

**CITY OF GASTONIA**  
**ZONING BOARD OF ADJUSTMENT**

May 24, 2018

Minutes

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The regular meeting of the Zoning Board of Adjustment was held on Thursday, May 24, 2018, at 9:02 a.m. in the City Council Chambers at City Hall.

Board Members present: Chairman Don Grant Jr., William Marino, Melanie Blankenship, Sidney Craig, and Michael Dickson

Board Members absent: Vice-Chair Lee Taylor Jr.

Staff present: Charles Graham, Assistant City Attorney; Joe Gates, CZO, Zoning Administrator; and Chrystal Howard, Secretary

Chairman Grant called the Board of Adjustment meeting to order.

**Item I: Approval of April 26, 2018 Minutes**

Board Member Blankenship made a motion to approve the minutes as presented and Board Member Craig seconded the motion. The motion was approved unanimously.

Chairman Grant explained the variance process. Because of the quasi-judicial format of these hearings it is required by North Carolina law to swear in persons that speak before the commission and offer evidence. Ms. Chrystal Howard administered the oath.

**Item II: Public Hearing #8985 – Gaston Hotel LLC – 444 Cox Road**

Chairman Grant opened the public hearing and addressed Item II on the agenda, Public Hearing #8985 – Gaston Hotel LLC – 444 Cox Road. The applicant has submitted a variance request to allow for additional sign area on an existing multitenant freestanding sign.

It is the policy of this board that a recused member shall be recognized and excused from participation of the related public hearing item. The board member may return to the dais for the next matter. Board Member Craig was recognized and recused from this hearing item.

Chairman Grant recognized Mr. Joe Gates, CZO, Zoning Administrator for staff presentation.

Mr. Gates thanked the board for being present. Mr. Gates stated the applicant's name, location, and the variance request to increase the amount of freestanding signage on an existing pole currently facing I-85. The applicant plans to increase the maximum allowable detached multitenant development sign area. The maximum sign area for this type of development is 200 square feet per the Unified Development Ordinance (UDO). The existing freestanding pole sign is currently at 199.5 square feet according to the notes attached to the sign permit for this sign. The sign permit number for this sign is 26539. The applicant is proposing a 14.12% increase over the maximum area for this district, an additional 28.24 square feet. In the application, the applicant stated that they desire a variance for increase signage because they were promised a sign panel on this existing pole sign at the time they acquired the property. The applicant stated that the seller over committed and cannot deliver the sign panel promised. Mr. Gates stated that there is no sign area remaining. Mr. Gates recognized that he was provided from the seller this morning a copy of the deed. Mr. Gates read a portion from the North Carolina General Warranty Deed Exhibit A, "Provided, However, that Grantor does hereby reserve unto itself, its successors and assigns, all right, title and interest in and to that certain pole sign and appurtenant structures now situate upon the northern portion of the above described property near its boundary with Interstate 85, together with an easement and right for ingress, egress, and regress to the said sign for purpose of maintenance and repair thereof. The easement and right of way for access shall follow the most direct and convenient route to the said sign and shall not unreasonably interfere with Owner's proposed used of the above described property. In the event that said sign reasonably interferes with Owner's development plans for the above described property, Grantor agrees to move the sign at its expense. Grantor agrees to allow Grantee to furnish, install and maintain, at Grantee's expense, an advertising panel on said sign in a size comparable to the size of the panels now existing. Grantor furthermore agrees to allow Grantee to furnish, install and maintain an advertising panel on Grantor's marquee sign situated at the Cox Road entrance to the subdivision shown in Plat Book 76, Page 61. Gaston County Registry at Grantee's sole expense." At the time the agendas were mailed, this information was not available. The applicant states in their application that the reason they are requesting a variance is the result of a private agreement pertaining to a sign panel that one party is not able to execute. The applicant has stated no physical attribute of the property itself or listed any other factor unique to the property in their application submittal that is causing them an unnecessary

hardship, which is required per section 5.14.1, if a variance is to be considered by the Board of Adjustment for consideration. Mr. Gates stated that staff has determined that this development does have at least 25,000 square feet in gross floor area to qualify for a 200 square foot multitenant sign. The applicant has not identified any unique physical characteristics of this property that would prevent the applicant from complying with the City of Gastonia Unified Development Ordinance. The conditions surrounding this variance request are self-created as stated in the applicant's own description of the situation in the variance application. The applicant and another party have entered into a contract/agreement and they now have an issue.

Board Member Dickson stated that the board does not have the authority to grant a variance based on the facts presented. Board Member Dickson asked if there was an additional or other option that the board could address and Mr. Gates answered that there is not another process similar to a variance regarding the sizes of signs. This particular case and circumstance has been discussed at this time and no other idea was entertained from the applicant or a sign company. Board Member Dickson asked Attorney Graham. Attorney Graham stated that the ordinance requires something unique to the property itself not necessarily the business transaction in order to grant a variance. The applicant has a right to speak and can present something. Currently, Attorney Graham was in agreement with Board Member Dickson's assessment. Attorney Graham stated that without reviewing the ordinance there may be signage options that can be placed on the building itself. The other option is to allow for a larger sign than the ordinance currently allows without some unique characteristics to the property. This would go to City Council requesting for the ordinance to be amended to allow for larger signs. No further questions were asked by the Board.

Chairman Grant recognized Mr. Parimal Thakor, 8632 Wilkinson Boulevard of Charlotte, NC. Mr. Thakor is for the requested variance. Mr. Thakor stated that they are building the Hilton Garden Inn and provided some amenities. Mr. Thakor feels that the hotel may increase traffic at this location and stated that the hotel is at a lower grade than the rest of the property resulting in poor visibility. Mr. Thakor stated that signage is very important for guest traveling from out of town, so they have the ability to make their way to the property without congesting the intersection. Mr. Thakor asked the board if they had any questions for him.

Mr. Gates stated that there will be available signage on a multitenant sign at the intersection on Cox Road and Gaston Mall Drive near I-85 and provided further details of sign location.

No further questions were asked by the Board.

Chairman Grant recognized Mr. Rob Pearson, 1422 Burtonwood Drive of Gastonia, NC. Mr. Pearson represents Pearson Properties and is for the requested variance. Mr. Pearson thanked the board for the opportunity to speak in favor of the variance request. Mr. Pearson stated that they sold the parcel to the hotel with a contractual obligation to provide a sign panel. Based on good faith, the hotel proceeded to develop, design, and build a beautiful new amenity for the City of Gastonia. After construction began, Pearson Properties discovered they had erred and overpromised sign panels and were unable to deliver. The hotel did everything correct. Not having a sign panel on a sign structure which is on their property appears to be punitive to a group making such as significant contribution to the amenities that Gastonia has to offer. Mr. Pearson was willing to share how he erred and overpromised signs. No questions were asked by the board.

Discussion ensued on signage continuing to be brought before the board.

Don stated that the intersection of Cox Road and I-85 is congested and it is difficult to read signs.

Chairman Grant inquired about the process to change the UDO and Mr. Gates answered that a text amendment is created, presented to the Gastonia Planning Commission for recommendation, and then presented to City Council for final vote. Mr. Gates stated that Ms. Jana McMakin, Senior Planner, and Mr. Jason Thompson, Planning Director, were present and available to answer any questions regarding text amendments and the process. Board Member Dickson inquired about the timeline for the change to occur and Mr. Gates answered approximately 3 to 4 months after application was submitted.

Chairman Grant asked Mr. Thakor how close they were to completion and opening date. Mr. Thakor answered that they expect opening date to occur late August or early September.

Board Member Dickson reiterated that the board does not have the authority to grant a variance request based on the facts presented and the admission of the developer, and that he is in support of signage being addressed to allow additional signage. Board Member Dickson was in favor of having the UDO

changed and agreed with signage continuing to be brought before the board. Board Member Blankenship provided recent signage items presented to the board.

Board Member Dickson made the motion to deny the request but that the board support the applicant in their attempt to have the UDO changed to accommodate their signage and move forward with them and staff to address this issue before the Gastonia Planning Commission and City Council. Board member Blankenship seconded the motion. The motion was unanimously approved 4-0.

Both Board Members Dickson, Blankenship and Grant offered their willingness to assist, as well as, go with applicant to the Gastonia Planning Commission and City Council.

**Item III: Public Hearing #8987 – Caren & Casey Berrier – 4227 Patriots Way & Patriots Way**

Chairman Grant addressed Item III on the agenda, Public Hearing #8987 – Caren & Casey Berrier – 4227 Patriots Way & Patriots Way. The applicant has submitted a variance request to allow a recreational vehicle to be parked in side yard.

Chairman Grant opened the public hearing and recognized Mr. Joe Gates, CZO, Zoning Administrator for staff presentation.

Mr. Gates restated the public hearing item. Mr. Gates began by stating that the applicant would like to park their camper slightly behind the front of the house, which would be the side yard, on a concrete pad due to lack of accessibility to their backyard currently in a flood zone. Mr. Gates stated that the owner also owns the adjacent parcel that the camper currently encroaches. Mr. Gates read a portion of Section 10.11 (a) Parking of Recreation Vehicles which is included in the agenda. Mr. Gates explained the front, side, and rear yard boundaries, the 100 year flood plain, and the grade. Mr. Gates referenced examples of setbacks in their agenda. Staff has verified that the rear of the property located at 4227 Patriots Way is indeed in the 100-year Floodplain. Mr. Gates reiterated Section 10.11 that Recreational Vehicles does require that a camper be on the same lot as the principle building (house). Currently, there are two (2) adjacent properties owned by the applicant and the area where the applicant is desiring to keep the camper parked is on both properties. In order to comply with this section of the ordinance, the applicant would need to recombine the two (2) existing parcels into one (1) parcel to comply with this requirement if the Board of Adjustment decides to grant this variance. Lastly, staff is asking the board to include this a condition if the board decides to grant the variance.

Chairman Grant asked if this came forward from a result from a complaint and Mr. Gates stated that they received a complaint on April 5, 2018. Staff investigated the complaint and sent a notice of violation to the property owner at that time. Staff met with the property owner on site and discussed the ordinance. The property owner asked if there were any allowancse or ways to help with the flood plain condition, addressing grading difficulties and development in the flood plain. Code Enforcement placed a hold on any enforcement once the variance applicant was submitted and will remain until the board makes their decision. The applicant is in agreement with staff that the current location of the camper is in violation but is asking for a variance because of the conditions on their property.

Discussion ensued between Chairman Grant and Mr. Gates on classification, height and size of primary and recreation vehicles, as well as, the violation complaint.

Chairman Grant inquired if it was a creek or pond in the rear elevation and Mr. Gates answered that it was a creek. Mr. Gates provided various images of the property from the applicant's PowerPoint presentation. Chairman Grant asked if the fence prohibits the vehicle from being parked in the back and Mr. Gates referred this question to the applicant.

No further questions were asked by the board.

Chairman Grant recognized Mr. Casey Berrier, 4227 Patriots Way of Gastonia, NC. Mr. Berrier thanked the board for giving him the chance to speak in favor of this request and he commented that Mr. Gates covered a lot of the request. Mr. Berrier stated that they feel they have a unique property with the flood zone in their back yard and the back yard is too steep for parking. Mr. Berrier answered Chairman's Grant question that the fence does prevent parking in the back yard as well as the steep grade. Mr. Berrier continued that the pad and trees were installed 3 to 4 years ago with the homeowner's approval. He stated that they tried to hide the camper from being seen from the road and feels that their property meets the hardship of being unique due to the flood zone.

Board Member Dickson asked the applicant if the homeowner meant the Homeowner's Association (HOA) and Mr. Berrier agreed and stated that this year the HOA no longer exists. Board Member Dickson asked for background on the adjacent property he owned. Mr. Berrier answered that the property is buildable; however, the HOA required that houses be a certain distance from the street making it difficult for a house to be built because of the flood zone. Board Member Dickson asked if they considered recombining these parcels and Mr. Berrier answered that they have considered it and do not have an issue with recombining the parcels if that is what it takes.

Discussion ensued on property value, recombining the parcels and the possibility of moving the common property line to encompass the driveway. Staff would be willing to work with the applicant in plat review to keep the lot in compliance with zoning. Applicant accepted the possibility of moving the common property line.

No further questions were asked by the board.

Board Member Dickson stated that in order to stay in compliance with the Unified Development Ordinance (UDO) and that the homeowner has shown hardship that should be address by this board; however, where the UDO requires the camper be parked on the primary lot, Board Member Dickson made the motion that the variance be approved with the condition that he take enough of the adjacent parcel #116849 and add it to parcel #116871 so that the camper is parked on the primary lot. Board Member Blankenship seconded the motion.

Board Member Dickson stated that he thinks to address this in this manner was a shame because it does create an additional expense to the homeowner. It does appear that the applicants did everything they could in the right way. Board Member Dickson reminded that public that the board does not have the ability to change the UDO. Without the ability to change the UDO, this is the only relief that the board can grant at this time. Chairman Grant also commented about possible complaints. Board Member Marino asked which neighbor made the complaint and Mr. Gates answered that staff is unaware of who made the complaint. An anonymous call was received making a complaint that this address had a camper parked in the side yard. The applicant stated that they had talked to their neighbors and received feedback that they were fine with it.

The motion was unanimously approved 5-0.

#### **Item IV: Other Business or Announcements**

Mr. Gates stated that staff has not receive any request for public hearing to be heard by the Board of Adjustment; therefore, there will not be a Board of Adjustment meeting scheduled in June.

Chairman Grant noted there was no other business or announcements.

There being no further business or announcements, Chairman Grant entertained a motion to adjourn the meeting. Board Member Dickson made the motion to adjourn the meeting and Board Member Craig seconded the motion. The motion was approved unanimously. The meeting adjourned at 9:59 a.m.

Respectfully Submitted:

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Chrystal Howard, Secretary

Zoning Board of Adjustment  
City of Gastonia, NC

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Vice-Chairman William Marino

Zoning Board of Adjustment  
City of Gastonia, NC