

**CITY OF ELIZABETH CITY
BOARD OF ZONING ADJUSTMENT
REGULAR MEETING
TUESDAY, SEPTEMBER 15, 2015
5:30 PM**

MEMBERS PRESENT

Carlton Etheridge, Chairman
Joda Bollard
Rwanda Farrer
Lee Gutman
David Harris
Bill Hiemer
Geraldine Hill

Also present were June Brooks, Planning Director; Kaitlen Alcock, Planner; and Dawn Harris, Secretary to the Board and applicants.

Chairman Etheridge opened the meeting with a roll call and determination of a quorum.

The first item was the Adoption of the Agenda. Mr. Harris made a motion to adopt the September 15, 2015 agenda as presented. Mr. Gutman seconded the motion. ***ALL IN FAVOR: ETHERIDGE, BOLLARD, GUTMAN, HARRIS, HIEMER, and HILL. NONE OPPOSED. MOTION PASSED.*** [Ms. Farrer was not present for the Agenda approval motion.]

Next item on the agenda was the adoption of the May 19, 2015 minutes. Mr. Hiemer made a motion to **APPROVE** the May minutes as presented. Ms. Bollard seconded the motion. ***ALL IN FAVOR: ETHERIDGE, BOLLARD, FARRER, GUTMAN, HARRIS, HIEMER, and HILL. NONE OPPOSED. MOTION PASSED.***

Ms. Harris then read the following Statement of Disclosure:

Elizabeth City Code of Ethics provides that public officials and employees be independent, impartial and responsible to the public; that governmental decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals and in keeping with the ethical standards of conduct for city public officials and its employees, disclosure of interest in legislative action must be stated for the public record, as per City of Elizabeth City Code of Ordinances Section 2-113. Any member of the Board of Adjustment who has an interest, as defined in Section 2-111 of the City of Elizabeth City Code of Ordinances, in any official act or action before the Board shall publicly disclose on the record of the Board the nature and extent of such interest, and shall withdraw from any consideration of the matter if excused by the Board pursuant to G.S. 160A-75.

Next item on the agenda was **CASE NO.: V-01-15** - Variance Application filed by River City Community Development Corporation for property located at 511 South McMorrine Street. The

applicant is requesting a variance from the Unified Development Ordinance Article XI Development Standards; specifically Section 11-1 Signs, §11-1.5(B).3 On-Premises Signs (freestanding pole or ground mounted on-premises signs). The applicant is requesting a reduction in the required setback from 10 feet to 3 feet 11 inches.

Chairman Etheridge called those wishing to speak to come forward and be sworn in. Ms. Harris swore in Christina Molloy and Lenora Jarvis-Mackey.

Board Member Lemuel Lamb recused himself from the hearing and was not in attendance.

Chairman Etheridge opened the public hearing and requested comment from the Planning Staff. Ms. Alcock gave the following report.

STAFF REPORT

The case is variance request 01-15 filed by River City Community Development Corporation for property located at 511 S McMorrine Street. The site, which is approximately half an acre, is zoned Central Business and lies just south of the intersection of East Ehringhaus Street and South McMorrine Street. The applicant is requesting a variance from Article 11-1.5(B)(3) of the Unified Development Ordinance which states that all ground signs must maintain a minimum separation of ten feet from rights-of-way, property lines, and structures. The applicant is requesting a reduction in the required setback from 10 feet to 3 feet 11 inches.

The business incubator facility went through the site plan review process in 2013, receiving final approval in 2014. File records indicate that during the review process, the topic of signage, particularly as it relates to the 10 foot setback requirement was included in Staff's initial review comments and was further discussed at the Technical Review Committee meeting. More specifically, the applicant's representative was advised that any ground sign would have to be located such that it was 10 foot from all property lines and structures. When discussed at TRC, the applicant's representative stated that it was not their intention to have a predominate sign on the property, rather they would rely on old Williamsburg shingle style signage. Staff asks BZA members to refer to comment 35 as well as page 4 of the TRC minutes, both of which were included in the appendix of the provided staff report.

The applicant submitted a sign permit application in June of this year requesting permission to place a ground sign off of the northeast corner of the parking lot. Upon initial review, Staff advised the applicant the requested location did not meet the requisite 10 foot setbacks and as such could not be placed in the proposed location unless a variance was awarded. At this time, Staff also advised that there was a location at the northeast corner of the property that did meet the 10 foot setback requirements and would be a viable location for the sign. The applicant decided to move forward with the permit for the alternate location while also petitioning for a variance to allow the sign to be placed in the location initially requested. Staff issued a permit for the sign to be placed in its current location in August.

In considering the variance request, Staff reminds the Board of ALL the criteria that must be met in order for the variance to be granted. The criteria are as follows:

1. Unnecessary hardship would result if the applicant complies strictly with the provisions of the Ordinance. It shall not be necessary to demonstrate that in the absence of the variance, no reasonable use can be made of the property;
2. The hardship results from conditions that relate to the applicant's land and are peculiar to the property; hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or general public, may not be the basis for granting a variance;
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing the property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship
4. The variance will neither result in the extension of a nonconforming situation nor authorize the initiation of a nonconforming use of land; and
5. The variance is consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured and substantial justice is achieved

If the Board determines that all the variance criteria previously mentioned have not been met and the request is denied, the sign should remain in its current location which satisfies the 10 foot setback requirement.

If the Board determines that all the variance criteria previously mentioned have been met and the request is granted, the sign shall be placed such that a minimum separation of 3 feet 11 inches is maintained between the sign and all property lines, rights-of-way, and structures (including the porch).

This concluded Ms. Alcock's report.

Chairman Etheridge asked if there were questions from the Board. Mr. Hiemer stated that on the actual application, page 4, Section D--Supporting Evidence under the unnecessary hardship rule, point number (a) seems to state something different than what Ms. Alcock read under number 1 in the Staff Report. Upon conferring with Ms. Brooks it was concluded that the variance application Section D--Supporting Evidence 1.(a) is incorrect. Ms. Alcock's statement in her Staff Report, according to the UDO is correct. Staff will correct the application.

There being no further questions for Staff, the applicant was called forward. Ms. Christina Molloy came forward. Ms. Molloy stated that they do have a sign currently but the visibility is not very good. The sign cannot be seen due to the Quality Seafood building. She stated that the edge building is within approximately 65 inches from the sidewalk and impedes the view of the sign when entering on Ehringhaus on the north end. Ms. Molloy stated that they started with the shingle style signage over the door of each business in the building. It was the same problem. They were not visible from the street. The businesses that have been there since March and April are just not visible there. She stated that they are telling them that their clients are not able to locate them because they can't see where they are. The current location of the sign is not visible at all when approaching the building from the northern end. From the southern end it is limited visibility. She stated that in order to increase the visibility of the signage and for exposure of the businesses they are requesting this variance to the code.

Chairman Etheridge asked if there were questions from the Board, Staff or other parties. There were no questions at this time.

There was no one present to oppose this application.

Staff had no further comments.

Chairman Etheridge closed the Public Hearing for public comment and opened the floor for discussion from the Board.

Mr. Harris asked Staff if there had been any past variance request for signage such as this. Ms. Brooks stated no.

Mr. Hiemer stated that he had gone to see the sign yesterday and what the applicant says is true. He stated that coming from Ehringhaus you cannot see the sign until you are right up on it. He asked does this make the building completely unusable. He stated, "No it doesn't." He stated based on the testimony here, he sees no reason why the sign should not be moved. (Inaudible).

Ms. Farrer commented that she too went to see the sign. She stated that the issue in the documentation is accurate in terms of you cannot really see the sign until you are right up on it. The way the building is situated, moving the sign would be helpful.

Mr. Gutman stated that typically when he is going from his house to a business that he is not familiar he gets the address. He stated that he doesn't just drive around looking for signs. He stated that he is not familiar with what businesses are at this location. He stated that it seems to him the signage would be a best a help. He is not against the variance but has not been convinced about how important the signage is to the success of the businesses that are at this location.

Ms. Bollard stated that she did ride by the location and she did not know that businesses were there. She stated that she does see where signs would help.

Mr. Gutman agreed. He stated that he drove down the street today on his way somewhere else. He stated that there is no question about the difficulty in seeing the signage where it is placed now.

Mr. Hiemer stated that he thinks the Board should look at page 8 of 8 in the report that Staff provided. It states, "The Board must find the applicant meets all of the following criteria for the variance to be granted." He stated that the only way they are going to know if they meet the criteria is by going down one through five with personal opinions aside. Number one is unnecessary hardship. He stated that what the Board is judging on now they do not have to demonstrate that in the absence of the variance, no reasonable use can be made of the property. Next is the hardship results from conditions that relate to the applicant's land or property, such as location. Mr. Hiemer stated that in his opinion it clearly does. Number three is the hardship did not result from actions taken by the applicant or the property owner. He stated that they had

nothing to do with it. (Inaudible) Ms. Brooks stated to Mr. Hiemer that it is not the adjoining building but the applicant's property that should be considered.

Ms. Farrer stated that she is a shopper and if she was going to a building like this with all these stores she stated that with the sign she would know she has arrived. She stated she would also want to know if what she was looking for is it still there. Before she had to find a parking space she would see the sign. Ms. Farrer stated that in a way she sees it as a hardship. If you have a business and you don't get the business you could have because it wasn't clear that you were at that location.

Mr. Gutman asked Ms. Brooks what if the sign was midpoint of the building but on the roof. Ms. Brooks stated that you cannot have a roof sign. They can attach signs to each one of the units or do the freestanding sign.

Ms. Brooks stated to the Board that they need to remember all of the training they had with the Institute of Government and what the State Codes say about the Finding of Facts you have to state if you grant the variance. The Board will have to come up with the reasons that the applicant meets the criteria of each of the Finding of Facts.

Ms. Farrer (inaudible comment).

Mr. Gutman stated that he has trouble with that last statement. He stated that if he had interpreted Ms. Brooks correctly simplistically if the Board recommends something that is a variance with the regulations, the Board has to come up with some legal reasons. Ms. Brooks stated yes. Mr. Gutman stated that all the folks that come here are looking for a variance from the regulations. He stated that he cannot imagine that there would be a legal reason why they should not have the variance. (Inaudible) Ms. Alcock stated it is just going through the variance criteria as listed on page 8 of the Staff Report. For the first one for instance, "unnecessary hardship would result if the applicant complies strictly with the provisions of the Ordinance." Ms. Alcock stated that the Board would take each individual criterion and say that they meet this based on this fact. Whether what was presented in the Staff Report, what the applicant has said in their presentation; you are just going through criteria by criteria and saying we are awarding the variance because of x, y and z and how they meet each one of those criteria. The applicant must meet all five points. Ms. Alcock stated that you have to go through all five points and show how they satisfy each one.

Mr. Hiemer stated in considering number two, "The hardship results from conditions that relate to the applicant's land and are peculiar to that property, such as location, size, or topography." He asked would they not consider the other building. Ms. Brooks stated that it is the applicant's property that the Board is reviewing and that it what they are here to determine based on their property do they have a hardship and should they be granted the variance.

Ms. Alcock asked the Board if there were any criteria that they could say right off yes they meet this and this is why. Mr. Hiemer stated the only one he is having a problem with now is number two.

Mr. Gutman asked regarding number four of the criteria would moving the sign in the 10 foot barrier constitute the initiation of a nonconforming use of land. Ms. Alcock stated that no the issuance of the variance would overcome that. Mr. Gutman asked if the Board does suggest that compliance with the Ordinance will result in a hardship where would that leave them with the other four criteria. Mr. Hiemer stated from number two, does the hardship result from conditions that relate to the applicant's land and it particular to that property, such as location, size, or topography. Mr. Gutman asked if the Board could consider the fact that this building as you look from Ehringhaus is kind of behind another building. That is really the issue that you can't see the sign from Ehringhaus. He stated if the Board was to do that than they would be taking the other property into consideration. He questioned if they could consider that building. Ms. Brooks stated what the Board may want to consider is the other end of the applicant's property to see if they can meet the requirements at that end or if both ends are the same and a variance would still be necessary. Mr. Gutman stated that if the signage was at the other end of the property it would still be obscure from Ehringhaus Street. He stated that the grey building will obscure. Ms. Brooks asked that the Board look at the applicant's site plan. She asked them to look and see if the applicant has space on another portion of their site to place their sign and still be in compliance with the UDO or would they still need a variance on any place that they put the sign.

Mr. Harris stated that the Aerial photograph is prior to the improvements to the property. Ms. Alcock stated that is correct.

(Inaudible dialogue between Board members.) Ms. Alcock assisted the Board members with the site plan pointing out locations.

Mr. Gutman asked the applicant if they had considered putting the sign in the parking area that would meet the criteria. Ms. Molloy stated that what they were told in discussion with the Planning Department the current location is the only place where it meets code. Ms. Alcock stated that the northeast corner is the only location that meets the 10 foot requirement. Ms. Hill asked if it would be in the same spot, just coming closer to the edge. Ms. Alcock stated and slide down toward the parking area. (Ms. Alcock pointed this out for the Board.)

Mr. Gutman stated that the applicant is between a rock and a hard place. He stated that their signage is useless.

Mr. Hiemer asked if it is an unnecessary hardship...start there. It will solve it; yes or no. Mr. Gutman stated that he thinks it is just because of the peculiar location. Mr. Hiemer agreed.

Ms. Bollard stated that on page two of the Staff Report it shows they built this property and they requested it to be zoned. She stated that they knew what they were getting into because they asked for different things and variances. The City said that they had to comply. She stated that she is seeing as they knew what they were getting into when they went into it. Mr. Gutman stated that the thought had occurred to him also, but they also say that they had intended to put the signage on the doors of the various units and that did not work for them. It was unanticipated that the signage would not work on the doors.

Ms. Farrer stated in looking at the definition of for a variance; "The purpose: a zoning variance give the owner permission to do something that is contrary to the requirements of the zoning ordinance. Variances are a safety valve in zoning that allows adjustment of rules to fit individual unanticipated situations. The standards for obtaining a variance are very strict, as this one is of the most powerful tools available to Boards of Adjustment and can be subject to substantial abuse if not carefully administered. Variances must not be used as a substitute for amendments to the zoning ordinance..." [Taken from "Quasi-Judicial Procedures and Decisions" presented by David Owens, School of Government.]

Mr. Gutman stated that the way he is looking at it at the moment is that the hardship is due to an unanticipated problem. He stated that he personally does not have a problem with granting the variance. He stated that he does recognize that signage is very important to the city and has to be controlled.

Ms. Bollard asked how many businesses were at this location. Ms. Molloy stated that there are four retail businesses and two offices. Ms. Bollard asked why they were not here at the meeting. Ms. Molloy stated that they as landlords and owners of the building they were the applicant.

Mr. Hiemer asked regarding the legal part if the Board approves the variance is there reason enough stated in their application. Ms. Brooks stated that it is the Board's decision to make. She stated whatever the motion is the Board member needs to be very specific and include the Finding of Facts in the motion.

Ms. Bollard asked if this item could be tabled so they would have time to look it up and come back to it. Ms. Brooks stated that they can table it and hear it at the next meeting.

It was asked where the sign would go would it make it less safe for people. (Inaudible)

Mr. Hiemer stated that in his mind it is a hardship and an unnecessary hardship.

Ms. Bollard stated that she does not mind if it is not tabled and she agrees that it is a hardship.

With there being no further discussion Chairman Etheridge called for a motion.

Mr. Harris made a motion to APPROVE Variance 01-15 as presented with the following Finding of Facts: 1) The hardship is not a result of the applicant's own actions; and 2) The hardship of which the applicant seeks relief is from unique circumstances related to the applicant's land; and are not common to the neighborhood or the general public; and 3) The variance will neither result in the extension of a nonconforming situation in violation of Article VI nor authorize the initiation of a nonconforming use of land; and 4) The requested variance is consistent with the spirit, purpose, and intent of the Ordinance such that public safety is secured and substantial justice is achieved. Also to be included is the following conditions: sign shall be installed as per the drawings submitted to the Zoning Administrator and shall adhere to the following distance separation variances: 1) Three foot eleven inches from the property line; 2) Three foot eleven inches from the building, including the porch; and 3) Three foot eleven inches from the nearest edge of the parking lot. Mr. Hiemer seconded the motion. ***ALL IN FAVOR BY ROLL CALL:***

ETHERIDGE, BOLLARD, FARRER, GUTMAN, HARRIS, HIEMER, and HILL. NONE OPPOSED. MOTION PASSED.

With no further business, meeting was adjourned.

Respectfully submitted by,

Dawn Harris
Secretary to the Board