

CITY OF ELIZABETH CITY  
BOARD OF ZONING ADJUSTMENT  
REGULAR MEETING  
TUESDAY, December 16, 2014  
5:30 PM

MEMBERS PRESENT

Carlton Etheridge  
Joda Bollard  
Peggy Davenport  
David Harris  
Lemuel Lamb  
C. Lee Gutman  
Bill Hiemer

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

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

Mr. Harris made a motion to **ADOPT** the December 16, 2014 Agenda. Mr. Gutman seconded the motion. ***ALL IN FAVOR: ETHERIDGE, BOLLARD, DAVENPORT, HARRIS, HIEMER, GUTMAN and LAMB. NONE OPPOSED. MOTION PASSED.***

Next item was the adoption of the November 18, 2014 minutes. Mr. Gutman made a motion to **APPROVE** the November minutes. Mr. Lamb seconded the motion. ***ALL IN FAVOR: ETHERIDGE, BOLLARD, DAVENPORT, HARRIS, HIEMER, GUTMAN and LAMB. NONE OPPOSED. MOTION PASSED.***

**Chairman Etheridge:** Statement of Disclosure.

**Ms. Harris:** 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.

**Mr. Etheridge:** Okay, new business—case number V-03-14 filed by Hyman & Robey on behalf of the Barbeque Barn for 0.55 acres located at 1801 Weeksville Road. The applicant is seeking Variances from the Unified Development Ordinance from Article XI Development Standards Section 11-2 Off-Street Parking, Stacking, and Loading Areas, Table 11-2-1 Off-Street Parking and Stacking

Requirements, Table Sub-Heading: Retail Trade, Number 7 Restaurants. Article XII Environmental and Special Purpose Regulations §12-7.4(A)(2) Landscaping of Undeveloped Areas and §12-7.9(A)(1) Spacing Standards. Case number 2, V 04-14 filed by McDowell and Associates.

**Ms. Brooks:** Chairman Etheridge, we need to hear the first case first and then we will go to the second one. Also, we need to refer to your notes about swearing in individuals who would like to speak tonight.

**Mr. Etheridge:** Okay, swearing in. All persons wishing to testify in this case should have signed up on the spreadsheet for the hearing. If you have not signed up and wish to speak, please sign-up now. All persons wishing to speak please proceed to the podium to be sworn in.

[At this time, Ms. Harris swore in those who signed up to give testimony: Kimberly Hamby, William McDowell]

**Mr. Etheridge:** Board conflicts, before opening the hearing, I'd like to give the board members a chance to reveal any possible conflicts and withdraw from the proceedings if necessary. [There were no conflicts] Any Board members who have any information or special knowledge about the case that may not come out at the hearing tonight, please describe that information for the record so that interested persons will know and can respond. [There were no comments] The order of business for this hearing will be as follows, first we will hear from the planning staff, then we will hear from the applicant and their witnesses, then we will hear from the opponents to the request. Parties may cross-examine witnesses after the witness testifies when questions are called for. If you want the Board to see written evidence such as reports and maps or exhibits, the witness who is familiar with the evidence should ask that it be introduced during or at the end of his/her testimony. We cannot accept reports from persons who are not here to testify. Attorneys who speak should not give factual testimony but may summarize their client's case. Before you begin your testimony, please clearly identify yourself for the record. Testimony from staff. I now open the public hearing on item V 03-14 and ask for testimony from the Planning Staff.

Ms. Alcock gave the following report.

### **STAFF REPORT**

The case before you tonight is variance request 03-14, made by Mr. and Mrs. Britt, owners of The Barbecue Barn restaurant located at 1801 Weeksville Road. The site, which is approximately half an acre is zoned General Business and located within the Highway Corridor Overlay District.

The building was originally constructed in 1967. When the applicants purchased the property in 1996 they began operating it as The Barbecue Barn. Since the building did not meet certain standards set forth in the most recent Unified Development Ordinance but was constructed prior to the Ordinance's adoption in 1999, it was considered a nonconforming structure. According to Article 6, Section 4.2 of the UDO, in the event of damage by fire or other causes, a structure can only be rebuilt and maintain its nonconforming status if the resulting damage is less than 60 percent of its tax value prior to the damage. If the damage exceeds the 60 percent threshold, the structure must be brought into conformity with the Ordinance.

Although damaged by a structure fire in January 2014, the restaurant could have been rebuilt and maintained its nonconforming status since the damage was less than 60 percent of its tax value. However, when the structure was struck by a tornado in April 2014, the resulting damage exceeded the 60 percent threshold and as such for the applicants to rebuild the restaurant it must be brought into compliance with the Ordinance.

Certain site constraints stemming primarily from the lot's size and dimensions make adherence to certain elements of the City's UDO difficult; as such, the applicant is requesting a variance from the following:

First, Article 11 Section 2, Table 11-2-1, Off-street Parking and Stacking Requirements; more specifically, the requirement that a restaurant with a drive thru provide 11 stacking spaces with a minimum of 5 spaces at or before the ordering station. The applicant is requesting a variance approving a total of 7 stacking spaces and will not be providing an ordering station. Second, Article 12, Section 7.3(C); Usage of required setbacks in the Highway Corridor Overlay District; more specifically, the requirement that all parking be a minimum of 20 foot from any lot line and 50 foot from any public right-of-way. The applicant is requesting a variance approving a parking setback of 5 foot from the northern and rear property lines, 0 foot from the southern property line and 25 foot from the public right-of-way to allow for sufficient parking for the restaurant. Third, Article 12, Section 7.4 subsection (2), Landscaping of Undeveloped Areas; more specifically, the requirement for a 50 foot vegetative buffer along any public right-of-way. The applicant is requesting a variance approving a 25 foot vegetative buffer along Weeksville Road. Fourth, Article 12, Section 7.7, Lot Coverage; more specifically, the requirement to utilize on-site stormwater retention or detention measures if the impervious lot coverage is greater than 70 percent. The applicant is requesting a variance approving maximum lot coverage of 80 percent without the use of stormwater BMPs since the site has historically had impervious coverage greater than the 70 percent threshold. Finally, Article 12, Section 7.9(A), Spacing Standards; more specifically, the requirement for lots with general uses and direct points of ingress and egress to highways to have a minimum of 150 feet between driveways. The applicant is requesting a variance approving a minimum driveway separation of 32 feet based on the current driveways on site and the overall lot width of 120 feet

According to the applicant, several site conditions make it difficult and in some cases impossible to adhere to the aforementioned requirements. As was previously mentioned, the dimensions of the site itself which measures 120 foot by 200 foot, makes adhering to the parking setback requirements difficult. If they were to adhere to the 20 foot property line setbacks and 50 foot right-of-way setbacks there would not be adequate space to meet the requisite 15 parking spaces while providing adequate space for internal traffic circulation. A map was included in the Staff report to provide the Board with an illustration showing what the spacing would be if they were to adhere to the 20 and 50 foot setbacks. Similarly, if the applicant were to provide a 50 foot vegetative buffer from the public right-of-way it would significantly limit the size of the restaurant the applicants were able to build as well as their ability to provide the necessary parking. Given the frontage of 120 foot along Weeksville Road, if the applicants were to adhere to the 150 foot spacing between driveways, they would be required to close one of the existing drives which would inhibit their ability to provide drive-thru service which has historically been offered at the restaurant. As a solution, the applicant is proposing that the current driveways be retained but designated as one-way only, thus limiting the site to one ingress and one egress drive which should alleviate any potential traffic issues along Weeksville Road. The applicant has received approval from the North Carolina Department of Transportation to utilize the two driveways with a minimum spacing between driveways of 32 feet.

In terms of the stacking requirements, the site lacks adequate space to provide the requisite eleven spaces. Further, the site will not utilize an ordering station or menu board; the sole purpose of the drive thru is for customers who have called ahead and have come to pick up their food. As such, it is the applicant's belief that the seven spaces provided will be sufficient. There have not been any issues in the past with the current drive-thru design.

Despite the requested variances, it is the applicant's belief that the intentions of the UDO will still be met with the proposed site plan and many overall improvements will be made, the improvements include:

- A landscape buffer along Weeksville Road, currently the paving goes almost all the way up to the right-of-way
- The parking lot will be landscaped to provide the necessary shading
- Driveways off of Weeksville Road will be made one-way to improve traffic flow
- A sidewalk will be provided along the front of the property for pedestrian access
- Parking spaces and drive aisles will meet current spacing standards

In the staff report provided, beginning on page 16 are the variance criteria listed in Article 7 Section 2 of the UDO. The Board should keep in mind that these are the criteria they should consider when deciding upon this matter. The applicant must comply with ALL of the criteria listed in this section for the variance to be granted. The variance criteria includes:

One, 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

Two, the hardship results from conditions that relate to the applicant's land and are peculiar to the property

Three, hardships resulting from personal circumstances or those that are common to the neighborhood or general public may not be the basis for granting the variance

The hardship did not result from actions taken by the applicant or property owner

The variance will neither result in the extension of a nonconforming situation in violation of Article 6 nor authorize the initiation of a nonconforming use of land

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

If the Board grants the variance, Staff recommends the general conditions listed on page 17 and 18 of the staff report be attached to the variance; these conditions include,

The owner/applicant shall submit a site plan for review, obtain all necessary City and State permits and authorizations; comply with all other sections of the UDO and all necessary site improvements be completed prior to the issuance of the certificate of occupancy

The owner/applicant shall submit a plat, with the nature of the variance and any conditions attached to them entered on the face of the recorded plat, or simply note the issuance of the variance and refer to the written record for further information

And finally, the property owner shall have recorded with the Pasquotank County Register of Deeds the aforementioned plat and variances with the conditions attached thereto prior to commencing construction. That concludes my presentation, thank you.

**Mr. Etheridge:** Alright, now we will hear testimony from the applicant and other persons in favor of the request. If there are attorneys or other representatives who will give a general summary of the client's position, we would like for you to go first.

Ms. Hamby spoke on behalf of the applicants.

**Ms. Hamby:** I'm Kim Hamby with Hyman & Robey. I am here to represent Mr. and Mrs. Britt in their request for this variance. Ms. Alcock did my job for me. She has done a great job presenting to you all this issues with this project. As you can see from the site plan we have developed, we have tried to find a way that the Britt's can still operate a restaurant and basically just reconstruct the Barbecue Barn while meeting as many of the City's new ordinance requirements as possible, to make it a safe site and just getting rid of a few things that due to lot size make it very, very difficult to develop. And I'll be happy to answer any questions.

Mr. Etheridge asked for any questions.

**Mr. Harris:** You did a good job with the material you presented so [inaudible] there are probably not too many questions

**Ms. Hamby:** It's pretty straightforward.

**Ms. Davenport:** I have a question here. So the status before the fire in January of this year and the status after the tornado in April of this year left the property in a nonconforming situation. And it was that way before those two events. And I am having difficulty finding out or determining why you would be conforming now. Why would this property, that was nonconforming for all these years be conforming now. I don't understand why you would be in a conforming status.

**Ms. Hamby:** It's based on a section of the Ordinance that requires all properties to be brought up to current standards after a certain amount of work has to be done to bring it back to its current state. I believe most of this really came into play because the damage to the building because of the fire could have been repaired but before they had a chance to do that the tornado came and the damage is to the extent now that the builders have determined they cannot use the existing foundation. They have to literally start from the ground up. That then triggers the Ordinance requirement that if it is more than sixty percent damaged it has to one hundred percent be rebuilt.

**Ms. Davenport:** Right and the Ordinance requires that if this is the case then the UDO must be met.

**Ms. Hamby:** Correct.

**Ms. Davenport:** So how is it that you will be meeting the UDO requirements?

**Ms. Hamby:** We are going to be meeting the UDO requirements to some level outside of these requests. By regulations size parking spaces striped out, ADA requirements for parking at the front door, we will be adding a sidewalk across the front of the site which is an Ordinance requirement. The site is going to be reconfigured to provide better traffic flow. Right now the way it has been in the past, there have been two driveways which people came in from any direction. It wasn't marked. Basically they were not real clearly delineated. We are adding landscaping where there was none before. In different parts of the City 15 and 20 foot buffers are common the Corridor Overlay is what really what trigger the more extensive requirements in this case of a 50 foot landscape buffer and the lot is just so small that if we start trying to meet every one of those requirements we get a developable area down too small to put in a parking lot to support the restaurant. But we are trying to meet as much as we can with, were meeting the number of spaces, the size of space, again putting a marked handicapped space at the front and adding landscaping. We are trying to improve the situation as much as possible.

**Ms. Davenport:** Is this true?

**Ms. Alcock:** Yes ma'am.

**Ms. Davenport:** Because I'm at a loss. Perhaps I did not read that.

**Ms. Alcock:** Right, if you look on page 11 of the staff report that's where it goes over the UDO requirements that if damage to a structure is sixty percent or greater, then it should be rebuilt and come into compliance with the Ordinance. That's what initiates the need for the variance because of the lot size they are not able to meet all of the requirements of the Ordinance then a variance has to be granted in order for them to go forward with the site plan and building. If you look on page 5 of the staff report where it shows the 20 foot property line buffer as well as the 50 foot buffer that would just show you the space they would be working with and having to fit the building and the parking all within that small space and it wouldn't be possible.

**Ms. Davenport:** What I am concerned about is what she just told me, I did not see that in there. What I am concerned about is what she just told me, is that true or not?

**Ms. Alcock:** Which portion?

**Ms. Davenport:** She says that they are trying to meet certain requirements of the UDO. Is she meeting those? How much is she in conformance with the UDO? That is what I am interested in and I did not read those things in the report. So I am wondering if I missed something.

**Ms. Alcock:** If you look on page 4 of the report and it is also in the attachment to the application that Ms. Hamby provided. So she is still providing the landscape buffer along Weeksville Road, it is just smaller, it will be a 25 foot buffer instead of the 50. She is providing all the required parking spaces and they will meet the dimensional standards set forth in the UDO as well as the parking lot itself will be landscaped which is a requirement of the Development Ordinance. There will be a sidewalk across the front of the property, so the parts of the UDO that she is able to meet she is meeting its just like I said with the buffer because of the size of the lot she is able to meet and still develop the lot. If you look on page 4 you will see those portions.

**Ms. Davenport:** Yes, I read that. But what I am concerned with is how many of the UDO requirements is she meeting as opposed to how many she is not meeting, or they are not meeting.

**Ms. Alcock:** They are meeting the building setbacks; they will still meet the landscaping requirements it is just going to be in smaller spaces, the number of parking spaces and the size, the sidewalk along the front, so that would be five. And the variance request that they are making would be five as well.

**Ms. Davenport:** So they are meeting five requirements. And how many exceptions are they asking for? Five.

**Ms. Alcock:** Right, and a lot of those stem from not being able to make the setback requirements because you have the property line setbacks and the vegetative buffer setbacks so that could be thought of as one request there. Does that clear it up a little bit or do you still...

**Ms. Davenport:** It still leaves me wondering about this in total. Maybe I am missing something, but we will discuss this later. But I might be missing something here. [Inaudible]

**Mr. Etheridge:** Any more questions for staff members?

[There were none]

**Mr. Etheridge:** I have a question. If this variance was granted, all the changes that are listed on page 17, if I understand this correctly, these comments from the staff, they would have to meet all of these. Is that correct?

**Ms. Alcock:** Yes, so this is just for the variance. If this is approved, they will still have to submit a site plan for review and aside from what is granted in the variance, they will still have to meet all other sections of the UDO and requirements of the UDO aside from what is granted if the variance is approved.

**Mr. Etheridge:** Ok. We will now hear from people opposing the request. Again, we would like attorneys or persons providing a general summary to go first.

**Mr. Roebuck:** I would like to say something if it is possible, I am Sam Roebuck.

**Ms. Harris:** Ok Mr. Roebuck, if you would sign in and let me swear you in, I have to get your signature.

Mr. Roebuck was sworn in by Ms. Harris.

**Mr. Roebuck:** I am here because I own the building next door to the building they're going to replace and improve and my only concern is that they not put anything that would block the sight of the entrance and the building and the business that's there now. That is the only thing that I am concerned about, that they leave it open just like it is today.

**Ms. Alcock:** They will have some landscaping, but is that the intent with the plan thus far?

**Ms. Hamby:** This is the first that I have heard of this, but yes the building and the parking will actually be further back, but the City is going to require that some landscaping be installed.

**Mr. Roebuck:** I'm sorry I can't hear what she said.

**Ms. Alcock:** The building and parking area is actually going to be further back than what is currently on the site, but there will be some landscaping requirements along Weeksville Road.

**Mr. Roebuck:** I can find nothing wrong with the way it is today, but if there is going to be a change I would like to be certain that you would have a view of the building next door to it from either direction.

**Mr. Lamb:** There's not going to be a solid fence adjoining this property?

**Ms. Hamby:** No fencing intended, certainly not any privacy

**Mr. Lamb:** So it will be pretty much open then?

**Ms. Hamby:** Yes, the only enclosure will be around the dumpster in the very back.

**Mr. Roebuck:** Thank you very much.

**Mr. Etheridge:** Planning staff comments. Does planning staff have any further comments?

**Ms. Alcock:** I have none.

**Mr. Etheridge:** Discussions and motions. At this time public participation in the hearing is closed; no additional testimony and evidence may be received. The Board will now deliberate and discuss the case. All parties involved in the case are entitled to hear the Board member's discussion, but if they willfully interrupt, disturb or disrupt the discussion, I, as Chairperson, can order the person to leave the room. Failure to comply can result in civil penalties.

**Mr. Lamb** stated that he feels that the improvements that have been shown help the overall lot and are an improvement over what was there originally.

**Mr. Harris:** I agree. I think they are trying to meet the intent of the Ordinance as much as possibly can be done given the size and configuration of the property they have to work with.

Mr. Gutman and Ms. Bollard also agreed with Mr. Lamb and Mr. Harris.

L. Gutman made a motion to approve the variance request, J. Bollard seconded the motion. ***ALL IN FAVOR: ETHERIDGE, BOLLARD, DAVENPORT, HARRIS, HIEMER, GUTMAN AND LAMB. NONE OPPOSED. MOTION PASSED.***

**Mr. Harris:** Question, clarification, do you need us to cite all of the variances?

**Ms. Brooks:** If you amend your motion to include all of the variances as stated in the staff report, we can go back and add them in.



**Mr. Harris:** I am not trying to create any issue, I just wanted to clarify. And also the recommendations of the planning staff about the submission of plans and so forth.

**Ms. Brooks:** Yes.

**Mr. Harris:** We need to amend that then

**Mr. Lamb:** Well we need to have the language [inaudible]

**Ms. Harris:** If you will just reference that, can you go back to amend your motion to include

Mr. Gutman made a motion to approve the variance requests as stated in the staff report as well as those recommendations made by staff. J. Bollard seconded the motion. ***ALL IN FAVOR: ETHERIDGE, BOLLARD, DAVENPORT, HARRIS, HIEMER, GUTMAN AND LAMB. NONE OPPOSED. MOTION PASSED.***

**Mr. Etheridge:** Next on the list, case number V 04-14 filed by McDowell & Associates on behalf of Kathy's Kreations, for 0.96 acres located at the south side of Sam Davis Street, between Sunset Circle and Hughes Blvd., consisting of .94 acres. The applicant is seeking a variance from the Unified Development Ordinance from Article XI Development Standards Section 11-3 Landscaping and Screening §11-3.1 Parking and Loading Area Landscaping, Property Line Buffer Yard Requirements.

**Ms. Harris:** Chairman, the swearing in has already taken place so we can remove that item please.

**Mr. Etheridge:** Board Conflicts. Before opening the hearing, I'd like to give Board members a chance to reveal any possible conflicts and withdraw from these proceedings if necessary.

**Mr. Gutman:** I'd like to recuse myself.

**Ms. Brooks:** Mr. Gutman, you need to give a reason you want to recuse and then the Board will have to vote.

**Mr. Gutman:** Mr. Parks and I don't like each other.

**Ms. Brooks:** Ok

**Mr. Gutman:** My thinking is that should the decision go against them there might be some possibility of legal action because I was a part of the vote.

**Ms. Brooks:** Did you have a financial gain or loss in the property.

**Mr. Gutman:** No

**Ms. Brooks:** Ok, now the Board has to vote whether they want to recuse Mr. Gutman for the reasons he stated.

**Mr. Etheridge:** We still have a quorum?

**Ms. Brooks:** We still have a quorum, you still have to do the 4/5 vote and that would take, if Mr. Gutman recuses himself, we still use the seven members so we would still have to have six members to reach the 4/5 vote.

**Mr. Harris:** If Mr. Gutman feels that strongly about it, I make a motion that we allow him to be recused.

Mr. Harris made a motion to recuse Mr. Gutman from voting, and Mr. Lamb seconded the motion. ***ALL IN FAVOR: ETHERIDGE, BOLLARD, DAVENPORT, HARRIS, HIEMER, and LAMB. NONE OPPOSED. MOTION PASSED.***

**Mr. Gutman:** Does that throw me out?

**Ms. Brooks:** Well no not necessarily. But if you would like to get up and go sit in the audience so that there would be no inclination.

**Mr. Etheridge:** Ok. Prior to Exposure to Evidence. Any Board members who have any information of special knowledge about the case that may not come out at the hearing tonight, please describe that information for the record so that interested persons will know and can respond. [There were no comments] Explanation of Proceedings. The order of Business for this hearing will be as follows: First we will hear from the Planning Staff, then we will hear from the Applicant and their Witnesses, then we will hear from the Opponents to the request. Parties may cross-examine the witnesses after the witness testifies when questions are called for. If you want the Board to see written evidence such as reports and maps or exhibits, the witness who is familiar with the evidence should ask that it be introduced during or at the end of his/her testimony. We cannot accept reports from persons who are not here to testify. Attorneys who speak should not give factual testimony but may summarize their client's case. Before you begin your testimony, please clearly identify yourself for the record. Testimony from Staff. I now open the public hearing on item V 04-14 and ask for testimony from the Planning Staff.

**Ms. Eggar:** Good Evening, I am Cheryl with the Planning Staff. To efficiently develop this property as a restaurant, the applicants are seeking a variance from the minimum buffer yard requirements found in the Parking and Loading Development Standards, specifically UDO section 11-3.1(B) Property Yard Buffer Requirements. The requested variance is to reduce the buffer yard from 25 feet to 10 feet and reduce the number of required shrubs from 30 down to 15. Kathy's Kreation's are going to be relocating from their current location on Hughes Boulevard to approximately an acre site on Sam Davis Street. This is where the Davis Hardware warehouses once were located. For the most efficient use of the site, a two way drive aisle is required to provide an area for vehicles to be loaded and unloaded for catering events and deliveries to the restaurant. In addition this drive aisle will provide access to parking at the rear of the building, to the dumpster site and to have improved traffic circulation for emergency vehicles to get around the building. The UDO requires a 25 landscaped buffer yard to separate commercial parking and loading areas from residential uses and zonings. This buffer is to assist in mitigating the impact the commercial property has on the residential uses and to create a visual screen between the two uses when they are incompatible. On your map that you will find on page 2 you can see that the site is zoned commercial and is surrounded primarily by commercial properties. On the southern property line you have residential properties. There are two single family homes there and there will be a 25 foot required buffer yard provided there. There area where the variance is required is on the eastern portion of property, there are three very long, narrow

lots that are over 800 foot long, going from the property all the way out to Ehringhaus. The property at the southeastern corner is where the variance is being requested, there is a house on the property that is approximately 650 feet away from the property line where the variance is being requested. This house is located approximately 50 feet away from the existing Shell Station that is on the corner of Ehringhaus and Elcinoca. To develop the site as proposed a variance from the property line buffer yard requirements along the rear portion of this particular lot is being requested to reduce this from 25 foot to 10 foot. With the reduction in the buffer yard there is also a request for the reduction in the required amount of shrubbery from 30 shrubs down to 15 shrubs. The proposed buffer yard in this area will be composed of an opaque fence 6 foot high fence, 15 shrubs, 6 understory trees and 6 canopy trees. The UDO allows some flexibility with buffer yards in particular when you have institutional uses adjacent to residential uses. There is flexibility that allow it to be reduced from 15 feet to 10 feet if an opaque fence is being used in the buffer yard. The applicant states that if a 25 foot buffer yard was required they would not have the ability to circle the building with two-way traffic. Reviewing the site plan, staff noted that even if they had one-way traffic patterns around that building they still would not be able to meet the 25 foot buffer yard requirements. If the variance is denied, the landscaping would be required to be installed at the required 25' width with all of the landscaping being fulfilled. This would require a redesign of the site in which there could be a loss in the drive aisle around the building. If the variance is approved, staff recommends the Board adopt the following language:

The Board grants a variance from Section 11-3.1 (B), Property Line Buffer Yard requirement, to permit the reduction of the required 25 foot buffer yard to 10 feet with a solid six foot fence constructed adjacent to the residentially zoned lot and a reduction in the number of required shrubs from 30 to 15.

That concludes my presentation.

**Mr. Etheridge:** Are there any questions from the Board or parties?

**Mr. Harris:** If I could just summarize it I guess, basically, we are only looking at a reduction from 25 to 15 and a reduction of shrubs to 15. That's pretty much it everything else is in compliance.

**Ms. Eggar:** Everything else is in compliance with the Ordinance.

**Mr. Etheridge:** Testimony from Applicant. We will now hear from the applicant and other persons in favor of the request. If there are attorneys or other representatives who will give a general summary of the client's position, we'd like you to go first.

**Mr. McDowell:** Thank you; I am Pat McDowell representing Mc Dowell & Associates and the applicants. I think Cheryl did a very good job capturing the situation and Mr. Harris you said 15 feet and its actually 10, we are trying to get down to 10.

**Mr. Harris:** I'm sorry.

**Mr. McDowell:** This is kind of a redevelopment area, a transitional residential and business. Two of the lots along that line already allow us to go down narrowly, so we are trying to get the third lot basically which as Cheryl said which the closest house on that lot is literally 600 feet towards Ehringhaus Street. So I will be glad to try to answer any questions if I can.

**Mr. Harris:** The fence is going to be along that line where the house is?

**Mr. McDowell:** Right

**Mr. Harris:** That six foot opaque fence is roughly

**Mr. McDowell:** That line is about 330 feet, two thirds of it we can work with, so it's the last third in that corner that we are trying to get.

**Mr. Etheridge:** Are there any other questions from the Board or Staff or other parties? [There were no questions] Ok. Testimony from the Opponents. We will now hear from people opposing the request. Again, we would like attorneys or persons providing a general summary to go first.

**Ms. Harris:** There is no one in opposition Chairman.

**Mr. Etheridge:** Ok. Planning Staff Comments. Anything further? [There was nothing further] Discussion and Motions. At this time public participation in the hearing is closed; no additional testimony and evidence may be received. The Board will now deliberate and discuss the case. All parties involved in the case are entitled to hear the Board member's discussion, but if they willfully interrupt, disturb or disrupt the discussion, I, as Chairperson, can order the person to leave the room. Failure to comply can result in civil penalties. Ok. Board is now open for discussion. [There was no discussion]

**Mr. Harris:** Is there any discussion? I don't want to cut anyone off. I would make a motion that we grant variance from Section 11-3.1 (B) from the Property Yard requirements to permit that it be reduced from 25 feet to 10 feet with the construction of a 6 foot solid fence along that area and reducing the number of shrubs required down to 15.

**Mr. Hiemer:** I second.

***ALL IN FAVOR: ETHERIDGE, BOLLARD, DAVENPORT, HARRIS, HIEMER and LAMB.  
NONE OPPOSED. MOTION PASSED.***

**Mr. Etheridge:** Ok, staff report.

**Ms. Brooks:** Actually, I would like to introduce our new member, Bill Hiemer. Did I get that right? He was just appointed by City Council and he is taking Mr. Thorne's place. We are looking forward to him and we have had orientation and I hope it wasn't too overwhelming.

**Mr. Hiemer:** You're orientation was very very helpful. I apologize for being late, there was an accident. But I will be on time from now on. Thank you.

**Mr. Etheridge:** New business. I guess we need to make a motion to drop Mr. Lynn Bennett from the list of members.

**Ms. Brooks:** Ok, can we do a little explanation first? Your bylaw state that if you miss three consecutive meetings or...

**Ms. Harris:** It is three consecutive, there's also a percentage depending on how many meetings per year. Mr. Bennett has met those qualifications, but on top of that, he has been contacted. I have spoken with Mr. Bennett and he is no longer able to serve on the Committee. We have to have written notice from him, but he has failed to provide that and we need to get the position advertised. In your bylaws it is required that the Board makes a motion and takes action to actually have him removed so we can forward that on to City Council.

**Mr. Etheridge:** Alright, so we need to make a motion to remove him.

**Ms. Brooks:** Right, to recommend removal, recommend that City Council remove him from the Board and appoint a new member.

**Mr. Etheridge:** We make a motion to remove Mr. Lynn Bennett from the active roster of the Board of Zoning Adjustment.

Ms. Davenport and Mr. Gutman seconded the motion.

***ALL IN FAVOR: ETHERIDGE, BOLLARD, DAVENPORT, HARRIS, HIEMER and LAMB.  
NONE OPPOSED. MOTION PASSED.***

**Ms. Brooks:** We do have a meeting in January, we usually only have three a year, I don't know what's happened to us, but it's a special use permit for a B&B over on Jones Avenue, so that is a fairly simple application. And for the City's homeless shelter over on 709 Herrington Road and basically just to brief you, it is the same building the City purchased with CDBG funds probably 6 or 7 years ago and it's been used as a homeless shelter before but the special use permit has expired so we need to reactivate it for a new homeless shelter. It is more of a procedural type application for that one.

**Mr. Etheridge:** There being no other business for the Board, I declare this meeting adjourned.

*Respectfully Submitted,*

*Minutes were approved at the January 20, 2015 BOA meeting.*