

CITY OF GASTONIA
ZONING BOARD OF ADJUSTMENT
May 25, 2023 Minutes

The regular meeting of the Zoning Board of Adjustment was held on Thursday, May 25, 2023 at 9:03 a.m.

Board Members present: Chairman Lee Taylor Jr., William Marino, Shaun Jones, Michael Dickson, and James Nebo

Alternate Members present: Jenna Jourdet

Board Members absent: None

Staff present: Jason Thompson, Planning Director; Jason Putnam, Zoning Administrator; Charles Graham, Assistant City Attorney; Chrystal Howard, Zoning officer; and Jalen Nash, Secretary

Chairman Taylor called the Board of Adjustment meeting to order.

Roll Call

All board members were present and no one received any calls or contacts.

Chairman Taylor declared a quorum.

Item I: Approval of October 27, 2022 Minutes

Board Member Marino made a motion to approve the minutes of October 27, 2022 and Board Member Nebo seconded the motion. The motion was unanimously approved (5-0).

Because of the quasi-judicial format of these hearings it is required by North Carolina law to swear or affirm in persons that speak before the commission and offer evidence. Mr. Nash administered the oath to speakers.

Item II: Public Hearing #PLVAR202300176 – Bradley Bork – 200 E Garrison Blvd.

The applicant has submitted a variance request to reduce setbacks for addition to primary structure.

Chairman Taylor opened the public hearing and recognized Mr. Jason Putnam, CZO, Zoning Administrator for staff presentation. Mr. Putnam stated Mr. Jason Thompson will handle the staff's presentation. Chairman Taylor recognized Jason Thompson, AICP, Planning Director for the staff presentation. Mr. Thompson stated the variance request and described the property location, and presented the zoning map for the subject property. Mr. Thompson stated the proposal is to expand the principal structure, where the architectural front of the building faces Oakland Street. Mr. Thompson stated the proposal is to expand and add a wash bay for Sunbelt Rentals, which rents different types of equipment. Mr. Thompson stated the reason there is a variance request is that the location where they are proposing to do the addition would encroach significantly into the rear setback. He stated the proposal would put the addition within 1.81 feet of the rear property line. Mr. Thompson stated the setback from the rear property line in the Unified Development Ordinance(UDO) is 20 feet, so this request would be a significant encroachment. Mr. Thompson stated the existing site is legally nonconforming and there is information in the board member's agenda packets about legal nonconforming uses. He stated the reason the property is legally nonconforming is because it existed before the current zoning ordinance. Mr. Thompson stated the site can continue to operate as is, but under the code, prohibits an expansion of a nonconformity. He stated this proposal would be considered an expansion of nonconformity in addition to the fact that the request is inconsistent with the setbacks of the current zoning. Mr. Thompson referred to Section 5.14.1 of the Unified Development Ordinance (UDO) as a point of reference when discussing variances with the Board:

"The variance process is intended to provide limited relief from the requirements of this Ordinance in those cases where strict application of a particular requirement will create unnecessary hardships. This process is not intended so that variances can be granted so as to merely remove inconveniences or financial burdens that the requirements of this Ordinance may otherwise impose on property owners. Rather, it is intended to provide relief where the requirements of this Ordinance create unnecessary hardship because of some unique physical attribute of the property itself or some other factor unique to the property for which the variance is being requested. Hardships resulting from personal circumstances, as well as, hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. Any state or federal requirements may not be varied through the granting of a variance. Furthermore, use variances (i.e., the allowance for a use to be developed in a zoning district where that use is otherwise not allowed) may not be granted by the Board of Adjustment"

Mr. Thompson concluded his presentation and welcomed the board for any questions they have.

Chair Taylor asked Mr. Thompson how much space is between the back of the Sunbelt properties building and the shopping center adjacent, and if it meets the current 20-foot setback requirement. Mr. Thompson responded he is unsure if it has been measured on-site, but according to his measurement on Gaston County GIS(<https://gis.gastongov.com/>), it's 9.7 feet.

Chair Taylor asked Mr. Thompson why the 20-foot setback is important. Mr. Taylor followed his question, with the assumption that the reasoning for that setback is for fire safety and access of emergency vehicles to the property. Mr. Thompson responded stating public safety is certainly a consideration when you're talking about things like building setbacks. He stated on top of public safety, things like light and air pertain to building setbacks and height restrictions. Mr. Thompson stated these regulations also exist to prevent situations where you have these tiny corridors or another building looming over another property or building. Mr. Thompson stated setbacks exist in almost every zoning district.

Chair Taylor asked Mr. Thompson what the topography of the land between the Sunbelt building and the shopping center was. Mr. Thompson deferred to the applicant to answer Chair Taylor's question. Chair Taylor asked Mr. Thompson what happens to water when it flows off the property and if the proposed building site is gravel or pavement. Chair Taylor stated he was worried about the impact of the water/gravel runoff and where it will end up.

Chair Taylor asked Mr. Thompson if there was a wall between the two properties. Mr. Thompson responded he is unsure and deferred to the applicant.

Chair Taylor asked the board if there were any more questions for staff.

Board member Dickson asked Mr. Thompson what zoning district in the City of Gastonia allows for zero-foot setbacks and if the property could be rezoned to use those setbacks. Mr. Thompson responded someone would have to rezone to either the Central Business District (CBD) or Urban Mixed Use (UMU). Chair Taylor asked Mr. Thompson what was the current zoning designation for the property. Mr. Thompson responded C-2 (Highway Commercial).

Mr. Thompson stated rezoning to the CBD or UMU could be considered spot zoning since those zoning districts are nowhere near the subject property.

Board member Dickson asked Mr. Thompson if there was any historical data available about the original zoning designation of when the structure was built. Mr. Thompson responded he could look up when the building was built and there are only four zoning ordinances that have been adopted in the City of Gastonia. Mr. Thompson looked on the Gaston County GIS for the date the structure was built.

Mr. Graham provided an interpretation of legal nonconforming uses while Mr. Thompson researched the property. Mr. Graham stated the building was already in existence when the current zoning code was adopted. He stated the building violated current setbacks, but because it was already there, it's allowed to remain. Mr. Graham continued stating the nonconforming use will be allowed to remain, but you can't increase the nonconformity by expansion and you can't use the code to make somebody tear something down.

Board member Dickson stated he was sure there was a building there before 1985. Mr. Thompson responded after looking in the tax records (provided by Gaston County GIS), and it says 1985. Mr. Thompson stated he is unsure if the tax record is referring to the primary structure or the metal infrastructure that could have been added to the site at some point in time.

Chair Taylor stated that based on the angles of the building, and the proposed building site, at the narrowest point, this proposal would not meet the 20-foot setback. He stated he is unsure and Mr. Thompson stated he was unsure also. Chair Taylor stated the previous question has no rule in the decision today, and to come to a decision, the applicant must show an unnecessary hardship.

Mr. Thompson presented section 5.14.5 Various Approval Criteria from the Unified Development Ordinance to assist the board determine whether a hardship exists

Discussion ensued amongst the board regarding section 5.14.5 of the UDO.

Chair Taylor asked Mr. Thompson if the staff has heard any statements from the surrounding property owners. Mr. Thompson responded we have not heard anything from surrounding property owners

and discussed the state statutes requiring surrounding property owners to be notified before the public hearing.

Chair Taylor asked the board if there were any more questions for staff. With there being no further questions, Chair Taylor recognized Peter Day at 4601 Park Road, Charlotte, NC.

Mr. Day stated he is representing the applicant and the CSO, the civil engineer that designed the project. Mr. Day stated he can add some clarification on the distance between their building and the shopping center's building. He stated on their plans, they show the existing mall buildings 9.7 feet away from the property line and their existing building is just over three feet away from the property line. Mr. Day stated there are about twelve or thirteen feet, measured from the closest corner of their building, to the existing mall buildings. Mr. Day stated the proposed building would either match or be larger than those distances.

Mr. Day stated there are two existing retaining walls, from an old truck dock, in the area where they are going to put the building. He stated their plans are showing those walls being removed and the new structure in their place.

Mr. Day stated as far as getting into the hardship, Sun Belt Rentals rents large and small construction equipment, as well as a variety of items. He stated he has rented from them several times personally and part of their project is expanding their storage and parking areas across the street. Mr. Day stated space is a limited commodity for them at this location and they're trying to make the best use of what space they have. He stated this is the reason the proposed addition is so narrow.

Mr. Day stated they want to install the wash bay to be able to keep their equipment clean and have a responsible place to wash the equipment off. He stated there's a drain installed in the addition, with an oil water separator to make sure they're not washing off the dirt and grime into the street or the stormwater system, and it will be drained to the sewer system.

Mr. Day stated they were kind of limited on where they could put the wash bay and if they wanted to do the addition, this location made sense because it was connected to the existing building, where they can get access. He stated the addition is narrower so they can move equipment around, but still get to it.

Mr. Day stated that kind of their hardship he wanted to point out, the space constraints and limited availability due to the site condition. Mr. Day asked if there were any questions for him.

Chair Taylor asked Mr. Day what the existing buildings were being used for. Mr. Day responded the small auxiliary building, with a metal roof is being used for maintenance and the principal building for office space and storage, but he does not know all the details of their current uses.

Chair Taylor asked Mr. Day if the preparation of the land was pavement, gravel, concrete, etc.

Mr. Day responded it is a mix of gravel and asphalt on the site. Mr. Day pointed out in the aerials displayed, in the parking areas, mainly along the frontage of the road, are all asphalt. He stated there's an asphalt area in the back corner that's behind the fuel tank area in the maintenance building. Mr. Day stated that most of the site is either grass, asphalt, or gravel currently. Mr. Day stated there's an area between the two existing buildings that has a large tree, that would not be impacted.

Mr. Day stated everything kind of gradually drains down toward Garrison Blvd. and there is a retention pond on the southern end of the property. He stated that the retention pond would not be impacted by the proposed addition. Chair Taylor asked Mr. Day if the retention pond was on Sunbelt properties. Mr. Day responded yes, just south of the existing building on the property.

Chair Taylor asked if the courtyard-like area, in the middle of the property is a mixture of gravel or asphalt. Mr. Day responded he does not think the area is all asphalt and that there may be some gravel pathways in the mix. Mr. Day stated they are proposing a sidewalk through the area, and there actually may be some landscaped area also.

Board member Nebo asked where the sidewalk is being proposed. Mr. Day responded a concrete sidewalk would go in between the maintenance building and the existing building, and then tie into the new addition.

Mr. Day pointed out where the grease interceptor is located on the presented site plan.

Chair Taylor asked Mr. Day regarding water runoff, will the applicant be removing those retaining walls. Mr. Day responded they are not truly retaining walls, but walls bordering both sides of an elevated truck dock. Chair Taylor asked Mr. Day if there was some kind of slope that required the retaining walls. Mr. Day responded that generally the ramp going up to the building would drain away from the building, and would split both sides and drain back down to Garrison.

Chair Taylor asked Mr. Day if he removes those retaining walls, and where's the water going to go between their building and the shopping center's building. Mr. Day responded it does already today drain between those two build existing buildings, anything to the left of that retaining wall will drain through there and pretty much all the existing drainage patterns will be maintained. Mr. Day stated he does not know all the details yet, but they may add a storm inlet in that area to make sure it drains properly.

Chair Taylor stated he wants to know if water will run off at a faster rate. Chair Taylor asked Mr. Day what type of roof they have on the proposed building, and if there are gutters. Mr. Day responded he does not know that for sure, but his assumption is the proposal does have gutters.

Chair Taylor asked Mr. Day if the property owner is present. Mr. Day responded no.

Chair Taylor asked Mr. Day if anyone is here who drew up the plans. Mr. Day responded he worked with them, but they are just site civil, so they don't deal with the architectural details of the building at all.

Board member Dickson asked Mr. Day if this was an attempt to move what you're doing outside into a climate-controlled area. Mr. Day responded exactly that because currently, washing occurs in the parking lot. Mr. Day stated they are not creating any additional use on the site, just moving inside from outside and creating a controlled environment where they can collect the water, dirt, grease, and grime.

Chair Taylor stated he likes that the proposal does not encroach any closer in the setback. Chair Taylor stated he was still worried about the runoff from removing the retaining walls, and asked Mr. Day if any excess runoff goes into the retention pond on the property. Mr. Day responded that the area between their building and the mall will not be receiving any additional water, and anything collected on their property will be routed around to the pond.

Mr. Day stated the wash bay roof would not discharge any water off the back of the property onto the adjacent parcel. Chair Taylor asked Mr. Day if the roof is slanted so water only collects on their property. Mr. Day responded he does not have those details, but they can make sure to collect the water on their property.

Chair Taylor asked if there were any other questions for the applicant.

Board member Jones asked Mr. Day if they have reached out to the property owners of vacant parcels adjacent to the parcel they own across the street. Mr. Day responded he does not know the answer to that and that is something he would have to talk to his client about.

Board Member Nebo asked Mr. Day with the size of the building that the applicant is proposing, if there is a reason why it can't be further away from the setback. Mr. Day responded because their site has that kind of center courtyard and that existing maintenance building, they needed enough separation to be able to turn vehicles, trailers, and equipment into the wash bay. Mr. Day stated if necessary, they can consider alternative options; however, out of all the designs produced, this one emerged as the most favorable.

Board member Nebo asked Mr. Day how much space is in between the proposed building and the maintenance building. Mr. Day responded approximately 35 feet. Board member Nebo stated that a lot of space. Mr. Day stated the space is needed for equipment that might be on a trailer. He stated the space is for maneuverability.

Discussion ensued over the different types of larger vehicles.

Board member Nebo asked Mr. Day if tractor-trailers would pull into the wash bays. Mr. Day responded no, more like the trailers you see at Home Depot.

Chair Taylor asked if there were any more questions for Mr. Day.

With no response, Chair Taylor asked Mr. Day as a property owner, if there were any particular hardships he sees. Mr. Day stated just the space constraints with the existing buildings on site and the fact that the current owner didn't put those buildings there, they purchased the property with all those buildings in place. Mr. Day stated space constraints would be the biggest hardship.

With no other questions for Mr. Day, Chair Taylor discussed the procedural rules for making a decision. Chair Taylor asked for the other board member's thoughts.

Discussion ensued over the survey. Chair Taylor asked if there was a fence situated in the rear of the property. Board member Dickson stated the entire area in the rear of the property is fenced, storing all of the equipment.

Chair Taylor discussed the variance request and the current uses on the property. Chair Taylor asked if there was going to be an enclosure around the wash bay. Board members Nebo and Dickson responded it is a permanent building.

Board member Dickson asked Mr. Thompson if this variance request would still be triggered if the applicant installed a wash bay with a roof. Mr. Thompson responded yes, that would still be considered for the building setback.

Mr. Graham stated the use is still the same on the property and the issue, under the ordinance, is the addition being an expansion of a nonconformity. Mr. Graham stated the board is not deciding on the usage of the property but on the addition.

Discussion ensued over what the Board is deciding on.

Board member Dickson made a motion to deny the variance because no unnecessary hardship is resulting from the strict application of the ordinance, and it would be an expansion of an existing non-conforming use that the buyer was aware of when they purchased the property.

Board member Nebo seconded the motion.

Chair Taylor opened the floor for discussion before taking the vote.

Chair Taylor stated it was known when the owner bought the property that the existing site limited their options, but he is considering where else they could locate the wash bays and what alternate drainage options are.

Board member Dickson stated he agrees and sympathizes with the situation and one of the applicant's options may be to request a rezoning or relocation of what their plans are, but as presented, he does not believe the Board has the authority to do anything but deny. Board member Dickson stated to try and approve this would be beyond the board's purview.

Board member Jones stated he sympathizes with the situation as well, but under zoning, this variance request is not consistent with the spirit, purpose, and intent of the ordinance and that was known upon purchase.

With no further discussion Chair Taylor takes the vote on the original stated motion. The motion to deny the variance request was approved unanimously.

Item III: Other Announcements or Business

Chairman Taylor thanked the staff for their work and wished the applicant luck in the future. Staff has not received any submittals for the June 22nd Board of Adjustment meeting. Mr. Putnam stated there are still four days left before the appeal deadline.

Chairman Taylor entertained a motion to adjourn. Board Member Marino made a motion to adjourn and Board Member Nebo seconded the motion. The motion was passed (5-0); therefore, the meeting was adjourned at 9:57 a.m.

Jalen Nash, Secretary

Zoning Board of Adjustment
City of Gastonia, NC

Chairman Lee Taylor Jr.

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