

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

October 4, 2018

The Board of Zoning Appeals held their regular scheduled meeting on October 4, 2018 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 and Board Members Lisa Gibson. Board Members Justin Brown and Reve' Richardson were absent, excused.

Staff members present were: Director of Planning, Building and Technology John Hanson, Municipal Attorney Brad Cunningham, Assistant Zoning Administrator Jessica Lybrand, Director of Parks and Sanitation Dan Walker, Digital Media Coordinator Darrell Pritchard, and Municipal Clerk Becky Hildebrand.

One (1) citizen was 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 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 2018-9 (V): Variance from the Landscape and Tree Ordinance at 521 Columbia Avenue:** Mr. Rusty Coan requested a variance and an appeal of an administrative decision related to the landscape and tree ordinance. It appears that many of the issues related to the variance request have been resolved or can be resolved without a variance. This leaves only an appeal of the requirement to place the electrical service for the building underground. The applicants have not stated grounds for a variance on this requirement but they believe that it is not applicable to their project because their project does not increase the building area by more than 50%. They have cited section 156.05.02 in support of this position. This section of the ordinance applies to an existing building where an addition to the building is being planned.

Section 156.10.02 of the ordinance addresses nonconforming properties. This section states that existing developed properties which do not meet the Landscaping and Tree Ordinance regulations shall comply with the requirements to the extent practical when there is any change of use, activity, parcel size, or placement of new impervious surface. In this case the applicant is changing the use of an existing abandoned building and changing the parcel size and may be increasing the impervious surface of the property.

Mr. Hanson stated that this item has been a moving target due to trying to meet deadlines. He added that the application in the Board's package refers to a variance and the reason for that is when the application was submitted, Staff did not have the tree survey, but they have it now. Mr. Hanson advised the Board that Staff had resolved the variance aspects that were addressed in the application, except for one issue. He stated that the one issue is an appeal of an administrative decision. He gave an example of a variance as if the Landscape Administrator required a project to have 20 trees, but the applicant only has room for 15 trees, then the Board may approve a variance of 5 trees. Mr. Hanson stated that the issue now at hand is for the placement of underground electrical service and the applicants believe that requirement of the ordinance does not apply to them because their project does not increase the building area by 50% and stated Section 156.05.02 in support of that position. Mr. Hanson provided the Board with that portion of the ordinance. He added that portion of the ordinance states that "*where to the extent practical, as determined by the Administrator, in consultation with the utility service provider and applicant; all new construction or renovations of an existing building which involves expansion of the building area of more than 50%, utility service shall provide the underground utility infrastructure necessary to connect to utility services(s) at the property line*". Mr. Hanson stated that section of the Landscape and Tree Ordinance refers to if he had a building and wanted to add an addition to it, you would not have to comply with the ordinance unless the addition to the building was more than 50%. He added that the Town's position is that the controlling ordinance is Section 156.10.02 (also included in the Board's package) which addresses non-conforming properties and states "*existing developed properties which do not meet the Landscape and Tree Ordinance regulations herein, are declared to be non-conforming. The property owner shall comply with the requirements to the extent practical in the following cases: (1) Any change of*

Board of Zoning Appeals Minutes
October 4, 2018

use, activity or parcel size; (2) Renovation costs that exceeds 50% of the assessed value or fair market value; (3) Structure expansion of existing facilities increase building or parking lot area by more than 30%; (4) The placement of impervious surfacing where none existed prior.” Mr. Hanson stated that in this case the applicant is changing the use of the existing abandoned building; changing the parcel size by cutting out an out parcel; and increasing the impervious surface by adding a paved asphalt parking lot in the back.

Mr. Hanson presented the applicant’s proposed plan to the Board for their review and restated that this is an appeal to the ordinance as it applies. Using the plan, Mr. Hanson pointed to the location of the property and the location of the power lines. He added that they were not asking to bury the transmission line, but they were requiring that the power line be buried from the line to the building which was approximately 60 feet. He pointed to the plan and the parcel to be cut out which changes the parcel size. He added that the business is changing from a car dealership to an auto body repair shop which is a change in use, plus they are adding parking behind the building.

Vice-Chair Fite confirmed the location of the building next to Sears where there are cars parked in the back for a towing service.

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

Mr. Rusty Coan, Cross Development CC Lexington LLC, (4336 Marsh Ridge Road, Carrollton, Texas), owner of the property, stated that they were previously under contract for the property located at 521 Columbia Avenue which was the old Addy Dodge dealership, and have now purchased the property. He added that in July they came before the Architectural and Appearance Review Board which included elevation and landscape and even then that Board made some recommendations for landscape and they made some changes. Mr. Coan stated that Section 156.05 is utilities and service area and 156.05.02 is about new construction or renovation on an existing building. He added that they were going to leave the building as is and it is an interior remodel. Mr. Coan stated that they have added some landscaping, islands, and buffers to try to get up to code but he was not sure if they were able to cover everything. They recently obtained a tree survey for the back of the property but they are not removing any of those trees. He stated that they are adding pavement in the rear of the building which is currently dirt and has some cars parked on it. Mr. Coan stated that they are also adding a screen fence along the back of the property. He restated that they are not new construction or expansion greater than 50%.

Board Member Gibson asked what type of business was going to be on the property. Mr. Coan responded that it will be Caliber Collision and is auto body and collision repair. He added that Addy’s also serviced cars in the building as well as being a car dealership.

**Board of Zoning Appeals Minutes
October 4, 2018**

Chair Watts asked if they were going to increase parking. Mr. Coan responded that they were keeping the existing parking in the front and they are trying to sell the out parcel. He added that since the transmission line bisects the parking lot they were able to propose a 6,000 square foot building on the out parcel to be sold for future development. Mr. Coan stated that they are paving a parking lot in the back of the existing building that will only be used by Caliber Collision for moving cars back and forth as they wait on parts and that parking will not be open to the public. He added that there are two existing buildings on the property and they will both be used by Caliber Collision for repairs.

Vice-Chair Fite asked if their position was that since Addy's, as a car sales place, also did auto body work, that is why they determine it is not a change in use of the property. Mr. Coan responded no, that they understand that Addy's did auto repairs, but Caliber Collision will also paint cars and that makes it a change in use. He added that their stance was they are not new construction or adding 50% to the building. Vice-Chair Fite commented that he had used Caliber before and they did a fine job.

Chair Watts asked if the property is still non-conforming. Mr. Hanson responded that is what they are trying to get to. Mr. Walker requested to respond as the overseer of the Landscape and Tree Ordinance for the Town and stated that the property is still non-conforming as it sits. He added that when they change use, change parcel size, or change the pavement as in adding impervious pavement where there was none prior, then the new business must come into compliance with the Landscape and Tree Ordinance. Mr. Walker stated that the Landscape and Tree Ordinance requires that the power lines be underground from the property line to the building. He added that he talked to a representative from SCE&G on behalf of the developer and there is a three phase system for the buildings on the property and there is a transformer currently located there and the three phase would not be able to run from the property line to the building and still provide the power needed. Mr. Walker stated that they need the transformer and it can only push the three phase system power and they can't run the line but so far and sixty feet is not that distance because it is more like 150 to 200 feet so they have plenty of room from the transformer where it currently sits to the building. Mr. Walker stated that all he was requiring them to do is put it underground from the pole at the transformer to the building which is roughly 60 feet. He stated that he has to rely on the information from SCE&G. Mr. Walker added that there are two sections now that went into the old building and one is 50 feet and one is 60 feet. He stated that Mr. Coan's contention is that they are not expanding the building by 50% that they do not have to bury the line, when that section of the ordinance takes into account an existing structure that is non-compliant, not changing owners, not changing use, but they are changing the building footprint. Mr. Walker stated that it has nothing to do with the other section of the ordinance.

Chair Watts thanked Mr. Walker for the answers. She stated that the property is still non-conforming and changing the use therefore they have to comply. She asked the Board if they had any additional questions.

**Board of Zoning Appeals Minutes
October 4, 2018**

Mr. Coan wished to state again that he sees the section that states they are non-conforming and that they have to meet the landscape ordinance and further in the landscape code there is a section regarding utilities that says new construction or expanding your building. Chair Watts responded that they are also changing the use of the property and changing the size of the property. Mr. Coan stated that those items would make it non-conforming so they have to follow the landscape code and Section 156 in the utilities section which talks about going underground with the lines. Chair Watts stated that they are non-conforming therefore they have to comply with all the requirements as stated. Mr. Coan stated then that clause does not need to be in the code. Vice-Chair Fite explained that Mr. Coan was getting hung up on Section 156.05.02 which discusses expanding the building by 50% and the Board agrees, but you can't say one item applies and others do not. He added that it clearly states in Section 156.05.02 that "existing properties that do not meet landscape requirements" and this property does not meet those requirements, plus they have changed the use, changed the property size, and paved the parking lot. Vice-Chair Fite stated that all four categories do not meet the requirements as listed under existing developments. He added that it could be just one of those requirements. Mr. Coan stated that he read it as "all new construction or renovation of existing buildings", so you do not need that in the ordinance if you have all the other requirements. Vice-Chair Fite stated that would be a question for Council because this Board does not write the ordinances.

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

A motion was made by Vice-Chair Fite and seconded by Board Member Gibson to deny the appeal request #2018-9(V). Chair Watts called for a roll call vote. Roll call vote results: Fite – Yes to the motion to deny. Watts - Yes to the motion to deny. Gibson – Yes to the motion to deny. The motion to deny the appeal request #2018-9(V) was unanimously carried by all those present. Chair Watts stated that the Board finds the property to be non-conforming in rule in favor of the Administrative decision.

APPROVAL OF MINUTES

A motion was made by Board Member Gibson and seconded by Vice-Chair Fite to approve the Board of Zoning Minutes from the September 6, 2018 meeting as submitted. The motion was unanimously carried by all those present.

OTHER BUSINESS

Mr. Hanson stated that there would be a Board of Zoning meeting on November 1, 2018.

ADJOURNMENT: There being no further business Chair Watts declared the meeting adjourned at 5:50 p.m. The motion was unanimously carried by all those present.

**Board of Zoning Appeals Minutes
October 4, 2018**

Respectfully submitted by:

APPROVED:

Becky Hildebrand, CMC
Municipal Clerk

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.