

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT

December 18, 2014

The Greenville Board of Adjustment met on the above date at 7:00 PM in the City Council Chamber of City Hall.

Scott Shook, Chairman *

Charles Ewen X

Claye Frank *

Bill Fleming *

Justin Mullarkey *

Thomas Taft, Jr. X

Kevin Faison *

Bill Johnson *

Michael Overton X

Jeremy Spengeman *

The members present are denoted by an “*” and those absent are denoted by an “X”.

VOTING MEMBERS: Shook, Fleming, Frank, Mullarkey, Faison, Johnson, Spengeman

OTHERS PRESENT: Mr. Bill Little, Assistant City Attorney
Mr. Michael Dail, Planner
Mr. Thomas Weitnauer, Chief Planner
Mr. Tim Corley, Civil Engineer II
Ms. Amy Nunez, Secretary
Mr. Jonathan Edwards, Communications Technician

MINUTES

Mr. Frank made a motion to approve the October 22, 2014 minutes as presented, Mr. Mullarkey seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY CRISTOPER VALENZUELA-APPROVED

The applicant, Cristoper Valenzuela, desires a special use permit to operate an automotive major repair facility pursuant to Appendix A, Use (9)a. of the Greenville City Code. The proposed use is located at 2210 Ione Street. The property is further identified as being tax parcel number 19918.

Mr. Dail delineated the area on the map. He stated that the property is located in the center portion of the City at the corner of Manhattan Avenue and Dickinson Avenue. It is located east of the major thoroughfare of S. Memorial Drive.

Zoning of Property: CDF (Downtown Commercial Fringe)

Surrounding Zoning:

North: CDF (Downtown Commercial Fringe)

South: CDF (Downtown Commercial Fringe)

East: CDF (Downtown Commercial Fringe)

West: CDF (Downtown Commercial Fringe)

Surrounding Development:

North: US Lawns

South: Single Family Residence, Moore's Body Shop
East: Booth Works Auto Detail, Mr. Tire
West: Sigmon Auto Market

Description of Property:

The subject property is 0.37 acres in size, has 150 feet of frontage along Ione Street and 200 feet of frontage along May Street and contains a 4,452 square foot commercial building.

Comprehensive Plan:

The property is located within Vision Area "G" as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends commercial development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on December 4, 2014. Notice of the public hearing was published in the Daily Reflector on December 8, 2014 and December 15, 2014.

Related Zoning Ordinance Regulations:

Definition:

Repair; major. The following activities shall be considered major repair:

- (1) Engine overhaul or dismantling of subparts;
- (2) Body or frame repair;
- (3) Windshield or glass replacement;
- (4) Transmission, starter, alternator or other subpart rework service;
- (5) Welding or metal cutting; and
- (6) Any other repair other than minor repair.

Repair; minor. The following activities shall be considered minor repair:

- (1) Engine tune-up; changing of plugs, filters, oil, lubricants, belts, adjustments;
- (2) Change and rotate tires;
- (3) Brake services;
- (4) Electrical system services;
- (5) Radiator services;
- (6) Muffler services; and
- (7) Battery service.

Specific Criteria:

- (1) All wrecked or damaged motor vehicles and parts shall be screened so as not to be visible from adjoining property lines and street right-of-way.
- (2) All vehicles on the premises for repair shall be stored at the rear of the principal structure.
- (3) No vehicle shall be stored on the premises for more than 15 days.
- (4) There shall be no exterior storage of items other than vehicles.
- (5) Sale of vehicles shall be in accordance with Article B, section 9-4-22, definition of automobile, truck, recreational vehicle, motorcycle and boat sales, contained therein.
- (6) Rental or utility trailers, cars and trucks shall be permitted as accessory uses, provided that all units in excess of four shall be screened from adjoining street right-of-way and property lines in accordance

- with Bufferyard C or with a bufferyard of greater intensity as required by the bufferyard regulations.
- (7) Outdoor displays of products such as tires, oil, wiper blades or other similar products shall be permitted provided they are within ten feet of the principal structure and outside required bufferyards. Signage displayed in conjunction with such display shall be in accordance with the sign regulations.
 - (8) All services except fuel sales shall be performed within a completely enclosed building.

Other Comments:

The proposed project must meet all related NC State fire and building codes prior to occupancy.

Staff Recommendation:

Staff is of the opinion that the applicant can meet the criteria for approval if the Board so finds.

Chairman Shook stated that Mr. Fleming had arrived and that all 7 present members would vote.

Chairman Shook opened the public hearing.

Mr. Jose Perez spoke in favor of the request on behalf of the applicant. He stated the business will be major auto repair. The work would consist of simple brake jobs to complete engine repair jobs. At the moment, they will not be replacing tires.

Chairman Shook asked where did he receive training and if he was certified.

Mr. Perez stated yes by Barbour Honda, now Hendricks Honda.

Mr. Mullarkey asked how many employees they will have.

Mr. Perez stated himself and the applicant, Mr. Valenzuela, for now since they don't have much business.

No one spoke in opposition to the request.

Chairman Shook asked for City Staff Recommendation.

Mr. Dail stated City Staff has no objection.

Chairman Shook closed the public hearing and opened for board discussion.

Mr. Mullarkey stated that the request fits well in with the surrounding auto related businesses.

Chairman Shook read the required findings criteria. No objections.

Mr. Mullarkey made a motion to adopt the finding of facts with the stated conditions, Mr. Frank seconded and the motion passed unanimously.

Mr. Johnson made a motion to approve the petition with the stated conditions, Mr. Faison seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A VARIANCE BY JONATHAN AND BRANDY CLEATON-APPROVED

The applicants, Jonathan and Brandy Cleaton, desire a variance from the right-of-way setback requirement in the R9S (Residential Single Family) zoning district, Section 9-4-94(C)(3) of the Greenville City Code. The proposed use is located at 3401 Rounding Bend Drive. The property is further identified as being tax parcel number 82025.

Chairman Shook stated that criteria is different for a variance and that there is a 4/5th majority voting rule.

Attorney Little stated it is a 4/5th majority with a full board complement of 7 members present. The applicant could sustain 1 negative vote and still have their request approved.

Mr. Dail delineated the area on the map. He stated that the property is located in the southwestern portion of the City in the Langston West Subdivision. Setbacks at the rear of property for accessory structures are normally 5 feet. This property is a corner lot and therefore City Code requires two 25 foot setbacks.

Reason for Request:

The applicant wishes to be granted a variance from the 25 foot right-of-way setback required along Birch Hollow Drive because the applicant's accessory structure was constructed 10.9 feet into this setback.

A variance reducing the setback to 14.1 feet is required to make the accessory structure conforming and is necessary to prevent the applicant from sustaining significant expenses and loss in removing the accessory structure located in the setback.

Zoning of Property: R9S (Residential Single Family)

Surrounding Zoning:

- North: R9S (Residential Single Family)
- South: R9S (Residential Single Family)
- East: R9S (Residential Single Family)
- West: R9S (Residential Single Family)

Surrounding Development:

- North: Single Family Residence
- South: Single Family Residence
- East: Single Family Residence
- West: Single Family Residence

Description of Property:

The subject property is located in Langston West Subdivision. The property is a 17,200 square foot corner lot with frontage along Rounding Bend Drive and Birch Hollow Drive.

Comprehensive Plan:

The property is located within Vision Area "E" as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends medium density residential development for the subject property.

Chairman Shook asked if the fence was on the property line.

Mr. Dail stated it appears from the survey that the fence is very close or right on the property line.

Notice:

Notice was mailed to the adjoining property owners on December 4, 2014. Notice of the public hearing was published in the Daily Reflector on December 8, 2014 and December 15, 2014.

Variance Criteria:

The Board must find in favor of the applicant on each criteria in order to grant the requested variance.

- (1) Reasonable Return – The applicant could not comply with the literal terms of the ordinance and still secure a reasonable return or make reasonable use of the property.
- (2) Unique Circumstances – The hardship of which the applicant complains results from unique circumstances related to the applicants land.
- (3) Hardship by the Applicants Action – The hardship is not the result of the applicant’s own action.
- (4) General Purpose of the Ordinance – If granted, the variance would be in harmony with the general purpose and intent of the ordinance and would preserve its spirit.
- (5) Public Safety and Welfare – The granting of the variance must secure the public safety and welfare and does substantial justice.

Staff Recommendation:

Planning Staff does not object to the requested variance upon proper findings of the Board.

Chairman Shook asked if it was built on a slab.

Mr. Dail stated yes, a concrete slab.

Mr. Weitnauer, Chief Planner, presented the following Staff Comments. He stated the information on the permit application was not clear and that changes are being made to make it clear.

Staff Comments:

Pertinent facts regarding the application:

The homeowner’s contractor started construction on the subject accessory structure (storage shed) without a permit. A stop work order was issued by the Building Inspections Division. At that point, all that had been constructed was a poured slab for the 14 X 16 foot shed. The homeowner applied for a permit. The permit was issued and construction resumed.

The permit did not include specific instructions or evaluation concerning corner lot setbacks in this subdivision. Planning staff wrote the following comments on the application: “Structure shall be located in the rear yard only, shall be located 10’ from the principle structure and 5’ from any side or rear property lines, shall not exceed 15’ in height.”

The applicant’s house is located on a corner lot. Corner lots in the subject site’s zoning district are required to observe a 25 foot setback from right-of -ways. However, as noted above, nothing on the

permit indicated a 25 foot setback. The shed is located approximately 14 foot from the property line. As a result of miscommunications between the parties involved work was resumed but the permitted structure did not comply with the 25 foot setback. Another stop work order was issued and the applicant was advised a variance was required before the structure could be completed.

Though the initial work was performed without a permit, the resumed work was performed in compliance with the permit; however, due to no fault of the owner, the permit instructions did not clearly denote the setback requirements.

Mr. Weitnauer stated changes on the application and the requirement for plot plans will begin in January. He stated the hardship was not a result of the applicant.

Mr. Faison asked who noticed the violation.

Mr. Weitnauer stated it was a building inspector.

Mr. Spengeman asked if someone inspected the slab after the permit was issued and before work resumed.

Mr. Weitnauer stated he did not know.

Mr. Faison asked if they became in compliance after the first stop work order.

Mr. Weitnauer stated the stop work order was issued regardless of the setback information because there was no permit. Once they got the permit, then work resumed.

Mr. Mullarkey asked if the permit issued stated a 5 foot setback because there was no indication it was a corner lot.

Mr. Weitnauer stated yes.

Chairman Shook opened the public hearing.

Mr. Jonathan Cleaton and Ms. Brandy Cleaton, the applicants and homeowners, spoke in favor of the request. He stated he hired a contractor to build the shed. The contractor did not apply for a permit. As the homeowner, he was unaware that a permit was needed. After the slab was placed, an inspector came by and asked for a permit. Since there was not a permit, a stop work order was placed. He stated he then applied for a permit and shortly after picked up an approved permit. He stated he called the City, stated he had a corner lot, and specifically asked how far he can be off of his property line. It was verbally stated to him that the setbacks were 5 feet from the back and rear and maximum 15 foot in height. He asked for that information in written documentation and was told it was written on the permit. Construction resumed. Another stop work appeared. The fence is about 15 inches from the building. The building corner closest to the side property line is 10'9". The property line is just inside the walkway. He stated he reached out to neighbors to speak in favor.

Mr. Johnson asked if trees were removed to build the shed.

Mr. Cleaton stated no.

Mr. Johnson asked if the shed needs to be moved, would trees need to be removed.

Mr. Cleaton stated yes. The 14 x16 4inch concrete slab with 12 inch footers would remain.

Mr. Mullarkey asked if the survey with the shed is current.

Mr. Cleaton stated yes.

Mr. Matthew Staskelunas and Rebecca Staskelunas spoke in favor of the request. She stated their property is caddy-corner to the applicants. She is in favor of the shed. It is not an eyesore; it's within the property line inside of the fence. He stated the fence is a 6 foot privacy fence. When it is finished it will look just like the house and you don't even notice it.

No one spoke in opposition of the request.

Chairman Shook asked for City Staff Recommendation.

Mr. Dail stated City Staff has no objection upon proper finding by the Board.

Chairman Shook closed the public hearing and opened for board discussion.

Chairman Shook stated that Mr. Weitnauer testified that this was no fault of the homeowner. It appears the homeowners have done what they should have, hired a contractor who in turn did not get a building permit.

Chairman Shook read the required findings criteria. No objections.

Mr. Faison made a motion to adopt the finding of facts with the stated conditions, Mr. Frank seconded and the motion passed unanimously.

Mr. Mullarkey made a motion to approve the petition with the stated conditions, Mr. Frank seconded and the motion passed unanimously.

With no further business, Mr. Fleming made a motion to adjourn, Mr. Shook seconded, and it passed unanimously. Meeting adjourned at 7:31 p.m.

Respectfully Submitted

Michael R. Dail, II
Planner