

## **Meeting Minutes of the Board of Zoning Appeals Tuesday, December 10, 2013**

The Board of Zoning Appeals met in City Hall Council Chambers on Tuesday, December 10, 2013 at 5:15 P.M. with the following members in attendance: Shelley Robbins, Aaron Ryba, Dave Drum, Joshua Lonon, Jim Davis, and David Scott Lewis. Marshall Irby was absent. Representing the Planning Department were Joshua Henderson and Julie Roland. Buddy Bush, Building Official, and City Attorney Cathy McCabe also attended the meeting.

### **Roll Call**

Ms. Robbins, the Chair, stated that public notice of this meeting was given twenty-four (24) hours in advance as required by the Freedom of Information Act. Any appeals from a decision or action of this body are limited to a request for pre-litigation/mediation or an appeal to the Circuit Court, to be filed within thirty (30) days after the decision of this Board in accordance with Section 603.6 of the City of Spartanburg Zoning Ordinance.

Roll call was taken – Six members were present, constituting a quorum.

### **Approval of Agenda for the December 10, 2013 Meeting**

Mr. Ryba made a motion to approve the Agenda for the December 10, 2013 meeting, and was seconded by Mr. Drum. The motion was unanimously approved by a vote of 6 to 0.

### **Disposition of the minutes from the September 10, 2013 meeting of the Spartanburg Board of Zoning Appeals**

Mr. Drum moved approval of the September 10, 2013 Meeting minutes, with second by Mr. Ryba. The motion was unanimously approved by a vote of 6 to 0.

### **Old Business**

There was no old business for discussion.

[Editor's Note: A motion was made by Mr. Ryba at 5:19 P.M. to enter into Executive Session to receive legal advice from the City Attorney regarding "The Importance of Creating a Record" and "How to Preside Over a Meeting", and he was seconded by Mr. Davis. The motion was unanimously approved by a vote of 6 to 0. On a motion and a second the Board Members came out of Executive Session at 5:43 P.M., and no action was taken.]

### **New Business**

**VAR 13 2-04 - Request for Variance from William "Alex" Hudson II., Hudson Construction Services, LLC, Owner.** Variance to encroach a maximum of twelve (12) feet on the right side of the lot at the cul-de-sac, into the required twenty (20) foot front yard setback, in order to construct a single-family residential home. The property is located at 675 Reba Dale Court, and further identified as Parcel 005.13 on Spartanburg County Tax Map Sheet 7-14-02.

Mr. Henderson came forward and was sworn, and he submitted the staff reports, including the slides and presentations the Board Members had previously received in their meeting packets for all three of tonight's cases into evidence, as Exhibit A, as well as two letters and one email that was received by Staff prior to the meeting on two cases as Exhibits B, C, & D. He informed the Board Members the Owner of 675 Reba Dale Court was seeking approval for a setback encroachment into the required twenty (20') foot front yard setback in order to construct a structure encroaching at the closest point twelve (12') feet into the required setback. The property was developed and reviewed with the additional properties along the street under the requirements for a Planned Development District (PDD); and was approved in September, 2007 by the Planning Department.

Mr. William "Alex" Hudson II., Owner of Hudson Construction Services came forward and was sworn. He informed the Board Members he was owner and developer of the Planned Unit Development (PDD) at Arbors of Reba Dale; and he was asking for a setback variance for another property within the development. He explained the setback lines along the cul-de-sac followed the contour of the road, which had a twenty (20') setback. Mr. Hudson referenced a location map and the property, and informed the

Board Members this particular lot (#13) sits half on the road and half in the cul-de-sac, which caused the setback to make a big arch into the property (build) line. He further informed the Board Members he was trying to keep this a high density development, and he would like everything uniform along the road. Mr. Hudson said he came before the Board Members last year with a variance request for another lot in the subdivision.

#### Board Questions and Comments:

- Mr. Lonon asked Mr. Hudson if the lot he received a previous variance for was the adjacent lot. Mr. Hudson said no, that it was the lot directly across the street from the proposed lot.
- Ms. Robbins referenced the property slide and asked about the houses that had been built that had not required a variance. Mr. Hudson explained.
- Ms. Robbins asked Mr. Hudson if he had begun construction of the proposed house. Mr. Hudson said he had not, that he was waiting on the variance to be approved before he began construction.
- Mr. Scott referenced a slide, and asked Mr. Hudson if he did not already have the foundation started for the proposed request. Mr. Hudson referenced another slide and pointed out that Mr. Scott was talking about lot 12 for which he had received a variance approval last year.
- Mr. Lonon noted for the record the mirror image lot had the exact same issue as the one Mr. Hudson had brought before them last year; and it appeared to him all of the factors that allowed the previous variance the Board Members had granted Mr. Hudson would also apply in this case.
- Mr. Lonon asked Mr. Hudson had there been any opposition. Mr. Hudson said he did not know of any.
- Mr. Henderson said he had a call from someone in the subdivision up above this one, who just wanted to know what was going on.
- Mr. Ryba asked to clarify was the proposed lot the last lot in the subdivision that would require a variance. Mr. Hudson said it was the last lot.

Mr. Henderson came forward again and said the request was just like the one they previously approved last year for Mr. Hudson. He showed more slides in order to better illustrate the request; and said Staff recommended approval of the request.

[Editor's Note: the report the Board Members previously received in their meeting packets included the Mandatory Written Findings for the Board to consider when reviewing a variance request and Staff's Analysis of Required Findings as follows:

#### MANDATORY WRITTEN FINDINGS

- 1) *There are extraordinary and exceptional conditions pertaining to the particular piece of property* – The exceptional and extraordinary conditions that apply to this property are related to the layout of the house with regards to the parcel. Since the front property line runs the curve of the radius of the cul-de-sac, the setback line follows the same curve.
- 2) *These conditions do not generally apply to other property in the vicinity* – The conditions do apply to a few properties within the PDD; however, it is because of the radius of the turns in the road. Requiring every corner of the house to be within the setback lines of these various parcels would either require the house to not be uniform across the front with regards to the architectural design with the neighboring structures, or to have the house out of rhythm with the rest of the existing structures along the street.
- 3) *Because of these conditions, the application of the ordinance to these particular pieces of property would effectively prohibit or unreasonably restrict the utilization of the property* – Although the application of the ordinance and the setback requirements will allow for the building of a house, it will, however, affect the most aesthetically pleasing utilization of the property in that it will break the rhythm of the structures in the neighborhood.

- 4) *The authorization of a variance will not be of substantial detriment to adjacent property or to the general public good, and the character of the district will not be harmed by the granting of the variance – Placing the structure outside of the required setback, will not be a detriment to the surrounding properties nor the character of the PDD since the houses will continue to be aligned with one another and have a sense of conformity.*
- 5) *The Board does not find it necessary to attach conditions regarding the location, character, or other features of the proposed building, structure, or use to protect established property values in the surrounding area or to promote the public health, safety, or general welfare.*

#### Staff's Recommendation

It is of staff's opinion that by allowing for this variance, the layout of the building should not be detrimental to any of the neighbors or the neighborhood itself. Therefore, staff recommends approval of this variance.

Mrs. Robbins opened the public hearing and asked if anyone wished to speak against the request, or in favor of the request to come forward. Let the record show that no one was present to speak in favor or against the request. Mrs. Robbins closed the public hearing.

Mr. Lonon moved to adopt the findings included in the report that was previously received by the Board Members in their meeting packets; and he was seconded by Mr. Ryba. The motion was unanimously approved by a vote of 6 to 0.

**VAR 13 2-05 - Request for Variance from Joy Oates, Oates Investments, LLC, Owner.** Variance to allow an accessory building to be located closer than two (2') feet to the back property line along an alley for property that is zoned R-8, Single Family Residential District. The applicant is asking for a maximum of a two (2') foot encroachment in order to allow for an accessory building upon which construction had already begun; however a Stop Work Order was issued once it was brought to Staff's attention. The Zoning Ordinance requires on all lots other than corner lots, accessory buildings shall be located not less than five (5') feet from any side or rear lot line, except where a rear or side lot line abuts an alley, the accessory building may be located not closer than two (2') feet from such rear or side lot line. The property is located at 560 Poplar Street in Converse Heights, and is further identified as Parcel 137.00 on Spartanburg County Tax Map Sheet 7-12-12.

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Mr. Henderson came forward and said this request was for a home located at 560 Poplar Street in the Converse Heights Neighborhood, and had an overlay of Single-Family District. The applicant is seeking approval of a setback encroachment into the required rear yard setback adjacent to an alley. The applicant has already begun construction of the proposed accessory structure which will encroach entirely into the required two (2') foot setback for an accessory structure when the property is adjacent to an alley. At the closest point, the accessory structure will be one to two inches at the most from the property line.

Ms. Joy Oates, on behalf of Oates Investments, Owner of 555 Palmetto Street came forward and was sworn; and she explained to the Board Members when they purchased the property at 560 Poplar Street, they knew all the structures were in poor condition. They first decided to rebuild the outdoor storage building (which was about to fall over) so they could use it for storage during the entire project. Their plan was to rebuild it back on the same foundation. When it was torn down, they realized there was no foundation; the walls were sitting on a 4" concrete slab that was in poor condition. They excavated fifteen (15") inches on either side of the slab to carry the weight of the truss supporting walls. A Monolithic slab which included a cap of the existing slab and the new footings were poured providing a foundation for the garage. It was at that point Buddy Bush and Joshua Henderson with the City of Spartanburg had come by, and issued a Stop Work Order regarding the accessory structure because a permit had not been applied for the accessory structure work; after which time they stopped work on the project. Ms. Oates explained about the other surrounding properties that abut the alley, and said she did not know she was doing anything wrong at the time.

#### Board Questions:

- Mr. Scott said it looked like there was a telephone pole on the property and that one of the structures was located in the alley. Ms. Oates explained there is a telephone pole on the property; and said one of

her neighbors had landscaping that dropped over into the alley, and the other neighbor's garage was very close to the alley and had informed her the pole was there when she had purchased her property.

Mr. Henderson came forward again and referenced an aerial slide and showed where the former accessory structure was located. He said the proposed encroachment will be to construct approximately a 243 sq. ft. accessory structure in the rear of the property, parallel to the existing alley to the rear. Mr. Henderson referenced another slide and pointed out on the slide if they were to draw a line from one property pin to the other side, the telephone pole would be cut in half. He referenced another slide and explained the building wall would be situated in such a way that the building wall of the structure would be approximately one (1') foot away from the alley making only the overhang directly on the property line. More slides of other property owner's accessory structures were also shown along the alley, in order to better illustrate the request. He said it was unclear if the other accessory structures were encroaching into the required 2' setback to their rear/side property lines; however, it did appear it could be possible that the accessory structures at 554 Poplar Street and 555 Palmetto Street were either encroaching or right on the required setback line (there would have to be a plat with property lines, bearings and distances, and existing structures submitted to have an exact clear understanding to the proximity of the existing accessory structures to their property lines). Mr. Henderson said he received a telephone call today from a neighbor (who had not given her name or address) who had no objection to what the petitioner was proposing, but did have concerns regarding the overhang being close to the telephone pole regarding any safety issues. Other than that the only other comments he received were Exhibit B he had introduced into evidence earlier from a neighbor who had no objection at all, and Exhibit C he had also introduced into evidence earlier that had a concern with permitting a variance in an alleyway. According to the City of Spartanburg Zoning Ordinance, properties in the City Limits that are adjacent to alleys on the side and rear yard property lines are allowed to have accessory structures built up to 2' setback from the outermost portion of the building. This is a closer allowance than when there isn't an alley which requires the accessory structure no closer than 5' to the property line measured from the outermost portion of the building. Mr. Henderson said as the applicant had informed the Board Members earlier, it was brought to Staff's attention that the above referenced work was being performed, and that himself and the Building Official had visited the property and had found out that the applicant had not applied for a permit for the accessory structure. A Stop-Work Order was issued by Staff. Mr. Henderson said he could go through each of the Mandatory Findings, but they were in the report the Board Members had previously received in their meeting packets.

Mr. Buddy Bush, Building Office with the City of Spartanburg came forward and was sworn. He informed the Board Members in August of this year Mr. and Mrs. Oates had been issued a permit for work to be performed on the house located at 560 Poplar Street. There was no mention of any accessory structure being worked on, and no permit was issued for an accessory structure.

#### Board Questions:

- Ms. Robbins asked what triggered a permit for an accessory structure. Mr. Bush and Mr. Henderson explained.
- Ms. Robbins asked if there was an inspection process for the footings, and if the process would have been followed if the petitioner had obtained a permit. Mr. Bush explained that it would.
- Mr. Ryba asked if the structure was raised and a permit had been obtained, would that existing structure not have been considered compliant. Mr. Bush said he did not know. Mr. Henderson said he had not seen a survey that had shown the previous structure and where it was setback regarding the property line. Mr. Henderson informed the Board Members, if there was an existing accessory structure that did not meet the setback requirements, Staff would have treated it as a non-conforming structure. He explained to the Board Members, if the only thing left was the slab, it would need to conform to the requirements, and setbacks just like a house.
- Mr. Ryba asked for further clarification about the footing regarding the overhang. Mr. Henderson said Staff counted from the ground up; and he explained that Staff looked at the outermost edge of the building.

- Mr. Ryba asked for the proposed case, did Staff recognize the over-hang was almost dead-on or just barely under the zero (0) limit. Mr. Henderson said correct; and he said included in their report he had noted the over-hang was on the property line, and if anything he explained it might be just an inch off; and said for all intensive purposes the over-hang was on the property line.
- Mr. Ryba asked for the building wall itself, if the over-hang were to be minimized, would the building wall still encroach about six inches. Mr. Henderson said that was correct, give or take a little.
- Mr. Bush came forward again and said he wanted to note for the record regarding Building Code clarification, on an alley or public way you could get as close to zero (0') feet, and that was o.k. regarding the fire line. If it abuts an alleyway there was no fire rating setback.
- Mr. Lonon asked Mr. Bush if the alley was used by vehicles. Mr. Bush and Mr. Henderson explained.
- Ms. Robbins asked Mr. Bush if he was aware of any issues with the utility pole regarding the Code. Mr. Bush said that was a good question, and he had not checked with Duke Power; and honestly he did not know how to answer without checking with Duke Power first.
- Mr. Davis asked had the roof line been cut around. Mrs. Oates explained that it had. Mr. Bush explained he felt they were within what the City Code required.
- Mr. Ryba asked Mr. Bush if Duke Energy was responsible for the pole, and of any requirements they might have. Mr. Bush said Duke Energy was responsible, but he did not know of what type of requirements they might have, and suggested Mr. Henderson should check that out.
- Mr. Ryba said for another clarification, Mr. Bush had mentioned per the IBC, IRC, and/or Fire Code would allow up to the zero (0) lot line? Mr. Bush said he was talking about a public way; and it was in the IBC. He was not sure if it was in the IRC or not.
- Mr. Ryba clarified for the record regarding the fire line; that another governing code would allow this to take place; but it was our City Code that required the two (2') feet. Mr. Bush said that was correct. Mr. Henderson said if the City Zoning Ordinance was not in place, the petitioner would be able to construct to a zero (0) lot line.
- Mr. Ryba asked Mr. Bush for his opinion if the variance was granted about putting any conditions regarding any fire insurance claims. Mr. Bush said he did not think that would be an issue, but felt it would be prudent to contact Duke Energy to find out if it was one of their poles, and any issues they might have.

Mr. Lonon informed Mrs. Oates the law required the Board Members to make five findings based on statutes in order to grant approval of a Variance request; and he asked her opinion of how the Board would make the following required findings: "There are extraordinary and exceptional conditions pertaining to the particular piece of property; and the finding that troubled him the most was "Because of these conditions, the application of the ordinance to these particular pieces of property would effectively prohibit or unreasonably restrict the utilization of the property".

Mrs. Oates explained she was under the understanding if she took something down on a property, she could put it back on the footprint; and felt if she had just tried to put it back on the "bad" slab she would not have this problem.

Mr. Henderson came forward again and apologized because he had failed to mention earlier tonight, that there was a four (4") inch concrete slab that would not, by Building Code Standards, have sufficed for rebuilding a new structure on top of it. By the petitioner having to do that and having to dig out fifteen (15") inches on each side, to be able to meet the Building Code requirements, was what would have been required had the petitioner known they needed to come in and pull a permit to utilize the existing structure. He said it was in his Staff Report the Board Members had previously received in their meeting packets under Exceptional Circumstances, Mandatory Required Finding #1.

[Editor's Note: the report the Board Members previously received included the Mandatory Written Findings for the Board to consider when reviewing a variance request and Staff's Analysis of Required Findings as follows:

- 1) *There are extraordinary and exceptional conditions pertaining to the particular piece of property* – When the applicant purchased the property, there was an existing accessory structure in the rear yard which was not structurally sound and therefore removed. The applicant decided to use the existing 4” thick concrete slab, which did not have a strong foundation. The slab was enhanced by the addition of approximately 15” of reinforced concrete on either side to have a stronger foundation and footing to support a new structure. Had the applicant went through the necessary steps to pull required permits, it would have been explained then that the use of the existing 4” concrete slab would be allowed, so long as there would have been reinforced concrete added to provide the foundation for a new structure. When this additional concrete was added, the building then was located closer to the rear property line than the previous building was. The building wall of the structure is approximately 1’ from the property line (which is encroaching 1’) leaving only the overhang being constructed to the property line. The applicant wanted to be able to use the structure for storage of building materials on site while renovating the primary dwelling unit.
- 2) *These conditions do not generally apply to other property in the vicinity*- There are three other properties that utilize this alley that have accessory structures along their rear/side property lines (358 Mills Ave., 554 Poplar St., and 555 Palmetto St.). It is exactly unclear if these accessory structures are encroaching into the required 2’ setback to their rear/side property lines; however, it does appear that it could be possible that the accessory structures at 554 Poplar St. and 555 Palmetto St. are either encroaching or right on the required setback line (there would have to be a plat with property lines, bearings and distances, and existing structures submitted to have an exact clear understanding to the proximity of the existing accessory structures to their property lines). During discussion with the City Building Official, Buddy Bush, it was pointed out that, according to the recently adopted 2012 International Residential Code (IRC), accessory structures are required to be at least 5’ from any property line. However, since this rear property line is adjacent to an alley (public way) the aforementioned IRC setback requirement would be waived. Staff understands that the alley is not a City owned or maintained public right-of-way, however it is still used as an ingress/egress public way for access to the rear of some of the surrounding properties.
- 3) *Because of these conditions, the application of the ordinance to these particular pieces of property would effectively prohibit or unreasonably restrict the utilization of the property* – The owners’ desire to construct an accessory structure to replace the previous structure in the rear of the property encroaching on the rear property line adjacent to an alley is reasonable and non-obtrusive for the neighborhood. While there may be alternative design configurations that would allow them to accomplish their goals, the building, in its current location appears functional, efficient, and consistent with other properties in the area.
- 4) *The authorization of a variance will not be of substantial detriment to adjacent property or to the general public good, and the character of the district will not be harmed by the granting of the variance* – Because this is a relatively small change with regards to the location of the previous building and the fact that it will not cause harm to the usability of the existing alley, we do not believe that this variance could be of substantial detriment to adjacent properties or to the neighborhood.
- 5) *The Board does not find it necessary to attach conditions regarding the location, character, or other features of the proposed building, structure, or use to protect established property values in the surrounding area or to promote the public health, safety, or general welfare.*

#### Staff's Recommendation

While we recognize that the proposed accessory structure does not conflict with the character and pattern of the neighborhood, we defer to the ordinance policy of setback requirements for primary and secondary structures. However, the structure will not cause an obstruction to the adjacent alley nor will it be a detriment to the surrounding properties and thus recommend approval of the request as presented.

Ms. Robbins said before she opened the public hearing, she wanted to note for the record that earlier at tonight's meeting there was a letter from Mary Cannon dated December 4, 2013 entered into evidence

regarding this request. She opened the public hearing and asked anyone who wished to speak in favor of this request to come forward.

- Mr. Allen Duesterhaus of 543 Palmetto Street came forward and said he had an accessory structure in his yard near a power pole, and Duke Power came out occasionally and walked on his roof in order to get to the power pole, and they don't seem to have a problem with it. He is excited the petitioner is renovating their property and is very much in support of their request.

Ms. Robbins asked anyone else who wished to speak in favor of the request to come forward. No one else came forward. Ms. Robbins asked anyone who wished to speak in opposition of the request to come forward.

- Mr. Henderson came forward and said he had introduced into evidence earlier tonight an email from Ms. Susan Woodham who was the property owner across from the alley, who was in support of the request.

Ms. Robbins asked anyone else who wished to speak regarding the request to come forward. No one else came forward. Ms. Robbins closed the public hearing.

#### Board Comments & Deliberation:

- Mr. Drum referenced the letter from Ms. Mary Cannon of 552 Palmetto Street that had been introduced into evidence earlier tonight; and felt she appeared to be complaining more-so regarding principal about not following the appropriate restrictions than this particular request. He also felt from a practical point of view, if vehicles go up and down and get through the alley-way with the telephone pole there, it would not detract from the neighborhood.
- Mr. Ryba explained one of his concerns was regarding the homeowner regarding the telephone pole concern; and he felt even though some of the neighbors seemed to be in support of the request they may need to condition any approval regarding the home owner being responsible for removing the pole if it should ever become necessary regarding safety issues.
- Mr. Lewis said he lives at 432 Lucerne Drive and has a utility building right at the corner of a telephone pole that had copper wiring above it; and he informed the Board Members when the wind blew he could see sparks coming off of the tree limbs. He explained he had Duke Power come out a couple of times to look at it, and they had indicated to him they did not view it as a safety hazard.
- Mr. Lonon asked Mrs. Oates what would it mean for her if the Board was to table the request in order to get more information from Duke Power regarding the renovation on the accessory building. Mrs. Oates explained that Duke Power was out not long ago and had not appeared at all concerned.
- Mr. Ryba asked Mrs. Oates if the Board tabled the request until the next meeting on January 14, 2014 meeting dependent upon getting a response from Duke Energy, how would that effect her. Mrs. Oates said it would not be a problem, and they were not working on the accessory structure at the moment anyway, and this was not her primary address.

Mr. Lonon made a motion to table the variance request pending further testimony, specifically but not exclusive of testimony from the power company.

#### Discussion of Motion:

- Mr. Henderson asked Mr. Lonon if it would suffice to have something in writing from the power company, or would they need to be present at the meeting in order to testify.
- Mr. Lonon said it was hard to answer that question without seeing what the testimony was; and he then explained to Mrs. Oates he wanted to be able to help her, but he was also concerned regarding the Board being able to find whether or not the request met the statutory requirements regarding a variance; and he felt further testimony from her to that effect would be helpful to the Board Members.

The motion was seconded by Mr. Ryba; and he said he would accept a written statement from the power company. The motion to table the request was unanimously approved by a vote of 6 to 0.

**VAR 13 2-06 - Request for Variance from Chris Parrish & Stewart Coates, Agent on behalf of Owners, Parrish & Coates Holdings, LLC.** Variance to allow approval for a maximum encroachment of ten (10') feet into the required minimum twenty-five (25') foot wide, side bufferyard on the west side of the property, in order to allow parking lot modifications that will permit a safer and more efficient use of the space, and to allow for emergency response if or when needed, for Zaxby's located at 1715 John B. White, Sr. Boulevard, which is zoned B-1, General Business District. This bufferyard is required when a high intensity use abuts a Single Family Residential use. The property is further identified as Parcel 028.00 on Spartanburg County Tax Map Sheet 6-21-13.

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Mr. Henderson came forward and said this request was for Zaxby's located at 1715 John B White Sr., Boulevard, and was zoned B-1, Neighborhood Shopping District, without any overlays. The owners are seeking approval for a maximum encroachment of ten (10') feet into the required minimum twenty-five (25') foot wide, side bufferyard on the west side of the property. He informed the Board Members this bufferyard was required when a high intensity use abuts a Single Family Residential use.

Chris Parrish and Stewart Coates, Owners of the parcel and Zaxby's, came forward and were sworn. Mr. Coates explained the Zaxby's at 1715 John B. White Sr. Boulevard had been opened for eleven years; and he explained to the Board Members that particular store ranked between four and five regarding sales in all of the approximate 570 Zaxby locations in the southeast. Mr. Coates said after John B. White Sr. Boulevard was widened several years ago, it helped their sales even more at this location; however, their parking lot was not designed to accommodate the amount of traffic the store received on a daily basis. He informed the Board Members that sometimes the drive-thru was backed up around the building out into John B White Sr. Boulevard; and it was a safety concern for people coming up and down the road coming into the parking lot and also for people trying to leave the parking lot. He explained there were six or seven places people could park against the building itself, with one of them being a handicapped spot. He further explained when the drive-thru was backed up, the people who parked against the building were trapped. He showed slides of the traffic problems and said it was an everyday occurrence. Mr. Coates said they wanted to isolate the drive-thru, so the drive-thru lane is against the building, and they want to shift the six or seven parking spots on the other side of the drive-thru lanes, in order for people to still be able to park as close to the building as possible and not get blocked in when they try to leave. Mr. Parrish reiterated the high points Mr. Coates had previously explained, and he explained further that their current traffic situation was a safety issue not only for people turning into Zaxby's, but also for people traveling down the road in general; and he explained how traffic came to a stop up and down the high-way. Mr. Coates said they re-designed the curb where you turn in, and explained it was almost like a hair pin turn, in order to access the egress into the parking lot, in order to make it more access friendly for standard size vehicles. Mr. Coates said today the standard size vehicle was a good bit larger than years ago; and they also get a lot of people with landscape trailers and oversize vehicles of any sort that cannot make the turn. He explained they had to stop, and then run over the curb, or back up in order to get in to the parking lot, and not realize how many cars they are holding up on the road while they try to get in to the parking lot. Mr. Coates explained the way their parking lot was currently designed, it caused a real traffic hazard. He informed the Board Members they redesigned their Boiling Springs location a few years ago where they also had a high traffic volume; and they would like to do the same with the John B. White Sr. Boulevard location. Mr. Coates said they would like for the Board Members to consider they be granted ten (10) additional feet in order to re-design the parking lot structure flow to separate the drive-thru traffic. They would still be fifteen (15') feet from the property line. He explained the neighbor to their right was a single-family residential home was a renter; and the property owner resides in Woodruff, S.C. Neither the tenant or the property owner had ever complained about anything that they were aware of the entire eleven years they had been in business.

**Board Questions:**

- Mr. Lonon asked the petitioners if the neighbor to their right was Angela Casey. Mr. Parrish said she was the property owner. He informed the Board Members they previously tried to purchase her rental property; and he said they could not come to an agreeable price. Instead they purchased two lots (one of which ran perpendicular behind Zaxby's).

- Mr. Lewis asked if the petitioners were asking for ten (10) feet on each side. Mr. Parrish said just on one side, which was the right hand side.
- Mr. Drum asked if the buffer consisted of some landscaping, trees and the wall. Mr. Parrish explained it included a six foot solid masonry wall which was about \$50,000.00 they had to construct after the fact, as well as some trees and landscaping. Mr. Parrish said regarding the buffer in the restaurant industry, they were classified as a fast casual restaurant (medium intensity). He said the City Attorney had determined their restaurant fell under “high intensity” and not “medium intensity.” If they were perceived as they understood themselves to be as a medium intensity restaurant; they would only be asking for a five (5’) foot encroachment, as opposed to ten (10’).
- Mr. Drum asked about the proposed drainage ditch regarding the bufferyard. Mr. Parrish said stormwater would be a separate issue if the Board Members saw fit to grant the proposed variance request. He explained they had previously met with Jay Squires, City of Spartanburg Stormwater Manager, who had informed them that the way it was at the moment; it was not efficient. Mr. Parrish said they want to get it to where it needs to be; and the current set up was forcing the stormwater under the masonry wall, across the back of the neighbor’s yard, down the left hand side of the home, into the storm drain.
- Ms. Robbins felt if the petitioner’s encroached more into the buffer, it would cause even more water to go under the wall. Mr. Parrish explained if they were allowed the variance, they would be able to restructure the stormwater.
- Mr. Lewis asked about a preliminary site design. Mr. Parrish explained it was included in the Board Members meeting packets they previously received.
- Mr. Davis asked a question regarding an area in the buffer zone and asked if that was the detention area. Mr. Henderson said he would explain.

Mr. Henderson came forward again and addressed what Mr. Parrish had said regarding intensity; and he informed the Board Members after he spoke with the City Attorney, the City did not have the same classifications as did restaurants. The City of Spartanburg recognized fast food or sit-down restaurants; and he explained what distinguished the two was regarding a drive-thru. He further explained that restaurants like Appleby’s and Outback had a pick-up area that included a parking space or two where a customer could park to get take out; but they did not have a drive-thru. Mr. Henderson said regarding the wall, the City Planning Department approved the site plan on January 9, 2002, and the parking lot was on the west side of the property, and measured 25’ from the back of the curb to the property line with a masonry wall that measured 22’ from the back of curb, which was 3’ from the property line). He explained when the site plan was approved in 2002, the bufferyard met the intent of the ordinance with regards to the amount and species of vegetation within the bufferyard. Mr. Henderson distributed a copy of the approved 2002 site plan to the Board Members. He explained the site called for a Bufferyard 5, which required having at least five canopy trees per every 100 linear feet with a masonry wall installed along the property line abutting a Single Family Residential use (which would be the west/side and south/rear property lines). Currently there were some trees that had been lost over time, which was a normal occurrence. He explained to the Board Members regarding the remaining trees on the site, that if the variance were to be approved; the remaining trees would need to be removed because of the possible damage to the root systems. He spoke with Stormwater Manager Jay Squires, who could not be at tonight’s meeting; and he had provided him with written documentation of what would be required regarding stormwater, if the request were to be approved. Mr. Squires had also met with the petitioners regarding correcting the existing and future stormwater issues. The owner is requesting the variance in order to be able to reconfigure the parking lot, drive-thru lane, and building layout for the restaurant regarding safety issues. He showed a slide of the existing layout plan and explained about the required masonry wall. Mr. Henderson showed different slides of the drive-thru area during lunchtime during the week; and explained the traffic flow was a definite problem regarding all the drive-thru traffic. He showed slides of the traffic being blocked coming in and out of the restaurant, and said it had been a problem for a number of years. He said the reason for the 25’ bufferyard was for the protection of the adjacent residential property. Per the 2004 City Comprehensive Plan for Future Use, viewed the adjacent single family residential property listed as office and commercial use in the future. However; this

property has not been rezoned for either and therefore should be protected from the higher intense use. Mr. Henderson said the Board Members had received the Mandatory Written Findings and Staff's Analysis in the meeting packets they previously received.

[Editor's Note: the report the Board Members previously received included the Mandatory Written Findings for the Board to consider when reviewing a variance request and Staff's Analysis of Required Findings as follows:

- 1) *There are extraordinary and exceptional conditions pertaining to the particular piece of property –* When the applicant submitted plans for review by the City of Spartanburg, the traffic flow, parking, and landscape were all reviewed to make sure that what was being submitted met the requirements set forth in the City of Spartanburg Zoning Ordinance. The applicant has stated that they are having a huge issue with traffic flow due to the location of the drive-thru and cars being parked on either side of the drive-thru. With their continued growth over the years, the applicant would like to redesign his site to be able to provide a more convenient site for their customers with regards to utilization and traffic flow for the site. By doing so, they need to encroach into the minimum bufferyard requirement along the west side property line to keep all the necessary widths for the drive-thru lane, parking spaces, and drive aisles.
- 2) *These conditions do not generally apply to other property in the vicinity –* There are a few other “fast food” establishments along John B. White, Sr. Blvd. with a drive-thru. All but one has a drive-thru that does not impede on the major parking areas for the site. Traffic flow through the parking lot can be a concern for customers trying to back out of their parking spaces on a busy day for the drive-thru. It is not uncommon to have restaurants with a drive-thru stacking being located in a parking lot. When looking at the existing parking lot and stacking area for the drive-thru, you can see that this drive aisle is one way only and that the angle of the parking spaces forces vehicles to follow that traffic flow. Having the amount of drive aisle space of approximately 25' is enough room for two cars to pass each other without concern. The issue for this existing use is when vehicles are stacked up waiting to order, they are typically in the middle of the drive aisle making it an issue for cars to back out of the space and be able to exit with ease.
- 3) *Because of these conditions, the application of the ordinance to these particular pieces of property would effectively prohibit or unreasonably restrict the utilization of the property –* While the redesign of the parking lot and drive-thru will make traffic flow and utilization of the property smoother, the existing layout of the parking lot and traffic flow meets all requirements set forth in the City of Spartanburg Zoning Ordinance. Therefore, the encroachment of the parking lot into the required bufferyard width is not necessary for utilization of the property. There could be alternative design configurations that would meet the needs of the property owner while maintaining the protection of the single family residential property to the west.
- 4) *The authorization of a variance will not be of substantial detriment to adjacent property or to the general public good, and the character of the district will not be harmed by the granting of the variance –* The requirement for a 25' wide bufferyard is to protect the residential property to the west. The required landscape is not currently meeting the requirements and therefore the property is already causing a potential negative impact on the residential use. Per the 2004 City Comprehensive Plan for Future Use it has the adjacent single family residential property listed as office and commercial use. However, this property has not been rezoned for either and therefore should be protected from the higher intense use.
- 5) *The Board does not find it necessary to attach conditions regarding the location, character, or other features of the proposed building, structure, or use to protect established property values in the surrounding area or to promote the public health, safety, or general welfare.*

#### **STAFF'S RECOMMENDATION**

While we recognize that the site, in its current condition, does have issues with traffic flow and usability, we have to defer to the strict requirements as set forth in the City of Spartanburg Zoning Ordinance to protect the less intense uses from the higher intense uses. Therefore, Staff is of the opinion that the encroachment into the required minimum 25' wide bufferyard, as proposed, would cause a negative impact on the adjacent single family residential property and request that the Board deny the applicants

request. However, Staff would defer to the Board for conditions to the application, should they determine that the encroachment be allowed, requiring the new landscape be above and beyond the intent of the Zoning Ordinance by means of new canopy trees (larger than the required size at time of planting, 12' tall and 2" caliper) and several large evergreen shrubs (e.g. Fragrant Tea Olive, Nellie R. Stevens Holly, or Japanese Cryptomeria).

Mr. Henderson concluded his presentation by saying if the Board chose to approve the variance request as the applicant presented, Staff would ask that conditions be placed on the approval that additional landscape would be required, in order to help buffer the business from the adjacent single family residential use. He said rather than additional canopy trees, staff would recommend understory trees or preferably large evergreen shrubs, such as Fragrant Tea Olive, Nellie R. Stevens Holly, or Japanese Cryptomeria.

#### Board Questions:

- Ms. Robbins asked Mr. Henderson if he did not recommend canopy trees because of the drip line. Mr. Henderson said for that reason, and he referenced a slide and said the ordinance required five (5) canopy trees for every 100 linear feet; and he explained in detail they would be spaced adequately apart so when they mature they would not cause problems. He further explained in detail all of the problems additional canopy trees would create, and also the fact that canopy trees did not buffer sound as well as large evergreens.
- Mr. Lonon asked Mr. Henderson another question regarding canopy trees. Mr. Henderson explained.
- Mr. Lonon did not feel the Board Members were equipped to make specific suggestions regarding landscaping; and he asked Mr. Henderson what body would make that decision. Mr. Henderson said they could also ask the City Attorney, but if he was not mistaken the Board of Zoning Appeals could grant variances on landscape and the amount of landscape regarding bufferyard requirements.
- Ms. Robbins asked if there were any City expertise on that matter. Mr. Henderson said he would need to ask the City Attorney. However, the City did have requirements as far as bufferyards go in the bufferyard requirements; and he explained about the bufferyard requirements and that Staff worked with a certified arborist.
- Mr. Drum asked Mr. Henderson was the water issue not a part of the zoning ordinance. Mr. Henderson explained that was under the Stormwater Ordinance, and if the request was approved, the plan would still need to be submitted to Staff, and he would look at it, as well as Mr. Bush, the Building Official regarding whether fire apparatus vehicles could get through the site, the Public Works department would make sure that trash pick-up vehicles could get through the site, and Jay Squires, Stormwater Manager would also need to check it out.
- Mr. Davis asked Mr. Henderson if the Board did put a condition on an approval, would it automatically defer back to a certain set of landscape requirements or was it something that could be customized. Mr. Henderson said it could be customized. He explained the ordinance only said evergreen shrubs or conifers; and there were different species under those requirements. He said the examples he suggested was provided to him by the City's Arborist consultant.
- Mr. Ryba said he was thinking of possible alternative layouts if the petitioners were to eliminate the row of nine (9) parking spaces out of the fifty-four (54) he had counted; and he asked Mr. Henderson if he had any idea on how close the applicants were regarding required parking spaces. Mr. Henderson explained the required parking was one parking space for each 80 sq. ft. of gross floor area; and the required parking would be approximately forty-four (44) spaces.
- Mr. Ryba informed the petitioners if they would consider a layout that would eliminate the one row of nine (9) parking spaces; they would not even have to deal with getting a variance request. He asked the petitioners if this scenario would affect their business in a negative manner. Mr. Coates said when the store first went into business it would have been alright; but with the way the business had now increased it would affect them in a very negative manner, because they did not have enough parking as it was.

- Mr. Lonon told Mr. Henderson he was fine with the landscaping as it was; however, he was stuck on Mandatory Finding point #4, "Authorization of a variance will not be of substantial detriment to adjacent property or to the general public good, and the character of the district will not be harmed by the granting of a variance." He asked how would this detriment the neighboring properties? Mr. Henderson said if the variance was approved, the cars would be parked ten feet closer to the adjacent residential property line.
- Mr. Lonon said he had entered into evidence earlier tonight as Exhibit D, an email from Angela Casey, the adjacent residential property owner who could not be at tonight's meeting. Ms. Casey stated in her email she was o.k. with the overall plan; but her concern was with the cars being closer to the property line.
- Mr. Drum felt with the fence that was there, it would be hard to see the cars.
- Mr. Davis felt the whole idea of extra landscaping for additional buffering was a good idea.
- Mr. Henderson reiterated again, hypothetically if the request was approved, the revised plans would be sent to all applicable departments for their review and comments regarding each department; and the Planning Department would review it from the perspective that all the landscape met the City's requirements regarding size, number and location.

Ms. Robbins opened the public hearing, and reminded the Board Members an email from the single family residential property owner had been introduced into evidence earlier tonight; and said let the record show that no one was present to speak in favor or against the request. Ms. Robbins closed the public hearing.

Mr. Lonon made a motion to approve the variance as requested, and was seconded by Mr. Drum.

#### Discussion of Motion:

- Mr. Ryba felt they should condition the approval per Staff's discretion regarding being advised by the City's consultant regarding adding additional landscaping.
- Mr. Lonon said in response to Mr. Ryba's suggestion, the ordinance stated a variance may be granted in an individual case by necessary hardship if the Board makes and explains in writing the following Mandatory Finding #5, "*The Board does not find it necessary to attach conditions regarding the location, character, or other features of the proposed building, structure, or use to protect established property values in the surrounding area or to promote the public health, safety, or general welfare*". Mr. Lonon felt that first of all, one of the findings the Board Members needed to make, was that the Board does not find it necessary to attach conditions; and based upon that he did not feel it was proper to attach conditions; and secondly he did not know how that would apply if they conditioned the request subject to another consultant or separate body for the City.
- Mr. Lonon felt they could table the request in order to get legal advice on whether or not he was reading the ordinance correctly; but under his reading of the ordinance that it was proper to either deny or grant the variance.
- Mr. Ryba said he was uncomfortable with granting the request without any conditions, and felt the request should be tabled for either clarification of Mandatory Finding #5, or until a revised landscape plan was provided that met all City requirements.
- Mr. Lonon asked the petitioners what affect it would have on their business, should the Board table the request to the next meeting for further discussion. Mr. Parrish said when they did their original site plan, typically the landscaping was done beyond the standards, and they would have no problem adding the additional trees in order to be a good neighbor; he also said they would have no problem with the request being tabled to the next meeting.

Mr. Lonon said based on that, he would withdraw his previous motion.

Mr. Ryba made a motion to table the request, with the request that the applicant submit a landscape plan for Staff's review that exceeded the City's requirements.

Discussion of new Motion:

- Mr. Henderson asked the Board Members if the petitioners provided a plan that was above and beyond what the City's requirements were at five (5) canopy trees; would it need to come back to the Board for their review, or would it die on the table.
- Mr. Lonon felt it came back to two things, 1) whether he was correct in his reading of the ordinance; and felt they should receive legal advice to that regard; and 2) assuming he was incorrect on his reading of the ordinance, he felt it would be correct for the request to come back before the Board Members, in order for them to take another vote on the variance itself, and decide on the conditions if any for the request.
- Ms. Robbins said it was the Board Members who decided whether or not to take a request off the table.

Mr. Ryba's motion to table the request was then seconded by Mr. Lonon; and it was unanimously approved by a vote of 6 to 0.

Ms. Robbins said she would work to make sure the Board Members received clarification on Mandatory Finding #5; before they proceeded on this issue; and at that point they might request additional landscaping be submitted.

***2014 Proposed Board of Zoning Appeals Meeting Approval***

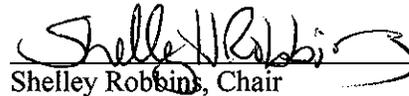
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The Board Members approved the 2014 Board of Zoning Appeals Meeting schedule.

***Staff Announcements***

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- The Board welcomed the newest Board Members, Mr. David Scott Lewis to the meeting. There being no other business, the meeting adjourned at 7:25 P.M.

  
Shelley Robbins, Chair

Edited by Julie Roland, Administrative Assistant