

**MINUTES  
BOARD OF ADJUSTMENT  
THURSDAY, NOVEMBER 6, 2014  
HOOD ROOM, MATTHEWS TOWN HALL**

**PRESENT:** Chairman Jim Jiles, Members, Walter Monestere, Cecil Sumners, Jim Mortimer, and Jeanne Moore; Alternate Members Jerry Meek and Peter Tuz; Attorney Robert Blythe; Planning Director Kathi Ingrish and Zoning Technician/Deputy Town Clerk Mary Jo Gollnitz

**ABSENT:** Alternate Member Gary Smith

**CALL TO ORDER/INVOCATION:**

Chairman Jiles called the meeting to order at 7:00 pm. Jim Mortimer gave the invocation.

**APPROVAL OF THE MINUTES:**

Jeanne Moore motioned to approve the minutes of the October 2, 2014 meeting. Jim Mortimer seconded the motion and they were adopted unanimously.

**SWEARING IN:**

The following were sworn in: Kathi Ingrish, Karen Floyd and Michael Fiore.

**VARIANCE REQUEST: Audi Charlotte, 9300 E Independence**

**STAFF REPORT:**

Planning Director Kathi Ingrish introduced the variance request for Audi Charlotte located at 9300 E Independence Blvd. She stated that the dealership is in the process of changing out their light fixtures on the property. The Town lighting ordinance was adopted after the building was constructed.

She explained that under applicability for outdoor illumination standards the ordinance states: "the replacement of an existing lighting fixture is defined as a change of the type of fixture; a change in the mounting height of a fixture on a pole, building, or other structure; or a change in the location of a lighting fixture. All of these applications require compliance with this section. Routine lighting fixture maintenance such as replacement of lamps, ballast, starter, photo control, or similar components will not constitute the need to comply with this ordinance, and is permitted provided such changes do not result in a higher wattage or higher lumen output."

Ms. Ingrish stated that the dealership is proposing to replace all the fixtures they have with a more efficient and a full cutoff style of lighting. They have already replaced the lights that were not too close to trees. Some of the poles are located too close to a tree to be in compliance with the Ordinance. Without the variance, the owners will either have to move the pole or the tree. Neither of these are very good options. She continued stating that the trees were planted when the dealership was initially built. The trees have significantly grown and to move the poles in the parking lot would likely cause uneven spacing of lighting. The Ordinance does apply in this situation because they are changing out the fixtures. In order to change the fixtures on the existing poles at existing locations, the applicant needs the variance.

Ms. Moore asked if the new fixtures have more illumination than the old fixtures and what is the reason for not having them so close to the trees. Ms. Ingrish stated that when the dealership was

first constructed there was no lighting ordinance. The intent of having the minimum space between poles and trees is so you do not have the light shining on leaves instead of the area where it needs to be. There is no fire hazard to the tree, the separation requirement is so the light is not blocked or cutting the tree will result in misshaping of the tree.

Mr. Jiles asked if staff is sure that the trees are going to block the lights. Ms. Ingrish stated that she did not go on the site to look at each light. However, Code Enforcement Officer Carlo McKoy and Planner Jim King did go out to the site. They looked at each location to determine how close the trunk of each tree was to the light poles. This provided the specific locations of which light poles were not far enough away from the trees. They also noticed that the trees are healthy. Mr. Jiles said that the change in the requirements increases the separation distance from the initial installation. The variance is to reduce that minimum. Ms. Ingrish confirmed that there were no minimum requirements when the building was first constructed. She continued noting that the closest spacing of tree trunk to pole is 8ft.

Mr. Mortimer stated that there are other instances in Matthews and this does not come up until they wish to change the lights. Ms. Ingrish agreed. Chairman Jiles asked if all the area around the subject property are commercially zoned. Ms. Ingrish said that this property is zoned Highway Business and that they are surrounded by all nonresidential uses.

Ms. Moore asked what will happen to the separation distance requirement as these trees continue to mature. Ms. Ingrish said that the ordinance is written as to the trees being fully matured.

Mr. Mortimer asked if LED light is cool lighting. Ms. Ingrish stated that it is a much lower energy use for the same light output, it is cleaner, bright light and provides accurate color.

Mr. Jiles stated for the Board that this variance is to allow for less spacing between trees and light poles than what is in the Ordinance. Ms. Ingrish noted that because the Town did not have a lighting ordinance when the property was developed, they could have had any intensity of lighting on the property. Now the code has maximum allowable wattage. Dealerships do get extra amounts of wattage because of their unique sales requirements. Gas station canopies, car dealerships, and sports fields are a few uses that need intense lighting and are specifically listed in the code.

Karen Floyd with Audi of Charlotte at 9300 E Independence Blvd addressed the Board. She stated that they had researched this project for three years. They met with several lighting companies and met seven times with Duke Power to make sure this was the right thing to do. They looked at induction lighting versus LED lighting. They are currently spending approximately \$25,000 a year changing out light bulbs and ballasts.

Ms. Floyd explained that when they would change out the ballasts or lights, it would be melted. They knew they had to change what they had in place. Michael Fiore with Powerworks Electric in Mooresville would stand behind their work and was recommend by Duke Power. She noted that the complete project will cost them approximately \$150,000.

Ms. Floyd continued describing the fixtures. She stated that some of the light fixtures were three per pole. Mr. Fiore's company has begun replacing the three lights with one fixture. Cree Lighting is providing the fixtures. She stated that currently it cost them 8.5 to 9 cents per hour per light per day. With 130 poles and some poles having three fixtures, that added up to approximately \$5000 per month for power. They are hoping to cut the bill in half. She stated that you can see the difference in the lighting at night. The lighting makes it safer for the customers. She stated that the lights are guaranteed for a period of 10 years and they hope they will last longer than that. It will be a great environmental savings as well as cost savings for them.

Chairman Jiles asked if they have had some of the new lights up and operating already. Ms. Floyd stated that yes they do. Mr. Jiles asked if they have noticed any problems, or cutoff with the adjacent trees. Ms. Floyd stated that they followed the landscape requirements the Town has. They are not moving any poles; they are putting up new fixtures on the poles. These fixtures are smaller than what was in existence and on some poles they are going from three fixtures to one fixture. She continued noting that there are 13 poles affected by the ordinance out of the 64 poles they are upfitting. She noted that the light is clearer and more like day light. The trees are almost to maturity. They did check every tree with Mr. King. They did ask to remove trees and the ordinance requires replacement of a 10" diameter tree with five 2" diameter trees. Unfortunately there was no room to place more trees on the property. They have replaced other trees in the median areas at a significant cost. She stated that they do maintain the property.

Mr. Jiles stated that there is a reason to place the lights in specific locations. His concern is with spillover of the lighting from commercial property onto the adjacent properties. He wants to make sure there is coverage on the lot.

Michael Fiore with Powerworks Electric of North Carolina addressed the Board. Mr. Fiore stated that the lighting temperature of LED's are cooler. You can place your hand on them. Other aspects of the LED lights are the way light is displayed and it is optically driven on the ground. He stated that the entire property has been photometric designed by Cree and insures that the lighting is placed on the vehicles. Traditional lighting uses a reflector inside the square on the pole and it is one big ball of light. LED is better with uniformity and the way it spreads evenly on the property.

He continued stating that one of the biggest values is the energy savings. This property will save 388,000kw hours per year of electricity. This is equivalent to 25 homes with average energy consumption per year. This will be a significant savings. He did state that his company, Powerworks Electric, is a commercial electrical contracting firm. He listed some projects that his company has completed in North Carolina. They have a lighting division that focuses solely on LED lighting. They review lighting ordinances throughout the southeast and Matthews has one of the best lighting ordinances he has seen. It is very sensible and worked very well.

Attorney Blythe clarified that the regular members will be voting this evening.

## **DELIBERATION:**

### **Deliberation**

Chairman Jiles stated that this is a request for variance for a reduction of the distance requirement of 20 feet from a light to pole to a tree. The Board used the seven standards to assist them in arriving at the four required findings of fact.

1. *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.* Chairman Jiles said that the building was constructed prior to the lighting ordinance adoption.

2. *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.* Mr. Jiles stated that construction was completed in accordance with ordinances established at that time.

3. *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.* Mr. Jiles said that there would be a hardship of removing and replacing trees. This does not result from the actions of the applicant.

4. *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.* Mr. Mortimer said there would be a substantial cost of removing the trees, damage to the property, and replacing the trees. Mr. Jiles said that it would not deprive them of use of the property; however it would be costly to do such.

5. *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.* Mr. Jiles said it will provide relief with the variance.

6. *That the proposed use and the appearance of any proposed addition or alteration will be compatible with, and not negatively impact, nearby properties.* Mr. Jiles said that the alteration will be compatible with the nearby properties.

7. *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.* Mr. Jiles said it will not be detrimental. There is no increase in noise or traffic resulting from this variance.

#### **Finding of Facts**

1. There would be unnecessary hardship from strict application of the ordinance. The Board felt that hardship would be primarily a continual financial burden. The variance may also aid marketing of the vehicles.

2. Hardship does result from the conditions that are peculiar to the property, without granting the variance. The proximity of the light poles to the trees was established when the construction occurred in 2005.

3. The hardship did not result from actions taken by the applicant or property owner. They do not result from any actions from the applicant because the development was constructed in 2005.

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, because public safety is secured and justice is achieved. The Board's consensus was yes.

Ms. Moore made a motion to approve the variance as presented. Mr. Mortimer seconded the motion which passed unanimously.

#### **ADJOURNMENT:**

Ms. Moore moved for adjournment. Mr. Monestere seconded the motion and the meeting adjourned at 7:35 pm.

Respectfully submitted,

Mary Jo Gollnitz  
Zoning Technician/Deputy Town Clerk