

**VILLAGE OF WESLEY CHAPEL
BOARD OF ADJUSTMENT MEETING
August 25, 2010, 7:00 PM**

MINUTES

The Board of Adjustment of the Village of Wesley Chapel, North Carolina, met at the Wesley Chapel United Methodist Church, 120 Potter Road, Monroe, NC 28110.

Present: Chairman Butch Byrum; Vice Chairman Bruce Ewing; Members Lisa Ghannam, Creig Williard, Tonya VanWynsberg

Village Staff present: Cheryl Bennett, Village Clerk; Joshua Langen,

1. Welcome and Determination of Quorum

The meeting was called to order; a quorum was present.

2. Additions, Deletions, Corrections, and Adoption of the Agenda

Bruce Ewing made a motion to adopt the agenda; Creig Williard seconded the motion.

The motion passed unanimously

2. Hearing on Variances for McDonalds – **Case No. ZV-10-2; McDonalds – Weddington Rd & Waxhaw Indian Trail Rd; tax parcel 06045009**

Chairman Butch Byrum asked Joshua Langen if the application had been filed timely; Langen replied he had added notes, put in the ordinance sections, added tax map ID numbers, and had them sign it; he brought copies of the signed application tonight. The applicant paid the fee. Langen said the adjacent property owners had been identified and notified. Chairman Byrum asked the Board of Adjustment members if they had any conflict of interest; they did not. He asked the Village Zoning administrator and the McDonalds representatives if they had any conflict of interest; they did not.

Chairman Byrum swore in the three witnesses: Joshua Langen, Zoning Administrator; Payman Nadimi, construction manager for McDonalds; and Jeremy Norris, graphic designer and permit acquisition specialist for Sign Clinic who handles the regional signs for McDonalds.

Langen said the applicant is building a McDonalds and the ordinance states you may have two menu board signs per restaurant; they are asking for four, two are pre-sell and two are menu boards. The exterior of the building is brick and stucco, and the ordinance requires you to use similar materials for the exterior of the signs, but they are asking for a variance to use aluminum signs. Langen also said the ordinance allows the height of the signs to be 60 inches from curb or 72 inches from drive, so they meet height regulations. Two of the menu boards don't

meet the maximum width regulations. The maximum internal portion is 48 x 72 inches; and they have exceeded the height and width of the internal portion and the width for the entire board. Langen noted Sec 11.3.1 of the ordinance says no variance shall be given for square foot limitations on signs.

Payman Nadimi said they have a new drive-thru concept with two drive-thru lanes; an example is in Waxhaw. The double drive-thru will benefit circulation and safety; it reduces back up; also the site is smaller than the typical McDonalds; also there is only one access point off the side street, not two curb cuts.

Chairman Byrum asked the size of the average lot for McDonalds; Mr. Nadimi said one to one and a quarter acres; this one is about .7 to .8 acre. Bruce Ewing asked if they looked at other sites. Mr. Nadimi said yes, he is on the construction side, and doesn't do the selection. Creig Williard asked if there is a McDonalds similar in lot size with two drive-thru's nearby. Mr. Nadimi couldn't think of any; he also noted there is a detention pond behind the lot so they couldn't access the shopping center there, they only have one access point. Chairman Byrum asked if there are any other businesses to be served off the access road; Mr. Nadimi said the bank on the east, and the grocery store.

Jeremy Norris stated they are attempting to limit the amount of time people are sitting in line, so the pre-signs help them make decisions.

The circulation plan was reviewed; Mr. Norris said during non-peak hours you might pull directly into the drive-thru lane, but in peak house hours it would be stacked up; there will be signs directing traffic.

Creig Williard asked if they have leeway on the size of the signs; Mr. Norris said no, it is dictated by McDonalds. Bruce Ewing asked if they were aware of the restrictions before they applied; Mr. Norris said yes. Chairman Byrum asked if the pre-sell board could be where all the cars go by; Mr. Norris said that was a possibility.

Chairman Byrum went to page two of the application, item (1) regarding no reasonable return from, or make no reasonable use of, his/her property; he said can you can make more efficient and better financial use with the variance? Mr. Nadimi agreed, he said it will also lead to safer flow of traffic.

Chairman Byrum then went to item (2) that the hardship results from the application of the Ordinance, and asked the applicant to explain the hardship. Mr. Nadimi said the hardship originated from the double drive-thru which he thought the ordinance is silent on; and said a double drive-thru may not have existed when the ordinance was written. Chairman Byrum said doesn't Council address text amendments, not the Board of Adjustment; Attorney Sistrunk agreed.

Chairman Byrum went to item (3) which states the hardship is suffered by the applicant's property; he stated it appears the property can be used, the hardship is more from individuals that will wait longer; Mr. Nadimi said he was correct.

Chairman Byrum looked at item (4) that the hardship is not the result of the applicant's own actions; he said he understood it is a new model layout, have you built in North Carolina in the last year or so where there is only one drive-thru? Mr. Nadimi said there was one in the Charlotte area two years ago; it was not an

ordinance issue, but an internal decision by the franchisee. This is a company owned McDonalds.

Lisa Ghannam asked if they took into account the lot size and entry access: Mr. Nadimi said yes, stacking will be significantly reduced; Ms. Ghannam said we will have twice as many trying to get out at the same point.

Bruce Ewing asked if the pre-sell board was a necessity. Mr. Nadimi said they like to have pre-sell boards for new and promotional items and extra value meals; it helps to make decisions earlier. Mr. Ewing asked if they could put the menu board where the pre-sell board is, and eliminate the pre-sell boards. Mr. Nadimi said no, there is a specific optimal distance from the cash booth to the menu board. Tonya VanWynsberg said most of this is for convenience and traffic flow. Mr. Williard said if you see people lined up, you will go across the street. Mr. Norris said one of the concerns is safety.

Tonya VanWynsberg asked if the sign material was aluminum; Mr. Norris said, yes black aluminum; Mr. Nadimi added it is standard in the Charlotte area. Mr. Norris said the building is primarily brick and stucco, but it is not typically used on the signs. Mr. Ewing suggested a brick frame around the sign; Mr. Norris said then they couldn't access it for maintenance. Chairman Byrum asked if the Village had a position on this. Joshua Langen said he had some factual items; regarding economic use of the property, if there were a traffic nightmare he might be forced to shut it down, the fire department might have something to say about it's a very small and peculiar site; whatever they can do to encourage traffic flow will help them stay in business. Langen said second of all, regarding extenuating circumstances; when they first came to him they discussed a number of entry options, and DOT ruled there had to be a certain distance from Highway 84; also they are operating from a set of plans that had Bank of America access in a different place, their actual driveway location messed up their original plans. It is also a peculiar lot because there is no access from the rear; and there is a right-in right-out from Highway 84.

Bruce Ewing asked if there was a problem having one entry/exit for the fire department? Langen said he hadn't heard anything from the fire department; they have to satisfy the fire marshal. Langen said the driveway should have had a middle turn lane, it would have helped with stacking; also anything we can do to get traffic moving will help.

Creig Williard asked if Wesley Chapel had a history of this type variance; did Chick Fil A apply for a variance? Mr. Langen said they asked for a waiver from the materials, and they put a screen wall behind the sign, so it looks like brick from behind and the actual casing has stucco material applied to it.

Creig Williard said he only saw four to five extra cars with the second drive-thru; Mr. Nadimi said it shows where the lanes diverge and converge and is accurate. Mr. Williard asked if you could put one pre-sell sign to serve both lanes: Mr. Nadimi replied yes.

Ronnie Mangum asked if he could make a statement; Chairman Byrum said it wouldn't be considered as evidence, but he could speak. Mr. Mangum, owner of the sign clinic, said regarding other stores with this issue, at Pineville Matthews they had a single drive-thru, and it was re-built to a double drive-thru and alleviated the traffic problem.

Butch Plyler said he lives next door, and it was supposed to be a Market Express where the Bank is; it will be a nightmare to make a left turn in, and customers will go elsewhere. At lunchtime Chick Fil A is backed up with a single drive-thru. He said to leave and go toward Monroe you would have to go back through the shopping center.

There was no other testimony. Chairman Byrum closed the record.

Chairman Byrum said safety is important and one criteria, but the other two criteria have to be considered. Regarding reasonable return, they have conceded they can use it without the variance. The fact that you can make more money is not a justifiable criteria. Attorney Sistrunk agreed.

Chairman Byrum said it is not so much the ordinance as other factors such as Bank of America and the roads; Sistrunk agreed.

Chairman Byrum said the hardship has to do with the customers, not the property. He asked do we have discretion to overlook legal point and issue a variance? Attorney Sistrunk said no, this is not the proper forum to address their issues; relief is a text amendment to the ordinance. Chairman Byrum asked Mr. Langen if they could apply for a text amendment: Langen agreed.

The planned opening date is about October 13, 2010. Tonya VanWynsberg asked if the extra signs could be added; Mr. Nadimi said yes, if we plan for it.

The three variances for number of signs, size and materials were considered collectively.

Considered first was whether (a) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance. The following five items were looked at:

Item (1) – If he/she complies with the provisions of the ordinance, the property owner can secure no reasonable return from, or make no reasonable use of, his/her property.

Bruce Ewing said they can't say there is no reasonable return, they want a maximum return.

Chairman Byrum said it is more toward increasing the return.

Creig Williard made a motion to vote on this, that they can make no reasonable return; Tony VanWynsberg seconded the motion. The vote was unanimous, 5-0 that the applicant had not proved this.

Item (2) The hardship results from the application of the Ordinance.

Chairman Byrum said the hardship is not from the ordinance, but has to do with the convenience of the customers, it is more an economic issue. Tonya VanWynsberg made a motion to vote on item (2); Bruce Ewing seconded the motion. The vote was unanimous 5-0 that there was no hardship resulting from the application of the ordinance. They did not feel the applicant had provided the

proof of the hardship.

Item (3) The hardship is suffered by the applicant's property.

Tonya VanWynsberg made a motion to vote on this item; Lisa Ghannam seconded the motion. The vote was unanimous, 5-0 that the applicant had failed to provide the burden of proof.

Item (4) The hardship is not the result of the applicant's own actions.

Creig Williard made a motion to vote on this; Tonya VanWynsberg seconded the motion. The vote was unanimous 5-0 that the applicant had not provided the burden of proof.

Item (5) The hardship is peculiar to the applicant's property.

Lisa Ghannam made a motion to vote on this item; Bruce Ewing seconded the motion. The vote was 4 that the applicant had not provided the burden of proof; and Creig Williard abstained from voting.

Next to be considered was (b): The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit.

Chairman Byrum asked Joshua Langen for his comments: he had no opinion.

Chairman Byrum said the ordinance doesn't state the intent, just has specific requirements. Tonya VanWynsberg made a motion to vote on this item; Lisa Ghannam seconded the motion. The vote was 5-0 that the applicant had not proven the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit.

Next to be considered was (c): The granting of the variance secures the public safety and welfare and does substantial justice.

Bruce Ewing made a motion to vote on this; Tonya VanWynsberg seconded the motion. The vote was three (Chairman Byrum, Bruce Ewing, and Tonya VanWynsberg) that the applicant had proven this finding; and two (Lisa Ghannam and Creig Williard) that the applicant had not proven this finding.

Next to be considered was (d): Giver reasons set forth in this application to justify the granting of a variance, and the variance is a minimum one that will make possible the reasonable use of the land and structures.

Tonya Van Wynsberg made a motion to vote on this item; Bruce Ewing seconded the motion. The vote was unanimous that the applicant had not proven that the variances should be granted.

Chairman Byrum told the applicant that he commended their goal of safely and quickly serving customers, and their option was to follow up with Joshua Langen on requesting a text amendment.

5. Adjournment

Bruce Ewing made a motion to adjourn; Tonya VanWynsberg seconded the motion.

The motion passed unanimously.

Respectfully submitted,

Cheryl Bennett, Village Clerk

Henry C. Byrum, Chairman