

LANCASTER COUNTY  
BOARD OF ZONING APPEALS  
REGULAR MEETING  
JANUARY 12, 2016  
MINUTES

Members Present: Reid Rushing, Harvey Carnes, Don Brouwer, LaVilla Brevard, Frances Liu, Terry Graham.

Others Present: - Penelope Karagounis, Planning Director; Elaine Boone, Planner II; Nick Cauthen, Planner I; Judy Barrineau, Secretary; Kenneth Cauthen, Zoning Officer; Gavin Witherspoon, Zoning Officer; John Weaver, County Attorney;

Others Absent: District 6 – Vacant Seat; Amy Bowers, Zoning Officer; Dwight Witherspoon, Zoning Officer; No members of the press were present.

The following press were notified of the meeting by mail or by fax in accordance with the Freedom of Information Act: Lancaster News, York Observer, Kershaw News Era, The Rock Hill Herald, Fort Mill Times, Cable News 2, WRHM Radio, and the local Government Channel.

**Approve the Agenda**

Frances Liu made a motion to approve the agenda and LaVilla Brevard seconded the motion.

VOTE:                      UNANIMOUS                      MOTION CARRIED

**Approval of the Minutes**

Terry Graham made a motion to approve the December 2015 minutes and Harvey Carnes seconded the motion.

Reid Rushing called the meeting to order.

Staff introduced themselves and Judy Barrineau swore them in.

Judy Barrineau - Do you solemnly affirm that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

Staff – Yes.

Reid Rushing – Have all the adjacent property owners and the applicant been made aware of tonight's meeting including place, date, and time and advertised in the paper including a copy on file?

Nick Cauthen – Yes.

Reid Rushing – The zoning board of appeals duties are within three specific areas: A) Administrative review is an appeal of an order, requirement, decision, or determination of the Administrator that has alleged error. B) The power to grant variances when strict application of the zoning ordinance would not cause an unnecessary hardship and the granting of variances would not cause substantial detriment to adjacent property or the public good. C) Special exceptions are permitted when uses require a public hearing prior to granting authorization. The public hearing is conducted to review comments and information both for and against a proposed application. During the public hearing portion of the meeting all interested parties will be given the opportunity to speak and give factual information or present factual documentation. All people speaking will be placed under oath. All persons wishing to speak must sign the proper registry prior to speaking. Anyone speaking will come forward to the podium, speak into the microphone, state your name, address, and your telephone number. We must record all information for the record. Applicant will speak first, all opponents second, the proponents next. The applicant will also have an opportunity for a rebuttal. Please, a 5 minute limit will be placed on each speaker.

**Variance application of James A. Craig. The applicant is requesting a variance from Chapter 2, Zoning Districts and Zoning Map, Section 2.1.5 Overlay Districts, Highway Corridor Overlay District of the Lancaster County Unified Development Ordinance regarding the design requirements. BZA-016-001**

Nick Cauthen – Presented the statement of matter.

Reid Rushing – I will now proclaim the public portion of our meeting open.

Judy Barrineau - Do you solemnly affirm that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

William Craig – Yes, William Craig - 1645 Westgate Circle, Brentwood, TN 37027. If you look at the first two pages of the exhibit I laid out, it is just a simple site plan and grading plan of what Jim ‘N Nick has proposed for their building. The building is further away from the highway but it allows a centered front door within the parking lot and a more economical entrance for customers. On the third page is a site plan we have developed which will meet the requirements of the Highway Corridor Overlay District and is strictly designed for that purpose. On the fourth page is a section cut through the front door from that version B showing the relationship from the road to our property and restaurant level. We feel the main hardship of the site is based on the drastic elevation change between both the entrance and the highway. There is over ten feet of quick elevation change and a multitude of issues including vision to the restaurant. There are also minor safety issues from the highway. It is a restaurant that is hoping to be in business for twenty years and we have an immediate drop off from a major highway straight to the front door if we design the site per the overlay district requirements. The entrance way to the development which has already been constructed it is considered part of that Highway Overlay Corridor. The building would have to be situated in a location that would have no front property and no front parking between both the highway and that main entrance from the highway which pushes us up into the tightest corner which happens to be where the highest elevation change between where the road is.

Frances Liu – Where will the signage be?

William Craig - As I understand it we would be allowed a monument sign but it is something that we haven’t discussed yet. My guess is that it would be on the interior of the property towards the private drive in the back where the cars would actually enter the site instead of having an additional monument sign right along side of the road. There would also be building signage.

Frances Liu – I was just thinking if visibility was a problem then a monument sign by the street would solve the problem. I was reading where it stated that the Highway Corridor Overlay District ordinance make customer and ADA access to the building very difficult. Why is that?

William Craig – The front door per the plan that would be required by the Highway Corridor Overlay District is facing directly towards the highway which is exactly what the corridor hopes for but in that case there is always a sidewalk running along the highway and that is where the main pedestrian access comes from. In our case because of the elevation change on the site, all main pedestrian access would be coming from behind and much further; ADA access would be coming from the side of the building. Anyone coming from off the site would essentially not be able to walk to the site. If we were to build sidewalks throughout the property, the way the Highway Corridor suggests, it would not connect to anything. Our main point of hardship isn’t necessarily visibility; the layout of the front door to the restaurant is opening to nothing, just the side of a hill.

Frances Liu – The building couldn’t be turned so the front door faces the parking?

William Craig – It could but it would not comply with the requirements of the Highway Corridor Overlay District.

Bryan Tuttle – Yes - 942 Blakely Walk, Rock Hill, SC 29732. This is all about creating good commercial enterprise to service our residents as well as to create a great new tax base for the County and a business enterprise we can be proud of. Jim ‘N Nick’s BBQ is from Atlanta and they are a strong organization with a nice presence and a well recognized in many of the metropolitan areas around the Southeast. We have been willing and volunteer participations of the overall overlay creation, the public input to that and providing certain expertise from a commercial point of view. We certainly support and have been part of the process all along. So we are not saying that this is about trying to take the first opportunity we have to change it; one size never fits all. I don’t care what ordinance you pass or what standards you have; it just can’t fit every single case. This particular case as you have noted on your page 3 that there is a front door facing a hill; that is not necessarily safe but certainly not a pleasant thing for you to do to orient yourself towards as a customer. I feel very strongly and we are genuinely concerned being in the apex of 30,000 cars a day going through that light right there. If there was one accident, one fall off the edge of the road; they would be in this building. A car would literally launch right on top of this building. It is not a safe scenario to have. It really is a genuine hardship.

Reid Rushing – What is the distance between Highway 521 and the back of the curb on sheet 3?

William Craig – That would be better for me to answer. There is 25 feet between the right of way of Highway 521 but I don’t know the distance between the edge of the pavement and the right of way of Highway 521. My guess is it’s between 10 and 15 feet because that is what SCDOT’s standards are.

Reid Rushing – From Highway 521 to the back of the curb?

William Craig – I’m sorry, 15 feet from Highway 521 to the edge of the right of way and then from the edge of the right of way it’s exactly 25 feet because that is what is required.

Reid Rushing – I will now proclaim the public portion of our meeting closed.

Reid Rushing – Any telephone calls or letters received by staff?

Nick Cauthen – Just one call inquiring what was going in there.

Reid Rushing – Has a site check been done?

Kenneth Cauthen – The parking area is basically 9, 10, and 11 feet below the shoulders of the road.

Brief discussion regarding topographic lines.

Frances Liu made a motion to approve based on the fact that there are extraordinary and exceptional conditions pertaining to topography which do not generally apply to most properties in the vicinity; the application of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property and LaVilla Brevard seconded the motion.

VOTE: 5 AFFIRMATIVE 1 NEGATIVE MOTION CARRIED

The one negative vote came from Reid Rushing.

**Variance application of Greg Welsh. The applicant is requesting a variance from Chapter 2, Zoning Districts and Zoning Map, Section 2.1.5 Overlay Districts, Highway Corridor Overlay District of the Lancaster County Unified Development Ordinance regarding a temporary parking lot. BZA 016-002**  
Nick Cauthen – Presented the statement of matter.

Judy Barrineau - Do you solemnly affirm that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

Greg Welsh – Yes, 5950 Fairview Road Suite 100, Charlotte NC 28210. When Movement Mortgage initially built the building they anticipated approximately 450 employees. They are quickly growing to close to 700 employees. They will have that many employees on this campus probably by the second quarter of this year. The developer, Keith Corporation, is planning to build a parking deck on the future phase to accommodate that; however given the fact that we have a CO scheduled for March, we need to quickly find some space for the employees. So the concept was to provide a gravel parking; again it's in the foot print of a future parking lot but it would not be in the way of the future parking deck. Paving, landscaping, curbing, all the stuff that would normally go into a permanent parking lot is simply cost prohibitive for something that is really only going to be in place probably nine to twelve months. This is while the construction of the parking deck is designed, permitted and constructed. I have spoken with the architectural review committee and they are in favor of this and very excited about the amount of employees coming to this area. They are ok with the idea of a temporary parking lot as long as it's not there in three years. They did put a three year cap on it.

Frances Liu – What is a CO?

Greg Welsh – Certificate of Occupancy.

Reid Rushing – So the architectural review committee has put a three year cap on it?

Greg Welsh – Yes, for the gravel parking. Brandon is with the Keith Corporation and I will let him talk more about the timing.

Judy Barrineau - Do you solemnly affirm that the testimony you are about to give is the truth, the whole truth and nothing but the truth?

Brendon Pierce – Yes, 5935 Carnegie Blvd., Charlotte NC 28209. The idea is to build a temporary lot on the future building pad which allows us to build the parking deck first and then move all the employees into that parking deck and then build the building second. The intent is to ultimately build two buildings here on these properties. Right now they are hiring approximately 100 people per month so that probably won't happen forever but their business is going very well.

Frances Liu – When will the permanent parking lot construction begin and when do you feel it will be completed?

Brendon Pierce – It will depend upon the timing of hiring. That is why the architectural review committee stated if you haven't built anything within three years, then you have got to get rid of it or pave it. My personal opinion is that I think it will happen before that because of the amount of hiring that Movement Mortgage is doing. I can't say with certainty. This is a condition to alleviate a situation where they will have more employees than they have parking spaces. What we don't want to do is build a permanent lot and then all of a sudden have to tear it up to build a second building. That is the reason for a temporary lot. We feel strongly enough that they are going to build that second building. Otherwise, we would just build a permanent lot.

Frances Liu – But we could be looking at a gravel lot for three years?

Brendon Pierce – Theoretically, yes.

Reid Rushing – We can put stipulations on this as well.

Brendon Pierce – We are not trying to get out of not building a lot, trust me on that. We want this to be a great business park and the last thing we want to do is have a gravel lot there. This is simply for convenience in order to allow us a quicker and more affordable way to build a second building.

Frances Liu – God forbid there would be a downturn and the business would not be there anymore, who would remove the gravel lot? Whose responsibility would it be?

Greg Welsh – We own the building as well and I agree with you; god forbid if there was a downturn, but it would be our responsibility as owners of the building and owners of the land. That is something we do as developer, we take that risk.

Reid Rushing – They already have a three year stipulation from the architectural review committee so our stipulation could be two years, six months, or it could be a year.

Frances Liu – Where is the gravel lot located because of the subdivision across the street?

Greg Welsh – It is just adjacent to it.

Harvey Carnes – What side of the road is it on?

Greg Welsh – Southside of Fort Mill Highway.

Harvey Carnes – If you are going to Fort Mill it is on the right or left?

Greg Welsh – The left.

Harvey Carnes – This map shows it on the right.

Penelope Karagounis – You are heading West on Highway 160 it is on the left.

Brief discussion regarding the layout of the map.

Greg Welsh – This will be Movement Mortgage home headquarters so they really don't want to have a gravel lot next to them. This is simply for the understanding that they need something temporary.

Harvey Carnes – Are you working on your building now?

Greg Welsh – The first building is under construction and will be complete in February.

Harvey Carnes – What about the other one?

Greg Welsh – We are working on designs right now.

Elaine Boone – Is it a parking deck?

Greg Welsh – Probably a table top deck.

Frances Liu – I'm having trouble with a gravel parking lot across the street from a subdivision. I can't imagine what it would be like to have all that dirt and gravel.

Reid Rushing – What we have to do is either grant them a variance to put that gravel down or to deny the variance request. That is all we have to worry about. Hopefully within time they are going to be building the parking deck.

Greg Welsh – If it helps you also, that lot is 23 feet low on Highway 160; it does sit way down relative to Highway 160 so from the subdivision you won't even be able to see the lot.

Brief discussion regarding where the gravel parking lot will be located.

Greg Welsh – In a perfect world we would build a permanent lot where the parking deck is going to be but the reality is the reason we don't want to do that is because we don't know exactly what size the second building is going to be.

Reid Rushing – I will now proclaim the public portion of our meeting closed.

Reid Rushing – Has staff received any calls or letters?

Nick Cauthen – Just one email from a citizen asking to see the plan is all.

Reid Rushing – Has a site check been done?

Kenneth Cauthen – The bottom of the drawing on page 22 shows parking right here which would be the east side of the building. Will those handicap parking spaces be paved?

Greg Welsh – Yes.

Reid Rushing – Have all measurements been verified?

Kenneth Cauthen – Yes, we went over this in the Development Review Committee meeting and we knew there was another lot available right there so evidently they are purchasing that as well. Mr. Willis had someone he was working with was asking him questions about alternative pavement methods and that is something that is catching on in places. In other words there are different types of materials you can use but I need to check with Jeff Catoe who is over Public Works and would be familiar with it.

Terry Graham – I would still like to have a better understanding of the timeframe for building the parking deck and removing the parking lot with gravel.

Reid Rushing – I'm not sure if they can answer that question this evening as far as a timeframe when they are going to build that parking deck. If the company continues to progress the way it has in the hiring of more employees at 100 more a month then it would be sooner than later. Let's put it that way.

Kenneth Cauthen – Red Ventures built a parking deck like this one and I know they have to see how the business is growing first but I was up there a good bit when Red Venture was building their deck, and I don't think it took over six months to build that parking deck.

Reid Rushing – A lot of it has to do with how quick they need it and also a big thing is the funding of it. We may grant a variance tonight but we can stipulate six months, a year.

Frances Liu – If they go out of business what kind of enforcement do we really have?

Reid Rushing – If they go out of business the County will get the land.

Penelope Karagounis – Like the applicant stated Movement Mortgage is their tenant; the owner is Keith Corporation who this gentleman represents. If you decide to do a variance with stipulations, I would stipulate that Keith Corporation is responsible for the record. Put as much information in that variance request; Movement Mortgage wants the temporary parking lot but it's the Keith Corporation's actual property.

Kenneth Cauthen – This is just like the big four story building in Edgewater. The original company went out of business and the owner of the building leased it to someone else fairly quickly. Also, the question regarding the runoff from the gravel; there is a sediment basin right there and all the water is designed to go across the parking lot into that sediment basin and will be trapped there. DHEC would require for the sediment basin to be cleaned out and disposed of in a safe way so that will help keep anything out of the streams.

Frances Liu – Is the variance going to the tenant or .....

Penelope Karagounis – The applicant is Mr. Greg Welsh from Burton Engineering, so the variance goes with the property. This is part of the Bailes Ridge Business Park. It was mentioned that they have their own covenants and have already received a stipulation up to three years. I guess at the time when they went to the board of Merrifield Partner's they didn't have an actual concrete date. If you choose to approve this variance they will also have covenants from Merrifield Partner's that they will have to answer to; not Movement Mortgage but the Keith Corporation.

Terry Graham – What was the start date on that?

Penelope Karagounis – The applicant stated that it was January 1<sup>st</sup> of this year that they received the approval from Merrifield Partner's for three years for building the parking deck based on their covenants.

Frances Liu – I will start out with a motion to approve with a stipulation of 18 months and if the parking garage is not completed that they will remove the gravel parking lot.

Reid Rushing – When you say “they” I assuming the owner of.....

Frances Liu – The owner of the property will remove the parking lot.

Terry Graham – I would name the Keith Corporation as responsible for the clean up.

Frances Liu – Yes, I would stipulate that the Keith Corporation remove the gravel parking lot.

Terry Graham – I will second the motion.

Penelope Karagounis – Can we restate it so everybody understands what they are voting for? There was a motion and a second to approve with a stipulation that if the parking deck is not built after 18 months then the property owner “Keith Corporation” is responsible in moving the gravel lot.

Greg Welsh – I would encourage you to put in the stipulation to the “landowner” because if we were to sell all the property to someone else to develop the seconded building for example and it is not our intent; you would want whoever is going to do that development to get rid of that gravel lot.

John Weaver – From a practical stand point if they sell the property to Corporation B and Corporation B is not bond by what you have made; then that gravel lot could stay there for three years.

Frances Liu – If they don't remove it in a year and a half; what can the County do to enforce it?

John Weaver – The County can take action to require them to do it or alternatively we can do it our self and place a lien for the value on that property.

Frances Liu made a motion to approve with the stipulation of 18 months and if the parking garage is not completed the landowner will remove the temporary gravel parking lot; Terry Graham seconded the motion.

VOTE: 6 AFFIRMATIVE 0 NEGATIVE MOTION CARRIED

**Variance application of Doby’s Bridge Road Development Partner’s, LLC. The applicant is requesting a variance from Chapter 2, Zoning Districts and Zoning Map, Section 2.1.5 Overlay Districts, Highway Corridor Overlay District of the Lancaster County Unified Development Ordinance regarding the design requirements. BZA 016-003**  
Nick Cauthen – Presented the statement of matter.

John Weaver – In the time that I have been with Lancaster County I know that you have never had a rehearing matter to be considered. I don’t know if you have ever had one. I know since I’ve been here you have not. I thought it advisable to prepare a legal opinion as to what you should or should not do. Legal opinions are nothing more than an opinion and we’ve got another lawyer here who might disagree with my opinion but I believe that I am correct in what I’ve said. You have two issues to decide and on page 27 of your book beginning on page 26 but on page 27 I have highlighted in red what your options are. The first option is to decide whether or not you want to grant a rehearing. A rehearing is not a right. It is an opportunity if this board sees it in its power to grant a rehearing. Now in this case there was a deadline to get in the request for a rehearing on December 30<sup>th</sup>. By the applicant’s own admission that did not occur, he sent in everything to support the rehearing except the letter itself. You will see in the facts that I stated that what he says happened and I have no reason to doubt it; the sheet that had the letter for the rehearing was simply put in the machine up side down. They got five or six or seven good pages but on page 5 they got a blank sheet. When that finally came to their attention a few days later, they sent in the letter that should have been reversed; if you believe what he said and I have no reason not to. From a technical stand point that letter was not received by December 30<sup>th</sup> but he explained the reason why. It is up to you as a majority vote to decide whether or not that is a genuine excuse that is appropriate in your mind. I will tell you that in the whole matter of a rehearing, if you want to do a rehearing it can be done if there was an administrative mistake. In this case, as Elaine told you last time, they forgot to put in Exhibit A and so I’m not saying that oversight should be the grounds for that but it has happened before in this same case. You will need to take a vote on whether or not to grant a rehearing. If you do not grant a rehearing the matter is over. If you do grant a rehearing then you have to decide what you can consider. In this case, this is not a second bite at the apple, this is not I didn’t do a good job the last time and I’m going to do a great job this time. Then you have a thirty minute display and new pictures and everything. What you are allowed to consider is what was presented the first time, plus that Exhibit A that Elaine left out of the first packet that you have. Do you or do you not grant the rehearing. Secondly, if you do grant it, Exhibit A was whatever came in from your December meeting.

The vote will be to grant the rehearing: (Roll Call Vote)

VOTE: 1 AFFIRMATIVE 5 NEGATIVE MOTION FAILED

The only one affirmative vote came from LaVilla Brevard. She stated because she was not at the December meeting she would vote affirmative.

John Weaver – Brief memo with applicable state law regarding educational requirements. If you do not meet your annual responsibility of state law requirements the County Council is obligated to remove you so as to ensure that your decisions are in conformity with the state law requirements. There is also a requirement that you provide a certification to Clerk to Council annually. Debbie Hardin generally gets in touch with you and has you to sign it. I don’t know if you have done it for the end of 2015 or not. You may have done it when you completed your educational requirements a few months back. If you have not

done it please get in touch with Debbie Hardin so that you can sign that and then in 2016 learn some more. As of right now, everyone on the board is a qualified pursuant state law.

Penelope Karagounis – I will normally provide continuing education classes in the spring time. The Association of Counties will probably provide another webinar in the spring just like we had this past May. I will let you know ahead of time when the next webinar will be. You can also attend classes in Rock Hill at Catawba Regional Council of Governments if it is easier for you to attend. I can also send you their schedule as well.

Reid Rushing adjourned the meeting.

VOTE: UNANIMOUS MOTION CARRIED

Respectfully Submitted,



Reid Rushing  
Chairman



Penelope Karagounis  
Planning Director