

Meeting Minutes of the Board of Zoning Appeals

Tuesday, May 12, 2015

The Board of Zoning Appeals met in City Hall Council Chambers on Tuesday, May 12, 2015 at 5:15 P.M. with the following members in attendance: Joshua Lonon, Don Bramblett, Jim Davis, and Marshall Irby. David Lewis was absent. Representing the Planning Department were Joshua Henderson and Julie Roland.

Roll Call

Mr. Lonon, Chair, stated that public notice of this meeting was given twenty-four (24) hours in advance. 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 – Four members were present, constituting a quorum.

Approval of Agenda for the May 12, 2015 Meeting

Mr. Bramblett moved approval of the Agenda for the May 12, 2015 meeting, and he was seconded by Mr. Davis. The motion was unanimously approved by a vote of 4 to 0.

Disposition of the minutes from the April 14, 2015 meeting of the Spartanburg Board of Zoning Appeals

Mr. Davis moved approval of the April 14, 2015 Meeting minutes, with second by Mr. Bramblett. The motion was unanimously approved by a vote of 4 to 0.

Old Business – None.

New Business:

APP 15 2-03 - Request for Appeal from Seth Novak, Property Owner. Appealing the decision made by the Planning Coordinator, Joshua Henderson to deny permit approval to build a new accessory structure in what is considered the front of the property. The applicant feels that based on the unique layout and size of the property the ordinance does not apply to them, due to the layout of their house on the extreme back of the property that prohibits them from building an accessory structure behind the house of the property at 118 Calhoun Avenue. The property is further identified as Parcel 142.00 on Spartanburg County Tax Map Sheet 7-17-09.

Mr. Henderson came forward and was sworn; and he submitted the meeting packets the Board Members had previously received including the report and slides into Evidence, as Exhibit A. He also submitted all copies of letters, emails, and telephone calls from neighboring property owners that were in favor of the petitioner, into evidence as Exhibit B. Mr. Henderson said the reason for Staff's decision regarding the issue came from the Zoning Ordinance, Section 501.4 Accessory Buildings in Residential Districts, which states that "any permitted accessory use in a residential district including a private garage, may be permitted in any rear yard, provided that such use does not occupy more than thirty percent (30%) of the required rear yard. Such accessory building shall not be located less than sixty (60) feet from the front lot line." He informed the Board Members due to this regulation, he had to deny the request for the Building Permit for the construction of the accessory building. The applicant was allowed to appeal his decision under Section 603.3 Appeals.

Mr. Seth Novak of 118 Calhoun Avenue came forward and was sworn; and he explained to the Board Members he and his wife had bought a home in the Duncan Park area that was approximately four acres in size. Based on the fact that the previous owners had horses on the property, as well as the fact that their lot included many trees which effectively blocked most of the view of their property from the surrounding owners; the City had permitted them to also have horses. The petitioners would like to build a structure to provide shelter to their horses during bad weather. They previously hired a gentleman to build a structure, which he had started to build; and when they were informed that he was supposed to obtain a permit and had not, they found someone else to build the structure who had applied for a permit, and what had previously been started was destroyed. Mr. Novak explained their house was at the back of the property, and they had picked an area for the structure they felt would least impact the surrounding

owners. He said they had not contacted any of the surrounding owners, but that many of their neighbors had approached them saying they supported him being able to build the structure for the horses.

Mr. Henderson came forward again and showed a slide of the location map, an aerial map, and a hand-drawn sketch of the proposed structure in order to better illustrate the request. The property was zoned R-15, Single Family Residential District. The petitioner would like to build an approximately 576 square foot new accessory structure for the purpose of being a shelter for their horses. The proposed building would be located approximately 145 feet into the property from the front property line, approximately 112 feet from the south side property line, approximately 290 feet from the north side property line, and approximately 210 feet from the existing residential dwelling. Mr. Henderson said since the house was located so far back on the rear property line, it caused an issue as he had previously stated in the Zoning Ordinance. He said all of the adjoining property owners had the same issues as the applicant’s property.

[Editor’s Note: the report the Board Members previously received included the Mandatory Written Findings for the Board to consider when reviewing appeal requests and Staff’s Analysis of Required Findings as follows:

- 1) *There are extraordinary and exceptional conditions pertaining to the particular piece of property –* According to the Property Owner, their property, being 3.907 acres in size, with the home built at the extreme back of the property, it restricts the building of any accessory structures meeting the regulations as previously explained. Also, due to the fact that City Staff had previously approved the Property Owner the right to have horses on the property, having a place for them during inclement and/or bad weather it is vital to their health and well-being.
- 2) *These conditions do not generally apply to other property in the vicinity –* These conditions do apply to some of the surrounding properties as they are similar in size. The property in question is adjacent to one 5.7 acre lot to the rear and a 4.6 acre lot to the north. The other smaller lots surrounding the property on the other sides are more visible to the street(s) due to the smaller lot size and positioning of the homes closer to the street(s).
- 3) *Because of these conditions, the application of the ordinance to this particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property –* The layout of the property, with regards to the placement of the primary dwelling unit, makes utilization of the entire property difficult. While you might be able to construct an accessory structure behind the house, it would be limited in size and might not be the best placement for utilization by the horses. Approximately 12,000 square feet of the property is considered “rear yard.”
- 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 –* Due to the size of the property in question, the size of the accessory structure, and the proposed location being over 100 feet from any property line, the accessory structure should not be a detriment to any surrounding residential use. There will be woods buffering the street and all adjacent properties.
- 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 Staff recognizes that the proposed accessory structure does not cause an adverse impact on the character of the house, the public right-of-way, or surrounding residential structures, we have to defer to the ordinance when reviewing Building Permits and structures on properties and thus recommend denial of the application. However, we believe that there are relevant considerations addressing each of the required findings that could adequately justify approval should the Board reach that conclusion.

Board Questions:

- Mr. Bramblett asked what the building would be made out of. Mr. Novak said it would be a wooden structure.
- Mr. Bramblett asked how many horses they had. Mr. Novak said they have two horses.

- Mr. Bramblett asked about the recommended living space to house a horse.

Mrs. Novak came forward and was sworn. She said in answer to Mr. Bramblett's question, that about one acre per horse was standard. She did not feel there was any standard regarding a shelter for the horses, but said the horses would be able to go in and out of the structure.

- Mr. Bramblett was concerned what the structure would look like since it would be in the front of the house. Mr. Novak said the structure would be aesthetically pleasing.
- Mr. Bramblett asked would it be painted. Mrs. Novak said it would be a natural wood.
- Mr. Davis said he road by the site and that you could not see back there at all.

Mr. Lonon opened the public hearing and asked anyone who wished to speak in favor or against the request to come forward. No one came forward. Mr. Lonon closed the public hearing.

Mr. Lonon went over the letters and emails that had been received by Staff for the record, in support of the petitioner's request that had formerly been entered into evidence as Exhibit B.

Mr. Henderson said for the record, Staff had not received any calls or letters, etc. in opposition to the request.

Board Discussion and Deliberation:

Mr. Bramblett moved approval of the petitioner's request as was submitted; and he was seconded by Mr. Irby. The motion was unanimously approved by a vote of 4 to 0.

Mr. Lonon informed the applicants they would receive an approval letter in the mail.

VAR 15 2-04 - Request for Variance from Neil Nichols, Neil Nichols Real Estate, Agent on behalf of Paul Melotte, Little Caesar's, Owner. Variance to allow a reduction of the bufferyard requirements to five (5') feet on the side line and ten (10') feet on the rear lot line, in order to be able to provide enough parking spaces for customers and employees of Little Caesar's located at 1635 John B. White Sr. Boulevard. Additionally, the applicant was requesting a variance on the required masonry wall structure along the western side property line and rear property line. The properties were located at 1633, "0", and 1635 John B. White, Sr. Boulevard; and the properties were further identified as Parcels 053.00, 054.00, and 054.01 on Spartanburg County Tax Map Sheet 6-21-13.

Mr. Henderson came forward and was sworn; and he submitted the meeting packets the Board Members had previously received in their meeting packets, including the slides into evidence as Exhibit A; as well as an 11 x 17 printout of the proposed preliminary site plan for Little Caesar's that had been revised since the meeting packets were sent out; that he introduced into evidence, as Exhibit C. Mr. Henderson showed a slide of the revised printout; and he said the only difference in the revised plan and the one that was submitted in the meeting packets was the five (5') foot revisions on the eastern property line in order to accommodate a row of Dwarf Yaupon Holly bushes along that property line.

Mr. Neil Nichols, Owner of Neil Nichols Real Estate at 188 West Henry Street came forward on behalf of the Owner, and was sworn. He informed the Board Members his company handled the brokerage regarding the sale of the properties to Mr. Melotte, as well as the recent rezoning of the three properties. He explained it was his understanding since there would be a drive-thru that a variance would be needed in order to reduce the setback, and also regarding a masonry wall. He knew that Mr. Smith, one of the adjacent property owners had an issue or two that he thought had now been worked out between Mr. Melotte and Mr. Smith.

Mr. Paul Melotte, Property Owner came forward and was sworn. He said essentially they wanted to move their Little Caesar's that had been located for the past thirty years at the corner of Blackstock Road and Reidville Road to the new location. The current lot was too small and there were not enough parking spaces. He pointed out that they would not have a drive-thru, only a pick-up window; and that there would not be any noise associated with this pick-up window (people just pulled up and normally picked up a hot and ready pizza). He said they would abide by the landscape plan, as well as be a good neighbor.

Mr. Henderson came forward again and said the lots had recently been rezoned from R-15 to B-1; and consisted of three properties that were approximately fifty (50') wide. Since the property would be used as a fast-food restaurant, the use more so than the zoning, would put it in the category of high-intensity commercial. He pointed out the properties surrounding the three proposed properties were still zoned R-15. He explained the properties along John B. White Sr. Blvd. had been going through a transition period for some years. The Owner was requesting on the rear property line, a ten (10') foot encroachment into the required twenty-five (25') foot buffer. The reason for the twenty-five (25') foot buffer was due to the R-15 Single Family Residential properties that abutted the properties. Mr. Henderson said that was what triggered the Buffer Yard 5 which required a minimum 25' wide landscape area with a minimum of 5 canopy trees and a masonry wall structure every 100' feet. The Owner was requesting to reduce the bufferyard width along the east side property line to 0' (entire 25' width reduction) and to 10' along the rear property line (15' width reduction). As previously mentioned, they were also requesting to eliminate the requirement to construct a masonry wall and be more in line with the rear bufferyard on the adjacent property that was currently operated as Bella Latte. Mr. Henderson showed a slide of the proposed landscape plan; and he said the Owner was proposing to have parking spaces abutting the east side property line and parking spaces ten (10) feet from the rear property line, with six (6) Trident Maple trees and seventeen (17) Fortune Tea Olives. While he was requesting an encroachment on the bufferyard area, and the elimination of a masonry wall; he would be providing additional landscape, above what was required. Regarding the revised plan the Board Members had received tonight, what was being proposed on the eastern side of the property was those parking spaces on the eastern side would be moved five feet, and the 24 would reduce to 19 feet on the drive aisle and there would be a five (5') foot strip of grass with a row of continuous Dwarf Yaupon Hollies. Over time, the canopy trees would provide the light buffer from the building and parking lights, and the large evergreen shrubs would provide a visual buffer from the parking lot and building. They were proposing 39 (thirty-nine) parking spaces, and they were only required 20 (twenty). It does meet the requirements for handi-capped parking. More slides were shown of surrounding properties, etc. in order to better illustrate the request.

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

- 1) *There are extraordinary and exceptional conditions pertaining to the particular piece of property –* Being classified as a High Intensity Commercial use, would require extensive bufferyards which could require the development to provide less parking than what they desire. The required amount of parking spaces for this use is one parking space per 80 sq. ft. of gross floor area of the building. Since the building is 1600 sq. ft., this would require twenty (20) parking spaces. The Owner has explained that since the proposed restaurant is drive-thru and take out only, they need more parking for their employees and customers than what the ordinance requires. Meeting the intent of the ordinance, with regards to bufferyards, would place additional conditions that could cause issues for future customers.
- 2) *These conditions do not generally apply to other property in the vicinity –* The properties in the immediate vicinity do not currently meet the requirements. That was because one property adjacent was previously approved by City Staff to be allowed to install a rear bufferyard that did not meet the ordinance with regards to bufferyard width and the required masonry wall. The property adjacent on the other side was currently zoned single family residential and not required to have a rear bufferyard since it was the same use as the property to the rear. The Owner would like to have the property connect with the Bella Latte at the rear of the property, which would be difficult if the rear bufferyard was to meet the intent of the ordinance.
- 3) *Because of these conditions, the application of the ordinance to this particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property –* This property would still be able to be developed meeting all City Development requirements without a variance.
- 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 authorization of the requested variance would cause adverse impacts on surrounding less intense uses. While the majority of the properties along John B. White, Sr. Blvd. were becoming

commercial, there could be a chance that the property to the east could transition into a commercial use in the future. However, the property to the rear is part of a single family residential area that should be protected from higher intense uses.

- 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 this development could be accomplished meeting the intent of the ordinance. We do believe that the precedent has been set with the adjacent property, and keeping similar buffer areas might be more acceptable, however, we have to defer to the ordinance and the requirements as they were adopted and thus recommend denial of the application as it has been submitted. Should the Board decide, after hearing testimony from neighboring property owners(s), that the proposed variance request will not be an adverse impact on the surrounding less intense uses and approve the requested variance; Staff would not have objection to this decision.

Board Questions:

- Mr. Bramblett said his main concern would be the parking lot lighting; and he referenced a scenario in the County regarding a Dollar General regarding pole lights vs wall lighting. He said the County insisted lights be put on the building as opposed to pole lights; and he felt they would be more offensive to neighbors and also to people trying to pull in the parking lot.
- Mr. Melotte said he had talked to the Contractor who had mentioned using poles, but directing them down somewhat.
- Mr. Henderson said according to the Zoning Ordinance and the Development Regulations, there were not any regulations regarding lighting. He said Staff always offered high recommendations regarding types of lighting to use, location, keeping in mind the landscape and what is called (CPFED) Crime Prevention for Environmental Design to have adequate lighting on the site and what would be good for public safety. Mr. Henderson said everything would be done to ensure that lights would not be directed toward any certain residential properties that would cause adverse impacts.
- Mr. Lonon asked Mr. Henderson if he received any objections or negative comments regarding the request. Mr. Henderson said he had a conversation with Mr. Smith who was at the meeting.
- Mr. Lonon asked Mr. Henderson to refresh his memory as to why Bella Latte was not required to build a wall, while the current petitioner would have to build a wall. Mr. Henderson explained that before his time with the City, a previous Board of Zoning Appeals had approved a variance on the elimination of a wall, with a note on the file from the previous Planning Director Stephanie Monroe.

Mr. Lonon opened the public comment period and asked anyone that wished to speak in favor or against the request to come forward.

- Mr. James Smith came forward and said he owned the property at 1631 John B. White, Sr. Boulevard; and he informed the Board Members he had been there since 1960 and had grown up in the neighborhood. He inherited the property after his father passed away a few years ago. He said he just wanted his property protected for future development. He explained to the Board Members that in the past years they had a lot of vandalism at the house. They had installed a privacy fence across the back of the property as well as on the opposite side of the property in order to cut down on vandalism. He said when the petitioner cleared his property at 1635 John B. White, Sr. Boulevard it would leave his property wide open for vandalism. Mr. Smith said he spoke to Mr. Melotte about this, who had mentioned putting in shrubs. Mr. Smith said he did not want shrubs installed, and he wanted a simple chain-link fence to protect his property was all that mattered to him.
- Mr. Lonon asked Mr. Smith whether he lived on the property. Mr. Smith said no.
- Mr. Lonon asked Mr. Smith if it was rented out. Mr. Smith said it was not.

- Mr. Lonon asked Mr. Smith if he was against the request as it had been requested. Mr. Smith said if they installed a chain-link fence he would be just fine.
- Mr. Bramblett asked Mr. Smith was his property for sale. Mr. Smith said yes.
- Mr. Nichols informed the Board Members he had talked to Mr. Bobby Crump who owned the three rental houses in the rear, and Mr. Crump had no issues with the request.

Mr. Lonon asked anyone else who wished to speak in favor or in opposition to the request to come forward. No one else came forward. Mr. Lonon closed the public hearing.

Board Comments and Deliberation:

- Mr. Bramblett asked Mr. Melotte whether he would be in favor of installing a chain-link fence. Mr. Melotte said he did not like the look of a fence being there; and he felt it was just an empty house that would be torn down in the future. He said if it meant obtaining the variance, he would definitely install one.
- Mr. Lonon asked Mr. Melotte about the application regarding Mandatory Finding Number 3, "Because of these conditions, the application of the ordinance to this particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and that he would like for him to answer it regarding the wall (how it would prohibit the use of the property), and then regarding the setbacks, were they just talking about a reduction to the number of parking spaces.
- Mr. Melotte said regarding the wall at over 300 feet would be pretty costly, and they had already spent \$100,000 extra on the land than they ever had before, and the numbers were getting very hard to make work.
- Mr. Henderson explained to the Board Members the setback portion of Mr. Lonon's former question regarding the setbacks and parking.
- Mr. Bramblett said he would like to see the petitioner be able to work something out with Mr. Smith regarding the fence.
- Mr. Irby asked Mr. Melotte whether he thought he could come to a consensus in order to work out the problem with Mr. Smith.
- Mr. Smith said he would love to see the property sell within four to five months. His main concern was to protect his residential property with a fence.
- Mr. Lonon said as far as the setbacks go; they recently considered an application from Zaxby's that they had granted; and they should probably grant the same for this application. He was a little uncomfortable with making a motion without any specific proposal about a particular fence being put up. He definitely felt there should be a buffer with landscaping.
- Mr. Davis agreed with Mr. Lonon.
- Mr. Henderson said the properties to the rear were rental properties. Whether or not the property owners conveyed this information to their tenants, was between the property owner and the tenants. The property owner did receive certified mail regarding this request.
- Mr. Henderson said tonight all that was being considered was the variance encroachment of fifteen (15') feet into the required twenty-five (25') foot rear yard bufferyard width, and a twenty (20') foot encroachment into the east side bufferyard, with the addition of the Yaupon Hollies, as well as eliminate the requirement of the masonry wall on the rear. The issue of the fence would fall between the petitioner and the property owners unless the Board Members felt they should put a condition on it.

Mr. Lonon did not feel the fence would have that much effect on the movement of vandals around the property.

Mr. Lonon made a motion to grant the variance as requested, based on the findings in the application. There was no second.

Mr. Bramblett made a motion to accept the application as presented, with the condition that a fence be built on the east side of the property that was suitable to both the City and the Applicant; and he was seconded Mr. Irby. The motion was unanimously approved by a vote of 4 to 0.

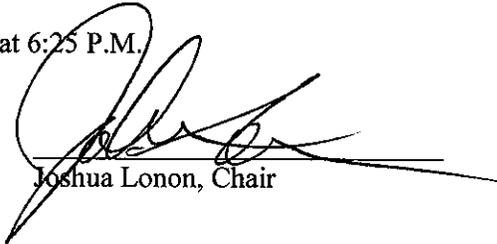
Mr. Lonon informed the petitioner the City would be in touch regarding a letter; and to the property owner the City would take in to account his concerns as well.

Staff Announcements

Mrs. Roland explained all Board Members who had not had their 2015 Continued Education training would need to do so before the end of the year.

Mrs. Roland said there was one Board Member position up for reappointment, and there were currently two Board Member vacancies and if anyone knew of someone who wished to serve to please let her know.

There being no other business, the meeting adjourned at 6:25 P.M.



Joshua Lonon, Chair

Edited by Julie Roland, Administrative Assistant