

Meeting Minutes of the Board of Zoning Appeals
Tuesday, July 11th, 2023, at 5:15 PM
City Hall Council Chambers

The Board of Zoning Appeals met in City Hall Council Chambers on Tuesday, June 13th, 2023, at 5:15PM with the following members in attendance: **Brian Murdoch, McKay Moore, Brian Cohen, Darren Matz, Dominique Dawkins and Don Bramblett**. Representing for the Planning Department is **Martin Livingston, Community Director, Bob Coler, City Attorney, Nan Zhou, Planner I, Tia Keitt, Planner II, and Oksana Holbrooks, Administrative Assistant**.

Roll Call:

Mr. Bramblett: Don Bramblett
Ms. Moore: McKay Moore.
Mr. Matz: Darren Matz.
Mr. Murdoch: Brian Murdoch.
Mr. Cohen: Brian Cohen.
Ms. Dawkins: Dominique Dawkins

Mr. Matz: Okay, thanks. Real quick we'll read the Freedom of Information Act Compliance. Freedom of Information Act Compliance public notification Board of Zoning Appeals meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the requirements of the City of Spartanburg Zoning Ordinance.

Approval of Agenda:

A motion was made by Mr. Bramblett, seconded Ms. Moore to approve the agenda. The motion was approved with a vote of 6-0

Mr. Bramblett: I move to approve the agenda.
Mr. Matz: Okay, second?
Ms. Moore: Second
Mr. Matz: All in favor of motion say aye?
Attendees: Aye.
Mr. Michels: All opposed? Nay. Okay.

Mr. Michels: Okay disposition of minutes from June 13th meeting minutes from the last meeting. Is there any comments that we need to add?

Approval of Meeting Minutes from June 13th, 2023.

A motion was made by Ms. Moore seconded Mr. Cohen to approve the meeting minutes. The motion was approved with a vote of 6-0

Ms. Moore: I move we approve with any submitted changes.
Mr. Matz: Second.
Mr. Cohen: Second
Mr. Matz: All in favor?
Attendees: Aye.

Mr. Matz: Aye's have it.

Old Business:

VAR-23-00200005 The City of Spartanburg's Board of Zoning Appeals has received a Variance request to the minimum lot size requirement for a development Caulder Avenue Duplexes located at Caulder Ave. (TMS # 7-16-08-078.00; 7-16-08-079.00; 7-16-08-080.00; 7-16-08-081.00; 7-16-08-082.00; 7-16-12-002.00; 7-16-12-003.00; 7-16-12-004.00; 7-16-12-005.00; 7-16-12-006.00; 7-16-12-007.00); with a zoning designation of R-12 (General Residential District). Owner / Applicant: Spartanburg Housing / Agent: Paul Mills, Site Design Inc.

Mr. Matz: Before we get started , can you please state you name and swear you in please?

Ms. Zhou: Yes, good evening board members my name is Nan Zhou and I work with the Planning Department. I swear I'll tell the truth.

Project Description and History

The project sites are approximately 150,218 square foot lots located in the R-12 (General Residential District) zone. The project site abuts Caulder Avenue to the southeast boundary. The project site is surrounded by R-12, General Residential District, across from Caulder Ave., R-6, General Residential District to the west side of the project site, and R-15, Single Family Residential District to the north side of the project side. The applicant/agent is proposing to build 24 affordable duplex housing units on the lots. However, due to the requirement of Group Housing Project Minimum Project Area – 4 Acres or more (R-12), the current lots' total square footage is 3.95 Acre, and the owner does not own the adjacent surrounding lots. Therefore, a request of reducing the minimum project area down from 4 acres to 3.95 acres is needed in order for the applicant/agent to accomplish the affordable housing project.

Analysis

Zoning Ordinance Consistency

The project site has a zone designation of R-12, General Residential District. **Section 302.2 R-12 General Residential District Uses Permitted by Right** of the City of Spartanburg Zoning Ordinance, R-12, General Residential District, does allow for two family and multi-family dwellings. However, given the available size of the land for the development of the proposed project, the applicant is seeking a minimum project size reduction variance for group housing projects. A Variance may be granted by the Board of Zoning Appeals to the minimum size standards required in the ordinance. Variances may only be granted in the instances listed in Section 603.4. Section 603.4 lists nine particular instances in which the Board may grant a Variance. Of these nine, two are applicable to this project;

Section 603.4 (1): To permit any yard less than the requirements of this Ordinance.

Section 603.4 (3): To permit the use of a lot or lots for a use otherwise prohibited solely because of the insufficient area or width of the lot or lots, but in no event shall the respective area and width of the lot or lots be less than eighty percent (80%) of the required area and width.

The Board must utilize **Section 603.3(A)(2)** and determine if the proposal meets all the criterion for approval. To hear and decide appeals for Variance from the requirements of the Zoning Ordinance when strict application of the provisions of the Ordinance would result in unnecessary hardship. A Variance may be granted in an individual case of unnecessary hardship if the Board makes and explains in writing the following findings:

- a. There are extraordinary and exceptional conditions pertaining to the particular piece of property;

- b. These conditions do not generally apply to other properties in the vicinity;
- c. Because of these conditions, the application of the Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- d. The authorization of a Variance will not be of substantial detriment to the adjacent property or to the public good, and the character of the district will not be harmed by the granting of the Variance.
- e. In granting a Variance, the Board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the Board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare.

Findings

1. *There are extraordinary and exceptional conditions pertaining to the particular piece of property –*

Currently, the total combined square footage of the parcels is 3.95 acres which falls short of the required 4 acres for minimum group housing projects by 0.05 acres. The owner of these parcels does not own any of the adjacent surrounding lands, prohibiting them from recombining additional lands from the surroundings to make up the shortage of 0.05 acres.

2. *These conditions do not generally apply to other properties in the vicinity –*

Properties located to the west side of the proposed project site are zoned R-6, General Residential District, and properties located to the northeast of the proposed project site are zoned for R-15, Single Family Residential District. If the proposed project parcels are zoned as R-6, General Residential District, then it would meet the minimum project areas required by the Zoning Ordinance.

3. *Because of these conditions, the application of the Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and –*

By granting the reduction of minimum project area for group housing projects, it will allow the landowner to accomplish building 24 affordable duplex housing units on these parcels. Otherwise, the proposed project cannot be developed with the desired number of affordable housing units.

4. *The authorization of a Variance will not be of substantial detriment to the adjacent property or to the public good, and the character of the district will not be harmed by the granting of the Variance–*

No substantial detriment or harm will be caused to the general public good. The character of the district will not be harmed by the grating of the Variance since the neighborhood will still remain as residential uses. Furthermore, the total area of the proposed project area is 3.95 acres which is equal to 98.75% of the required area, 4 acres.

5. *In granting a Variance, the Board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the Board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare–*

In the event the Board finds that the Variance finding can be met and the project approved, conditions of approval are attached to this report. The Board may choose to approve or amend them based on the outcome of this proposal.

Applicant:

Zedekiah Heydenburg, Engineer of Site Design

Joseph Jackson, Spartanburg Housing Development Director

Public Comments:

Annie Kerns, 293 S Converse St, Spartanburg, SC 29306.
Sonja Rice, 547 Caulder Ave, Spartanburg, SC 29306.

Discussion:

The need of the surrounding neighbors, the upkeep, the lighting and trash pickup, landscape and property value to the surrounding properties. If the project was to get denied the developer can rezone to a much more densely zoned requirement and have more buildings and be more populated.

A motion was made by Mr. Bramblett, seconded Mr. Murdoch to approve with a vote of 4-2.

New Business:

APP-23-020-0008: The City of Spartanburg's Board of Zoning Appeals has received an appeal to the Bufferyard Requirements for the development of the Coke Facility Redevelopment Phase I located at 500 W. Main Street (TMS: 7-12-13-024.00); with a zoning designation of B-3 PDD (General Business – Planned Development District). Owner: Palmetto Operating Company, LLC / Applicant: Brett Baumgarten / Agent: Danny Balon; Seamon Whiteside Engineering

Mr. Matz: Before we get started can you please state your name and relation to case please.

Mr. Matz: You promiser to tell the truth?

Ms. Keitt: Yes, Tia Keitt Planner with City of Spartanburg Planning Department.

Project Description and History

Palmetto Operating Company and Coastal Partners, LLC are working on the adaptive reuse site, 500 West Main St., formerly the Coca Cola Bottling Company, and transitioning the site into mixed-use commerical. The developers have hired Seamon Whiteside Engineering to conduct site analysis and to carry the project through rezoning, site plan review and now before the BZA to Appeal Zoning Ordinance Bufferyard requirements: **§505.64 Landscaping Requirements for Buffers.**

Per the City of Spartanburg Zoning Ordinance, the commerical redevelopment project is considered Medium Intensity Commerical. This use next to an existing single family district zoning requires the **Bufferyard 4** landscaping between these two uses for the protection of residents from potential light and noise. See **Table 505.1 entitled Buffered Yard Requirements** (p. 169) of the City of Spartanburg Zoning Ordinance for the complete table

The applicant is Appealing the required Bufferyard as outlined in Section 505 Tree Protection and Landscaping and have submitted the Zoning Appeals application through the Planning Department.

Analysis

Zoning Ordinance Consistency

505.64 Landscaping Requirements for Buffers

A. Applicability. The purpose of a buffer is to protect existing low intensity land uses from being devalued or hurt caused by the effects of new higher intensity uses. The developer, owner or tenant of a new higher intensity use is required to install landscaped buffers adjacent to, but on their side

of, common property lines to protect existing lower-intensity uses. Buffers shall be required for all developed or redeveloped portions of a property based on the primary use of the property whether or not the primary use is located on a specific portion of the property.

B. Bufferyard Requirements

A proposed land use which is medium intensity commercial, high intensity commercial, light industrial or heavy industrial which abuts a single family residential use or multiple family residential use shall include a brick or stucco wall as part of the bufferyard.

The wall, fence or berm illustrated in the bufferyard can be located on either side of the required bufferyard, but typically shall be located on the highest elevation within the bufferyard in order to maximize the screening function. The exact placement of required plants shall be the decision of the developer except that evergreen (or conifer) plant materials shall be planted in clusters rather than singly in order to maximize their chances of survival and that plants shall be sited utilizing existing and proposed topography to maximize the screening effect.

603.3 Appeals.

The Landowner /Applicant is seeking an appeal to **Section 505.64 Landscaping Requirements for Buffers**. Such an appeal shall be submitted within thirty (30) days after a decision by a board. Such notice of an appeal shall be accompanied by a check in the amount of \$50 payable to the City of Spartanburg to partially defray the cost of giving public notice of such hearing, none of which shall be refundable. The Planning Staff shall forthwith transmit to the Board all papers constituting the record upon which action appealed was taken from. An appeal stays all legal proceedings.

The Board must utilize **Section 603.3(A)(1)** and determine if the proposed Appeal meets all the criterion for approval. The Board must hear and decide Appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance; The Board may grant approval of the appeal in an individual case of unnecessary [site] hardship if the Board makes and explains in writing the following Findings:

Findings

a. ***There are extraordinary and exceptional conditions pertaining to the particular piece of property;***

The engineering firm (Seamon Whiteside) states that the existing building is located approx. 3 ft. from the adjoining property. At 20 ft. or less, Bufferyard 4 requires a Masonry Wall structure and 5 canopy trees. The engineer states that the slopes are steep (see application) and the required footing would put the wall over 9 ft high. Also, the constructability becomes a challenge, whereas installing a fence minimizes land disturbance.

b. ***These conditions do not generally apply to other properties in the vicinity;***

Topography, new land use vs. historic buildings with current zoning codes are conditions that developers run into when redeveloping a site to be an adaptive reuse project. The Zoning Ordinance requires the developer to install a masonry wall anywhere within the buffer zone with a minimum height of 6 ft. Portions of the boundary consists of a steep slope and the engineers would prefer not to disturb the hill. They have proposed to install a 6 ft tall stockade fence.

- c. ***Because of these conditions, the application of the Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and***

Enforcing the Zoning Code would prohibit and unreasonably restrict the proposed commercial mixed use of the property.

- d. ***The authorization of a Variance will not be of substantial detriment to the adjacent property or to the public good, and the character of the district will not be harmed by the granting of the Variance.***

Approval of the Appeal would not be of substantial detriment to the adjacent properties. There is an existing 6' fence with trees and bushes that serves as a natural barrier between properties along Washington St. There are portions of the property where residents can look directly onto the old Coca Cola site. Residents of Washington and Monk Streets are nestled between two major thoroughfares and replace the required masonry wall with a fence will not impact the character of, nor harm the residential district.

- e. ***In granting a Variance, the Board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the Board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare.***

Planning Staff have attached Conditions of Approval. Please note that the site plans and the building plans have been approved for this commercial redevelopment project. Conditions of Approval help to protect abutting properties residential properties in consideration of public health, safety and general welfare.

At the July 11, 2022 meeting, the Board **may grant approval** of the Appeal and allow a 6 ft. fence replace the required 6' masonry wall, **approve the appeal with conditions** that includes Staff comments and any additional conditions designated by the board, or **deny** the request. In the case of a denial, the applicant would be required to meet the landscaping and bufferyard requirements as it is written, or appeal the Board's decision. If necessary, the Board can also **table the matter** for the next meeting and request additional information for review.

In exercising its powers, the Board of Zoning Appeals may, in conformity with the provisions of Section 603, reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination, and to that end, has all the powers of the officer from whom the appeal is taken and may direct the issuance of permit approval. The board, in the execution of the duties specified in this chapter, may subpoena witnesses and in case of contempt may certify this fact to the circuit court having jurisdiction.

All final decisions and orders of the board must be in writing and be permanently filed in the office of the board as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board which must be delivered to parties of interest by certified mail.

Applicant:

Brett Baumgarten & Danny Balon, Seamon Whiteside Engineering.

Public Comments:

Chris Sawhill, 104 N Daniel Morgan Ave, Spartanburg, SC 29306.

Pam Mitchell, 201 Briarwood Rd, Spartanburg, SC 29301.

Dave Wenstrup, 505 W Main St, Spartanburg, SC 29302.

Discussion:

The multi-use of the proposed project and the intention behind it. Confirmation location of the building, fence, landscaping, setbacks and buffer in between running along the property line. How does this project effect N. Highpoint Street and dates of the proposed project site. Does the building meet the code requirements and setbacks of the proposed site.

A motion was made by Ms. Moore, seconded Mr. Dawkins to approve with a vote of 5-1.

Ms. Moore: I move we approve the appeal to change the buffer yard extension.

Ms. Dawkins: Second

Mr. Matz: All in favor?

Attendees: Aye

Mr. Matz: All opposed?

APP-23-00200009 The City of Spartanburg's Board of Zoning Appeals has received an Appeal to the Parking Lot Landscaping Requirements for a commercial development located at 228 S. Pine St. and 453 E. Henry St. (TMS # 7-12-11-284.00 & 7-12-11-284.02); with a zoning designation of B-3 (General Business District). Owner/Applicant: Newburg Investment / Agent Raj Patel.

Ms. Zhou: My name is Nan Zhou and I'm here to present the last case request and it's also an appeal for 228 S Pine St. Actually this request involves two pieces of property.

Project Description and History

The project sites are approximately 52,272 square foot (1.2 acre) commercial lots located at 228 S. Pine St. (TMS # 7-12-11-284.00) and 453 E. Henry St. (TMS # 7-12-11-284.02). The lots are currently zoned for B-3, General Business District. 228 S. Pine St. site contains one-story building that was a fast-food restaurant. 453 E. Henry St. currently is a bank contains one-story building with a drive through. The proposed redevelopment plan for the two lots will be a mixed-use development containing retail stores and restaurant with alcohol sales.

The applicant is requesting an appeal to not installing tree islands which will take away one (1) parking space from the last row of the parking spaces (west side of the site). Based on the site plan, fifty-seven (57) parking spaces are provided for the site redevelopment based on the proposed use. Therefore, based on the current City of Spartanburg Zoning Ordinance Section 505 Tree Protection and Landscaping Requirements 505.62 Parking Lot Landscaping Requirements (B), **One (1) Tree Island** is required for the last row of the parking spaces (west side of the site). The requested appeal is to challenge the Parking Lot Landscaping requirements based on staff interpretation of tree islands needed to adhere to.

The Landowner /Applicant is seeking an appeal to Parking Lot Landscaping Requirements, specifically to the one tree island installation needed for the last row of parking spaces (west side of the site) based on the number of parking spaces provided. The owner states that the current parking layout has taken advantage of sites' horizontal limitation to provide the maximum number of parking spaces as required. Installing one (1) tree island per twelve (12) single row with each island having one (1) large canopy tree will reduce the number of parking spaces provided on the site as required and needed, which may bring concerns such as traffic flow, street access, and services needs of the potential tenants.

Such an appeal shall be submitted no later than ten (10) days after the start of construction or within thirty (30) days after a decision by a board, commission, or bureau, or a decision of the Zoning Administrator, whichever is lesser. Such notice of an appeal, special exception, or variance shall be accompanied by a check **in the amount of \$50 payable** to the City of Spartanburg to partially defray the cost of giving public notice of such hearing, none of which shall be refundable. The officer from whom the appeal is taken shall forthwith transmit to the Board all papers constituting the record upon which action appealed was taken from.

An appeal stays all legal proceedings in furtherance of the action appeal from, unless the officer from whom the appeal is taken certifies to the Board, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by this Board or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown. To hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance.

Analysis

Zoning Ordinance Consistency

The project site has a zoning designation of B-3 – General Business District. The zoning designation of the sites allows for mixed-use development such as a restaurant. The applicability of parking lot landscaping requirements shall apply to all surface parking lots containing more than four (4) parking spaces. In addition, these parking lot landscaping requirements shall apply to outdoor areas that store that have storage areas of 3,000 square foot or more. Also, the purpose of requiring parking lot landscaping is not only trying to beautify the parking lot, but also function to provide natural drainage and filter stormwater.

The Board must utilize **Section 603.3(A)(2)** and determine if the proposal meets all the criterion for approval. To hear and decide Appeal from the requirements of the Zoning Ordinance when strict application of the provisions of the Ordinance would result in unnecessary hardship. An appeal may be granted in an individual case of unnecessary hardship if the Board makes and explains in writing the following findings:

- a. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
- b. These conditions do not generally apply to other properties in the vicinity;
- c. Because of these conditions, the application of the Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- d. The authorization of a Variance will not be of substantial detriment to the adjacent property or to the public good, and the character of the district will not be harmed by the granting of the Variance.
- e. In granting a Variance, the Board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the Board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare.

Findings

1. ***There are extraordinary and exceptional conditions pertaining to the particular piece of property –***
Currently, the site is surrounded by three public roads, E. Henry St., S. Pine St., and Ribault St., street parking is not an ideal option for the site if the number of parking spaces cannot meet the requirements on site based on the current Zoning Ordinance. Installing one tree island in the last row of the parking spaces will reduce the number of parking spaces on the site as required.

2. ***These conditions do not generally apply to other properties in the vicinity –***
Property across from the E. Henry St., Sugar-n-Spice was a non-conforming development that was in the City since 1940s. YMCA (Young Mens Christian Association of Spartanburg) on the right side of the project site has tree islands on their parking lot. Properties across from S. Pine St. Ward Law Firm and Regions Bank all have tree islands on their front parking lots.

3. ***Because of these conditions, the application of the Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and –***

There is no indication that a strict application of the ordinance would prevent the use of the property. The proposed use of the property is still permitted-by-right based on the current City Zoning Ordinance. The parking requirement can still be in compliance with the current zoning ordinance based on the square footage of the uses proposed by the owner. Furthermore, installing bike racks can reduce the parking by up to 20% if the required number of parking spaces cannot be met for the site development.

Proposed Retail – around 9,225 SF

Proposed Restaurant with 75 Seats – around 3,000 SF

4. ***The authorization of a Variance will not be of substantial detriment to the adjacent property or to the public good, and the character of the district will not be harmed by the granting of the Variance–***

Approval of the appeal would not be of substantial detriment to the adjacent properties and would not influence the property values, public health, safety, or general welfare of the public. However, by allowing the site to not install one tree island may pose challenges to other site's development in terms of meeting the parking lot landscaping requirements due to concerns about reducing parking spaces required based on the proposed use can be accomplished by installing bike racks on the site, which would allow up to 20% parking reduction.

5. ***In granting a Variance, the Board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the Board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare–***

At this time, staff doesn't believe that any conditions could be applicable to this situation.

Applicant:

Newburg Investments, Raj Patel. Was not in attendance.

Public Comments:

No public comments.

Discussion:

Going over the landscaping and layout plan. The requirements and parking lot size for the multi-use.

A motion was made by Mr. Murdoch, seconded Mr. Cohen the request for the appeal was denied to the parking lot landscape requirements with a vote of 6-0.

The meeting was adjourned at 7:33 PM.


Darren Matz, Chairman