
CITY OF COLUMBIA
BOARD OF ZONING APPEALS MINUTES
September 8, 2015- 10:00 AM

City Council Chambers
1737 Main Street, 3rd Floor • Columbia, SC

In attendance: Ernest Cromartie, III, Patricia Durkin, Dr. Pat Hubbard, Reggie McKnight, Chuck Salley

Out: Calhoun McMeekin, Preston Young

Staff: Brian Cook, Andrew Livengood, Andrea Wolfe

I. CALL TO ORDER and DETERMINATION OF QUORUM

Ernest Cromartie, chairperson, called the meeting to order at 10:02 AM, and introduced the members of the Board of Zoning Appeals (BOZA) and staff.

II. CONSENT AGENDA

A. APPROVAL OF MINUTES

Approve August 11, 2015 minutes

B. OLD BUSINESS

None.

C. NEW BUSINESS

1. **15-061-SE Dist. 2 3523 N. Beltline Boulevard (TMS# 11613-06-05)** Special Exception to establish a beauty salon (Shanta Wallers, Brequoj Salon) (C-1)
2. **15-062-SE Dist. 1 5507 Colonial Drive (TMS# 11705-07-13)** Special Exception to expand a residential care facility (Scott Lambert, Lambert Architecture & Construction Services) (RS-3)

No one spoke in favor or opposition of the requests, or requested any items be removed for discussion.

Motion by Mr. Hubbard to approve the Consent Agenda items subject to any exhibits and conditions that may be found within the case summary for that application and to adopt as the findings of the Board, those findings in each case prepared by Staff, also found within each case summary; and include the August 11, 2015 Minutes.

Motion seconded by Mr. McKnight. Motion approved 5-0.

III. REGULAR AGENDA

A. OLD BUSINESS

None.

B. NEW BUSINESS

- 3. 15-060-V Dist. 4 4827 Devereaux Road (TMS# 13816-02-11)** Variance to the required side yard setback to construct a carport (Jonathan Boyce Bankhead) (RS-1)

Request for a variance to the side yard setback requirements in order to accommodate a proposed 240 sq. ft. carport attached to the side of the house. A side yard setback of 8 feet is normally required in the RS-1 district; the applicant is proposing approximately 5 feet 10 inches instead.

Jonathan Bankhead, applicant, reviewed the criteria required for a request for variance:

- *Extraordinary and exceptional conditions pertain to the subject property. The problems arise because of the existing structures in the area, and the natural location for the proposed carport will follow the existing driveway and house line.*
- *The conditions noted above do not generally apply to other property in the area and are unique and individual to the applicant's property.*
- *Because of the conditions noted above, the requirements of the Zoning Ordinance effectively prohibit or unreasonably restrict the use of the property. The current parking situation is not effective, and is a safety issue.*
- *Approval of the variance would not be of substantial detriment to adjacent property or to the public good, and the character of the district would not be harmed. Having the carport will actually be better for the character of the neighborhood, as the parked vehicle will not be as visible.*
- *The variance is the minimum necessary, and as far over as possible to still allow the vehicle to fit inside.*
- *The proposal is in harmony with the purpose and intent of the Zoning Ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. A letter of support from the neighbor directly on the left side of his house where the carport will be located provided a letter of support, and voiced no objection to the request.*

The letter was entered into the record.

Mr. Cromartie stated that based on the testimony given by the applicant regarding extraordinary and exceptional conditions; based on the fact that it does not generally apply to other property; if the variance is not granted, it does prohibit or unreasonably restrict the use of the property; it is of no substantial detriment to the adjacent property as evidenced by the shortening of distance or the lengthening of the distance from the adjacent property and the letter of support; coupled with the fact that there is testimony stating it is the minimum necessary; and the proposed use is in harmony with the Zoning Ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

No one spoke in favor or opposition of the request.

Motion seconded by Mr. Hubbard to approve the application as the Chair just summarized the extraordinary and exceptional conditions upon the property, it does not generally apply to other houses already built in the area; it will not be a substantial detriment to adjacent properties or to the public good; the character of the district will not be harmed; it is the minimum necessary; and it is in harmony with the purpose and intent of the zoning Ordinance.

Motion seconded by Mr. Salley. Motion to grant the request approved 5-0.

Mr. Cook asked the Board to consider amending the Agenda to move case #5, 827 Albion Road, up to allow case #4 to be heard consecutively with case #6 as they are requests for the same property. This would be beneficial to individuals wishing to provide testimony on the requests for 3000 Devine Street.

Motion by Mr. Cromartie to move case #4 up ahead of 15-066-V so that both requests regarding 3000 Devine Street can be handled at the same time. This will help the Board in making its decisions and make a more efficient manner in which to handle the agenda.

Motion seconded by Mr. Hubbard. Motion to move item 15-064-V ahead of 15-063-SE approved 5-0.

- 5. **15-064-V Dist. 4 827 Albion Road (TMS# 13905-15-06)** Variance to the fence height requirement within rear and side yards (Terry M. Mauldin) (RS-2, -CC1)

Terry (Mickey) Mauldin, applicant, presented on the request for a variance to the fence height requirement within rear and side yards. A fence up to 7-foot high is normally allowed and the applicant is requesting a 9-foot tall fence instead because of topography issues which will not allow for the privacy he desires. Mr. Mauldin has spoken with the neighbor to the rear of the property who is in support of his request for a 9-foot privacy fence.

There are extraordinary and exceptional conditions that pertain to the subject property as there are elevations issues on the property that do not pertain to other properties in the neighborhood. The back and side yards are not visible from the street and will not be harmful to the neighborhood.

No one was in attendance to speak in favor or opposition of the request.

Motion by Mr. Hubbard to approve the variance request of a 9-foot fence along the rear property line and the right side as one looks at the street, down to where the neighbor's 4-foot brick column is. There are extraordinary and exceptional conditions that apply to this topography that generally do not apply to any other property. Because of the conditions noted above, the requirements of the Zoning Ordinance effectively prohibit or unreasonably restrict the use of the property involved. It will not be of substantial detriment to adjacent property or the character of the district would not be harmed.

Motion seconded by Mr. Salley. Request for variance granted 5-0.

As items 4 and 6 are at the same location, 3000 Devine Street, Staff read them concurrently to allow information to be heard at one time. Two separate motions, one for the request for special exception and one for the request for variance, will need to be made.

- 4. **15-063-SE Dist. 3 3000 Devine Street (TMS# 13804-16-01A and -01B)** Special Exception to establish a drive through facility for a restaurant (Will Gillespie, UC HQ-Devine Street) (C-2)
- 6. **15-066-V Dist. 3 3000 Devine Street (TMS# 13804-16-01A and -01B)** Variance to the parking requirements for a restaurant (Will Gillespie, UC HQ-Devine Street) (C-2)

This application for Special Exception is to permit a drive-through facility for a proposed +/- 3,225 sq. ft. restaurant, Urban Cookhouse. While a restaurant of this size is allowed as of right in the C-2 district, drive through facilities are allowed only by special exception, regardless of the base district.

The applicant is also requesting a variance to the parking requirements in order to establish a restaurant at this same location. For the proposed restaurant, 26 parking spaces would normally be required; the applicant is proposing to provide 22 parking spaces instead to avoid large trees which they wish to preserve.

Numerous emails, in support and opposition of the request, have been received up to the day before the meeting, and included in Board members' packets.

Will Gillespie, UC HQ-Devine Street, presented an updated site plan showing two additional parking spaces which would amend the request for variance to a request providing 24 spaces instead of 22.

The updated site plan has not been reviewed by staff, and therefore no comments could be made at this time. Any relief granted or additional parking on-site, will need to be reviewed by appropriate staff in relation to preservation and retention of trees. Mr. Cook felt essentially the request is the same by providing 24 parking spaces whereas 26 are required, and that the Board could still hear the case and request zoning staff and landscape staff review the plan at a later time.

If the request were to be approved by the Board and upon later review by staff found to be unacceptable as required by the Ordinance, the applicant would need to return to the Board with another request for variance. Should the Board be inclined to approve the request if heard today, and it is determined by staff after review of the amended site plan that the 24 spaces will not work, staff would request approval be conditional upon a reasonable plan that is acceptable to staff as far as landscaping and other requirements be reviewed. The request for variance will be based upon the amended site-plan.

As the applicant had individuals in attendance who were available for any questions, Mr. Gillespie said he would like to proceed on the request for variance based on the updated site plan.

For clarification of the request, Mr. Cromartie stated the applicant had submitted a new site plan providing for two additional spaces which has not been previously submitted to staff. The Board will proceed with the request based upon the most recent and current information presented by the applicant. It is the understanding that if the variance is approved based on the new information, but staff finds that information incorrect, the applicant will again need to present to the Board.

Mr. Livengood stated in a conversation just held with the applicant, it was clarified that the request for variance would be for three parking spaces, as they are proposing 23 spaces, not 24 as initially stated.

Mr. Gillespie had no issues with the correction and wished to proceed with the request based on the new site plan which shows one additional parking space.

The applicant proceeded with review of the criteria required for a special exception in terms of the request for a drive through.

- *Proposed special exception will not have a substantial adverse impact on vehicular traffic or vehicular and pedestrian safety. This will not be a traditional drive through where orders are placed with a call box and a microphone, and picked up at another window; this will be a pick up window for pre-placed orders only where orders are placed on-line or phoned in. The pick-up window accounts for 30-35% of orders, which alleviates the need for parking onsite as an inside diner. Mr. Gillespie agreed as part of his testimony, that no exterior menu board or microphone will be used.*

- *Proposed special exception will not have a substantial adverse impact on adjoining properties in terms of environmental factors such as noise, lights, glare, vibration, fumes, odors, obstruction of air or light, and litter. This is a family restaurant that has no music, and normal business hours are 11AM to 9PM. There will be patio seating to create a nice environment with some background music. There will be no issue with lights, glare, fumes or odors.*
- *Proposed special exception will not have a substantial adverse impact on the aesthetic character in the surrounding area, to include a review of the orientation and spacing of buildings. The intent is to build a first class building that will remain that way, and be a positive impact on the aesthetics of the area.*
- *Proposed special exception will not have a substantial adverse impact on public safety or create nuisance conditions detrimental to the public interest.*
- *The establishment of the proposed special exception does not create a concentration or proliferation of the same or similar types of use. This is not a fast food concept with a traditional drive through window, and the layout of the facility is unique to the area.*
- *Proposed special exception is consistent with the character and intent of the underlying district. The demographics and customer clientele are individuals on the go. The pickup window fits in area and is not visible from the road. The mission of the restaurant is to 'buy local, and eat urban'.*
- *Proposed special exception is appropriate for its location and compatible with the permitted uses adjacent to and in the vicinity of the property.*
- *Proposed special exception will not adversely affect the public interest. Patrons will be able to dine comfortably in a clean facility, or use the proposed drive through facility to pick up food on the go.*

Mr. Cromartie asked the applicant to address comments made by the city's Traffic Engineer:

- Shifting the building to the left and placing the pickup window to the other side.
- Turning at Sims Avenue will be difficult for a vehicle of any size.
- With the current configuration, only three vehicles would need to be at the facility before the lane at Devine Street would be blocked for incoming vehicles.

Travis Basnett, Alliance Consulting Engineers, Inc., prepared the amended site plan. The site plan Mr. Brewer reviewed was the original site plan presented, and on which his comments were based. The amended site plan presented today was created to address the comments made by Mr. Brewer. The new site plan received today has a much greater stacking length than the previous layout, and the queuing and traffic flow issues have also been addressed.

Mr. Cromartie asked staff if they had reviewed the information, and if any input could be obtained from the city traffic engineer.

In looking at the new site plan, it appeared the building was moved as requested; however Mr. Cook felt it would not be appropriate to review the new site plan at this time. There are certain concerns that would need detailed review with regard to the request for variance. With regard to the request for special exception of the drive through, there may be a bit of congestion. As the applicant spoke of preserving trees, it is felt there should be more focus on tree preservation and less on site plan review, which can be reviewed at a later time.

Mr. Cromartie thanked the applicant for bringing the new information and accommodating the requests of the city traffic engineer and working closely with city staff to provide the best possible product. As this new information seems to bear so heavily on both the special exception and subsequently the variance, he voiced concerns that at this point, there has not been sufficient time for staff to vet and review that information. It is not solely the Board's decision; a lot will be based on upon staff. If a recommendation were made today, there may so many things contingent upon staff review. It would be better to let staff make that review and then provide the Board with concrete information.

Mr. Cromartie asked staff if they felt they would be in a better position to provide the Board with comment and more concrete information if they had time to review the new plan, and talk to the city

traffic engineer; and therefore present the Board with better data. The data is available now but staff has not had a chance to review the data which will impact both requests.

Mr. Cook agreed it would be beneficial for staff to have extra time to review the information, though the applicant complied with Mr. Brewer's recommendations. If the variance is predicated on preserving trees on the property, staff would like to be very specific with comments, as well as determining if the amount of pavement to be placed will actually preserve a tree or cause its demise in a number of years.

The applicant can still request to move forward and if the variance is approved with a certain number of spaces determined, will be held liable to that determination; and if it was found necessary would return to the Board until a better plan can be found. Because the new site plan appears to have met the concerns of the city traffic engineer, the drive through is a different issue, however something may still be amiss as it has not been reviewed.

Mr. Basnett stated that he created the new site plan based on Mr. Brewer's comments, the new site plan was sent to Mr. Brewer for review; however at this time, no response has been received.

Mr. Cromartie polled each Board member to hear their opinion regarding this issue.

Ms. Durkin felt staff should have more time to review the application.

Mr. Salley said he would go either.

Mr. Hubbard felt this was a minor issue compared to other issues and could be heard.

Mr. McKnight felt it best to defer.

Mr. Gillespie stated that while there was not a time sensitive contract on the property, any delay was prohibitive both time wise and financially. There are significant losses with each spent idle. He understood that the cases would proceed, and would return to the Board if not approved by city staff after they reviewed the new site plan.

Mr. Cromartie stated his concern was to make sure the Board had the most accurate, up-to-date and complete presentation possible. He commended the applicant on working with staff to accommodate their request, however they have not had a chance to vet the information presented. He felt what staff presented for the Board is not 100% complete, which is not the fault of anyone but a timing issue.

If the decision for both requests is postponed to the October meeting, the Board will have more information to more accurately make a decision in favor or opposition of the requests. If the Board proceeds today, caveats will need to be added in such a way which will probably prevent the applicant from proceeding. Though it is an uncertainty, it is the applicant's decision to wait one month for a Board decision, or wait possibly three weeks for staff decision.

Mr. Hubbard said to defer will probably not require any caveats. The number of parking spaces required is recommended by the traffic engineer and the number that the Board works with. That contingency was fairly clear and easily resolved; however the new site plan that has not been removed put things into a different posture.

Mr. Gillespie added that the Shandon Neighborhood Association and Merchants Association have voiced support of both requests on behalf of the applicant.

Mr. Cromartie commended the applicant on working with staff and the neighborhood, saying this is a decision that will follow the property, therefore whatever the decision the Board makes will impact beyond the next five or ten years. It is understandable that the applicant does not wish to defer the request, however felt to make the best decision, the Board must have the best information which will come from the City vetting.

As numerous members of the public were in attendance, Mr. Cromartie stated the Board was contemplating deferral to allow for more accurate information to allow for any decision to be made to have the most complete and up-to-date information. He thanked everyone for taking time from their busy schedules to speak in favor or opposition of the request as he is aware that is very important; however the Board does not take these decisions lightly and they wish to make good decisions. From a business perspective, it is not the best outcome, but gives the opportunity to make the best decision.

Motion by Mr. Cromartie to defer the request for special exception and the request for variance for 3000 Devine Street to the October 13th BoZA meeting, and ensure they are the first case on the upcoming agenda, and try to expedite getting the best information and best vetting possible so applicants can have their professionals look at it as well.

Motion seconded by Mr. McKnight. Motion approved 4-1; Mr. Hubbard in opposition.

Charles Appleby, president of the Shandon Neighborhood Council, said it was specifically stated that there would not be a call box or menu board at the drive through at this location. He questioned if the special exception were to be granted and a new owner came in, would that owner need to return to the Board for a special exception to install a call box or menu board.

Mr. Cook stated if a new restaurant came in and wanted to place a menu board or any other type of change, they would need to return to the Board. As this request specifically states there will not be a call box or menu board, any new establishment on the property would be held to that. If they desired a call box or menu board, it would be considered an additional level of review, and would need to return to the BoZA for review and approval.

Mr. Appleby stated that he or someone else from the neighborhood would be in attendance at the October meeting, as well as a representative from the Oakwood Court Neighborhood.

5. 15-064-V Dist. 4 827 Albion Road (TMS# 13905-15-06) Variance to the fence height requirement within rear and side yards (Terry M. Mauldin) (RS-2, -CC1)
Case #5 moved up to be heard prior to Case #4

6. 15-066-V Dist. 3 3000 Devine Street (TMS# 13804-16-01A and -01B) Variance to the parking requirements for a restaurant (Will Gillespie, UC HQ- Devine Street) (C-2)
Case #6 moved up to be heard In conjunction with Case #4

IV. OTHER BUSINESS

V. ADJOURNMENT

There being no further business, Mr. Cromartie adjourned the September 8, 2015 Board of Zoning Appeals meeting at 11:08 a.m.

Respectfully submitted by Andrea Wolfe
Sr. Admin. Secretary
Planning and Development Services Department
City of Columbia