

**TOWN OF HARRISBURG, NORTH CAROLINA
HARRISBURG TOWN HALL
BOARD OF ADJUSTMENT MEETING
TUESDAY, JULY 17, 2018
6:00 PM**

MINUTES

1.

CALL TO ORDER

Lloyd Quay called the meeting to order.

PRESENT: Lloyd Quay, Thelma Thorne-Chapman, John Overcash, Andy Rathke, Rodney Garner, Steve Bedwell, Scott Noel

2.

CONSENT AGENDA

3.

PUBLIC HEARINGS

H2018-01-(V) TAKE 5 OIL CHANGE MASONRY WALL VARIANCE REQUEST.

Take 5 Carolinas, LLC acting on behalf of the property owner, Marie Borsuk, is seeking relief from Appendix E of the Unified Development Ordinance, specifically Section E3.4.2. This section requires that a building that sits further back than the maximum setback (20ft) from the road right-of-way provide a 4ft masonry knee wall to maintain the build-to streetscape that the Ordinance is intended to create. All those speaking concerning this case were sworn in. Ashley Kale, Planning Consultant, presented the background information.

Ashley Kale

As you mentioned before the only thing we have for the Board of Adjustment is the H2018-01-V for Take 5 Oil Change. Take 5 is seeking relief from Appendix E of the UDO specifically sections E3.4.2 the section requires that a building that sits further back than the maximum set back of 20 feet from the road is to provide a 4 foot masonry knee wall. The applicant is requesting that the requirement be waved fulling so that no masonry knee wall be required for the development of this site. The application states that the topography of the site is the source of the issue that necessitates the issuance of the variance. The applicant has included three exhibits, Exhibit A, B, and C to help make their care to the Board of Adjustment. Staff has included additional exhibits, Exhibit D and E, which show both the current grade of the site as well as the proposed grade post-construction that the applicant is seeking. The difference between Exhibits D and E show that the applicant intends to reduce the elevation of the building site by approximately 3.7ft from its current grade. Exhibits D and E were provided by the applicant to staff as part of the site plan review process. In this packet you will find that variance application, an area map, a staff analysis, as well as the 5 exhibits described above. The Planning and Zoning Department will only present the facts of the case at this hearing. Staff recommends that the Board of Adjustment hold a Public Hearing on this matter and consider the request. In the application the applicant provided answers to the four Finding of Facts listed in the UDO. The first being, unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. The response was, adding a 4' knee wall in front of a 3'-4 retaining wall will create 7'-8' of visual barrier to the proposed business. The business model relies on consumers being able to see the bays and/or line from the street being a "quick" lube-type

service. The required wall exacerbates the visual barrier which also creates security issues if the majority of the business (bays, doors, windows, parking lot) is screened from public view. The second finding, the hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. The applicant's response was that this property drops appx 14' from the front to the back, making it impossible to bring the frontage up to existing street grades while maintaining appropriate slopes across the parking lot and in the driveway. The adjacent property owner will not allow access from the west and NCDOT will not allow a curb cut along NC-49 so the south (back) connection is the only possible access point. The proposed 3'-4' retaining wall is the shortest wall possible to make the grades work. Find of Facts 3, the hardship did no result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. The response was that the hardship is due to the existing topography. And the last finding, the requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. Response is the intent of the knee wall is to provide visual separation which will still be achieved by the sunken nature of the proposed building and associated vehicle drives and parking. In addition, the location of the angled southeast property line creates a large setback area which provides considerable visual distance between the vehicle drive and existing/proposed sidewalk locations. Possible Conditions suggested by the applicant is instead of a full 4' masonry wall, a partial height wall or brick columns separated by wrought iron spindles, or open sections in the wall as alternatives to the knee wall.

Lloyd Quay

Do we have any questions for staff?

Scott Noel

These are all the exhibits that have been submitted correct?

Ashley Kale

Exhibits A, B and C were provided by the applicant.

John Overcash

I do have one question for you, looking at the map on Exhibit A, the shape of that in the Northeast corner is for utilities I believe, would that be considered part of a setback?

Ashley Kale

Yes I believe that would be in the right away and utility areas.

Lloyd Quay

Any other questions? Thank you. We can hear from the Applicant now. Please state your name and address.

Carrie T

My name is Carrie, 8008 Corporate Center Drive, Charlotte, NC. I'm with American Engineering and I am here to present our Variance request and I am here also with William Mills who is with Take 5 Carolinas LLC and he is the developer of the site. We wanted to give a quick presentation; we have a few bullet points here to start off with. The whole point of the ordinance was to screen the parking and drive ways from the street. We believe that our site plan still provides the screening that

is intent of the ordinance request. Due to the sunken nature of the building provides that visual separation of the screening. Because of this retaining wall and the building already being sunk down in the ground already if we added a 4 foot screen either by wall or hedge as the code states then you are really screening the building about 8 feet. We believe that is more than what is intended by the code. So our point is do you want to screen it or obscure the building. We feel like complying with the code completely that we will be obscuring the building and in addition there are also the transparency requirements that in the code where a certain percentage of the building has to have windows so you're sharing the building interior activities so adding this big screen you are obscuring what is happening on the inside of the building. I just listed out the whole section of the code that we are trying to get a Variance for. Since we applied a couple months ago we have now detected the hedge instead of the knee wall just to clarify that point. As was mentioned it is 14 feet from the front to the back so we are starting out with a hardship for the site as it is. We did the best we could with the grading to bring the building up as much as possible but you can see we are still sunk down at least 5 feet from the street level. The strange shape of the whole front corner of the property is blocked off for the right-of-way so that limits what we can do on the site. What I would like to show is by adding the hedge or the knee wall it is going to obscure the first whole floor of the business which is not good for business or security. We have included a slide to demonstrate that flow along Patricia Ave on the right hand side is the access to Bojangles with is our neighbor, so this is our access point you would enter the site from the right and our driveway would come off of there and would go up. If you see our finished floor elevation is 674.3 the street is at 679 that puts us almost 5 feet of the buildings finished floor of elevation below the street. We made a couple exhibits of what this would look like visually. This will show what the building would look like as is the way we have it designed, we are trying to show that there is already that screening that is the intent, you can't even see the cars that would be coming out of the bays. We think how it is meets that intent. The next slide will show what it would look like if we blocked it you will lose a lot of transparency. This next slide will show you the added screening with the option of doing the 4 foot hedge, so the building is sunk down 4 feet and then you add a 4 foot hedge that makes the building almost covered. Then I have another view from Patricia, here it is without the hedge and we had to modify our standard type we had to add a bunch of windows on that side of the building to make the 35% requirements so we have added these windows and if you add the hedge to make that meet the screening requirements then you would be covering all those windows. It seems like a contradiction of code there. In conclusion we just believe that we are meeting the intent of the code without adding a hedge or a masonry wall. Without it we are already providing separation that would be created with the retaining wall on this site. Do you have any questions?

Lloyd Quay

Are you saying that if you are needing to put the knee wall in first you are saying now a hedge can replace the knee wall to meet the code correct?

Carrie T

Yes the hedge meets the code at 4 feet.

Lloyd Quay

Would there have been a separation between the knee wall and the hedge? What is the separation between the two?

Carrie T

We would have to squeeze it in between the retaining wall and the property line so it's really just a couple feet off of it.

Lloyd Quay

I am looking at Exhibit C here and the dark outline I guess is the property line and I see a driveway coming off of Patricia, is your access and parking going to be on the adjacent property?

Carrie T

No I am looking at the screen and you can see our driveway comes off the existing driveway to Bojangles it is at the top of the screen.

Scott Noel

There is no direct 49 access?

Carrie T

Yes that is correct that was not allowed.

Scott Noel

Just to clarify, the hedge if you go back to the actual code, it says a knee wall and hedge correct to make it to code?

Carrie T

It was one, the other, or both.

Scott Noel

I thought that it had to be a combination; if you go back it says a knee wall or a combination of the two it is not either or it is a knee wall and hedge for the code?

Steve Bedwell

Yes per the code.

Carrie T

I read it as vegetation, knee wall or both.

Rich Koch

I think it is one or the other.

Lloyd Quay

On the application it says that there is a security aspect to not being able to see into the bays, is that if someone is being robbed or something?

Carrie T

Right you don't want your building be completely obscured from the street.

Steve Bedwell

That condition exists already in some of the business that is right out here on 49. There is not only a lower grade from the street level but there is also a knee wall so some of these businesses you cannot see anything more than just the roof from 49. Transparency is kind of a grey area there as far as the actual intent of other than to make things visible inside the buildings.

Scott Noel

Would you be able to define any supporting information regarding security?

Carrie T

I did not bring anything like that, no.

Andy Rathke

If you lowered the condition between the sidewalk and the retaining wall by 2 feet you could add a 4 foot vegetation buffer that would only be 2 feet above the location that you are saying right now, correct? Right now you actually have it sitting higher than the sidewalk.

Carrie T

You're saying the top of the retaining wall?

Andy Rathke

If you lower the retaining wall say 2 feet?

Carrie T

Well that's not our property; it's a good 12 feet between.

Andy Rathke

Maybe I should have said from the property line to the retaining wall because right there you are showing it.

Carrie T

We are already at 3 to 1, I don't think we want it any steeper than that from our property line that is usually as steep as we would like to go.

Lloyd Quay

Are there any further questions?

Rodney Garner

The brick columns with a rod iron fence, would that work? You would have an open area and it would give you a nice design with open area.

Carrie T

I guess we prefer not to, we would like the look as it was without. That is our preference.

Scott Noel

Was the owner aware of this code that is in place before they purchased this property for this type of business?

Carrie T

The owner is the developer; the developer is leasing the property.

Lloyd Quay

Any further questions? Ok sir would you like the chance to add anything if so please state your name and address please.

William Mills

My name is William Mills I live at 1927 Harris Rd, Charlotte, NC. I will be the business owner and the operator so I just want to say we are excited about moving to Harrisburg. We think it is a great market and could be very good for our business. We like this site but as Carrie said our business

relies heavily on visibility, it is important for us and visitors to see us as they are driving by so they know what's going on. We believe by having a wall in addition to having the down nature of the building will limit our business very much. We think we can add a lot of value to this corner that has been vacant for quite some time. We think a new building can add a lot of new value here. Like I said, we are excited to be here in Harrisburg and would ask for your help in getting us off the ground. I am happy to answer any questions.

Rodney Garner

Signage, isn't there a big Take 5 sign that will be on the upper end of your building?

William Mills

Yes there will be. With a 4 foot knee wall half of that signage will be blocked.

Rodney Garner

That sign is yellow correct?

William Mills

Yes, it is similar to that in the picture.

Rodney Garner

Does it alumininate at night?

William Mills

Correct

Andy Rathke

Is there going to be any type of monument sign out front?

William Mills

Yes that is the plan.

Lloyd Quay

Anymore questions? Ok, thank you sir. I need a motion, the motion would be to grant or deny the request for the variance. They have suggested a condition here at the bottom and Council will need to advise us is that condition were to be incorporated how we could do so in terms of the variance. If we wanted to compose that condition as part as the variance.

Lloyd Quay

The vote tonight on a variance requires a super majority so it will be 4 out of 5 and I am open to a motion to grant or deny.

Andy Rathke

I will make a motion to deny H2018-01-V.

Lloyd Quay

Ok I have a motion do I have a second?

Scott Noel

Second.

Lloyd Quay

Ok second Scott. Is there any further decision? You feel like they have not met the conditions?

Andy Rathke

Yes they have not met the conditions.

Lloyd Quay

Any other discussion? Ok, all in favor of the motion raise your hand. All opposed same. The variance is denied.

MOTION:

Denied 4-1 (Thelma Thorne-Chapman voting against).

Rich Koch

I will provide the appropriate Findings of Fact.

Lloyd Quay

Is there any other business if not I move that we adjourn this Board of Adjustment.

4.

ADJOURNMENT

There being no further business, Lloyd Quay made a motion to adjourn with a second from Andy Rathke. **The motion passed 7-0.**

Findings of Facts as prepared by Attorney Rich Koch are as follows:

FINDINGS OF FACT

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(a) The applicant presented no evidence of an unnecessary hardship.

2. The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public may not be the basis for granting a variance.

(a) This property drops approximately 14 feet from the front to the back, which is a hardship, but it is one that can be overcome with a different design for the project.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

(a) The applicant did not create the hardship.

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

(a) The knee wall ordinance is designed to create a uniform look along Highway 49. This variance does not promote the spirit, purpose or intent of the ordinance.

Based on the foregoing Findings of Fact, the Board makes the following

CONCLUSIONS OF LAW

1. The attached Findings of Fact are incorporated by reference as Conclusions of Law so as to give full effect to the provisions of this Order Denying a Variance.

2. Unnecessary hardship would not result from the strict application of the UDO. The applicant did not present substantial, material and competent evidence of an unnecessary hardship.

3. There are hardships resulting from the conditions that are peculiar to the Property, such as location, size, and topography, these hardships are not unnecessary.

4. The requested variance is not consistent with the spirit, purpose and intent of the UDO, such that public safety is secured, and substantial justice is achieved.

5. Granting the variance in this situation is not consistent with the spirit, purpose and intent of the UDO.

Lloyd Quay, Chairman

Carly Bedgood, Secretary

