

Meeting Minutes of the Board of Zoning Appeals Tuesday, January 14, 2014

The Board of Zoning Appeals met in City Hall Council Chambers on Tuesday, January 14, 2014 at 5:15 P.M. with the following members in attendance: Shelley Robbins, Dave Drum, Joshua Lonon, Jim Davis, Marshall Irby, and David Scott Lewis. Aaron Ryba was absent. Representing the Planning Department were Joshua Henderson and Julie Roland. Assistant City Manager Chris Story attended part of 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 January 14, 2014 Meeting

Mr. Drum made a motion to approve the Agenda for the January 14, 2014 meeting, and was seconded by Mr. Davis. The motion was unanimously approved by a vote of 6 to 0.

Disposition of the minutes from the December 10, 2013 meeting of the Spartanburg Board of Zoning Appeals

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

Old Business

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.

Ms. Robbins said before the Board Members proceeded with tonight's two old business cases, she would need a motion to remove them from the table.

Mr. Davis made a motion to remove both cases from the table; and he was seconded by Mr. Drum. The motion was unanimously approved by a vote of 6 to 0.

Mr. Henderson came forward and was re-sworn regarding the two variance request cases that were tabled at last month's meeting.

Mr. Henderson said regarding the request located at 560 Poplar Street; it was discussed in the minutes from the last meeting an issue regarding the location of an accessory structure with regards to a telephone pole. He introduced the meeting packet the Board Members received in their meeting packets into evidence as Exhibit A; and he presented them each with a copy from a response letter from A T & T representative, which he introduced into evidence as Exhibit B, that stated they had no conflict with the pole or the accessory structure as it currently stands. He also mentioned in his report there were Duke Power services on the pole, however, they would not put anything on record; but verbally said they did not have any issues with the request. He did receive one email from Mary Cannon that stated the same thing as at last month's meeting in opposition to the request and that she would not be able to attend the meeting. He also received a telephone call from a neighbor across the alley that said he had no

objections. Mr. Henderson concluded his presentation by saying Staff recommends approval of the request.

[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 asked the petitioner if she had anything to add to Mr. Henderson's presentation. Mrs. Oates said she did not have anything to add.

Ms. Robbins stated for the record, there was no one present to speak in favor or in opposition to the request, and there was no reason to hold another public hearing.

Mr. Lewis made a motion to approve the petitioner's request, and he was seconded by Mr. Davis. The motion 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.

Mr. Henderson came forward and said this request was for Zaxby's located at 1715 John B White Sr., Boulevard; and had been tabled at the last meeting regarding some legalities, concerns, and questions regarding the Board being able to place conditions on a request. He said those concerns were addressed regarding emails the Board Members had previously received since last month's meeting; and Staff had also addressed the concerns by making a revised application in order to make it more clear regarding the Board did have the authority to place conditions on an application approval, if deemed necessary. Mr. Henderson informed the Board Members, Staff worked with the City Landscape Architect & Arborist Consultant to put some renderings together that was included in their meeting packets they had previously received; and he tried to show slides of the same, however; the laptop was not working properly. He explained in detail the proposed renderings the Board Members had received in their meeting packets. Mr. Henderson said Staff recommended approval of the request, with the condition additional landscaping as provided in the renderings he had just described was provided by the petitioners.

[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.*

Board Questions:

- Mr. Lonon asked Mr. Henderson how the proposed landscaping would be implemented. Mr. Henderson said the landscape installation would have to meet the spacing regarding the canopy trees and the spacing for the large evergreen shrubs. Mr. Henderson said regarding the species; that would be up to the petitioners, as long as it met our size requirements, and the definition of the same.
- Ms. Robbins asked if there were in fact definitions that depicted what was a canopy tree and evergreen shrub. Mr. Henderson said yes; and explained.
- Mr. Lonon asked if the owner of the neighboring property had received another notice regarding the continued public hearing. Mr. Henderson said yes; and Staff had not received any comments back.
- Mr. Lonon asked Mr. Henderson if the petitioners had received a copy of the proposed renderings to see if it was feasible. Mr. Henderson said the applicants had received a copy of the plans, as well as a phone conversation; and he did not know whether or not Assistant City Manager Chris Story had any communications with them or not.
- Mr. Drum asked Mr. Henderson what affect this would have on the drainage of the stormwater, or would it be a separate issue. Mr. Henderson explained that was a separate issue and would be addressed by the City's Stormwater Manager; and he had been on-site and was aware of what was being proposed, and had given the applicants the information they needed to submit for his approval.
- Mr. Irby asked Mr. Henderson if the evergreens would need to be at least six feet tall. Mr. Henderson explained the City Zoning Ordinance provided classification and size requirements for understory and canopy trees; but regarding the large evergreen shrubs, typically six feet in height at time of planting was adequate. Understory trees were eight feet with 1 ½" caliper.

Chris Parrish and Stewart Coates came forward and were sworn. Mr. Parrish said at the previous hearing, he thought the issue was whether or not conditions could be imposed by the Board. He said he never got a response regarding the email Mr. Henderson had mentioned earlier; and felt they should have been notified.

Ms. Robbins explained that was more of a procedural issue regarding a specific language that would affect all cases, not just their case in particular.

Mr. Parrish said he felt they should have received clarification from either Mr. Henderson, the Board Members, or someone. Mr. Parrish said he received his packet in the mail regarding tonight's meeting yesterday; and Mr. Henderson had left him a message regarding something today, and he did not know what it was about. Mr. Parrish said since the last hearing, he had not heard a single word from Mr. Henderson; and it disturbed him as an applicant. He said regarding the plan, they understood at the beginning of the process there would be some additional landscaping required; but he explained they did

not see the need for canopy trees. They had previously replaced one canopy tree and it was \$1000.00 for one canopy tree. He had communicated a couple of times with Assistant City Manager Story since the last meeting; and he had forwarded him some plans from the City Landscape Architect & Arborist Consultant. Mr. Parrish felt they had always acted in a very professional manner regarding matters with the City in the past eleven years; and he did not feel comfortable leaving matters as proposed.

Mr. Coates said they had discussed at the last meeting about not doing as many canopy trees.

Mr. Parrish said they felt the shrubs would help to eliminate the sound barrier.

Ms. Robbins explained the Board was not qualified to make a call regarding what the buffers should be; and that was why they relied on other expertise.

Board Questions:

- Mr. Lonon asked Mr. Henderson about the required number of canopy trees, and the cost. Mr. Henderson said they recommended five canopy trees at an approximate cost of \$250.00 per 12" tall, 2" caliper canopy tree that they had been able to get in the past
- Mr. Irby asked the petitioners if they were opposed to the number of canopy trees, or if they did not want them at all. Mr. Parrish said they currently had three canopy trees in place; and he was not exactly sure of their measurements. He said they would rather install the evergreen shrubs.
- Mr. Drum asked Mr. Henderson who was the City's expert regarding this matter. Mr. Henderson said Chris Thompson, of Nature Forms LLC, that was located in Spartanburg, and he was a licensed Landscape Architect and certified Arborist; and said the City had used him for a number of years.
- Mr. Lonon asked Mr. Henderson about Mr. Parrish's earlier comments regarding canopy trees. Mr. Henderson said the applicant was accurate in the fact that canopy trees did not provide a sound barrier buffer; however they do provide a shade buffer along the boundary line. Mr. Henderson said typically for every twelve parking spaces a tree island was required, which were in place; however, some of the trees were not there or had been removed. He also explained that the City of Spartanburg's Landscape Plan had been in place since 1976.

Mr. Coates explained they currently had a total of six canopy trees.

More Board Questions:

- Ms. Robbins asked the petitioners if their plan involved taking any of the existing trees out. Mr. Parrish and Mr. Coates both explained that all but one of the existing trees would need to be removed due to damage to the root systems.
- Ms. Robbins asked Mr. Henderson at what degree of construction would the bufferyard requirement be triggered as a requirement. Mr. Henderson explained if construction was done to where the trees were not damaged, regarding the petitioners were not exceeding fifty percent of the appraised value of the property; it was possible Staff would not require the plan that was provided by the City's consultant. However; he further explained when the consultant was on-site and reviewed the trees and location of the drip line, it was found that any movement at all on the parking lot towards the wall would cut into the tree's root system, and there was a very strong possibility the trees would die as a result.

Ms. Robbins said let the record reflect there was no one present to speak in favor or against the request; and there would be no need to hold the public hearing on this issue.

Board Deliberation:

- Mr. Drum felt at the last meeting the Board had procedural questions, which had now been answered; and the Board did in fact have the power to attach conditions to a request.
- Mr. Davis said in order to clarify; the new suggested plan would bring the proposed property into compliance with the ordinance. Mr. Henderson said the suggested plan would put the property above and beyond the ordinance requirement, which were five canopy trees per every 100 linear feet with a masonry wall installed along the property line abutting a Single Family Residential use.
- Mr. Lonon said he really had not heard a reason in general to have the canopy trees, other than the fact that they looked nice; and he felt regarding the sound barrier, he can't get passed the fact that they

were discussing one of the busiest roads in the City of Spartanburg with the amount of traffic that traveled the road with no buffer from the sounds of the thousands of cars that drive by every day, but yet they were going to require some sort of sound buffer to move the parking back ten (10') feet for parked cars, and he did not feel that parked cars made a lot of noise. He said for the above mentioned reason, after the discussion was over, he was going to propose the variance be approved as requested by the petitioners, without conditions.

Mr. Lonon made a motion to approve the request as requested by the petitioners, without any conditions.

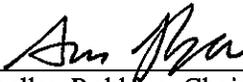
Board Discussion of Motion:

- Mr. Henderson asked Mr. Lonon if the motion would include the required minimum number of canopy trees in the zoning ordinance.
- Mr. Lonon did not feel the motion would change any existing requirements.
- Mr. Parrish had a question regarding the motion.

Mr. Lonon said his motion was to grant the variance as requested by the petitioners and adopt the five required findings, which included the revised statement the Board had the authority to attach conditions; and he was seconded by Mr. Lewis.

The motion was unanimously approved by a vote of 6 to 0.

There being no other business, the meeting adjourned at 6:00 P.M.



Shelley Robbins, Chair

Edited by Julie Roland, Administrative Assistant