

Board of Adjustment
Thursday, March 6, 2014
7:00 PM
Hood Room, Matthews Town Hall

AGENDA

- I. CALL TO ORDER
- II. INVOCATION
- III. APPROVAL OF MINUTES
- IV. REMAND: 1635 Matthews Township Parkway
- V. ELECTIONS
- VI. ADJOURNMENT

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

PRESENT: Members Jim Jiles, Jim Mortimer, Cecil Sumners, Walter Monestere and Jeanne Moore; Alternate Member Jerry Meek; Attorney Robert Blythe; Zoning Administrator/Planner II Jim King, GIS/Planner II David Nelson and Zoning Technician/Deputy Town Clerk Mary Jo Gollnitz.

ABSENT: Alternate Peter Tuz

CALL TO ORDER/INVOCATION

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

Jeanne Moore made a motion to approve the minutes of the November 7, 2013 meeting. Cecil Sumners seconded and the motion was unanimously approved.

SWEARING IN

The following were sworn in: David Nelson and Michael Reeve.

VARIANCE REQUEST: 668 West John Street

Staff Report

GIS/Planner II David Nelson provided the board with information about the variance request for 668 W. John St. He explained that the request is for the Shell Station located at the intersection of John Street and Matthews Township Parkway. The specified request is to replace portions of the existing pylon sign. The applicant wishes to replace the lower two price panels with LED panels.

Pylon signs are not permitted in any zoning district. The existing sign is considered a nonconforming sign and is regulated differently than conforming signs. Mr. Nelson read Section 153.220 of Matthews Zoning Ordinance which explains the rationale behind nonconforming signs. He further explained that a nonconforming sign is allowed to continue so long as there is no significant investment or upgrades. He listed what was allowed according to the Zoning Ordinance.

He stated that the sign would be upgraded and improved with the removal of the existing panels therefore such is considered a structural change. The right-of-way at this intersection has increased since the building was constructed, and has resulted in the sight triangle being pushed back on the property. The sight triangle now occupies the same space as the sign. Granting a variance for a structural upgrade would not resolve the sight triangle issue. A second variance may need to be granted for placement of a sign in the sight triangle.

Ms. Moore asked for clarification on the variance request. She asked if they are trying to move the sign in order to make the sign conforming. Mr. Nelson explained that the variance is to replace components of the sign, not completely replace the sign. They will still have a nonconforming sign because it is a pylon sign.

Mr. Jiles asked if the physical location of the sign will be moving. Mr. Nelson said no the sign will not be moving. Mr. Jiles said that it is his understanding the two lower panels will be changing. Mr. Nelson said yes, that is correct.

Ms. Moore said that if everyone else in town has these digital panels, why the applicant needs a variance to change to digital. Mr. Nelson explained that a digital monument sign would be permitted by right. The pylon sign is the nonconforming issue.

Mr. Sumners asked to have the "sight triangle" explained for him. Mr. Nelson explained it is a cleared space on the corner of two right-of-ways and no obstruction of sight.

Jim Mortimer asked if there was a map showing the sight triangle on the property in question. Mr. Nelson showed the map that was available, but did not have the sight triangle on it. Discussion continued about the sight triangle. Mr. Nelson noted that a portion of the building is enveloped in the sight triangle.

Mr. Mortimer asked if you move the sign out of the sight triangle would it interfere with egress. Mr. Nelson stated that moving the sign would be difficult given the layout of the property. Mr. Jiles asked who regulates the sight triangle at this location. Mr. Nelson said that sight triangles are regulated under Section 153.141 of Matthews Zoning Ordinance. He read the definition for the board.

Mr. Jiles asked additional questions regarding NC Department of Transportation and their requirements for sight triangles. Mr. Mortimer asked how tall a monument sign could be. Mr. Nelson stated that a monument sign could be up to 10' tall. Mr. Mortimer asked if at the ten foot height, would a sign obstruct the sight triangle. Mr. Nelson stated yes.

Mike Reeve representing the applicant Sam's Mart, 7935 Council Place in Matthews addressed the board. He provided depictions of the sign in its present state and what the sign would be if the variance is approved by the board.

He stated the reason for the price sign change request is that the well being of his employees is an issue. They have to change pricing daily and the sign is close to the road. The digital sign could be changed from inside the building or from the corporate headquarters if necessary.

Mr. Mortimer stated that he believes that the board understands the safety issue. He asked if there was anywhere else a sign could be placed. Mr. Reeve stated that he did not believe placing the sign on the canopy is allowed by the ordinance. He continued noting that a monument sign could not fit on the corner. He does not know where it could fit on the site.

Mr. Jiles asked if you are replacing panels with electronically controlled panels, is there electrical wiring or rewiring that has to take place. Mr. Reeve stated that there is a wireless interface that goes up with the price sign. The electrical that is there is sufficient for LED. The power is already there. Mr. Jiles asked if the existing sign is internally lighted. Mr. Reeve said yes.

Mr. Mortimer noted that the ordinance allows for maintenance, but not for upgrades. Mr. Jiles said that the line of sight should be considered. Mr. Mortimer said that the sign was built and conforming before the line of sight

changed. Mr. Reeve said that the sign being a two pole configuration instead of one solid monument, it is less of a visual impairment as it exists.

Deliberations

Jim Mortimer said that he recommends approving the variance, acknowledging that it is a nonconforming sign. However the sign was built before the road was widened. He felt that it would be a hardship on the applicant to place the sign somewhere else. He is not sure where you could place the sign on the property. It is certainly a public safety issue for the employees in the current condition. He continued noting that it does not detract from the attractiveness of the sign. Ms. Moore said that the client should get into the modern times. She noted that the sign needs to stay where it is and it is a necessity for the applicant to be able to complete this.

Cecil Sumner agreed noting that he feels it is maintenance and the technology is available to other businesses. It can be more efficient and easily seen at night. Mr. Jiles stated that he felt the modification doesn't specifically meet the ordinance as written. He continued saying that he did not believe that a monument sign would be more of an obstruction than what is currently on site.

Ms. Moore said that the property owners have been trying to keep the site looking good and modern. Mr. Jiles said that the lighting of the sign does not affect the sight triangle.

Mr. Jiles summarized the Board's deliberation and findings of facts:

Number 1: There would be an unnecessary hardship from the strict application of the ordinance;

Number 2: The hardship does result from conditions that are there and have existed for some time. They are a result of highway improvements, widening and other items that have occurred. These are not a result of the owner of the property;

Number 3: The hardship did not result from the actions taken by the property owner and are a result of other occurrences;

Number 4: The requested variance is consistent with the spirit, purpose, and intent of the zoning code. Public safety is and still exists in a consistent manner.

Jim Mortimer added that what the board is voting on is the strict "snap in LED" to the sign and that no other changes to the sign other than maintenance, now and in the future.

Jim Mortimer so moved that the variance request be approved for 668 W. John Street. Jeanne Moore seconded and the vote carried unanimously.

Swearing In

David Barley, Zoning Inspector with LUESA; Jim King and Bart Key

VARIANCE REQUEST: 409 Matthews Township Parkway

Zoning Administrator/Planner II Jim King provided the board with an overview of the request. He stated that the applicant is Lennar Homes requesting a variance to increase the square footage of a sign for the residential subdivision entrance. The Ordinance allows for subdivision signs with the copy area up to nine square feet. The applicant is requesting a variance to increase the sign copy to 18 square foot.

Mr. King continued by stating that the property is located at 409 Matthews Township Parkway. In March 2013 Lennar Homes received final plat approval for a 20 lot subdivision. He further noted that around December 17,

2013, David Barley with Mecklenburg County Zoning, met with the applicant at the site to discuss a separate issue. While there, Mr. Barley brought to the applicant's attention that the sign exceeded limits permitted in the Zoning Ordinance and that no permit had been issued for the signage.

Mr. King read Section 153.150 of the Matthews Zoning Ordinance which defines what signage is permitted, location, and the size of allotted signs. He noted that the sign regulations were updated in 1993 and that the signage allowed has been adequate for subdivisions since that time. He described the area where the sign is located and visibility of the signage along Matthews Township Parkway. The parkway is four lanes and cannot be accessed from the east bound lane.

He further noted that there are no subdivisions entrance signs in Matthews that exceed the nine foot size limit. Approval of the variance would allow substantial benefit to Lennar Homes and Reid Hall Subdivision that is not afforded to other subdivisions.

Mr. Jiles asked staff to show where the sign is located on the map of the town. He also asked if the Planning Board discussed the signage when the property was rezoned. Mr. King said that no zoning change was required to develop this property. The property was developed by right. Mr. Mortimer asked how long ago Town Council had approved this subdivision. Mr. King said that Council had approved the final plat in late 2013.

Ms. Moore asked if the developer knew when they received a sign permit what size they were allowed. Mr. King stated that if they had applied for a permit with drawings, they would have been informed that the sign was too big. Ms. Moore wanted clarification and asked if the applicant received a permit for the sign. Mr. King said that the sign was installed without a permit.

Jerry Meek stated that the sign is situated so that it can be viewed by southbound traffic rather than northbound. Mr. King said that it is situated so that it can be seen heading out of Matthews. It is not designed to attract traffic from the other lane because there is a median on the road.

Mr. Jiles asked if the sign is angled in that direction, you would have to really be looking for it from the other lane. Mr. Meek said that the sign is located in such a manner that the size of the letters will not make a difference.

Bart Key with Lennar Carolinas in Charlotte represented the property developers. He stated that the biggest issue is visibility in the northbound lane. In the southbound lane the entrance sneaks up on you. There is a 30 foot tree buffer which is not a problem this time of year. He continued stating that when they were designing the sign they stood on the road to see what would be the best size for the sign to be seen along the road. Mr. Key continued noting that there is a coat of arms on the signage which is a substantial portion of the square footage. The coat of arms is approximately 2 ft. by 2 ft. which could possibly be moved to a column on the north side of the entrance. This may be an option to identify the neighborhood.

Mr. Mortimer asked for additional explanation on the coat of arms and pictures of the signage that is currently installed. Mr. Jiles stated that the board is not looking for options at this moment. The board needs to address the variance request. Mr. Mortimer asked Mr. Key if he is suggesting that they are willing to reduce the sign to nine square feet. Mr. Key said that the coat of armor would help identify the neighborhood and reduce the square footage on the sign.

Mr. Mortimer asked if the issue is the text or the overall sign including the monument. Mr. Jiles stated that the way this sign is situated and you are going east bound you have to turn around and look behind you to see it. Mr. Key said that for that specific reason they made the sign large.

Ms. Moore asked the applicant why they installed the sign without a permit. Mr. Key explained that he had a contractor hired to do a turnkey operation on the signage. He was not aware that the contractor had not applied for a sign permit.

Mr. Meek stated that he understood that the applicant had smaller letters and did not use them. Mr. Key stated that they had slightly smaller letters, however they were very ugly. Mr. Meek asked if that was the reason for the change. Mr. Key said that it was part of the reason, but the largest was to provide an identity by matching the interior street signs that have the coat of armor on them. Mr. Meek asked if the original sign was conforming. Mr. Key said that no, it was probably 15 square feet total area. The biggest changes made installing the current signage was the larger "r" and "h" letters, along with the medallion.

Ms. Moore asked if they could reduce the sign to nine square feet. Mr. Key said they could shrink the letters and remove the armor in the middle. Ms. Moore said that the sign is not the only marketing that they have. Mr. Key said that the development is sold out and they are trying to make the subdivision look good while providing an identity.

Mr. King informed the board the current Zoning Ordinance allows for one sign per corner per entrance of 9 sq. ft.

Deliberations

Attorney Blythe informed the board that there is a possibility for placement of another sign as long as it would be in conformance.

Ms. Moore said that she believes they should be in conformance like all the other subdivisions within Matthews. If they can do the signs on both sides of the entrance, that is fine. They did not get a permit and that is their problem.

Mr. Meek said that he felt the variance request fails the first test. He continued stating there is no unnecessary hardship. To the best of their knowledge, there has not been any other request for subdivision sign variance, so there is no hardship.

Mr. Mortimer said he thought it failed all four tests. Mr. Sumner said that approving this would set a precedence we don't want to set.

Mr. Jiles summarized the board's deliberation and findings of facts:

Number 1: There is no unnecessary hardship that would result from the strict application of the ordinance and in the absence of the variance reasonable use of the property can be made;

Number 2: There is no hardship resulting from conditions particular to the property and have existed for some time;

Number 3: Since there is no hardship, any action to place the sign is the results of the owner and do not provide a reason for the variance;

Number 4: The requested variance is not consistent with the spirit, purpose, and intent of the zoning code, and substantial justice is achieved.

Walter Monestere moved that the variance request be denied. Jim Mortimer seconded and the vote carried unanimously.

ADJOURNMENT

Mr. Jiles made a motion to adjourn. Mr. Sumner seconded the motion and the meeting adjourned at 7:50 pm.

Respectfully submitted,

Mary Jo Gollnitz
Zoning Technician/Deputy Town Clerk

DRAFT

**Summary Brief from Attorney Bob Blythe
Explaining History of Premier Surgery
Variance Request**

2/28/14

Premier Plastic Surgery Center, et.al, Request for Variance.

To: Board of Adjustment

This is intended to be a supplement to the Staff Report and a brief explanation of these proceedings. This is not a new variance request or hearing, but rather a court ordered reconsideration of the findings of fact and decision on granting of the requested variance.

History: This variance request to permit the sign to remain was first heard on July 10, 2008, after which hearing the Board of Adjustment denied the request. This was appealed to the Superior Court in Mecklenburg County on September 22, 2008, and the decision of the Board was upheld by the Superior Court on January 10, 2010. This decision was further appealed to the North Carolina Court of Appeals, and by a decision dated July 19, 2011, the decision of the Superior Court was reversed in part and remanded to the Board of Adjustment for further findings of fact and decision consistent with the Court of Appeals decision. This came before the Board of Adjustment on September 13, 2012, and was heard based on the existing evidence in the record. Again, the Board of Adjustment turned down the request, with the Findings of Fact and Order dated April 4, 2013. This was again appealed to the Superior Court. The Superior Court issued an order on November 25, 2013, holding that many of the Finding of Fact were invalid and remanding the matter to the Board of Adjustment to review the record and reconsider its decision based upon the Court of Appeals opinion and the Order entered by the Superior Court. The Town of Matthews did not appeal this Order.

Procedures: In his Order remanding to the Board of Adjustment, Judge Bonner specified what the Board was to do: (1) Review the existing record, which is basically the minutes from the previous hearing and the exhibits that were attached to it, There will not be any new testimony, only the record and the arguments of counsel. (2) Reconsider the previous decision which denied the variance. (3) Make new findings of fact consistent with the Court of Appeals decision and Judge Bonner's order. Under that order, Judge Bonner held that Findings of Fact # 1, 2, 3, 5, 6, 8, 9 and 10 were declared to be invalid so those specific findings cannot be used. (4) You are specifically directed to determine and answer whether application of Zoning Code 153.144(A) (the section providing for one monument sign for a unified multi-tenant complex) under the "unique circumstances of this property as presented in the Record of Proceedings, poses a threat to public safety" and if the variance is issued, "the public health, safety and welfare have been assured and substantial justice done."

Again, this is not a full hearing, but the decision will be made based on the existing record, so long as it is in accord with the Court of Appeals decision and the Order of Judge Bonner.

Bob Blythe

Findings of Fact and Record of Decision of the Matthews Board of Adjustment

Meeting Date: March 6, 2014

Case: Remand of Premier Plastic Surgery at 1635 Matthews Township Parkway

Applicant: Dr. Victor Ferrari

Site: Parcel 19329214

In accordance with GS160A-388 (d), "When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the regulations or provisions of the ordinance upon a showing of all of the following"

1. 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.

FINDING:

2. 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.

FINDING:

3. 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.

FINDING:

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

FINDING:

Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

The Following Conditions Accompany The Approval of the Variance

1.

Dated: March 6, 2014

Chair