

Town of Lexington
**Board of Zoning Appeals
Minutes**

June 7, 2018

MEMBERS PRESENT: Chair Mary Watts and Board Members Troy Fite, Lisa Gibson, and Revé Richardson.

Others in attendance were: Director of Planning, Building and Technology John Hanson, Municipal Attorney Brad Cunningham, Digital Media Coordinator Darrell Pritchard, and Municipal Clerk Becky Hildebrand.

Three (3) citizens were present and no one from the news media was present.

Chair Watts called the meeting to order at 5:30 p.m. The meeting was held in the Council Chambers. Chair Watts read an opening statement to explain the procedures of a Board of Zoning Appeals meeting.

All four points must be met and should be read as part of the official record. The Board of Zoning Appeals is a legal board operating under the Comprehensive Planning Act of the State of South Carolina; they make decisions within the parameters of State law and may hear and decide appeals for a variance from the requirements of the ordinance when strict application of the provision of the ordinance would result in unnecessary hardship and a variance may be granted in an individual case of unnecessary hardship if the Board makes and explains in writing all their findings: (1) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography. (2) These conditions do not generally apply to other property in the vicinity. (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. (4) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance. State law further prohibits the board from granting a variance simply because the property could be used more profitably if the variance were granted. The board is not concerned with the use of the property because that is determined by others. If the applicant believes the board made an incorrect decision, they may appeal the decision through Circuit Court within certain time limits provided by State law. Those testifying at the meeting are asked to sign-in.

ACTION ITEMS

1. **Variance 2018-3 (V): Variance from the Buffer and Setback requirements at 456 South Church Street (Woodland Villas):** Mr. David Cook requested a variance from the buffer and setback requirements for an apartment complex located

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at 456 South Church Street. The property currently has three buildings with a total of twelve (12) units. Mr. Cook would like to add five additional buildings with twenty (20) more units. Apartment facilities are required to have a 100 foot buffer and 150 foot setback from side property lines. Neither the proposed nor the current buildings on this site meet this standard. This type of situation is referred to in the Zoning Ordinance as an area nonconformity. Area nonconformities can only be expanded if the expansion is in compliance with the Zoning Ordinance. Mr. Cook would need a variance reducing the side yard setbacks to 58 feet for this expansion to be compliant with the Zoning Ordinance.

Chair Watts called for comments from the applicant and/or those *in favor* of the variance.

Mr. David Cook, 2271 Hollingshed Road, Irmo, SC, owner of 456 South Church Street a/k/a Woodland Villas, brought a site plan for the Board to review along with photographs of how the property looks now. He described the placement of the existing buildings and the placement of the proposed new buildings. He stated that the site plan shows the existing three buildings and the proposed five buildings. He added that the new buildings would require a setback variance to 58 feet. Mr. Cook stated that when the five buildings were constructed in 1986 the plan called for two additional buildings. He added that he requested funds with his loan to repave the parking lot and drive way for approximately \$45,000 because the current one is pretty bad. Mr. Cook had met with the Town's Stormwater Management and came up with a plan which includes a detention pond since the property has a natural slope. He thought the project would benefit the entire neighborhood with new parking, new landscape, overall improvements, plus it would add much needed housing to the Lexington community. Mr. Cook stated that the only neighbor to the property, Mr. Hutto, was present if the Board had any questions for him.

Board Member Gibson asked if the new units were the same size as the original units. Mr. Cook stated that he had the blue prints and they would be identical to the original units. He added that they will be two bedrooms, two and one-half bath units and will be 1,200 square feet. Chair Watts confirmed that the units are like duplexes and there is currently no screening, just trees. Mr. Cook stated that the back sewer easement was recently bush hogged by the Town and on Mr. Hutto's side there are trees and across the street is another apartment complex. Board Member Gibson confirmed that the construction entrance would be at the main driveway which is 15 feet wide. Mr. Cook stated that he wanted to delay paving the parking lot until after construction. He confirmed that a cul-de-sac already exists but it needed to be resurfaced.

Mr. Hutto, 457 South Church Street, was present but did not wish to speak. Board Member Fite confirmed that Mr. Hutto had no objection to the project. Mr. Hanson confirmed that 10 other neighbors received notice letters twice regarding the variance request.

Chair Watts called for comments from those *opposed to* the variance. There were none.

Chair Watts called for the Board's discussion. Board Member Fite asked if the variance was approved, how would it affect the nonconforming area that is already in place. Mr. Hanson responded that if approved, and assuming they approved the side yard setback to 58 feet, it would eliminate the nonconformity which would apply to all the buildings. He stated that a buffer is an area of inactivity, but you cannot put a parking lot in a buffer. Chair Watts confirmed that the property on Roberts Street is undeveloped and owned by someone else. Mr. Hanson stated that the Church Street side may still be nonconforming, but this variance request does not increase that area. He added that the new buildings are in the back. He stated that with respect to the parking lot, it would be required anyway with the expansion probably to meet the fire code. He added that they had not discussed it yet, because the variance had to be done first. Board Member Gibson confirmed that a motion did not have to include a contingency regarding the parking lot because it was part of what would be required under zoning regulations. Mr. Hanson stated that if the Board were to approve the variance it would need to be contingent on only this project. He added if Mr. Cook ever sold the property, the variance would apply only to the site plan that the Board reviewed.

There being no further questions or discussion, Chair Watts called for a motion.

A motion was made by Board Member Fite and seconded by Board Member Richardson to approve Variance 2018-3 to reduce the side yard setback to 58 feet on the five new buildings and the 3 existing buildings only in that the initial nonconformity status creates an extraordinary conditions; these conditions to not apply to other properties in the area due to the initial 1980 layout; without the variance use of the property would prohibit the project as stated; and based on letters to the neighbors this will not generally affect other properties in the area. Chair Watts called for a roll call vote. Roll call vote results: Fite – Yes to the motion. Watts - Yes to the motion. Richardson – Yes to the motion. Gibson – Yes to the motion. The motion to approve Variance #2018-3 as stated was unanimously carried.

2. **Variance 2018-4(V): Variance from the Sign Ordinance at 5560 Sunset Boulevard (Chick-Fil-A):** Mr. Brandon Guest with Clayton Signs requested a variance from the Sign Ordinance to install additional signage on the new Chick-Fil-A building that will be constructed at 5560 Sunset Boulevard. The Town approved plans to demolish the current Chick-Fil-A located on this property and construct a new building. According to the variance application that was submitted to this Board in January for a setback variance, the new building is being constructed to operate more efficiently and better handle the volume of customers. Mr. Guest requested a variance to add two more wall signs to the new building. A variance would be required for two additional signs and approximately 11 square feet of signage.

Mr. Hanson summarized by stating that Chick-Fil-A at 5560 Sunset Boulevard has an existing building with two signs which comply with the current Sign Ordinance.

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He added that they have a high volume of business and are demolishing that building to create a new building that will more efficiently handle the volume of business and are asking for additional signage to move the overwhelming volume of business that is requiring them to demolish the building.

Board Member Richardson asked if they would have the same number of signs on the new building as on the building that they are going to tear down. Mr. Hanson stated that that are allowed two signs and they are asking for four signs on the new building. Board Member Fite asked how the monument sign factored into the count of signage. Mr. Hanson responded that it would be in the same location. He added that they can have two wall signs or a wall sign and a monument sign. Mr. Hanson distributed photographs of the existing building and an artist rendering of the new building as submitted to the Board of Architectural Review to approve architecture of the new building. He added that they are asking for three wall signs and one monument sign. Chair Watts directed the Board to their package which included a site plan which indicated the placement of one monument sign and three channel letter signs.

Chair Watts called for comments from the applicant and/or those *in favor* of the variance.

Mr. Brandon Guest, Clayton Signs, distributed another copy of the site plan indicating the placement of signage and additional artist renderings of the signs. He thanked Mr. Hanson for letting him know about the previous variance, but since they were not sign related he was not aware of it until two weeks ago.

Board Member Fite asked why Chick-Fil-A needed two additional signs. Mr. Guest responded that the elevation of the road is higher than the lot and it was part of the previous variances to get parking spaces reduced and provide a deceleration lane. He added that some screening was required in that variance that will further block the view of the building from Sunset Boulevard. Board Member Fite asked if Chick-Fil-A had to remove mature trees to install the deceleration lane so smaller trees would be planted that will take 20 years to mature. Mr. Hanson responded that was correct. Mr. Hanson stated that the screening being referred to is a knee wall to block the double drive-thru that is being installed to handle the additional volume. He added that the Architectural Review Board negotiated with Chick-Fil-A because typically the Town does not allow a drive-thru on the front of the property. Mr. Hanson stated that part of the negotiation to allow a drive-thru on the front of the building was for Chick-Fil-A to install a knee wall to cover the canopy that would be installed where the order takers will be underneath the canopy so they can move the volume of cars. He added that during the negotiations no mention was made about additional signage and signage seemed to be okay with them at the time. Mr. Hanson stated in addition to that, the deceleration lane being installed by Chick-Fil-A reduces the buffer between the road and the building, therefore he had a problem with the line of sight issue that was brought up. Board Member Fite confirmed that the monument sign is the same as the current sign which you can see from Saxe Gotha Presbyterian Church. Chair Watts confirmed that the new building will be further back on the property. Mr. Hanson clarified that the building will be placed

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further to the right if you are looking at the front of the property and you could argue that it would be closer to the road. Chair Watts confirmed that the knee wall would be similar to the Chick-Fil-A located at Ginny Lane which was installed to lessen the impact of the drive-thru. The Board Members reviewed the plan from Clayton Signs. Board Member Fite stated that he did not see any reason for the sign facing Walmart. He stated that he would argue that the Chick-Fil-A logo was one of the top ten most recognizable logos in the country and the monument alone can be seen from 300 feet away at two intersections. Board Member Fite stated that Mr. Tucker, the owner, had done very well in a building that has had large trees in front for over twenty years and will soon have smaller trees for the next 15 years; plus there is a monument sign out front; and an entrance sign on the building, all of which should suffice. He did not see a need for a secondary sign above the drive-through or a sign on the Walmart side and parking lot. Board Member Richardson verified the location of the proposed sign on the Walmart side of the building. Chair Watts stated that if the Board granted a variance it would be for the number of signs, not the location of the signs.

Mr. Guest stated that they would go with whichever elevation the Board recommended. He added that until he started the project, he thought the road beside Chick-Fil-A was a road since it had a light and several lanes. He stated that Aspen Dental and AT&T are in the same building and they each have two walls signs and each company is on the monument sign out front and there is nothing even close to a road at that location. Board Member Fite explained that Aspen Dental and AT&T is considered a shopping center which has different requirements. He added that for the record, Town Staff does an amazing job of handling sign issues, but when the request is outside the ordinances it comes before this Board. Board Member Fite stated that a standalone building is different from a shopping center or a multi-use building and each has a set of rules. Mr. Hanson stated that the Board does not set precedence with decisions since they are made on a case by case basis.

Chair Watts asked if the Board had any further questions. Board Member Richardson confirmed that by the ordinance Chick-Fil-A would be allowed two signs total whether it was one monument and one wall sign or two wall signs. Mr. Hanson confirmed that Chick-Fil-A would be allowed to use the same amount of signage that they currently have at this location in any configuration that they decide. Board Member Fite confirmed that if the Board denied the variance, the applicant would not have to come back before the Board as long as they were in compliance with the ordinance.

Chair Watts called for comments from those *opposed to* the variance. There were none.

Chair Watts called for the Board's discussion. She added that she thought the Board had thoroughly discussed the item and she did not see any mitigating facts to make an exception for any more than two signs at this time. Chair Watts called for a motion. Board Member Fite made a motion to deny Variance #2018-4. There being no second to the motion, the motion failed. Board Member Richardson made a motion to allow Chick-Fil-A a third sign,

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not four as they requested. Board Member Gibson seconded the motion as stated. Mr. Hanson reminded Board Member Richardson that she would need to state her findings for the four required points for exceptional and extraordinary conditions. Board Member Richardson stated that she made a motion to provide a third sign in addition to the two signs to provide additional visibility to their business due to the current volume of business at this site which is an exceptional and extraordinary condition for this particular piece of property. She stated that these conditions do not apply to all of the properties located on Highway 378; and because of these conditions, the applicant at this particular piece of property would effectively prohibit and unreasonably restrict the utilization of the property and it would not apply to all other businesses along the corridor. Board Member Gibson seconded the amended motion. Chair Watts called for a roll call vote. Roll call vote results: Fite – No to the motion. Watts - No to the motion. Richardson – Yes to the motion. Gibson – Yes to the motion. The motion to approve Variance #2018-4(V) and allow a third sign failed due to a lack of a majority vote.

Mr. Hanson advised the Board that their options were to continue to discuss the item or adjourn the meeting. The Board stated that they had no further discussion. Municipal Attorney Cunningham confirmed that both motions failed due to a lack of a majority vote.

APPROVAL OF MINUTES

A motion was made by Board Member Fite and seconded by Board Member Richardson to approve the Board of Zoning Minutes from the January 4, 2018 meeting as submitted. The motion was unanimously carried.

OTHER BUSINESS

Mr. Hanson stated that there would not be a Board of Zoning meeting in July.

ADJOURNMENT: There being no further comments or questions, a motion was made by Chair Watts and seconded by Board Member Fite to adjourn at 6:05 p.m. The motion was unanimously carried.

Respectfully submitted by:

Becky Hildebrand, CMC
Municipal Clerk

APPROVED:

Mary Watts
Chair

FOIA COMPLIANCE – Public notification of this meeting was published, posted and mailed in compliance with the Freedom of Information Act and the Town of Lexington requirements.