

MINUTES

**Regular Meeting
Wake County Board of Adjustment
Tuesday, May 9, 2017
9:00 a.m., Room 2700
Wake County Justice Center
300 S. Salisbury St.
Raleigh, North Carolina**

Members Present: (5) Mr. Brenton McConkey (Chair), Mr. Don Mial (Vice-Chair), Mr. Brian Foxx, Ms. Sheree Vodicka, and Mr. DeAntony Collins

Members Not Present: (4) Mr. Will Barker, Mr. Terence Morrison, Mr. Waheed Haq, and Mr. John Barker

County Staff Present: (7) Mr. Steven Finn (Land Development Administrator), Mr. Tim Maloney (Planning, Development, and Inspections Director), Ms. Celena Everette (Planner II), Mr. Chris Record (Planner I), Mr. Charlie Johnson (Deputy Fire Services Director), Mr. Frank Cope (Community 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. McConkey called the meeting to order at 9:02 a.m. with 5 members present.

IN RE MINUTES

Item 2, Approval of Minutes of the April 11, 2017 Meeting

Mr. McConkey made a motion to approve the April 11th meeting minutes, and Mr. Mial seconded. The motion carried unanimously.

Item 3, Approval of Written Decision Granting the Variance in the matter of BA V-2248-17

Mr. Mial made a motion to approve the written decision granting variance in the matter of BA-V-2248-17, and Mr. McConkey seconded. The motion carried unanimously.

Item 4, Approval of Written Decision Granting the Variance in the matter of BA V-2240-17

Mr. McConkey made a motion to approve the written decision granting variance in the matter of BA-V-2240-17, and Mr. Mial seconded. The motion carried unanimously.

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

Item 5, BA SU-2241-16

Voting Members: Mr. McConkey, Mr. Mial, Mr. Foxx, Ms. Vodicka, and Mr. Collins

Landowner: Jack Smith, LLC

Petitioner: Tim Sivers

PIN#: 0733-65-9170

Size: 5.47 acres

Location: The property is located at 2117 NC 55 Highway.

Zoned: Highway District within a Community Activity Center

Land Use Classification: Town of Cary Short Range Urban Services Area

The petitioner is requesting a special use permit to construct a 103,050 square foot indoor self-storage facility with associated office and parking.

TESTIMONY AND EVIDENCE PRESENTED

Documentary Evidence: Staff report, PowerPoint presentation, site plans, application, video, aerial maps, relevant sections of the Unified Development Ordinance were shown and/or available, Exhibit 1: An Affidavit of Timothy Sivers, and Exhibit 2: an affidavit of J. Thomas Hester, MAI.

Testimony:

Mr. Record, Planner I, entered the staff report and PowerPoint presentation for BA SU-2241-16 into the record. Mr. McConkey accepted the staff report and PowerPoint slides. Mr. Record stated the petitioner's name, zoning classification, background and history of the petition. The property to the north is vacant and zoned Highway District. The properties to the east across NC 55 Highway contain residential and outdoor storage uses and are zoned Residential 40 Watershed and Highway District. The properties to the south and west are residential and zoned Residential 40 Watershed. The site plan associated with the applicant's initial Special Use Permit submittal on December 5, 2016 proposed a landscape easement on the adjacent property to the south. This easement was intended to accommodate the required bufferyard in that location. Planning staff determined that a landscape easement would not be in keeping with the intent of the Unified Development Ordinance's Article 16 – Landscaping and Tree Protection. This interpretation was appealed by the applicant in case BA-A-2247-17 that the Board of Adjustment considered on February 14, 2017. At this meeting, the Board of Adjustment upheld Planning staff's interpretation. The site will be served by individual well and septic system. The property has frontage on NC 55 Highway. A driveway permit from NCDOT is required for access onto NC 55 Highway. The site plan demonstrates the required 23 parking spaces that are to be provided for the intended use. The proposed building height of 35 feet meets the standard for the maximum height of a building in Highway District. In terms of bufferyards, the floor area ratio of the building classifies this proposal as high-intensity non-residential. Along NC 55 Highway, a 10-foot type F streetfront buffer is required. A 60 foot Type B buffer is required along the northern property line and is being proposed to be reduced to 45 feet along a portion of its length by a wall. An 80 foot Type A buffer is being required along the southern property line. This buffer is being proposed to be reduced to 60 feet along a portion of its length by a wooden fence. The site plan proposes recombining a portion of the adjacent parcel to the south with the subject property in order to accommodate the required bufferyard. Prior to building permit approval, an exempt plat would need to be recorded with the Register of Deeds to legally recombine the properties as shown on the site plan. An 80 foot Type A buffer is required along the western property line. The site is heavily vegetated and the applicant proposes to utilize existing vegetation to satisfy bufferyard requirements while supplementing new planting material as needed. Impervious surface coverage in HD is limited to 30% before stormwater devices are required. The site plan indicates there will be 30% impervious area on the site. A level spreader is being provided on the site to help mitigate stormwater runoff. Notification letters to adjoining property owners were mailed on April 21, 2017. A public hearing placard was placed on the site on April 18, 2017.

Mr. McConkey asked if the proposed buffers are in compliance with the ordinance. Mr. Record said that the buffers meet the intent of the ordinance.

Ms. Vodicka asked about the landscape buffers that were appealed. Mr. Record said that the original submittal showed a landscape buffer on the adjacent parcel. Staff determined that the proposal would not meet the intent of the ordinance. The Board of Adjustment upheld staff's determination. The updated proposal shows a property line recombination that would satisfy the buffer requirements.

Ms. Merrick Parrott, an attorney with Parker Poe (301 Fayetteville Street, Raleigh, NC), came forward representing the petitioner.

Sworn witnesses in favor of the petition:

Tim Sivers, 16 Consultant Place, Suite 101, Durham, NC 27707

J. Thomas Hester, 228 Fayetteville Street, Suite 200, Raleigh, NC 27601

Ms. Parrott submitted Exhibit 1: an affidavit of Timothy Sivers, PLA, ASLA. Mr. McConkey accepted the exhibit into the record.

Mr. Sivers stated his credentials as a licensed North Carolina professional landscape architect who has worked on over a dozen self-storage facilities. He said that the proposal will not significantly impact traffic conditions in the vicinity. He said that the proposed facility will not materially endanger the public health or safety, and it will meet all regulations and standards applicable in the UDO.

Mr. Hester stated his credentials as a North Carolina State Certified General Appraiser, a licensed broker, and an MAI designation from the Appraisal Institute. Mr. McConkey accepted Mr. Hester as an expert witness. Ms. Parrott submitted Exhibit 2: an affidavit of J. Thomas Hester along with a property impact analysis. Mr. McConkey accepted Exhibit 2 into the record. Mr. Hester testified that the facility will be well screened on all sides. He said that it would be a low impact use, and it would not generate much traffic. He said that the location on Highway 55 is a typical location for this kind of use; there are other self-storage facilities on Highway 55. Mr. Hester analyzed three residential communities that are adjacent to self-storage facilities in that part of the county and utilized a paired sale analysis. He concluded that there is no difference in the sale prices for the properties that are adjacent or have a view of a self-storage facility as compared to properties in the same community without a view of the storage facility. He said that the proposed self-storage facility will be in harmony with the area in which it is located, and the use will not fundamentally injure the value of adjoining or abutting property.

Ms. Parrott said that according to the staff report the project is in a Community Activity Center where self-storage facilities are allowed. She said the project is consistent with the Wake County Land Use Plan. She said that a request to reduce the bufferyard depth by 25% with the construction of a wall was granted by Planning staff.

Sworn witness in opposition of the petition:

Steve Jenkins, 1804 Holt Road, Cary, NC 27519

Mr. Jenkins said that he owns the country store house across the street which includes dry storage. He said that there are five facilities within two miles that offer similar services. He said that the Southwest Area Land Use Plan says that there would not be any structures larger than 100,000 square feet. He said that there would be commercial tenants at the storage facility which could affect the traffic. He said that there is an elementary school near the site, and there are school buses and carpooling at certain times of the day. He said that he would like to see a turn lane into the facility for the safety of the kids and parents at the elementary school.

Ms. Parrott said that anti-competitive justifications are not competent, material evidence based on the five required findings.

Mr. Sivers said that the peak hour trips were calculated based on the building square footage, and it takes into account all traffic. He said that the project will require a driveway permit from NCDOT, and thus far NCDOT had not indicated that a turn lane would be required.

Mr. McConkey asked Mr. Record about the Southwest Area Land Use Plan. Mr. Record said that he is not aware of any stipulation regarding 100,000 square feet maximum for storage facilities. Ms. Everette said that such a specific requirement would typically be found in the UDO and not the Land Use Plan.

There was no one else who wished to speak in favor of or in opposition to the request. Mr. McConkey closed the public hearing.

BOARD DISCUSSION

The board discussed the five required findings.

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

Mr. Mial said that there was no evidence that the proposed development would endanger the public health or safety. He said that NCDOT had not indicated that a turn lane would be required, and there was no evidence that traffic would be an issue. There would be onsite well water.

Ms. Vodicka said that this would be a low impact use.

Mr. McConkey said that a driveway permit from NCDOT will be a condition of approval if the permit is granted.

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. McConkey said that the statement of justification details how the proposal meets the regulations for impervious surface, bufferyards, setbacks, landscape screenings, building height, and parking. He said that staff testified that the requirements had been met, and Mr. Siverson testified that the proposal will meet all regulations.

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

Mr. McConkey said that there was expert testimony from Mr. Hester who prepared a matched pair sales analysis. Mr. Hester testified about the proximity to roads and commercial uses, and that the development would not substantially injure the value of adjoining property.

Mr. Foxx noted that there is a storage facility across the street.

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

Mr. McConkey said that there was expert testimony from Mr. Hester that the proposed development would be in harmony with the area in which it would be located.

Mr. Foxx noted that there is a storage facility across the street.

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

Mr. McConkey said that the staff report, the petitioner's testimony, and the statement of justification concluded that the proposed development would be consistent with the Wake County Land Use Plan.

MOTION

Mr. Mial made a motion in the matter of BA SU-2241-16 that the Board find and conclude that the petition does meet the requirements of Article 19-23 of the Wake County Unified Development Ordinance and the special use permit be granted with the recommended staff conditions. Mr. Foxx seconded the motion. By a vote of 5-0, 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. There is no evidence that the proposed development will endanger the public health or safety. There is no evidence that traffic would be an issue. There will be onsite well water. This will be a low impact use.

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.

- 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.

(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. The proposal meets the regulations for impervious surface, bufferyards, setbacks, landscape screenings, building height, and parking.

(3) The proposed development will not substantially injure the value of adjoining property, or is a public necessity. There was expert testimony and a matched pair sales analysis. There was expert testimony about the proximity to roads and commercial uses, and that the development would not substantially injure the value of adjoining property. There is a storage facility across the street.

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 was expert testimony that the proposed development will be in harmony with the area in which it would be located. There is a storage facility across the street.

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, the petitioner's testimony, and the statement of justification concluded that the proposed development would be consistent with the Wake County 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 and complete appropriate building permits from the Wake County Inspections Development/Plans/Permits Division;
- 3) The petitioner must obtain a driveway permit from the North Carolina Department of Transportation;
- 4) 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;
- 5) The landowner must maintain compliance with the special use approval and Wake County Unified Development Ordinance;
- 6) Prior to the issuance of a building permit, an exempt plat recombining the property with a portion of the adjacent property to the south must be recorded with the Register of Deeds.
- 7) The petitioner must maintain compliance with the performance standards, including a lighting plan, listed in Article 17 of the Unified Development Ordinance.

Item 8: New Business – The board tabled their discussion of proposed changes to the rules of procedure until the next meeting. Mr. Finn updated the board regarding recent development trends.

Item 9: Old Business – There was no old business.

Item 10: Adjournment

Hearing no additional business, the meeting was adjourned at 9:54 a.m.

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REGULAR MEETING
WAKE COUNTY BOARD OF ADJUSTMENT
May 9, 2017

All petitions complete, Brenton McConkey declared the regular meeting
of the Wake County Board of Adjustment for
Tuesday, May 9, 2017 adjourned at 9:54 a.m.

Respectfully Submitted:



6/13/17

Brenton McConkey
Wake County Board of Adjustment

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