

**MINUTES  
BOARD OF ADJUSTMENT  
THURSDAY, SEPTEMBER 5, 2013  
HOOD ROOM, MATTHEWS TOWN HALL**

**PRESENT:** Chairman Eric Welsh, Vice Chairman, Members, Walter Monestere, Jim Mortimer, and Cecil Sumners; Alternate Members, Jeanne Moore, and Peter Tuz; Planning Director Kathi Ingrish; Senior Planner Jay Camp and Zoning Technician/Deputy Town Clerk Mary Jo Gollnitz

**ABSENT:** Attorney Robert Blythe; Member Jim Jiles and Alternate Member Jerry Meek

**CALL TO ORDER/INVOCATION:**

Chairman Eric Welsh called the meeting to order at 7:04 pm. and gave the invocation.

**APPROVAL OF THE MINUTES:**

Cecil Sumners motioned to approve the minutes of the April 4, 2013 meeting. Walter Monestere seconded the motion and they were adopted unanimously.

Peter Tuz was appointed to act as a voting member.

**VARIANCE REQUEST: 316 E. Matthews Street**

**SWEARING IN**

The following were sworn in: Jay Camp and Jeff Fuller

**STAFF REPORT:**

Senior Planner Jay Camp explained that the petitioner is requesting variances for the historic Funderburk Plaxco House. There is currently a rezoning request for the property that has a scheduled decision date of September 9<sup>th</sup>. In order for the rezoning to move forward the project must meet all applicable zoning requirements. Staff has identified several areas where variances are necessary.

Mr. Camp continued that the house dates back to the 1880's, making it one of the oldest houses in Matthews. The Historic Landmarks Commission purchased the house last year. The property is under contract to Fuller CPA.

Staff has identified several variances that are vital to the overall project. Mr. Camp noted that staff has separated the request into three individual variances. Variance A is a request to eliminate screening requirements from the northwest property line and use existing vegetation for other location on the property. Variance B is the request to reduce side yard requirements from six feet to approximately one point two feet for a distance of approximately 20.6 feet. This is to allow the structure to remain in its current location. Variance C is a request to reduce screen plant material requirements along the internal zoning line and use existing vegetation.

Mr. Camp showed the Board an overview of the property with the location of Variance A and B on the property. He noted that there is an addition on the house and where it comes close to the property line. With Variance A there would be no screening required in a section of the property.

The reasoning for this request is because Matthews screening beds are ten to fifteen feet wide. The main portion of the house only is approximately twelve feet from the property line. To place new planting with the existing vegetation on the property would not look good and could possibly damaged the existing plant material. The intent is to leave this portion as is and transition from residential to office. Additionally, there is vegetation along with a chain link fence, on the back portion of the property and there is no plan to disturb that portion of the property. Again, leave as is and have the least amount of impact on the neighboring property.

Mr. Camp continued saying that there are no changes planned for that side of the property. All parking and access will be opposite this property line. There will be no change in the appearance of the house.

Variance B is the request to reduce the side yard requirement from six feet to one point two feet. The O-9 District regulations require a six foot side yard on one side and an eight foot side yard on the other side. Staff has applied the eight foot separation to the other side of the property. Mr. Camp showed the Board the 20.6 foot along the house that is 1.2 feet off the property line. The alternates to the variance would be to move the house or demolish this portion of the house.

Ms. Moore asked if this was added onto the house. Mr. Camp said yes it was and staff is not sure when it was constructed, however it was not added within the last five or ten years. It appears it may have been a keeping room that could have been added in the early 20<sup>th</sup> century. It is an essential part of the structure.

Mr. Camp showed the Board the new landscape plan that the applicant had provided after the agenda was set. It shows a reduction of the screening material. Mr. Camp clarified that the property is split zoned and Mr. Fuller is only utilizing the portion of the property that has the house on it. As part of the conditions of the plan, no construction can occur on the portion next to KP Park. In conjunction with the Downtown Master Plan, the vacant portion may be a building lot in the future.

Since the property has a split zone, there normally would be screening requirements. The request is to reduce the screening requirements of vegetation from the front of the property to the back of the property. The petitioner will use some existing trees and some new plantings. There will not be a solid hedge row. The request for Variance C is to have screening on part of the internal zoning line.

Ms. Moore asked if the vacant portion of land belonged to Historic Landmarks. Mr. Camp explained that the property is one parcel with a split zoning. Ms. Moore asked if the property would have to be subdivided to be sold and developed. Mr. Camp stated that the entire parcel will all be conveyed to Mr. Fuller and any development options would be his decision.

Mr. Tuz asked if there are any structures on the lower right portion of the property. Mr. Camp stated that there are two structures and both are scheduled to be removed. The Historic Landmark Commission has issued certificates of appropriateness for those buildings indicating that neither structure has historic value.

Mr. Fuller addressed the Board. He stated that he is trying to purchase this property. He is asking for the variances in order to make the property something Matthews can be proud of.

Mr. Mortimer asked Mr. Fuller if he was going to do any changes to the exterior of the house. Mr. Fuller said that he was going to fix the roof but no additions to the exterior.

Mr. Welsh said that it is helpful that staff has separated the request into three areas; however it is different from the application. Does the applicant need to adopt the specifics of Variances A, B, and C requests? The variance request is more detailed. Mr. Camp stated that reviewing the site

plan required changing the applications in order for the intent of Mr. Fuller rezoning is met. Mr. Fuller needs to affirm for the record that he agrees with the staff report.

Mr. Camp explained to Mr. Fuller that the application and the way that staff has presented it before the Board are slightly different. Staff structured the request in order for the site plan to get approval. Mr. Fuller asked to see exactly what has been changed. Mr. Camp explained and showed Mr. Fuller that he separated the two screening areas for the Board in order for it to be clear on what they were deciding on.

Mr. Fuller agreed that he agreed with the change.

**DELIBERATION:**

Mr. Mortimer asked if the Board will be making one vote or three separate votes. Chairman Welsh stated that the Board will make three separate votes.

Mr. Welsh said that there is a legitimate need for the variance request because the request is the result of the rezoning. The applicant is trying to come into compliance and the issues were not brought on by his own doing. The plans will keep existing foliage along the side yard while adding more plantings and they will not be moving or demolishing the house.

Mr. Mortimer concurred with Mr. Welsh. Mr. Sumner also agreed that leaving the area as it currently exists is the best course of action.

Ms. Moore asked Mr. Camp how close the property line is in case the neighboring property owner wants to remove the trees. She wanted to make sure the neighboring house is far enough away. Mr. Camp informed the Board that it was approximately 80 feet from the adjoining house to the property line.

Mr. Tuz said he was concerned about the house location in case the adjacent property is rezoned to office and may need additional parking. The parking could possibly be up to the Plaxco House.

Mr. Mortimer said that the adjoining property is currently R-20 and then any changes would have to be made if a change is requested.

Mr. Tuz asked if the small portion that is so close to the property line, is it possible to remove that addition from the house.

Mr. Welsh asked Mr. Camp if that portion of the house were to be demolished, would the main part of the house be compliant

Mr. Camp stated that such action would meet the side yard requirement. Then a ten foot wide screen with privacy fence would be possible on that side. Mr. Camp showed the Board the Town's Master Plan and how it is believed the area will develop. The Master Plan shows preservation of the home, with infill development on the vacant lot and potential parking structure encompassing the neighboring property and existing Japanese Restaurant.

Mr. Camp said the variance to screen the side yard would not be required if the neighboring property is no longer zoned residential. Extra space could be allocated at the time of rezoning to make sure there is sufficient separation between structures.

Mr. Welsh asked the applicant what the current use is on the section that encroaches the property line. Mr. Fuller stated that it is a sunroom. Mr. Welsh said that it would be a big deal to demolish it. Mr. Fuller said that it was added to the house without any place to cut it off; yes it would be and could potentially damage the house.

**FINDINGS:**

Mr. Sumner motioned to accept Variance A. Mr. Mortimer seconded the motion. Mr. Welsh clarified that this is the variance that Mr. Camp presented and the applicant has accepted.

Mr. Welsh said that this variance request with respect to hardship, the applicant has met its burden because the house was placed on the site long before the current requirements came into being. This is not a hardship that was brought on by the applicant. There are no other feasible options for addressing this other than coming before the Board, if the rezoning request is to be granted. The Board heard the applicant give evidence that trying to do anything to the side portion of the house would be prohibitively expensive and dangerous to the structure of the historic house. There is no option of relocating the house and in order for the rezoning to go forward this variance would need to be obtained in order to be compliant. Evidence and testimony was presented that the variance is consistent with the overall harmony and purpose of the Town of Matthews plans. The changes would be the least possible deviation from those plans. There is a benefit to the general public of the preservation of one of the oldest homes in Matthews. The applicant cannot move forward with the rezoning unless the variance is approved. The applicant wishes to use the property for commercial purposes.

Chairman Welsh called for the vote on Variance A. The motion carried unanimously.

The Board held the same findings for Variance B as those presented for Variance A.

Mr. Sumner motioned to accept Variance B as presented by the Town and adopted by the applicant and represented in the map. Mr. Mortimer seconded the motion which was approved unanimously.

Mr. Mortimer motioned to approve Variance C as presented by the Town, adopted by the applicant, presented in the map and landscape plan. Chairman Welsh asked that Variance C be tied to the landscaping plan. Mr. Camp stated that staff will note such in the permanent record. Town Council may request that the site plan be changed; the Council could alter the site plan.

Mr. Camp stated that the preferred layout was presented this evening. There has been some discussion from Council that they would like to see all the parking towards the rear of the property. No matter what motion the Board makes, conditioning it on the exact layout presented may be difficult.

Mr. Welsh stated that the screening portion is what this Board is focused on not the parking. Is it possible to condition it on the screening being substantially compliant as presented on the map? Mr. Fuller showed the Board which trees exist and what will be planted in the future. Mr. Welsh asked if they could make the motion to include substantially compliant with the planting and screening that exists on the presented map. He did not believe the parking would impact the plantings. This gives some latitude without the Board being completely ignored.

Mr. Welsh modified the motion to approve Variance C as presented by the Town, adopted by the applicant, contingent upon the screening being substantially compliant with the planting map presented this evening. Mr. Monestere seconded the motion.

Mr. Welsh suggested that the Board adopt the prior findings for Variance C as those presented in Variance A. The Board consented to the findings.

Mr. Welsh noted that the information showing the planting and screening provides a good accommodation for the town and applicant.

The vote carried unanimously.

## **REVIEW AND DISCUSSION: New Statutes affecting Board of Adjustment actions**

Planning Director Kathi Ingrish briefed the Board on the revisions to the new statutes adopted by the State Legislature regarding Board of Adjustment actions. Many of the changes Matthews currently has in place. The new requirements will not be placed in the Zoning Ordinance. Staff is completing the UDO to be presented to the Town Council in the upcoming month, which will have the new requirements. However, the Board is still bound by the new requirements that go into effect on October 1, 2013.

Ms. Ingrish mentioned that a notice to adjacent property owners must be sent between 10 to 25 days before the hearing and a sign posted on the property. Appealing a decision of the Zoning Administrator has to be filed concurrently with the clerk and planning office.

She continued explaining that instead of three findings of facts there are now four. The Board no longer has to say "no return" if the variance is not approved. Zoning variances will still need to have a four fifths majority vote, where appeals and interpretations will be a simple majority vote.

Ms. Ingrish went into depth noting text changes and provided clarification of how this will affect the Board. She also mentioned that a written decision must be sent and must be signed by the Board chairperson or authorized board member. It can be sent by email, first class mail or hand delivered. The thirty day appeal time does not start until the letter is sent to the property owner and/or applicant. This will have to be determined how this will be handled.

Ms. Ingrish reminded the Board that the requirements will go into affect October 1<sup>st</sup> and the Board will need to do written decisions and use the new findings at that time.

## **REVIEW AND ADOPTION: Changes to Rules of Procedure**

Ms. Ingrish presented the revised Board of Adjustment Rules of Procedure to the Board. She explained that a majority of the changes are due to the new legislation. One particular item that staff revised was the application deadline to the Board. Staff has changed the time from fifteen days to twenty business days. This will allow enough time for staff to do the report and verify the application.

Mr. Welsh asked if the rest of the changes we based on the new law in order to be compliant with the legislation. Ms. Ingrish said yes and changing the verbiage from Zoning Ordinance to UDO, which will be completed after the UDO is adopted.

Ms. Ingrish continued stating that notices will have to be completed by mail and staff will need to post the property with signage. The Board may require a written explanation from the applicant if there is a purposeful delay or stalling of a decision. When a hearing involves a determination from the zoning administrator, they must be witness at the appeal hearing.

Mr. Welsh asked what would happen if the zoning administrator doesn't appear. Ms. Ingrish stated that the Board must continue the case.

She further clarified that the written decision requirement in the Rules of Procedure now states that the chairman or any board member can sign the document. This will be helpful in the event the chairman is not present at the meeting, one of the members who was present for the decision can sign the decision.

There is a time limit for variances to begin of six months. If there is a request for more time in getting started, then the zoning administrator can authorize an extension; as long as there is no

change in conditions. There was discussion about how the extension currently is handled and how this will be handled in the future.

Mr. Sumner questioned the four-fifths vote going to simple majority. Mr. Ingrish noted that this is now state law and all actions will be simple majority except variances which will still be four-fifths.

Mr. Tuz asked if instead of appearance by the zoning official; can the Board accept a letter of written determination. Ms. Ingrish said that staff currently sends a letter of determination before something goes to hearing; however, the zoning official now must appear at the hearing to be in compliance with State law.

Discussion was held as to whether the Board should wait to adopt the updated Rules of Procedure or adopt this evening.

Mr. Welsh moved to approve the Rules of Procedure as presented and revised as of September 5, 2013 seconded by Mr. Monestere and carried unanimously.

Mr. Mortimer asked that each Board member receive a hard copy of the adopted Rules of Procedure.

**ADJOURNMENT:**

Mr. Sumner moved for adjournment. Mr. Monestere seconded the motion and the meeting adjourned at 8:20 pm.

Respectfully submitted,

Mary Jo Gollnitz  
Zoning Technician/Deputy Town Clerk