

**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