

MINUTES

**Regular Meeting
Wake County Board of Adjustment
Tuesday, November 8, 2016
9:00 a.m., Room 2700
Wake County Justice Center
300 S. Salisbury St.
Raleigh, North Carolina**

Members Present: (4) Mr. Tim Clark (Chair), Mr. Brenton McConkey (Vice-Chair), Mr. Will Barker, and Mr. John Barker

Members Not Present: (5) Mr. Blake Cason, Mr. Trenton Stewart, Mr. Terence Morrison, Mr. Billy Myrick, and Mr. Donald Mial

County Staff Present: (5) Mr. Steven Finn (Land Development Administrator), Mr. Chris Record (Planner I), Mr. Tim Maloney (Planning, Development, and Inspections Director), Mr. Charlie Johnson (Deputy Fire Services Director), and Mr. Russ O'Melia (Clerk to the Board)

County Attorneys Present: (1) Mr. Ken Murphy (Assistant County Attorney)

Item 1, Call to Order: Mr. Clark called the meeting to order at 9:05 a.m. with 4 members present.

IN RE MINUTES

Mr. Clark said that the board would consider item 3 and item 4 on the agenda after item 5. There was no objection.

Item 2, Approval of Minutes of the October 11, 2016 Meeting

Mr. Clark made a revision to the minutes on page 1 to correct the address from 2704 Glassman Road to 2704 Glassman Lane. Mr. Clark made a motion to approve the amended October 11th meeting minutes, and Mr. McConkey seconded. The motion carried unanimously.

Mr. Clark asked the petitioner, Mr. Harry Mitchell, if he would like to proceed with the board considering BA SU-2228-16 with only four board members present or if he would prefer to continue the hearing until December 13th. Mr. Mitchell said that he would like the board to proceed with the hearing.

Mr. Murphy stated that North Carolina law prohibits the practice of law by a non-lawyer. The North Carolina State Bar has determined that it is the unauthorized practice of law for someone other than a licensed attorney to appear at a quasi-judicial hearing in a representative capacity to advocate the legal position of another person or corporation. In the matter of BA SU-2228-16, the applicant was an engineer, and the property owner was an individual. There did not appear to be an attorney involved. The engineer may testify, but if there were any witnesses opposed the special use request, the engineer would not be able to cross-examine those witnesses since that would be the unauthorized practice of law.

Before the case was heard, Wake County staff members Mr. Record and Mr. Finn were duly sworn.

Item 5, BA SU-2228-16

Voting Members: Mr. Clark, Mr. McConkey, Mr. Will Barker, and Mr. John Barker

Landowner: W.C. Hollingsworth, Jr.

Petitioner: Harry Mitchell

PIN#s: 1748-82-7823

Size: 0.83 acres

Location: The site is located at 4220 Lillie Liles Road on the western side of its intersection with Louisburg Road.

Zoned: Highway District (HD) within Residential Retail Area

Land Use Classification: Short Range Urban Services Area (City of Raleigh)

The petitioner is requesting a special use permit approval to construct and operate a vehicle sales business with associated outdoor storage/display, customer parking and an office.

TESTIMONY AND EVIDENCE PRESENTED

Documentary Evidence: Staff report, PowerPoint presentation, site plans, application, video, aerial map, relevant sections of the Unified Development Ordinance were shown and/or available, Exhibit 1: a rendering of the site layout, Exhibit 2: photographs of the existing Hollingsworth Auto Sales business, Exhibit 3: emails between Harry Mitchell and Scott Wheeler of NCDOT, and Exhibit 4: photographs submitted by Mr. O'Neal

Testimony:

Mr. Record, Planner I, entered the staff report and PowerPoint presentation for BA SU-2228-16 into the record. Mr. Clark accepted the staff report and PowerPoint slides into the record. Mr. Record stated the petitioner's name, zoning classification, background and history of the petition. The property to the north is residential and zoned Residential-30. The property to the east across Lillie Liles Road is residential within the Town of Rolesville's ETJ. The properties to the south across US 401 are residential within the City of Raleigh's ETJ and residential within the Town of Rolesville's ETJ. The property to the west is a farm zoned Highway District. The property owner, W.C. Hollingsworth, Jr., purchased the subject property in early 2015. The property was previously owned by the North Carolina Department of Transportation. The lot is 0.83 acres and is currently vacant. The applicant is seeking approval to construct a 30-foot x 40-foot office building with a display area for vehicle sales with 18 display spaces and 5 customer parking spaces. The hours of operation would be 9 a.m. to 7 p.m. Monday through Friday, and 9 a.m. to 5 p.m. on Saturday with one employee. Access to the site is being proposed off of Lillie Liles Road after discussions with NCDOT. At its October 11, 2016 meeting, the Board of Adjustment granted a variance for this parcel that allows for the minimum lot width and frontage along Lillie Liles Road to be reduced from the required 150 feet to the existing frontage of 24.91 feet. Water for the use will be provided by an individual well to be located on the site. Wastewater will be provided by a new septic system to be installed on the site. Parking is provided at a rate of 1 parking space per 1,000 square feet of display area. The proposal calls for 3,850 square feet of display area and the site plan indicates 5 parking spaces are being provided to meet the standard. The site plan shows the required 10 foot Type-F streetfront bufferyard. A 40-foot bufferyard is required along all adjacent property lines. The applicant is proposing to reduce these bufferyard widths to 30 feet by constructing an 8 foot tall wooden fence which exceeds the required 6 foot tall fence required for a reduction per the UDO. Special uses in Highway District have minimum front and corner setbacks of 50 feet from the ultimate right-of-way. The site plan shows that the outdoor display of vehicles is proposed to be 10 feet from the right-of-way. Per the UDO, the Board of Adjustment may reduce the building setback lines and minimum corner yard requirements upon making a finding that the proposed reduction of those requirements:

1. Will not substantially defeat the purposes for which those requirements were established, as set forth in Article 19 (Review and Approval Procedures) of this Unified Development Ordinance;
2. Will not adversely affect traffic conditions in the vicinity by, for example, impeding sight lines at street intersections and curb cuts; and
3. Is necessitated by the configuration of the land, which makes it impossible to comply with the standards setback and front yard requirements.

Impervious surface in Highway District is limited to 30% without on-site detention. The proposed plan indicates 29.4% impervious surface. Therefore, stormwater measures are not triggered. Adjoining property owners

were notified by mail on October 21st, 2016, and a public hearing notice was posted on the property on October 18th, 2016.

Sworn witnesses in favor of the petition:

Harry Mitchell, P.O. Box 2007, Wake Forest, NC 27588
Janet Farley, 75 Dixie Farms Road, Louisburg, NC 27549
W.C. Hollingsworth, Jr., P.O. Box 61, Louisburg, NC 27549-0061

Mr. Mitchell testified that the property was created in 1965, and its current shape and size is the result of the growth and increasing traffic volume in the area. NCDOT acquired the property in 2009 as part of the project to construct the Rolesville Bypass and widen US 401. At the completion of that project, the residual 0.83 acre lot was sold to Mr. Hollingsworth. Mr. Mitchell said that the required setbacks restrict the developable envelope to only 4,000 square feet. For that reason, Mr. Mitchell said that he was requesting to reduce the corner setback (that fronts to US 401) to 10 feet from the required 50 feet. He said that the 8-foot fence was offered as a consideration to improve the screen to separate the proposed use from the adjacent residential use. Mr. Mitchell said that NCDOT has done a preliminary review of the project, and they agreed to allow a driveway access off of Lillie Liles Road with a short left turn lane. He said that the proposed auto sales use is a special use, but a convenience store would be a permitted use in the zoning district that would not require a public hearing. Mr. Mitchell said that an auto sales use would be a low intensity use that would be appropriate for the location. He said that there are regulations in the UDO regarding commercial uses that are adjacent to residential uses. There will be an 8-foot fence, a driveway, and the vegetative buffer. The lighting would be limited to a single security light. The site would be operated by one employee, and it would generate minimal traffic.

Mr. McConkey asked about the security light.

Mr. Mitchell said that the security light would be the type of light that you would find in the backyard of a residential use.

Mr. Mitchell submitted Exhibit 1: a rendering of the layout of the site layout and exhibit 2: photographs of the existing Hollingsworth Auto Sales business. Mr. Clark accepted the exhibits into the record.

Mr. Hollingsworth said that they would put 4-5 cars inside the building and 15-18 outside. The site would be staffed by family members of Mr. Hollingsworth. Mr. Hollingsworth said that exhibit 2 shows photographs of his existing business as 3808 Capital Boulevard. He said that there is a Hollingsworth car lot in Wake Forest that he did start, but Mr. Hollingsworth said that he has not owned it in twenty years. The proposed building would be 30 feet by 40 feet. He said that there would be 4-5 cars inside the building with a desk, couch, television, magazine rack, and a unisex bathroom.

Mr. McConkey asked if the lot would be paved. Mr. Hollingsworth said that it would be either concrete or asphalt. He planned to put one light near the office. Mr. Hollingsworth said that he would put whatever type of fence that the neighbors wanted.

Mr. Clark asked about what type of fence the UDO calls for. Mr. Record answered that the UDO specifies a wooden fence, masonry wall, or a berm.

Mr. Hollingsworth said that the land to the south has been sold, and it is planned to have condos, a grocery store, a Jiffy Lube, and other mixed use development. Mr. Clark asked which jurisdiction that land is in. Mr. Record answered that it is in Wake County's jurisdiction zoned Highway District and R-30, and staff had a pre-submittal meeting for a potential grocery store on that site. He said that the proposed development may be difficult to complete without municipal water.

Mr. McConkey asked about the landscaping. Mr. Hollingsworth answered that they would comply with the landscaping standards. Mr. Mitchell said that it would be an evergreen screen to comply with the bufferyard standards.

Mr. Record said that a Type C buffer is required. The fence allows for a 25% reduction in the width of the bufferyard from 40 feet to 30 feet. He said that the proposed landscaping meets the UDO requirements.

Mr. Mitchell noted that the proposed 8-foot fence would provide an immediate screen, whereas some of the landscaping could take 3-4 years to mature. Regarding impervious surface, Mr. Mitchell said that the size of the lot will not accommodate stormwater management.

Mr. Clark asked about the proposed driveway and communication with NCDOT. Mr. Mitchell said that he had communication with NCDOT that shows a short turn lane installed at Lillie Liles Road where the existing concrete median is. Mr. Mitchell submitted Exhibit 3: email communication between Mr. Mitchell and Scott Wheeler, Senior Assistant District Engineer for NCDOT, in which Mr. Wheeler states that he is "good with the proposed plan." Mr. Clark accepted Exhibit 3 into the record as an exception to the hearsay rules because it is an email from a public official in the course of his duties at NCDOT.

Mr. John Barker asked about how US 401 affected the property. Mr. Mitchell said that NCDOT added separate northbound and southbound lanes as part of the improvements to US 401. Additional right-of-way was required, and acreage was removed from the parcel as a result of that work.

Ms. Farley said that her brokerage, Covenant Realty of North Carolina, handles properties that have negative aspects and tries to remediate them to add value. Ms. Farley said that the neighborhood has already been impacted by the expansion of US 401 from a 2-lane road to a 4-lane road. She said that the neighbor adjacent to the site currently has road frontage to US 401 since there is nothing in front of his property. She said that if the proposed development were constructed, it would improve the quality of life for the adjacent neighbor and probably increase the value of the adjacent property since there would no longer be road frontage to US 401.

Sworn witnesses in opposition to the petition:

John O'Neal, 4216 Lillie Liles Road, Wake Forest, NC 27587

Denise Lucas, 4213 Lillie Liles Road, Wake Forest, NC 27587

Jerry Lucas, 4213 Lillie Liles Road, Wake Forest, NC 27587

Mr. O'Neal testified that he was opposed to the proposal because it would affect his quality of life and have a negative impact on his property value. He said that he believed that he would have trouble selling his property if his neighbor was a used car lot. Mr. O'Neal questioned how much usable property would be available with the 40-foot greenways. He questioned where customers would park if they come to the site after hours and whether they would park on the shoulder of the road in front of his property. Mr. O'Neal submitted Exhibit 4: photographs that Mr. O'Neal took. Mr. Clark accepted Exhibit 4 into the record. Mr. O'Neal described the photographs, including photographs of Hollingsworth Auto Sales in Wake Forest. Mr. Hollingsworth stated that he does not own the Hollingsworth Auto Sales business in Wake Forest. Mr. O'Neal said that the turn into the proposed driveway for the site would be more than a 90-degree turn. He questioned the safety of the proposed layout of the turn lane and the driveway. He questioned why someone would invest money in a 15-18 vehicle car lot when it would take many years to recoup the investment.

Mr. John Barker asked about the median. Mr. Record said that the plan calls for the median to be reduced so that the turn into the property would not be more than 90 degrees. Mr. Mitchell said that a left turn lane is being added so that the traffic coming off of US 401 onto Lillie Liles Road will bypass the traffic turning into the site.

Ms. Lucas stated that she owns the property at the corner of Lillie Liles Road and US 401. She said that the property value has gone down since US 401 was widened because they now own less property. She said that putting a car lot in what is typically a residential area would not improve her property value. She questioned why a business would need to go on the site if a house will not be built there. She said that the proposed

development down the road with a grocery store and condos would be closer to a business area near the intersection of Louisburg Road and Forestville Road. Ms. Lucas said that she is opposed to the petition because she does not want to see a business like that in the neighborhood. She said that Lillie Liles Road is a busy road mainly because there is a dump site at the other end of Lillie Liles Road. She questioned whether Lillie Liles Road would be widened or if the median would be removed.

Mr. Mitchell said that the improvements to Lillie Liles Road will occur within the radius at Lillie Liles Road and US 401. He said that the radius will be increased. He said that additional pavement will be added in order to provide a left turn lane against the concrete median.

Mr. Will Barker asked if the right-of-way will need to be increased. Mr. Mitchell said that all of the improvements will stay within the existing right-of-way, and no additional right-of-way will be required to accommodate the left turn lane. Mr. Mitchell said that the lot is 36,160 square feet, and the footprint will be approximately 10,620 square feet.

Mr. Clark asked about the requested setback reduction. Mr. Record said that the petitioner requested a reduction in the corner setback. He said that the special use includes the display of the vehicles. The setback reduction would be along US 401 where the cars will be displayed. Mr. Record said that wherever the driveway is would be considered the frontage.

Mr. Hollingsworth stated that the hours of operation would be 9 a.m. until 5 p.m. from Monday through Friday and 9 a.m. until noon or 1 p.m. on Saturday. He said that he would install a gate if the neighbors would like a gate to be installed. Mr. Record said that a gate is not a requirement of the UDO. Mr. Hollingsworth said that there are eight businesses within 400 yards of the site.

Mr. McConkey asked if the 18 spaces for vehicle display will be sufficient. Mr. Hollingsworth said that the site will be a small, clean country car lot.

Mr. Lucas asked about whether the property the property was approved for a convenience store. Mr. Record said that there was not a prior special use approval for the property. There was a special use application in the late 1990s for a law office to be on the site when there was a residence, and that special use application was denied because it did not comply with the Land Use Plan. He said that a convenience store is a use that is permitted by right within the zoning district. Staff had not been approached about anyone putting a convenience store there.

There was no one else who wished to speak in favor of or in opposition to the request. Mr. Clark closed the public hearing. The board took a brief recess.

BOARD DISCUSSION

The board discussed the required findings of fact.

1. The proposed development will not materially endanger the public health or safety.

Mr. John Barker said that the proposed use will generate low traffic. According to the statement of justification, the use will generate about 20 vehicles a day. He cited Exhibit 3 which indicates that there will be a turn lane.

Mr. McConkey said that the evidence show that the median on Lillie Liles Road will be reduced.

Mr. John Barker said that the site would be under the 30% limit for impervious surface coverage.

Mr. Clark said that there would be lighting at the property.

2. The proposed development will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of special use or class of special uses.

Mr. Clark said that there was a variance granted for the site to reduce the minimum lot width and frontage along an access road.

The board discussed the three required findings to reduce the minimum corner setback.

With respect to the required minimum corner setback of 50 feet, reducing the required corner setback from 50 feet to 10 feet:

1. Will not substantially defeat the purposes for which the required corner setback minimum of 50 feet was established, as set forth in Article 19 (Review and Approval Procedures) of this Unified Development Ordinance.

Mr. McConkey said that the setback fronts US 401. Reducing the setback would not impact US 401.

2. Will not adversely affect traffic conditions in the vicinity by, for example, impeding sight lines at street intersections and curb cuts.

Mr. McConkey said that there was not any evidence that reducing the setback would adversely affect traffic conditions in the vicinity. Mr. John Barker said that cars will not be trying to turn left out of Lillie Liles Road since it is a right-only turn.

3. Is necessitated by the configuration of the land, which makes it impossible to comply with the standards setback and front yard requirements.

Mr. McConkey said that the property is an oddly shaped and oddly placed lot which is why a variance was needed.

3. The proposed development will not substantially injure the value of adjoining property, or is a public necessity.

4. The proposed development will be in harmony with the area in which it is located.

Mr. McConkey said that the applicant has attempted to address the concerns of the neighbors. He said that there will be evergreen landscaping with an 8-foot wooden fence. There will be minimal lighting on the site. The parking lot will be paved. There will not be any servicing of automobiles on the lot. The rendering of the site showed an attractive building. He said that Ms. Farley testified regarding the value of creating separation from US 401 for the neighboring lot. There will be changes to the road, the median, and the addition of a left-turn lane. Mr. McConkey said that all of those facts help to meet findings 3 and 4.

Mr. Clark said that Ms. Farley is a realtor and testified that the property would not be suitable for a residence. He said that there was not any testimony from an appraiser regarding property values of adjoining properties.

Mr. McConkey noted that a convenience store would be a permitted use on the lot. As a result of the proposed car sales lot, there will be a fence, substantial landscaping, and other standards to be met.

5. The proposed development will be consistent with the Wake County Land Use Plan.

Mr. McConkey cited the staff report which said that the proposed development will be consistent with the Land Use Plan.

MOTION

Mr. McConkey made a motion in the matter of BA SU-2228-16 that the Board find and conclude that the petition does meet the requirements of Article 19-23 and Article 3-23-4(B)(3) of the Wake County Unified Development Ordinance and the special use permit be granted with a reduction of the required corner setback

minimum from 50 feet to 10 feet, with the recommended staff conditions. Mr. Will Barker seconded the motion. By a vote of 4-0, the motion passed, and the special use permit was granted. So ordered.

FINDINGS OF FACT:

(1) The proposed development will not materially endanger the public health or safety. This will be a small business with only a few employees. There will be lighting at the property.

Considerations:

- a. Traffic conditions in the vicinity, including the effect of additional traffic on streets, street intersections, and sight lines at street intersection and curb cuts. The proposed use will generate low traffic. There will be a left turn lane into the site. The median on Lillie Liles Road will be reduced.
- b. Provision of services and utilities, including sewer, water, electrical, garbage collections, fire protection.
- c. Soil erosion and sedimentation.
- d. Protection of public, community, or private water supplies, including possible adverse effects on surface waters or groundwater. The site will be under the 30% limit for impervious surface coverage.

(2) The proposed development will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of special use or class of special uses. A variance granted for the site to reduce the minimum lot width and frontage along an access road.

With respect to the required minimum corner setback of 50 feet, reducing the required corner setback from 50 feet to 10 feet:

1. Will not substantially defeat the purposes for which the required corner setback minimum of 50 feet was established, as set forth in Article 19 (Review and Approval Procedures) of this Unified Development Ordinance. The setback fronts US 401. Reducing the setback would not impact US 401.
2. Will not adversely affect traffic conditions in the vicinity by, for example, impeding sight lines at street intersections and curb cuts. There was not any evidence presented that reducing the setback would adversely affect traffic conditions in the vicinity. Cars will not be trying to turn left out of Lillie Liles Road since it is a right-only turn.
3. Is necessitated by the configuration of the land, which makes it impossible to comply with the standards setback and front yard requirements. The property is an oddly shaped and oddly placed lot which is why a variance was needed.

(3) The proposed development will not substantially injure the value of adjoining property, or is a public necessity. There will be evergreen landscaping with an 8-foot wooden fence. There will be minimal lighting on the site. The parking lot will be paved. There will not be any servicing of automobiles on the lot. The rendering of the site shows an attractive building. The neighboring lot will have separation from US 401. There will be changes to the road, the median, and the addition of a left-turn lane. The property would not be suitable for a residence.

Considerations:

- a. The relationship of the proposed use and the character of development to surrounding uses and development, including possible conflicts between them and how these conflicts will be resolved.

- b. Whether the proposed development is as necessary to the public health, safety, and general welfare of the community or County as a whole as to justify it regardless of its impact on the value of adjoining property.

(4) The proposed development will be in harmony with the area in which it is located. There will be evergreen landscaping with an 8-foot wooden fence. There will be minimal lighting on the site. The parking lot will be paved. There will not be any servicing of automobiles on the lot. The rendering of the site shows an attractive building. The neighboring lot will have separation from US 401. There will be changes to the road, the median, and the addition of a left-turn lane. The property would not be suitable for a residence.

Considerations:

- a. The relationship of the proposed use and the character of development to surrounding uses and development, including possible conflicts between them and how these conflicts will be resolved.

(5) The proposed development will be consistent with the Wake County Land Use Plan. The staff report says that the proposed development will be consistent with the Land Use Plan.

Considerations:

- a. Consistency with the Plan's objectives for the various planning areas, its definitions of the various land use classifications and activity centers, and its locational standards.
- b. Consistency with the municipal and joint land use plans incorporated in the Plan.

CONCLUSIONS OF LAW

The proposed development will not materially endanger the public health or safety. The proposed development will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of special use or class of special uses. The proposed development will not substantially injure the value of adjoining property, or is a public necessity. The proposed development will be in harmony with the area in which it is located. The proposed development will be consistent with the Wake County Land Use Plan.

IT IS THEREFORE ORDERED:

- 1) The petitioner must record the notarized form pertaining to the Order of the Board in the Wake County Register of Deeds and return a copy to the Planning, Development and Inspections Division of Community Services;
- 2) The petitioner must obtain the required permits and inspections from the Wake County Planning, Development and Inspections Division of Community Services for all proposed structures, including fences if applicable;
- 3) The petitioner must obtain an driveway entrance permit from the North Carolina Department of Transportation;
- 4) The petitioner must obtain the required permits and inspections from the Water and Wastewater Section of the Wake County Environmental Services Department for the on-site well and septic;
- 5) A final zoning inspection to verify site plan compliance must be performed by the Wake County Zoning Administrator prior to the issuance of a certificate of completion by the Wake County Planning, Development and Inspections Division of Community Services;

6) The landowner must maintain compliance with the special use approval and Wake County Unified Development Ordinance;

7) The petitioner must maintain compliance with the performance standards listed in Article 17 of the Unified Development Ordinance.

Item 3, Approval of Written Decision Granting Variance in the matter of BA V-2232-16

The board deferred action on the written decision for BA V-2232-16 until its next meeting on December 13th.

Item 4, Approval of Written Decision Granting Variance in the matter of BA V-2236-16

The board deferred action on the written decision for BA V-2236-16 until its next meeting on December 13th.

Item 7: New Business – Mr. Finn updated the board regarding recent development activity.

Item 8: Old Business – Mr. Murphy updated the board regarding an appeal of the board’s decision in BA SU-2227-16.

Item 9: Adjournment

Hearing no additional business, the meeting was adjourned at 10:58 a.m.

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REGULAR MEETING
WAKE COUNTY BOARD OF ADJUSTMENT
November 8, 2016

All petitions complete, Tim Clark declared the regular meeting
of the Wake County Board of Adjustment for
Tuesday, November 8, 2016 adjourned at 10:58 a.m.

Respectfully Submitted:



Tim Clark
Wake County Board of Adjustment

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