

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

July 21, 2022

The Board of Zoning Appeals held their regular meeting on July 21, 2022 at 5:30 p.m. in the Council Chambers located in Town Hall, 111 Maiden Lane, Lexington, S.C. Those present for the meeting were Chair Mary Watts, Vice-Chair Troy Fite, Board Members Justin Brown, Ronald Fisher and Reve' Richardson.

Staff members present were: Director of Planning, Building and Technology John Hanson, Assistant Zoning Administrator Jessica Lybrand, Digital Media Coordinator Michael Tolbert and Municipal Clerk Becky Hildebrand.

Two (2) citizens were present and no one from the news media was present.

Chair Watts called the meeting to order at 5:30 p.m. and read an opening statement to explain the rules of procedure for a Board of Zoning Appeals meeting as follows:

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 2022-6 (V): Variance from the Parking Requirements at the Home Depot located at 5600 Sunset Boulevard:** Director Hanson presented the request

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and stated Mr. Scott Mommer requested a variance from the parking requirements for the Home Depot located at 5600 Sunset Boulevard. Mr. Hanson reminded the Board that they agreed during their June meeting to hear this item in July in that the applicant was delayed at the airport and could not attend the June meeting. The store intends to add an equipment rental service with equipment storage in the parking lot. The construction permits needed to undertake this activity were placed on hold because currently the location does not meet the retail parking requirements even before the additional service is included and additional spaces are used for equipment storage. The Zoning Ordinance requires the store to have 493 parking spaces which is one space for every 300 square feet of sales floor area. There are currently 394 spaces provided. Mr. Hanson stated that there is some disagreement about his next statement, but this does not include reductions for outdoor displays of various items such as storage sheds, trailers or garden supplies that routinely occur in the store parking lot. Mr. Hanson added that he could provide more information on it, however Staff's concern is calculating the parking spaces based on the sales floor area and moving part of the sales floor area out into the parking lot which increases the sales floor area and reduces the amount of parking spaces available. (Copies attached.)

Chair Watts called on the applicant.

Mr. Scott Mommer, Site Developer Coordinator for Home Depot, stated that they had been working with Staff for several months on this project. He clarified that they were originally approved for 100 less parking spaces than the 493 required by code. He added that they did a parking analysis compared to similar stores and they use 222 parking spaces. Mr. Mommer stated that from a corporate standpoint, 350 stalls (parking spaces) is the minimum required, even in a high volume store, so they are still over the corporate requirement for retail. He suggested that anyone can go to Google Earth around 12:00 p.m. and see that they are never at capacity. He added that they have two peak times: 6:00 a.m. to 9:00 a.m. and 2:00 p.m. to 4:00 p.m. which is driven by contractors who come to the store before they start their job and late afternoon to pick up materials for the next day.

Mr. Mommer stated that they are in agreement with Staff on this project and parking and they requested a variance similar to the original project with regard to the city code. He added that over the years, and particularly most recently, parking demands have changed and 325 is the International Traffic Engineering Code requirement. Mr. Mommer stated that between their analysis and the ITE, they are below what is needed based on the experts and the actual operator of the store. Mr. Mommer asked the Board for their support on this project because moving forward is about a tool rental center that will increase sales to the store yet provide a use for the community which is needed. He asked the Board if they had any questions.

Vice-Chair Fite wished to confirm that the original building was approved for less parking spaces than what it was zoned for. Mr. Mommer responded yes that is correct, it required 493 and they have 394 when the store was built. Vice-Chair Fite asked if Staff would have approved that big of a difference today. Chair Watts asked when was the store built. Mr. Hanson responded that he was not sure when the store

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was built. A citizen in the audience responded that it was built in 2006. Mr. Hanson continued and stated that he was not sure when the property was annexed, but the Zoning Ordinance changed in 2008 and again since then, therefore it is considered a legal nonconformity right now. Mr. Mommer stated that Home Depot did not intentionally build it with less parking stalls than required. Vice-Chair Fite stated that he intended no disrespect to the applicant or the information he provided, he just needed to get the facts straight in order to make a decision. Mr. Hanson confirmed that Staff had no reason to think that it was not built to compliance at that particular time. Chair Watts confirmed that at this present time it is nonconforming.

Vice-Chair Fite asked that as the store sits today with the garden center taking over some parking spaces, outside storage sheds and trailers being stored in parking spaces, did Staff assess that the store is in compliance or not in compliance or has that been done. Mr. Hanson responded that it has not been done, but based on the documents presented, 394 parking spaces based on the store's square footage it is not in compliance regardless of what is in the parking lot because 493 parking spaces are required before you take out anything else.

Chair Watts stated that some of the rental equipment is very large. Mr. Mommer responded, no, they are very small units that go behind a pick-up truck and it is not like a Bobcat that is huge or what you would see at a construction site. He added that it is little tiny equipment and smaller than a car. Board Member Richardson stated that some of the equipment shown in the documents provided looked larger than a car. Vice-Chair Fite agreed and stated that from his experience in construction he saw skid steers, mini excavators and light towers. He added that they are not earth movers but they are not small equipment such as lawn mowers or pull behind items and these items probably have to be trailered. Mr. Mommer responded that most of the items are on small trailers or have independent wheels.

Vice-Chair Fite referred to the plan that was presented and asked if this is the standard square footage at other Home Depot stores for the storage of this equipment or does it vary from location to location based on how many units they keep. Mr. Mommer confirmed that Vice-Chair Fite was referring to equipment rental. He stated that this is their prototype equipment stalls and some stores across the country that are in high demand may have more equipment if they were approved for it. He added that one store had 35 stalls (parking spaces) used for equipment rental but they are in a new robust area. Mr. Mommer stated that one thing about this plan is they have developed an OSRP (Operations Restriction Plaque), not required by the city, which is similar to the site plan and color coded with code restrictions and requirements and once construction is complete they post the plaque on the store manager's wall and server. He added that the purpose is if there are any code violations the legal department gets the store to fix it. They document it so the store knows what they can and cannot do with no misunderstandings. Mr. Mommer stated that over the years store managers change so when a new manager comes in the plaque is there and they know they have to abide by it and if they do violate it the legal department will tell them that they have to fix it now.

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Vice-Chair Fite stated that he is very familiar with this Home Depot as his money gets left there regularly and as he looked at the plan drawing it appeared that a shed will take up six (6) parking spaces. His concern is if the Board approves this request, what guarantee does the Town have that the garden center won't cheat over three more spaces or the shed needs more space. He asked what will stop the growth if mini excavators do good and you decide to bring two more in when you are only showing 10 spaces for those stalls. Vice-Chair Fite stated that he had to figure out how the Town can control this without it encroaching forward. Mr. Mommer responded and explained that the Operations Restriction Plaque is there and they have to abide by it. He added if a Code Enforcer came by and saw that they are creeping into unknown areas, the store manager would receive a code violation which they would give to the legal department who would look at it and tell the store manager to get rid of it because they can't do that. Mr. Mommer stated that the store manager who is there now is going to know exactly what she can and can't do and when a new manager comes along they will have to abide by it too which is always a concern. He added that the beauty of this, as shown on page 3 of the document, is they stripe and post where the store can put equipment or sheds and delineated on the asphalt because they learned about three years ago that they need to spend the money and put the paint on the ground like a line in the sand to show where it stops.

Board Member Fisher asked how many trucks did they plan to keep on the lot at any one time. He added that he drove by the site today and there were five trucks and one trailer which were taking up 12 parking spaces. Mr. Mommer responded that it is designated to have 12 stalls striped off for six trucks. He directed the Board to page 3 which shows how they stripe the area so it is known where to put the trucks and so hopefully customers will not park there. Chair Watts confirmed that these six trucks are in addition to the equipment. Vice-Chair Fite confirmed with Mr. Mommer that these are for the Penske trucks or whatever brand they may use in the future.

Board Member Brown asked if the TRC rental store as shown in the plans is a rental store that already exists. Mr. Mommer responded that the store was built with the idea of putting in a tool rental center but it was never built so the shell of the building actually has the set up in there and lettering. He added that it will be converted to a tool rental center for all point of sale transactions for equipment rentals which will only be processed through the TRC portion of the building and not at the regular cashier. Mr. Mommer stated that is why they installed the TRC portion at that end of the building. Board Member Brown asked if it was the gated side because he has driven down that side many times and it looks like a lot of space. Vice-Chair Fite explained the two different locations off Highway 6 which appears to be just a door from the outside but when you go inside there is a contractor's desk. Board Member Brown wished to confirm that no existing business is run out of that area now and it is just a shell. Mr. Mommer responded that is correct and that is the area that they are converting for the rentals. Chair Watts confirmed with Mr. Mommer that there was not enough room inside to store the equipment.

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Vice-Chair Fite asked if this tool rental center would be like the Home Depot in the Harbison area. Mr. Mommer responded that he had not been in the Harbison store. Vice-Chair Fite stated that he has been in other Home Depot stores and they rent small hand tools, such as popcorn ceiling sanders, at the inside tool rental center.

Board Member Brown estimated by taking out the seasonal garden, the shed display, the trailer display and the rental center stuff it appears to eliminate 72 parking spaces making it down to 322 from 394. Mr. Mommer stated that the numbers are shown on the right side of the site plan. Vice-Chair Fite asked for a larger copy of the site plan. Mr. Mommer stated that this alone will be an increase in sales of over seven figures for the store. Vice-Chair Fite apologized for cutting Mr. Mommer off but what it does for the store is not this Board's concern. Board Member Brown continued and stated that the application states how it will affect the neighborhood or other businesses, but if Home Depot ran out of parking spaces it could impact other businesses such as CVS or Verizon if customers had to park there even though Home Depot has done a parking study.

Vice-Chair Fite stated that he appreciated the work they have done on the project but, regardless of national trends or what happens somewhere else, Town Staff does a great job with the Town's Zoning Ordinance and they are what they are. He added that the cut-in that goes behind the shopping center is used a lot as a cut through drive way. Board Member Richardson agreed and added that they are already out of compliance. Vice-Chair Fite stated that his concern, and no reflection on Staff, but the correction for a code violation is based on getting caught because if the Town's Code Enforcement Officer comes by and issues a ticket, Home Depot's legal department would get involved to make sure it is corrected. He added that as in any business, if you find that something works good you try to increase what is good, therefore, he did not know how they could do this and control it. He asked if Home Depot wanted to increase the rental business would they have to come back to the Board. Mr. Hanson responded that if it were approved it would be based on the documents presented tonight.

Chair Watts stated that it is too much stuff in the parking lot all of which is removable.

Mr. Mommer stated that Home Depot is a good corporate citizen and he agreed that people do tend to stretch, but over the past year violations have been taken very seriously and that is why they developed the OSRP so it is known what you can't do. He added that they have been doing this for a long time and are doing 100 TRC's a year with the goal to have 700 across the country and all be successful. Mr. Mommer added that a huge benefit to the community is the fact that citizens can rent something right here versus going to another area that could be 30 minutes away which has proven to be one of the biggest drivers of support for these centers. He stated that local numbers show it is needed and one of the reasons this store was picked. Mr. Mommer stated that the community, citizens and even city employees want the availability of rental equipment.

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Vice-Chair Fite restated that his concern is about the growth and movement of the product because, since this store has been here, the seasonal area gets bigger every year and the control of that is too loose.

Board Member Richardson stated that she is not in favor of the variance in that the store is already out of compliance.

There being no further questions from the Board, Chair Watts called for a motion.

A motion was made by Board Member Brown to deny Variance Request 2022-6(V) as requested from Home Depot. The motion was seconded by Board Member Richardson. Chair Watts called for a roll call vote. Roll call vote results: Brown – Yes to the motion to deny. Fite – Yes to the motion to deny. Watts – Yes to the motion to deny. Richardson – Yes to the motion to deny. Fisher – Yes to the motion to deny. The motion to deny variance request #2022-6(V) was unanimously carried.

2. (Item postponed.) **Variance 2022-7 (V): Variance from the Sign Ordinance at the JT's Chrysler-Jeep located at 4838 Sunset Boulevard.** Mr. Hanson announced that the applicant had been notified but was not present. He recommended that the Board postpone the item until their August 4, 2022 meeting because it would be helpful to hear from the applicant. The Board unanimously agreed to hear the item at their August meeting.

APPROVAL OF MINUTES

A motion was made by Vice-Chair Fite and seconded by Board Member Brown to approve the Board of Zoning minutes from the June 2, 2022 meeting as submitted. The motion was unanimously carried.

OTHER BUSINESS

Assistant Zoning Administrator Lybrand advised the Board that the next required Board Training would be held on September 23, 2022 from 2:00 p.m. to 5:00 p.m. The Board members stated that they would all attend the September session.

ADJOURNMENT: There being no further business, Chair Watts called for a motion to adjourn. A motion was made by Board Member Brown and seconded by Board Member Richardson to adjourn. The motion was unanimously carried. The Board of Zoning Appeals meeting adjourned at 6:03 p.m.

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Respectfully submitted by:

Becky P. 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.