Sumners; Alternate Member Jerry Meek; Senior Planner Jay Camp and Zoning Technician/Deputy Town Clerk Mary Jo Gollnitz

ABSENT: Attorney Robert Blythe, Member Jim Mortimer, Alternate members Jeanne Moore and Peter Tuz.

CALL TO ORDER/INVOCATION:

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

Chairman Welsh noted that all alternates will vote and deliberate for this meeting.

APPROVAL OF THE MINUTES:

Mr. Sumners motioned to approve the minutes of the January 3, 2013 meeting. Mr. Jiles seconded the motion and they were adopted unanimously.

VARIANCE REQUEST: 731 Matthews Township Parkway

SWEARING IN:

The following were sworn in: Jay Camp, Mark Tantillo, Jennifer Benson, and Bill King

Senior Planner Jay Camp explained that the applicant is requesting a variance to setback requirements in the Highway Overlay District on Matthews Township Parkway.

The property is at 731 Matthews Township Parkway consisting of two single family homes and a large industrial building at the back of the property. The owner of Certified Collision, opposite Charles Street, recently purchased the site and desires to convert the residential homes into office use.

The reasons for the variance request are two-fold; Matthews requires a variance when there is a change in use and non-conformities exist on the property. There is also infill on this property.

Mr. Camp continued informing the Board that Matthews Township Parkway was extended across the frontage of the property around 1990-1991. This new overlay parkway was created to guide development in an orderly fashion. The Highway Overlay District was developed to provide a view shed buffer along the parkway and restrict drive access.

Specific to the Overlay requirement, there is 30' front setback with a 15' building setback off of that. Therefore, you would have your vegetative buffer, and any structure would have to be 15' off of that, leaving space between the planting area and buildings. There are also requirements to have the buildings to front the parkway and parking required behind or besides the building.

Staff feels that the request should be two separate variances. The first variance would reduce the 15' setback requirement to 5'. The second variance would reduce the 30' vegetative buffer to no less than 15'. This is not a typical setback, therefore the need for the two variances.

Mr. Camp continued showing the Board images of the property as it currently exists with two family structures. The proposal includes paving and striping new parking in the back of site. Landscaping would be in front which would meet the Overlay requirements. It would close an unsafe driveway, reduce a curb cut and provide new landscaping.

Chairman Welsh asked where the driveway was located on the property. Mr. Camp answered that the driveway leads straight into a carport, which would be eliminated. All traffic would use the section of W. Charles Street attached to the property.

Mr. Jiles asked what type of driveway was currently there. Mr. Camp stated that it is dirt/gravel. Mr. Camp noted that when Township Parkway was constructed, each home had drive access.

Mr. Camp continued by showing the Board additional exhibits which are included in the staff report. He noted the approximation of where the setback would be if this was a new development. Such would take over two-thirds of the property. He also presented a map from 1974 showing how Township Parkway replaced Shelby Street. The two homes were originally on a side street until the Parkway was constructed and with a 100' right-of-way in front of the homes. This is a legal nonconforming situation.

Chairman Welsh wanted verification that because of the legal nonconforming, if there was any change at all from homes, a variance is required. Mr. Camp stated yes and continued noting that Section 153.222 dealing with nonconforming, states that you can expand the structure, but the area you are expanding into has to meet code. For instance these buildings could be expanded toward the back without a variance. The request is to allow the structures to remain and allow infill.

Mr. Camp reviewed the applicant's proposal of the buildings. They are asking to keep the buildings and link them together. The setbacks would not increase. The building would not project any further out into Township Parkway.

Chairman Welsh understands that the Highway Overlay District intent is to encourage planning, setbacks and buffers. How do we deal with the fact that by giving a variance we are not keeping with that intent. Will the properties eventually come into compliance? Mr. Camp noted that eventually they go away or they come into compliance.

Chairman Welsh asked what part of the variance would make the property come into compliance. Mr. Camp stated that the curb cut would be eliminated and traffic would flow to the side street. The landscaping buffer would partially meet the requirement.

Mr. Jiles asked if the plan would meet the parking requirements. Mr. Camp stated that based on the office uses, that yes it would. Mr. Jiles asked if the side yard meets the side yard setback. Mr. Camp answered yes.

Mr. Sumner asked if the foot print will be the same as shown except for the front and the back end. Mr. Camp mentioned that he would defer that to the owner or architect that are present this evening.

Chairman Welsh asked if the two variances are granted tonight will that run with the land, and when this would ever be moved backed into compliance. In ten years from now, if they were to do something different, would it come back to the Board. Mr. Camp said that it depends if there are any conditions with the variance. Essentially, it would be the useful life of the structure. Discussion continued about additions to the back of property and future requests for variances.

Applicant and property owner Mark Tantillo addressed the Board. He said that if they ever added to the back of the building, they would not meet parking requirements and the parking is needed. He continued noting that Enterprise would be the anchor tenant and they are willing to sign a 20 to 25 year lease.

Mr. Tantillo said that he is the owner of the property and Certified Collision. He acquired this property in November to help traffic flow on his property at 705 Matthews Township Parkway. He purchased the property to keep everything close by. Enterprise agreed to help with redevelopment of the two homes. Rather than renovating the homes, we decided to make it look like an industrial/office space area.

Mr. Tantillo said that his architect is going to be leasing the second house and there will be other small businesses in there.

Chairman Welsh asked if the after photo presented is a remodeling or will there be a tear down of the structures. Mr. Tantillo answered that they will be removing the roof and replacing it with a flat roof, they will remove the air conditioner units from both structures, clean and paint the bricks, remove the windows so it has a more store front appeal, and raise the perimeter in order to raise the ceilings internally. The two homes will then be connected with a garage for Enterprise to wash and vacuum cars.

Mr. Sumner asked if the entrance would be from the rear of the structures. Mr. Tantillo answered yes; everything would be from the rear including the garage.

Chairman Welsh asked if the acquisition of the property included the work shop. Mr. Tantillo answered yes. The lawn mower shop has moved and the building has been painted.

Chairman Welsh wanted to know if there are a set number of parking spaces for a car rental business and is the property compliant. Mr. Camp said that he would view car rental establishments the same way as new car sales establishments. There are no minimum parking space requirements. It is hard to project how many vehicles would be on the lot. It is based on building square footage and how many employees. Because this is office it would be one space per 300 sq. ft. The entire building is 2,842 sq. ft.

Mr. Tantillo said that Enterprise's fleet is constantly out on the road. We house no more than 8 cars at a time. If parking is a problem we still have parking available at 705 Matthews Township Parkway.

Bill King, engineer of the design documents for the project, said additional parking is being added to the back side of the existing buildings which will provide 13 additional spaces. The parking will be paved. Mr. King showed the location of the proposed parking spaces and relationship to the existing buildings. He continued providing details of the site.

Chairman Welsh asked for the square footage of the buildings. Mr. King said that it was 2,800 sq. ft. and that the office environment would need nine spaces and there will be 13 provided behind the building.

Mr. Jiles wanted clarification of what staff considers infill and what the limits are. This is not tearing down walls; however there is a lot of construction going on here. Mr. Camp said that the most visible example that he could think of was the Texas Roadhouse built in the 1980's and the setback is nonconforming. They gutted the interior, keeping the four walls in place, modified the roof structure so they did an intense renovation. This would be similar scale; however you are adding a portion of new foundation and roof to the structure.

Mr. Camp continued stating that Mr. Jiles did bring to light the point of the side yard. There is a 10' side yard requirement. Should the Board grant a variance tonight, staff requests that side yard variance of approximately five foot side yard be added.

Mr. Jiles asked the site engineer what the difference in grade elevation is to the retaining wall. If something else happens to the property or if there is an increase in parking spaces, from a planning aspect what implications this might have. Mr. King stated that the retaining wall is already in place. Mr. Jiles said that the site could probably exist without the wall. Mr. King said yes.

Mr. Sumners asked for clarification of the site plans, noting that they are going to leave wall and concrete the back adding the 13 spots. Mr. King said yes, black top. Mr. Sumners noted that the few times he has used Enterprise they have been really, really crowded and they need spots.

Chairman Welsh asked the applicant as well as staff, are the options with respect to this property; 1) it stays residential as is and therefore no variance request required; 2) we grant the three variance requests tonight so that it can be renovated; or 3) we deny it and the applicant is free to tear down the structure and the applicant is free to build something that is in compliance with the Town's requirements. Mr. Welsh asked Mr. Camp if this summarized it correctly. Mr. Camp said that there are several variables. The residential uses are currently nonconforming; we do not allow residential uses in industrial districts. Even if it continues as residential use, it is a legal nonconforming use. Chairman Welsh said if that would continue, there is nothing that this Board could do until someone wanted to change the property in some significant respect. Mr. Camp said unless they were unoccupied for one year, you would lose the building.

Mr. Camp continued saying that it is not so cut and dry. There could be a request for a change in use without any new area added. Not sure that would meet the applicant's needs. Chairman Welsh asked the applicant if they had looked into the possibility of tearing down the structure and building new back further on the property. Mr. Tantillo stated that if he tore the two structures down then he would be close to the retaining wall. He continued stating that it is not a flat piece of land. The workshop is higher up than the two homes. Mr. Tantillo showed the change in elevation on the site plan.

Mr. Jiles asked if the retaining wall is the low spot on the property. Mr. King pointed to the low spot on the property and the hill sloping upward toward the retaining wall. Chairman Welsh asked if there could be parking behind the retaining wall if necessary. Mr. King said that yes you could. Mr. Tantillo said that if the two building were torn down he would not build in that area, because the parking in the workshop area is currently being utilized by his business. It would not meet Town requirements and never have enough parking. Everything would have to be demolished on the property and it would be quite costly.

DELIBERATION:

Chairman Welsh said that he has driven by this structure a lot and these buildings are very close to the road and understand why we are here tonight. There are some positives with the plantings that will be done, not conforming, but better and closer to what the Town wants. He is encouraged about this driveway situation going onto to the Township Parkway which is an important safety issue. Those are really big positive points. He continued saying that he is struggling with the overall intent of what the Town is trying accomplish with the Overlay District. The property is so out of conformity and it would be a major restructuring of the existing facilities. He is very concerned that with these two homes significantly altered that these would be in existence for long term and he is not sure if the Town's intent is to have these structures in place for another 25 years.

Mr. Jiles stated that we made reference to the fact that this is one parcel and they are doing modification that requires a variance. He said that he sees the reason for the variance and it would be an improvement of what is there. However, this Board needs to look at the overall intent of the Highway Overlay and what the final usage needs to be. We have three variances to consider and he is concerned about the magnitude of the infill and construction this close to the highway. Additionally, from a safety stand point, you have a curb and a down slope into the front of the building. This is not that far away from the curb on 51. Those are his primary concerns, not necessarily the parking, grading, or utilization of that property. If it is ever changed, residential use will not be allowed there. The variance goes with the property.

Mr. Sumner said that he felt similar. When they widen the road to make the parkway they took off the front portion of the property. As it is now, residential is not a good use of that parcel.

Chairman Welsh said that his thought is to grant the variance requests he feels that it would have to have some significant restrictions on it. It would have to be tied to the plan that was presented tonight. The foot print of the structure couldn't change; if it did then the variance would be lost. It would also have to be contingent on the planting that they are going to do. He agrees that this would be a more appropriate use of the parcel, plus somewhat safer and more attractive.

Mr. Jiles said that this would be an improvement but we could not leave it perpetually, because we are dealing with one tract. The fix that they are proposing would be an improvement.

Chairman Welsh made a motion to adopt the variance and reduce the 15' setback to no less than five feet; to reduce the 30' vegetative buffer area to no less than 15'; and the renovations of the property would not encroach any further than currently exist on the eastern most property line.

Chairman Welsh clarified that the motions should be separate and that all would be contingent upon compliance with the plan that presented this evening by the applicant as part of the record, including compliance with the planting in the buffer area, the parking and also contingent upon the foot print of proposed building will not expand beyond where it is proposed on the overall site plan exhibit. Mr. Jiles seconded the motion.

Chairman Welsh stated that the contingences will apply to all three, however they will vote one at a time. The first variance would be to reduce the 15' setback to no less than five feet. The motion is to grant that variance subject to the conditions that were stated previously. Mr. Jiles seconded the motion and it carried unanimously.

Chairman Welsh said that the second variance reducing the 30' vegetative buffer to no less than 15'. The motion is to grant that variance subject to the conditions that were stated previously. Mr. Monestere seconded the motion and it carried unanimously.

Chairman Welsh said that the third variance of the planned building will no encroach any further on the eastern side than it currently does. The motion is to grant that variance subject to the conditions that were stated previously. Mr. Jiles seconded the motion and it carried unanimously.

Chairman Welsh read the findings of fact for all three variances. The Board heard evidence from the Town and applicant regarding the fact that the existing property is currently used as single family home which is not a conforming use. The change of this property to office space is what the Town anticipates for this area and requires these variances. There is a safety issue regarding the use of the existing driveway onto the parkway and will be alleviated by the granting of these variances. The granting of these variances, while not bringing the property completely into compliance with the overlay requirements for the buffer, it will get the property further along and will create a more attractive frontage to Township Parkway.

Chairman Welsh continued stating that the hardship is not the result of the applicant's actions, but rather due the overlay requirements and the road way changes that have occurred after the

structures were built. The variances will bring this more closely to what the overlay requirements are regarding driveway access points and improving safety issues.

ADJOURNMENT:

Mr. Jiles moved for adjournment. Mr. Monestere seconded the motion and the meeting adjourned at 8 pm.

Respectfully submitted,

Mary Jo Gollnitz
Zoning Technician/Deputy Town Clerk



DRAFT

Matthews Board Of Adjustment

Case 2013-03

Type of Request: Variance

August 28, 2013

Summary of Request

The applicant requests several variances in conjunction with a rezoning request to convert a historic home from R-20 to O-9 (CD). The variances are for screening and sideyard requirements.

Background

The historic Funderburk-Plaxo House is believed to date from the 1880's and was originally constructed across the street. It was moved to the current location in the early 20th century. The property is currently owned by the Historic Landmarks Commission and is under contract with Fuller CPA. For the CPA firm to locate offices at the site, a rezoning to O-9 (CD) is required. A decision date is tentatively set for September 9th, 2013. For the rezoning to be eligible for approval, the project must meet all applicable Zoning Code requirements. During review of the rezoning request, staff identified several issues related to screening and to side yard requirements. As a result, several variances were requested that relate mostly to the location of the home near the property line . A portion of the house of approximately 20' in width and facing to the northwest is only 1.2' from the property line according to the survey. The bulk of the remainder of the home also sits close to the property. With the intent to preserve the home and landscaping in a manner as close as possible to its current condition and to mitigate the change from residential to office, the owner requests the following variances:

Variance A - Request to eliminate screening requirement for one portion of the northwest property line and use existing vegetation for another . (See attached map showing request)

Variance B - Request to reduce side yard requirement from 6' to approximately 1.2' for a distance of 20.6' to allow the structure to remain in its current location.

Variance C - Request to reduce screening plant material requirement along zoning line and use existing vegetation. (This request may change upon submittal of final civil drawings)

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 cannot be rezoned without the requested variances without moving the home.

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 subject property was placed on the site long before current requirements for sideyards and screening.

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

The hardship is not the result of the applicants actions and was placed on the site in the early 20th century.

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 variances are the least possible deviation and seek to lessen the impact of the residential to office conversion on the adjacent residential property by not disturbing that area.

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 benefits of the variance to the general public include preservation of one of Matthew's oldest homes without moving and disturbing it.

Matthews Board Of Adjustment

Case 2013-03

Type of Request: Variance

August 28, 2013



View from adjacent residential property

Matthews Board Of Adjustment

Case 2013-03

Type of Request: Variance

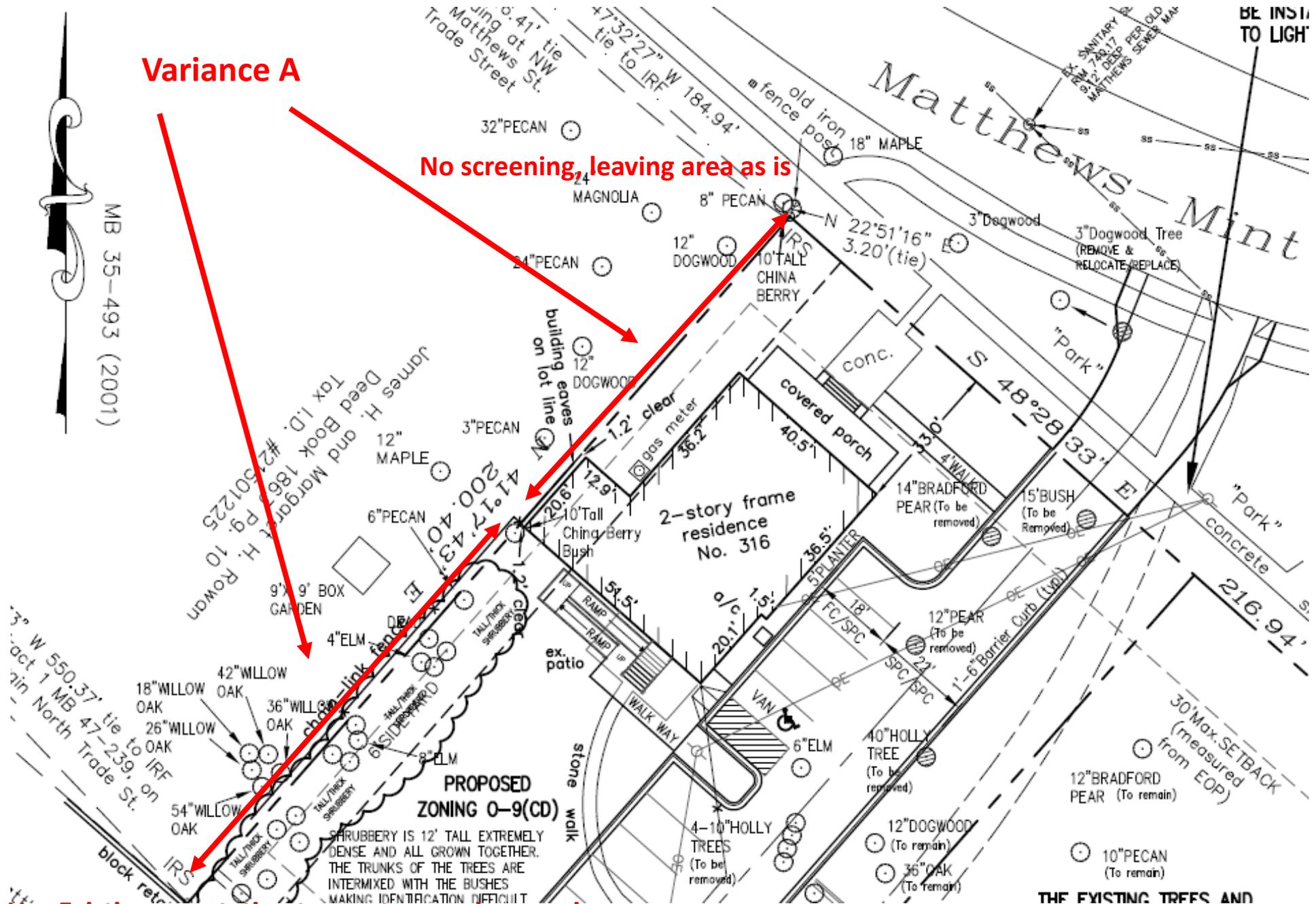
August 28, 2013



View of property line area from sidewalk

Variance A

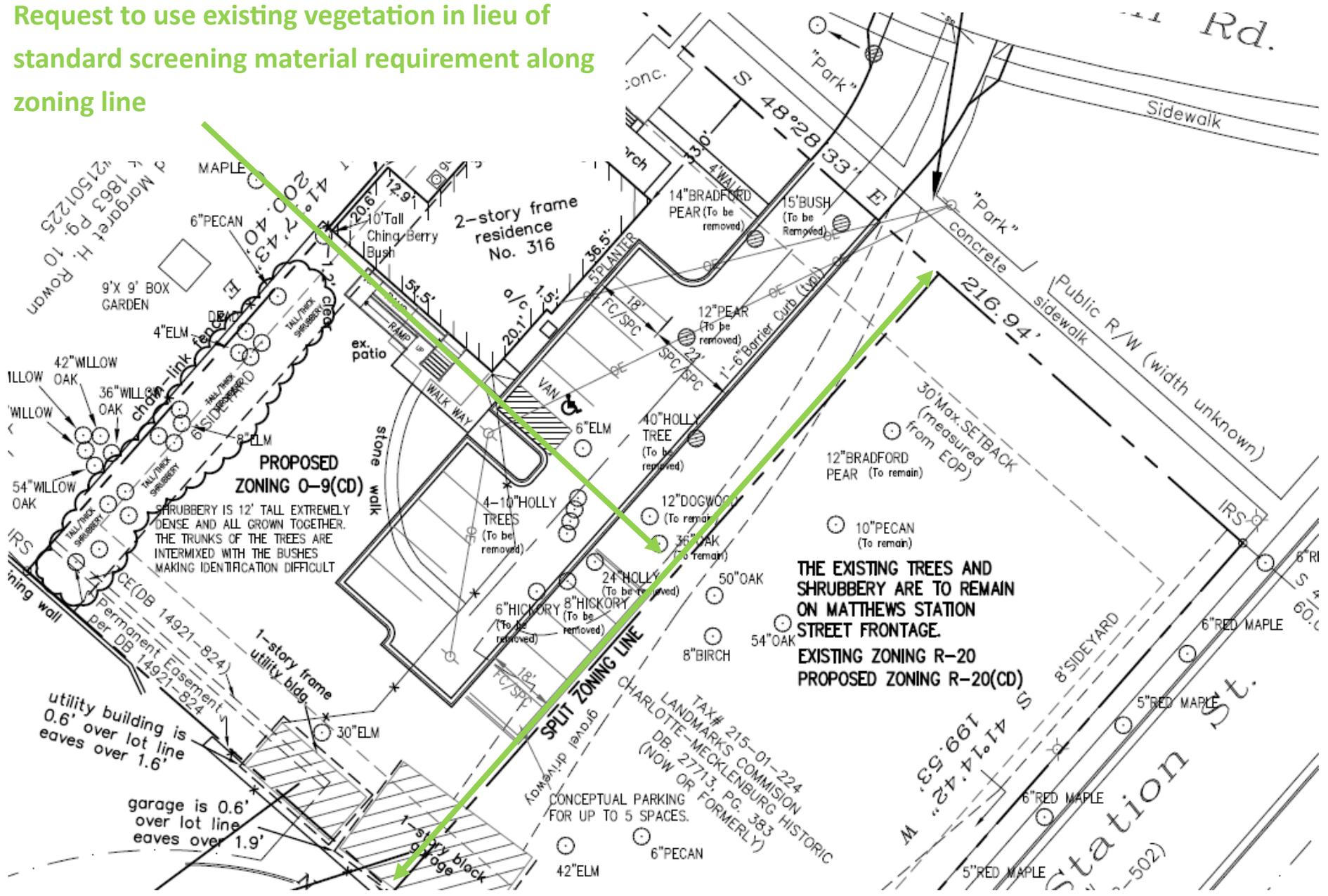
No screening, leaving area as is



Use Existing vegetation to meet screening requirement for this portion

Variance C

Request to use existing vegetation in lieu of standard screening material requirement along zoning line





232 Matthews Station Street
Matthews, NC 28105
704.847.4411

APPLICATION FOR A ZONING VARIANCE

DATE FILED August 21, 2013

HEARING DATE September 5, 2013 TIME 7:00PM

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

To the Matthews Board of Adjustment:

I, Jeffrey L Fuller (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:

In order to use the building as an office building for a CPA practice we are asking for variances to the building code for:

A) Variance from the screening requirements

B) Variance from the 6' sideyard to a 1' sideyard

The property is located at 316 E Matthews St (address)
and is shown on the Mecklenburg County tax map as parcel number(s) 215-012-24.

The section(s) of the Zoning Ordinance which affect this ruling is/are 153.075(I) Screening 153.058(E) Yard area height -
Variance to 6' sideyard

The present zoning of the property is R-20 (Proposed O-9 (CD), R-20 (CD)).

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.)

A) The rear portion of the property is heavily bushed - approximately 10-12' tall and 10-15' wide, several trees are interspersed throughout. All of the rear yard is screened with this vegetation. It may or may not meet the strict planning requirements.

B) The existing house predates the ordinance and encroaches to within one foot of the property line.

C) The front portion of the west property line has been residential for over 100 years. No improvements are being made that would change this residential character. To add a buffer to this area would change the character and segment off the openness of the existing lawns and landscaping.

(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 uniqueness of the property is its age and the 100+ year history that it adds to the Town. Because of the building's proximity to the west property line, the existing landscaping and character of the lawn, it creates an atmosphere where adding a buffer would cause more detriment than benefit to the property.

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

Applicant is conveying use of the existing building, but the area around this property line is remaining as it has been for several decades.

(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 variance serves to protect the character and the integrity of the property and preserve the existing landscaping that has been there for decades.

(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.)

There would be no harm to the public by the granting of these variances.

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.

Jeffrey L Fuller

Print applicant name

704-844-6683

Telephone number of applicant

Telephone number of representative

Print representative's name

Date

 8/21/13

Signature of applicant

2637 Providence Spring Lane Charlotte, NC 28270

Mailing address of applicant

Signature of representative

Mailing address of representative

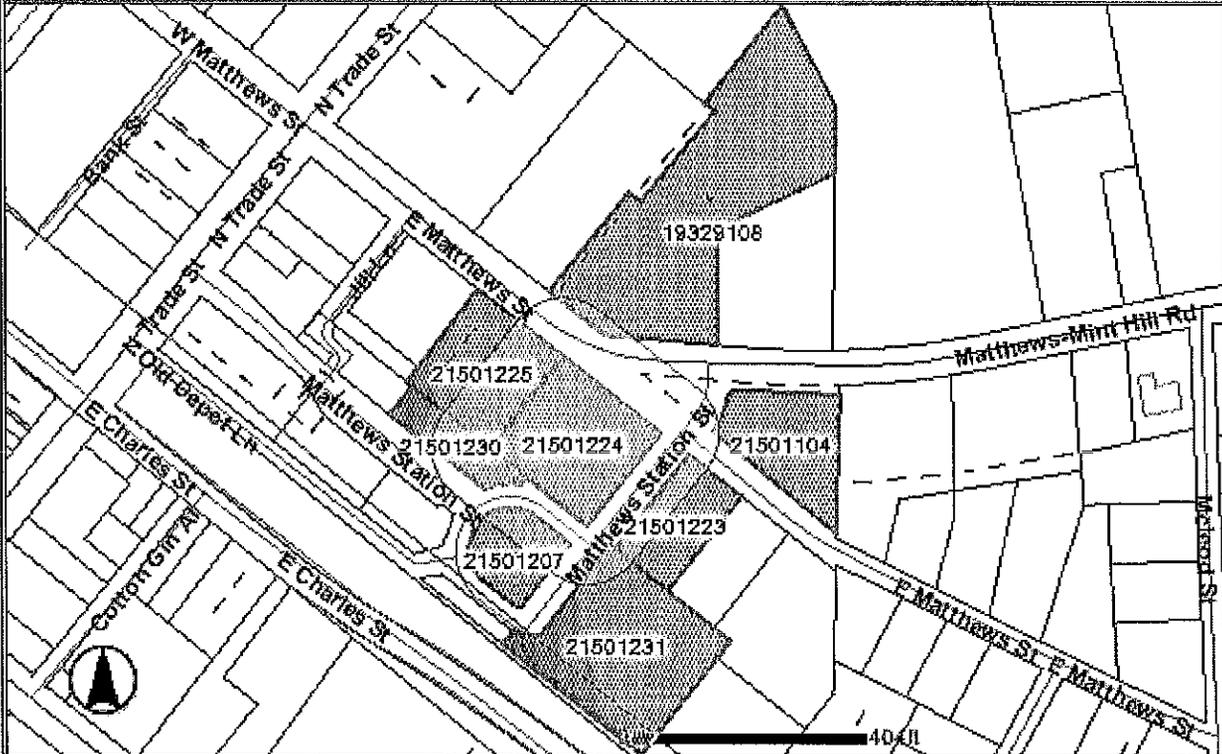
Date

Mecklenburg County, NC POLARIS
Property Ownership Land Records Information System
Adjoining Owner's Report

Buffer Distance: 100 Feet

8/21/2013 3:34:41 PM

[Click Here to Open Owner's List \(Comma-Delimited\)](#)



This map is prepared for the inventory of real property within Mecklenburg County and is compiled from recorded deeds, plats, tax maps, surveys, planimetric maps, and other public records and data. Users of this map are hereby notified that the aforementioned public primary information sources should be consulted for verification. Mecklenburg County and its mapping contractors assume no legal responsibility for the information contained herein.

Parcel ID	Owner Name	Mailing Address	City	State	ZIP	Legal Description	Deed Book	Deed Page	Land Area
19329108	CHARLES FUNDERBURK AND MADRID F 13	PO BOX 941	MATTHEWS	NC	28106	NA	01890	600	2.79 SMAC
21501104	JAMES MONROE FRINK AND WILLIAM BUNN FRINK (B/W)	PO BOX 481	MATTHEWS	NC	28106	NA	01022	042	0.722 SMAC
21501207	TOWN OF MATTHEWS	232 MATTHEWS STATION ST	MATTHEWS	NC	28105	TR3 M35-493	10279	699	0.438 AC
21501223	BROOKECHASE PROPERTIES LLC	PO BOX 578	MATTHEWS	NC	28106	NA	26167	317	0.54 SMAC
21501224	LANDMARKS COMMISSION CHARLOTTE-MECKLENBURG HISTORIC	2100 RANDOLPH RD	CHARLOTTE	NC	28207	NA	27713	383	0.996 SMAC
21501225	JAMES H ROWAN AND MARGARET H ROWAN	PO BOX 36	MATTHEWS	NC	28106	208 MATTHEWS ST	01863	010	0 SMAC
21501230	MATTHEWS DEPOT LLC	4530 PARK RD #300	CHARLOTTE	NC	28209	TR2 M35-493	22317	316	0.332 AC
21501231	TOWN OF MATTHEWS	232 MATTHEWS STATION ST	MATTHEWS	NC	28105	PT P1 M35-493	10279	699	1.559 AC

DRAFT UDO SECTIONS RELATING TO QUASI-JUDICIAL ACTIONS BY THE BOARD OF ADJUSTMENT TO INCORPORATE CHANGES AS PROVIDED BY SESSION LAW 2013-126

Text highlighted in yellow is proposed new, and ~~highlighted with line is proposed to be deleted~~

For Board of Adjustment presentation on Sep 5, 2013

155.208. The Town Board of Adjustment

- A. ESTABLISHMENT AND ORGANIZATION. The Town Board of Adjustment is hereby established. The Board of Adjustment will consist of five (5) full voting members who are citizens and residents of the Town and appointed by the Town Board of Commissioners. There shall also be three (3) alternate members who are Town citizens and residents appointed by the Board of Commissioners. Alternates may sit in on an official meeting of the Board in the absence of one or more members of the Board at a given meeting. All appointed members serve until they are replaced by a successor. Board of Adjustment members shall be eligible for reappointment for a maximum of two consecutive terms, at which point they would not be eligible for reappointment for at least one year. An appointment to fill a vacancy on the Board will be for the remainder of the unexpired term.
- B. RULES OF PROCEDURE. The Board of Adjustment will adopt rules and regulations for its own operation necessary to carry out the provisions of this Title. The Town Planning and Development Department will maintain copies of the adopted rules for public information.
- C. DUTIES OF THE BOARD. The Board of Adjustment shall have the following duties:
1. VARIANCE OF CHAPTERS 1 THRU CHAPTER 6, INCLUSIVE.
 - a. Following a determination by the Zoning Administrator that a requested action is not in compliance with the zoning provisions of Chapters 1 thru 6, inclusive, of this Title, the Board of Adjustment will hear and determine variances from the requirements which relate to the establishment or extension of structures or uses of land. ~~Before a variance request is granted the Board must find: that practical difficulties or unnecessary hardship would result if the strict letter of the law were followed; that the variance is in accordance with the general purpose and intent of the chapter; and that the public health, safety and welfare have been assured and substantial justice done.~~ The Board may not grant a variance which would allow the establishment of a use which is not otherwise permitted in the district, would result in the extension of a nonconforming use, or would change the district boundary or zoning classification of the property in question.
 - b. In reaching a decision on a variance request, the Board ~~will be guided by the following principles in its evaluation of conditions which constitute practical difficulties or shall make findings upholding unnecessary hardships have been shown for all of the following criteria.~~
 1. ~~The difficulty or hardship would result strictly from the provisions of this chapter Title and from no other cause, including the actions of the owner or previous owners of the property. Unnecessary hardship would result from the strict application of this Title. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.~~
 2. ~~The difficulty or hardship is peculiar to the property in question and is not generally shared by other properties in the neighborhood. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.~~
 3. ~~The difficulty or hardship resulting from the application of the provisions of the chapter Title would prevent the owner from securing a reasonable return or making a reasonable use of the property. However, the fact that the property could be utilized more profitably will not be considered as grounds for granting~~

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

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

2. VARIANCE OF FLOODPLAIN REGULATIONS. The Board of Adjustment shall hear and decide petitions for variances from the requirements of Chapter 9 of this Title, as further explained at 155.904.
 3. ADMINISTRATIVE APPEAL. The Board of Adjustment will hear and decide appeals on any determination, order, requirement, or decision made by the Zoning Administrator or code enforcement official. A request for appeal must be complete, and must be submitted to the Town within thirty (30) days of the date of notice of violation, order, or decision.
 4. APPEAL OF FLOODPLAIN REGULATIONS. The Board of Adjustment shall hear and decide appeals from any order, decision, determination or interpretation made by the Floodplain Administrator pursuant to or regarding the regulations of Chapter 9 of this Title as further explained at 155.904.
 5. APPEAL OF MINIMUM HOUSING REGULATIONS. The Board of Adjustment shall hear and decide appeals from any order, decision, determination, or interpretation made by Mecklenburg County Code Enforcement (the Building Inspector) pursuant to or regarding the regulations of Chapter 10 of this Title as further explained at 155.1005.
 6. INTERPRETATION OF CERTAIN SECTIONS OF THE UNIFIED DEVELOPMENT ORDINANCE. The Board of Adjustment is responsible for interpreting the provisions in Chapter 1 thru Chapter 6, inclusive, of this Title relating to zoning regulations if there is a question about the meaning or application of a provision. Once the Board has made an interpretation on an issue, the Zoning Administrator will use that interpretation in the administration of this Title. The Board may also ask that the Title be amended to clarify a problem that has come to the Board's attention.
- D. QUASI-JUDICIAL HEARINGS. The Board of Adjustment will hold a quasi-judicial hearing on any variance, appeal, or interpretation request which comes before it. All administrative papers and other information relating to the request shall be transmitted to the Board. Notice of the time, place and subject of hearings shall be given to the persons making the request and to the owners of property that adjoins or is directly across a street or alley from the property involved in the hearing. The Board shall keep minutes of its hearings and records of the votes of each member.
- E. ACTIONS OF THE BOARD OF ADJUSTMENT. The Board of Adjustment will decide on a zoning variance, appeal, or interpretation request and on any matter upon which it is required to act under this Title. The decision of the Board shall be documented in the minutes or transcript of the meeting which shall record a motion to approve, approve with conditions, or disapprove. The motion shall be supported with findings of fact and conclusions of law placed in the minutes of the meeting. The concurring vote of four-fifths (4/5) majority of the members of the Board will be required to override a decision of the Zoning Administrator or a code enforcement official charged with enforcement of this Title or to decide in favor of the persons making an appeal or a variance request.
- F. FILING APPLICATIONS AND FEES. Applications and related documents for zoning variance, appeal, or interpretation requests to be considered by the Board of Adjustment must be filed with the Town Planning office as further explained at Section 155.403.2, and accompanied by the necessary application fee as established by the Town Commissioners. The Town Planning office shall determine the application is complete and ready to be sent to the Board of Adjustment for review.

155.403 Process for Deciding Interpretations, Appeals, and Variances

In fulfilling the duties listed at Section 155.208, the Town Board of Adjustment shall receive and act on applications presented for their review and action.

155.403.1 Interpretation and Variance Limitations

No request for interpretation or variance to zoning provisions of Chapters 1 through 6 inclusive, or to the Floodplain and Flood Damage Protection Standards of Chapter 9, shall be granted that would have the effect of allowing a use not permitted in the district in which the property in question is located.

155.403.2 Application Process

A. APPLICATION REQUIRED.

1. All interpretation or variance applications shall be filed with the Planning Office. An application shall be considered filed with the Planning Office when delivered to the Planning Office and the date and time of filing shall be entered on the application by the Planning Office staff.

2. An appeal of any determination, order, requirement or decision by an administrative official must be taken within thirty (30) days after the date of decision or order which is being appealed. An appeal shall be **concurrently** filed with the **Town Clerk**, Planning Office and any administrative official charged with enforcement of this Title, **which shall serve as the notice of appeal filing as required at NCGS160A-388(b1)(1)**. An application shall be considered filed when delivered to **both the Town Clerk and** the Planning Office and the date and time of filing shall be entered on the application by the Planning Office staff.

B. DETERMINATION OF COMPLETE APPLICATIONS. An application for interpretation, appeal, or variance will not be deemed properly filed unless it is complete. The Planning Office shall determine the completeness of an application. Upon determination that the application is complete, the Board of Adjustment shall schedule a hearing in accordance with the application schedule on file in the Planning Office.

C. NOTICE TO OFFICIAL. When an appeal is filed, the Planning Office shall transmit to the Board of Adjustment and to any administrative official charged with enforcement of a pertinent section of this Title all documents constituting the record relating to the action which is being appealed. An administrative or enforcement official may include, but is not limited to, the Town Planning Director or designee, the Town Code Enforcement Officer, the Town Zoning Administrator, the Town Public Works Director or designee, the Town Engineer, the Town Storm Water Administrator, the Town Floodplain Administrator, and an employee of the Mecklenburg County Land Use and Environmental Services Agency or Mecklenburg County Code Enforcement Division when applying Town adopted regulations.

D. EFFECT OF APPEAL APPLICATION. An appeal stays all actions by the enforcement official seeking enforcement of or compliance with the order or decision being appealed, unless the enforcement official certifies to the Board of Adjustment **in an affidavit that a stay would because of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life and/or property, or because the violation is transitory in nature, a stay would seriously interfere with enforcement of this Title.** In that case, enforcement proceedings shall not be stayed except by **order of the Board of Adjustment or a court, issued on application of the party seeking the stay, for due cause shown, after notice to the enforcement official by restraining order.** If enforcement is not stayed, the appellant may request an expedited hearing, as allowed at NCGS160A-388.(b1)(6). **{GS160A.388(b)}**

155.403.3 Findings of Fact for Zoning Variances

In granting any zoning variance to provisions within Chapters 1 through 6, the Board of Adjustment shall make findings listed at 155.208.C.1.b.1 through 3 that the spirit of the ordinance shall be observed, public safety and welfare shall be secured, and substantial justice shall be done. To reach these findings, the Board of Adjustment shall consider the following standards:

- A. That special or unique circumstances or conditions ~~or practical difficulties~~ exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts;
- B. That the special conditions or circumstances ~~or practical difficulties~~ do not result from the actions of the property owner or applicant, their agent, employee, or contractor. Errors made by such persons in the development, construction, siting or marketing process shall not be grounds for a variance except in cases where a foundation survey submitted to the Planning Director, or designee, before a contractor proceeds beyond the foundation stage has not revealed an error which is discovered later;
- C. That the unique hardship situations cited by the applicant are not hardships resulting from personal or household members' circumstances which would no longer be applicable to the location if the applicant or household was no longer present at the property;
- D. That the strict enforcement of this Title would deprive the owner or applicant of reasonable use of the property that is substantially consistent with the intent of this Title;
- E. That the granting of a variance will not result in advantages or special privileges to the applicant or property owner that this Title denies to other land, structures, or uses in the same district, and it is the minimum variance necessary to provide relief;
- F. That the proposed use and the appearance of any proposed addition or alteration will be compatible with, and not negatively impact, nearby properties; and
- G. That the variance shall not be materially detrimental to the health, safety or welfare of persons residing or working in the neighborhood. Consideration of the effects of the variance shall include but not be limited to, increases in activity, noise, or traffic resulting from any expansion of uses allowed by the variance.

155.403.4 Conditions of Approval for Zoning Variances

In granting variances, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practical with surrounding properties.

155.403.5 Burden of Proof

- A. Zoning Variances. The burden of presenting evidence sufficient to allow the Board of Adjustment to make its findings as set forth in Section 155.403.3, as well as the burden of persuasion on those issues remains with the applicant seeking the variance.
- B. Appeals. When an appeal is taken to the Board of Adjustment in accordance with Section 155.403.2., the enforcement official shall have the initial burden of presenting to the Board sufficient evidence and argument to justify the order or decision which is being appealed. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

155.403.6 Action by Board of Adjustment

- A. VARIANCE APPROVAL. Before a variance action is determined to be granted, the Board of Adjustment shall vote affirmatively by a four-fifths majority on the request and on the required findings of fact in Section 155.208.C.1. A statement on each of the seven standards in Section 155.403.3, ~~or any other contested facts and their application to the case under review~~, may be included to give a specific reason in support of the motion.
- B. VARIANCE DENIAL. A motion to deny a variance may be made on the basis that any one or more of the standards and therefore required findings of fact are not satisfied or that the application is incomplete. The motion shall include a statement of the specific reasons or findings of fact that support such motion. The motion is adopted as the Board's decision if supported by more than one-fifth of the Board's membership (excluding vacant seats). **[Expands upon Section 153.289]**
- C. APPEAL. The Board of Adjustment may reverse or affirm in whole or in part, or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the case before it. To this end, the Board shall have all the powers of the officer from whom the appeal is taken. A motion to reverse, affirm, or modify the order, requirement, decision, or determination which is being appealed shall include a statement of the specific reasons or findings of fact that support the motion. If a motion to reverse or modify is not made or fails to receive ~~the four fifths (4/5) a~~

majority vote necessary for adoption, then a motion to uphold the decision appealed from shall be in order. This motion is adopted as the Board of Adjustment's decision if supported by more than one-fifth of the Board's membership (excluding vacant seats).

D. INTERPRETATION. The Board of Adjustment shall interpret the meaning or application of text within this Title, zoning maps, district boundary lines and similar questions by a concurring vote of ~~four-fifths (4/5)~~ a majority.

E. WRITTEN DECISION. Each quasi-judicial decision by the Board of Adjustment shall be in writing and signed by the chair or other duly authorized member of the board. The decision shall become effective when the signed decision is filed with the clerk to the board. A copy of the signed decision shall be given to the applicant, property owner, and any person who requested in writing to receive a copy by personal delivery, electronic mail, or first-class mail. The person delivering this notice shall certify that proper notice has been made.

[Expands upon Section 153.289]

155.403.7 Other Appeal or Variance Actions

- A. VARIANCE FROM SUBDIVISION REGULATIONS. The procedures, standards, and requirements as given in 155.712 shall be followed for any request for variance from Chapter 7 Public Improvement Standards.
- B. APPEAL OR VARIANCE FROM POST CONSTRUCTION ORDINANCE REGULATIONS. The procedures given in 155.802.E. for actions taken by the Storm Water Advisory Committee (SWAC) shall be followed for any request for variance or appeal to enforcement of and regulations in Chapter 8 Post Construction Storm Water Regulations.
- C. APPEAL OR VARIANCE FROM FLOODPLAIN REGULATIONS. The Board of Adjustment shall follow the procedures, standards, and requirements as given in 155.904 for any request for variance or appeal from Chapter 9 Floodplain Regulations.
- D. APPEAL FROM MINIMUM HOUSING REGULATIONS. The Board of Adjustment shall follow the procedures given in 155.1005.D. for any appeals of enforcement decisions or actions taken to implement Chapter 10 Housing Code.

155.403.8 Effect of Board's Decision

- A. After the Board of Adjustment approves an interpretation or a variance, the applicant shall be required to follow the applicable procedures of this Chapter 4 for the approval of a building permit or Certificate of Occupancy in order to proceed with the use and development of the subject property. Where a variance is granted, unless otherwise specified by the Board, the variance shall automatically expire if a building permit is required and is not obtained within six (6) months from the date of the meeting at which the Board of Adjustment rendered its decision. In addition, if six (6) months has expired, the Zoning Administrator shall have the authority to authorize the permit to be issued if the Zoning Administrator determines that, based upon the Board's decision, the circumstances for granting of the variance have not changed and would allow the issuance of the permit.
- B. After the Board of Adjustment reverses or modifies an order, requirement, decision, or determination of the Zoning Administrator, the appellant shall be required to follow the applicable procedures of this Chapter 4 for the approval of a building permit or Certificate of Occupancy in order to proceed with the use and development of the subject property.
- C. After the Board of Adjustment issues an interpretation on how a specific provision of this Title is to be understood and applied, then that interpretation will be used on future situations with matching criteria. Future amendments to clarify or further revise written provisions or zoning maps shall follow the procedures outlined in this Chapter 4.
- D. Decisions on interpretations, appeals, and variances by the Board of Adjustment may be appealed when such appeal is to superior court in the nature of certiorari ~~within thirty (30) days of decision~~, as provided by law. A petition for review shall be filed with the clerk of superior court by the later of thirty (30) days after the decision is effective or after a written copy is given to the applicant or property owner.

**RULES OF PROCEDURE
BOARD OF ADJUSTMENT
TOWN OF MATTHEWS, NC**

Revised and Adopted 11-2-06; DRAFT Updated per SL2013-126, effective 10-1-13;

Additional Changes that Will Need to be Made Following Adoption of UDO in 2014

I. GENERAL RULES

The Board of Adjustment of the Town of Matthews, North Carolina, hereafter called the Board, shall be governed by the terms of Section 388 of Chapter 160A of the General Statutes of North Carolina, and the Matthews **Zoning Ordinance**, both as amended.

II. OFFICERS AND DUTIES

Section 1 - Officers

The officers of the Board shall consist of a Chairperson, and a Vice-Chairperson.

Section 2 - Chairperson

The Chairperson shall be elected by majority vote of the membership of the Board from among its members. The term of the Chairperson shall be for one year and until a successor is elected, beginning on the first of February of each year. The Chairperson shall be eligible for reelection.

The Chairperson shall decide upon all points of order and procedure unless otherwise directed by a majority of the Board in session at the time, subject to the provisions of state and local law.

The Chairperson (unless absent or excused), shall chair each meeting of the Board and shall be a full voting member of the Board.

Section 3 - Vice-Chairperson

A Vice-Chairperson shall be elected from among the members in the same manner and for the same term as the Chairperson. The Vice-Chairperson shall serve as Acting Chairperson in the absence of the Chairperson and in such capacity, shall have the same powers and duties as the Chairperson.

III. MEMBERS

Section 1 - Composition

The Board shall be composed of such members as the **Zoning Ordinance** shall prescribe from time to time.

Section 2 - Attendance of Regular and Alternate Members

Regular and alternate members are expected to attend all regular and called meetings of the Board. When a member or alternate is unable to attend a meeting, that member shall notify the Town Planning Department or the Chairperson in advance whenever possible.

Section 3 - Continuing Members

Faithful attendance at all meetings of the Board and conscientious performance of the duties required of members and alternates shall be considered important factors for continuing membership on the Board and for placing alternates into regular member positions as they become vacant.

Section 4 - Conflict of Interest

No member or alternate member shall participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

Section 5 - Actual Participation

No member or alternate member shall vote on any matter deciding a variance, interpretation, or appeal unless such member shall have attended the public hearing on that case or shall have read all the minutes of the public hearing and shall have seen the evidence presented in the case.

Section 6 - Confidentiality

No member or alternate member shall discuss any case with any parties thereto prior to the public hearing on that case, provided however a member or alternate member may contact a party for the purpose of viewing property prior to the hearing. Members may, however, receive and/or seek information pertaining to the case from any appropriate Town employee prior to the hearing, limited to **Zoning Ordinance** text and its past interpretation, any maps, graphics, or other related data generated by or given to Town staff, including the applicants' submissions and any staff report prepared for use by the Board. Members and alternates shall not express individual opinions regarding any case with any parties thereto prior to the determination of such case.

IV. MEETINGS

Section 1 - Regular Meetings

Regular meetings of the Board shall be held on the first Thursday of each month at 7:00 PM at the Town Hall. Notice of such a meeting, with information on cases and items to be heard, shall be supplied at or before each meeting to all regular and alternate members.

Section 2 - Special or Called Meetings

Special meetings of the Board may be called at any time by the Chairperson or by an employee of the Town Planning Department. Notice of the time and place of called meeting shall be given at least forty eight hours prior to the meeting by the Chairperson or appropriate Town employee. The Chairperson or Town staff will attempt to contact each member and alternate member of the Board as soon as possible after a special or called meeting is set.

Section 3 - Cancellation of Meetings

Whenever there are no variance requests, appeals or requests for interpretation received in complete and acceptable form by the Town Planning department ~~fifteen~~ **twenty** calendar days prior to the regular meeting date, or other business of the Board, or whenever it is determined a quorum will not be available, the Chairperson may cancel the scheduled regular or called meeting by giving a written or oral notice to all members and alternates prior to the time set for the meeting.

Section 4 - Quorum

A quorum shall be a minimum of four (4) acting members. Alternate members may be assigned by the Chairperson at each meeting to sit as a regular member to enable the Board to obtain a quorum (4 positions) or a full Board (5 positions). In the event there is a temporary disqualification of a regular member or a vacancy due to a pending appointment of a new regular member, an alternate member may be selected to fill that position in order to obtain the necessary minimum quorum or full Board.

Section 5 - Voting

The concurring vote of four-fifths of the members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administration official charged with the enforcement of the Zoning Ordinance, or to decide in favor of the applicant any matter upon which it is required to pass or grant a variance from the provisions of the Zoning Ordinance.

Section 6 - Order of Meetings

All meetings shall be open to the public subject to these rules. The order of business at a regular meeting shall be as follows:

1. Approval of Minutes
2. Hearing and Determination of Cases
3. Reports of Committees
4. Unfinished Business
5. New Business

The Chairperson may alter the order of business as situations so warrant.

V. APPEALS AND REQUESTS FOR INTERPRETATION

Section 1 - Types of Appeals

The Board shall hear and decide all appeals from and review any order, requirement, decision or determination made by any administrative official charged with the enforcement of the **Zoning Ordinance**. No appeals shall be heard by the Board unless proper petition for appeal has been filed with the Town of Matthews within 30 calendar days of **receipt of written notice** of the order, requirement, decision or determination.

Section 2 - Types of Interpretation Requests

The Board of Adjustment is responsible for interpreting the provisions of the ordinance if there is a question about the meaning or application of a provision. The Board shall not hear a request for

interpretation without having a written interpretation from the Zoning Administrator. Once the Board has made an interpretation on an issue the Zoning Administrator will use that interpretation in the administration of the ordinance. The Board may also ask that the ordinance be amended to clarify a problem with the ordinance that has come to the Board's attention. No petition for interpretation shall be heard by the Board unless proper notice has been filed with the Town Planning Department.

Section 3 - Procedure for Filing Appeals or Petition for Interpretation

An appeal or petition for interpretation shall be filed with the Town of Matthews Planning department at least ~~fifteen~~ ~~twenty~~ calendar days in advance of a regular meeting in order to be assured of being placed on the agenda. The applicant must file an application/petition for a hearing on the form furnished by the Town of Matthews for that purpose. The form shall require the applicant to specify the grounds for appeal or interpretation, and all information and required supplementary documentation shall be completed before an appeal or petition for interpretation shall be placed on the Board's agenda for consideration. ~~Completed appeals or petitions for interpretation received less than fifteen calendar days prior to a regular meeting may only be added to the agenda by the Chairperson, or by 2 regular members.~~

Where appropriate, a copy of such completed form shall be filed with the administrative official having previous involvement with the case, and said official shall transmit to the Board all papers constituting the record on the case as may be appropriate.

Section 4 - Notification of Adjoining Property Owners

It shall be the responsibility of the appellant or an applicant for an appeal or petition for interpretation to provide a full copy of the petition form and addressed envelopes for every adjoining property owner to the Town Planning Department at the time the application for appeal, or interpretation when it is tied to a specific site, is submitted. These copies will be mailed by Town Planning Department staff to inform all adjacent property owners of the specifics of the appeal or petition, and of the date of the hearing before the Board of Adjustment. This notice shall be by first class mail, ~~and shall be deposited in the mail at least 10 days, but not more than 25 days prior to the hearing date.~~ The Town Planning staff member who mails the notices shall complete a certification that indicates each intended recipient, their property, their name and address as listed in Mecklenburg County Tax rolls, and shall indicate the date these notices were delivered into the proper receptacle at the US Postal Service. The certification shall become part of the permanent file on the request, and will be available to the Board at the hearing. ~~If such documentation is not provided at the hearing, the Board may continue the hearing until a later date, or may hold the hearing as scheduled but delay their decision until certification of mailing is provided.~~ This mail notification requirement may be waived when a petition for interpretation is obviously general in nature rather than site-specific.

Section 5 - ~~Alternate Notification Property Posted~~

~~Where time constraints or other unusual circumstances exist, the applicant or petitioner may notify adjacent property owners by hand delivered documents. Applicants shall obtain a written, signed receipt from each property owner stating the date he/she received the application and notice of public hearing. Such receipts shall be filed with the Board by the time of the hearing.~~

~~When the request for appeal or interpretation is tied to a geographic location, rather than being general or Town-wide in its effect, then the subject property shall have a sign posted on it stating the date of hearing. Such sign shall be placed on the property no less than 10 days prior to the hearing date.~~

VI. VARIANCES

Section 1 - Procedures for Filing Applications for Variances

An application for a variance shall be filed with the Town of Matthews Planning Department at least ~~fifteen~~ **twenty** calendar days in advance of a regular meeting in order to be assured of being placed on the agenda. The applicant must file an application for a variance on the form furnished by the Town of Matthews for that purpose. The form shall request the applicant state why the required findings should be made and a variance granted. All information and required supplementary documentation shall be completed before the variance request shall be placed on the Board's agenda for consideration. ~~Completed variance applications received less than fifteen calendar days prior to a regular meeting may only be added to the agenda by the Chairperson, or by 2 regular members.~~

Section 2 - Notification of Adjoining Property Owners

It shall be the responsibility of the applicant for a variance to provide a full copy of the petition form and addressed envelopes for every adjoining property owner to the Town Planning Department at the time the variance application is submitted. These copies will be mailed by Town Planning Department staff to inform all adjacent property owners of the specifics of the petition, and of the date of the hearing before the Board of Adjustment. This notice shall be by first class mail, ~~and shall be deposited in the mail at least 10 days, but not more than 25 days prior to the hearing date.~~ The Town Planning staff member who mails the notices shall complete a certification that indicates each intended recipient, their property, their name and address as listed in Mecklenburg County Tax rolls, and shall indicate the date these notices were delivered into the proper receptacle at the US Postal Service. The certification shall become part of the permanent file on the request, and will be available to the Board at the hearing. ~~If such documentation is not provided at the hearing, the Board may continue the hearing until a later date, or may hold the hearing as scheduled but delay their decision until certification of mailing is provided.~~

Section 3 - ~~Alternate Notification Property Posted~~

~~Where time constraints or other unusual circumstances exist, the applicant or petitioner may notify adjacent property owners by hand delivered documents. Applicants shall obtain a written, signed receipt from each property owner stating the date he/she received the application and notice of public hearing. Such receipts shall be filed with the Board by the time of the hearing.~~

~~The property subject to the variance request shall have a sign posted on it stating the date of hearing. Such sign shall be placed on the property no less than 10 days prior to the hearing date.~~

Section 4 - Rules and Findings

The Board shall be guided by the rules and findings of fact set forth in **Sections 153.285 - 291 of the Zoning Ordinance**. The Board shall hear all testimony, then determine whether the required findings can be made. If all findings are made, the Board can approve the variance as requested, or grant it with appropriate conditions and safeguards added.

VII. HEARINGS

Section 1 - Schedule of Hearings

Hearings for appeals, petitions for interpretation, or variances shall generally be set for the next regular Board meeting as long as the application is filed and determined by Town staff to be complete at least fifteen calendar days before the next regular meeting date. The Chairperson

may use his/her discretion to ~~allow applications to be added to the agenda when submitted less than fifteen days in advance, or to~~ set a hearing date other than at a regular scheduled meeting.

Section 2 - Order of Hearing

Any party may appear in person, by agent, or by attorney, at the hearing. The Board may elect to continue a hearing to a later date if no one is in attendance to present the application/petition. ~~The Board may require documentation of reasons for ongoing delay in conducting and concluding an open case if there may be any perception of purposeful slow-down, and may subpoena witnesses and compel the production of evidence. The Board may also determine it is in their best interest to make findings based on the evidence provided to them in the absence of any party's attendance at a scheduled hearing.~~

~~When the hearing involves a request for interpretation or appeal of a determination by a zoning official, then that official, or his/her designee, shall appear at the hearing as a witness.~~

The order of business for the hearing of each case shall be as follows, unless the Chairperson, for good cause, elects to vary the order of presentation.

- a. The Chairperson, or such person as he/she shall designate, shall introduce the case.
- b. All witnesses shall be sworn in.
- c. Planning department staff shall give an overview of the application, outline the **Zoning Ordinance** sections that relate to the case at hand, provide any other documents that may have relevance to the case, and answer any questions from the Board.
- d. The applicant shall present evidence in support of the application and answer any questions from the Board.
- e. Anyone opposed to granting the variance, reversing the decision appealed from, or opposed to the interpretation being presented, shall present evidence against the application.
- f. Both sides shall be permitted to cross examine witnesses.
- g. Both sides shall be permitted to present rebuttals to opposing testimony.
- h. The Board shall discuss the issue, make findings where appropriate, and determine alternatives or additional conditions that could be imposed.

The Board shall reserve the right to make reasonable limitation upon the time allowed the applicant, opposing parties, and/or other persons giving testimony.

VIII. MINUTES

Section 1 - Public Record of Decisions

The decisions of the Board, as recorded in the minutes, shall be a public record, available for inspection at all reasonable times once they are approved by the Board.

Section 2 - Contents

The Board's final decision on each case shall be shown on the record of the case and recorded in the minutes. Each quasi-judicial decision shall be signed by the Chair or other voting member of the Board, and may be included within the minutes or as an attachment to the minutes. Such records shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact made by the Board. When a variance is granted, the minutes shall state in detail what, if any, conditions and safeguards are imposed by the Board in connection with the granting of the variance. The minutes of all cases shall show all important facts, every resolution, and all votes of members of the Board, indicating the names of members absent, abstaining or failing to vote.

Section 3 - Further Record

Minutes shall be kept in a permanent volume at Town Hall. In addition, a recording device shall be used whenever possible, to keep a complete record of the proceedings of each meeting.

IX. EXPIRATION OF DECISION

Section 1 - Time Limit on Variances

Unless otherwise specified, any order or decision of the Board granting a variance shall expire if a Building Permit or Certificate of Occupancy for such is not obtained by the applicant within six months from the date of the decision. If six months have expired, the Zoning Administrator may authorize permits to be issued if he/she can determine that the circumstances leading to the Board's decision, and any related conditions, have not changed and would allow issuance of the permits.

Draft 7-22-13