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**CITY OF KANNAPOLIS, NC
BOARD OF ADJUSTMENT**

**Minutes of Regular Meeting
Tuesday, March 15, 2016**

The Board of Adjustment met on Tuesday, March 15 2016 at 6:00 PM at the Kannapolis Train Station, 201 South Main Street, Kannapolis, North Carolina.

Board Members Present: Jeff Parker, Chairman
Jonathan Farmer, Vice-Chairman
Andrew Baker
Colby Meadows
Boyd Hardin
Scott Wilson
James Palmer
Ryan Craft

City Attorney: Walter Safrit, II

Board Members Absent: None

Visitors:

Roy Bell	Fred Wally	Yvonne Michael
Katie Martocchio	George Martocchio	Trudy Benton
LaVon Benton	Norman Anderson	Heather James
Sandra Straub	Lesley England	Nick Craver
Debra Provost	Paula Brandle	Mickey Brandle
Tracie Cline	Sandra Keiper	David Keiper
David Burnett	Diana Wilson	James Champion
Beck Staton	Marie Wallace	

Staff Present: Zachary D. Gordon, AICP, Planning Director
Josh Langen, Senior Planner
Aaron Tucker, Planning Technician
David Jordon, IT

Recording Secretary: Zac Gordon

CALL TO ORDER

Board Chairman Jeff Parker called the meeting to order at 6:00 P.M.

ROLL CALL AND RECOGNITION OF QUORUM

Chairman Parker called the roll. The presence of a quorum was recognized.

SWORN IN FOR TESTIMONY

Staff members Zac Gordon and Josh Langen, Fred Wally, Sandra Straub, Heather James, LAVOR Benton, Yvonne Michael, Norman Anderson, James Champion, Becky Staton, Lesley England, Paula Brandle, Mickey Brandle, Sharon Bell, Debra Provost, Tracie Cline and David Burnett.

1 APPROVAL OF AGENDA

2 Chairman Parker asked for a motion to approve the agenda which was made by Mr. Farmer, seconded by
3 Mr. Baker and the motion was unanimously approved.

4 APPROVAL /CORRECTION OF MINUTES

5 Chairman Parker requested a motion to approve the February 16, 2016 minutes which was made by Mr.
6 Farmer, seconded by Mr. Hardin and the motion was unanimously approved.

7 BOA-2016-01 – CONCRESCERE COMPREHENSIVE SIGN PACKAGE – CONDITIONAL USE
8 PERMIT

9 Planning Director, Zac Gordon, gave a PowerPoint presentation regarding a request for a Comprehensive
10 Sign Package to allow for signage larger than what is allowed by Unified Development Ordinance
11 (UDO). The property is located at 357 Concrescere Parkway and is further identified as Cabarrus County
12 PIN #5673-56-1326, 4673-56-8723 and 4673-47-7388 and is zoned CD – Campus Development. The
13 applicant is Keith Wayne.

14
15 Mr. Gordon reminded the Board that a Comprehensive Sign Package (CSP) is to be reviewed as a
16 Conditional Use Permit (CUP) which is why case #BOA-2016-01 is being presented to the Board. He
17 then directed attention to the aerial and current zoning maps for the subject property as well as the Future
18 Land Use Map. He stated that anyone can apply for a CSP if they have a freestanding structure in excess
19 of twenty-five thousand (25,000) square feet and/or a master planned development in excess of 10 acres.
20 Mr. Gordon stated that the purpose of the CSP is to encourage innovative, creative and effective signage
21 by providing an alternative to the general permanent signage criteria in Article 12.

22
23 Mr. Gordon stated that there are no dimensional regulation limitations for signage except that , the design,
24 character, location and/or materials of all freestanding and attached signs proposed in a CSP shall be
25 demonstrably more attractive than signs otherwise permitted on the parcel(s) proposed for development
26 under the minimum sign standards Article 12 of the UDO; and that all signs must be architecturally
27 integrated into/with the design of the building and/or site using similar and coordinated design features,
28 materials, colors, etc. Mr. Gordon provided an example of a CSP by referencing the Afton Ridge
29 shopping center and stated that signage currently in place would not have been permitted under the
30 signage regulations of the UDO. He directed the Board’s attention to a sign rendering as well as site
31 plans and reminded the Board that the request is concerning signage only and does not include any
32 building plans or development plans.

33
34 Mr. Gordon reminded the Board that a Comprehensive Sign Package shall be reviewed as a CUP.
35 He then reviewed the criteria outlined in Section 3.5.3 of the UDO, and the suggested Staff findings of
36 fact that the Board may use to determine whether or not to grant a CUP, as follows:

37
38 **1. The proposed conditional use will be in harmony with the area in which it is to be located and**
39 **in general conformance with the City’s Land Use Plan.**

40 The 2015 Land Use Plan (LUP) defines this property to be in the *Western Growth Area* of
41 Kannapolis. The LUP calls for this area to have a Mixed Use. The area is currently zoned Campus
42 Development (CD) which promotes mixed use; signage is currently permitted with supplemental
43 conditions listed in Article 12.1-2 in the CD district, therefore, the proposed Comprehensive Sign
44 Package will be in conformance with the City’s Land Use Plan.

45
46 **2. Adequate measures shall be taken to provide ingress and egress so designed as to minimize**
47 **traffic hazards and to minimize traffic congestion on the public roads.**

48 The Comprehensive Sign Package proposes allowed directional signage for each development
49 to aid in the flow of traffic in and out of the site. The guidelines call for the signage to meet

1 all visibility requirements of the City or State, whichever has jurisdiction. This would require
2 all signage to be located outside of the public street Right-of-Way and the required sight
3 triangle of any intersection. The plans submitted by the applicant would comply with these
4 location restrictions and as a result, the proposed Comprehensive Sign Package will not create
5 any traffic hazards or traffic congestion on public roads.
6

7 **3. The proposed use shall not be noxious or offensive by reason of vibration, noise, odor,**
8 **dust, smoke or gas.**

9 The proposed use will not produce any noxious or offensive noise, odor, dust, smoke, or gas.
10

11 **4. The establishment of the proposed use shall not impede the orderly development and**
12 **improvement of surrounding property for uses permitted within the zoning district.**

13 The Comprehensive Sign Package will not impede the orderly development of the
14 surrounding properties as they are all on premise signs.
15

16 **5. The establishment, maintenance, or operation of the proposed use shall not be detrimental to**
17 **or endanger the public health, safety, or general welfare.**

18 The proposed signs will be required to comply with all applicable regulations of the North
19 Carolina Building Codes which will help safeguard public health and safety. Therefore, the
20 signs will not be detrimental to or endanger the public health, safety, or general welfare.
21

22 **6. Compliance with any other applicable Sections of this Ordinance.**

23 The Comprehensive Sign Package complies with all requirements of Article 12.6. Applicant
24 has submitted a site plan that identifies locations of freestanding, multi-tenant, and directional
25 signage. Applicant has also met the requirements of Article 12.6 by providing a list of
26 guidelines for all future signage in the development.
27

28 Based upon assessment of the above criteria and suggested findings of fact, Staff recommends approval of
29 BOA-2016-01 with the following conditions:
30

- 31 1. Any signage not specifically identified in the Comprehensive Sign Package shall conform to the
32 minimum signage criteria contained in Article 12 of the UDO,
- 33 2. All signage must be located outside of the public street Right-of-Way; and
- 34 3. Concescere Parkway is currently designated as a private street. Signage may be located within
35 the Right-of-Way of a private street however, the main monument sign shall not be located in the
36 Right-of-Way if Concescere Parkway is to be dedicated as a public City maintained street. [Staff
37 has spoken with the applicant and their intention is to keep and remain as a private street.]
38

39 Mr. Gordon reminded the Board that they should consider all facts and testimony after conducting the
40 public hearing and render a decision accordingly. He stated that in order to approve the request for a CSP
41 CUP, the Board must find that the above approval criteria have been met. He further stated that if the
42 Board agrees with Staff findings of fact, no additional findings are necessary but that if the Board
43 disagrees with Staff findings of fact, they may propose alternate findings which should be included as part
44 of the Board's decision. Should the Board approve the CSP CUP request, Mr. Gordon stated that they
45 may place conditions upon the use as part of the approval to ensure adequate mitigation measures of the
46 proposed use which may be in addition to what the Staff has proposed.
47

48 Mr. Gordon stated that after conducting a Public Hearing, and as part of rendering a decision accordingly,
49 the Board conduct the following actions:
50

- 51 1. Make a motion to accept the City's exhibit's into record,
- 52 2. Make a motion to approve or revise the findings of fact proposed by Planning Staff, and
- 53 3. Make a motion to approve, approved with conditions or deny the issues of the CSP CUP

1
2 Mr. Gordon concluded his presentation and asked if the Board had any questions.
3

4 For clarity, Attorney Safrit asked Mr. Gordon to confirm the freestanding structure that is on the site
5 complies with the twenty-five thousand (25,000) square feet and the minimum ten (10) acre requirement?
6 Mr. Gordon responded "yes". Attorney Safrit stated that the proposed sign is twenty-two (22) feet tall,
7 the base is ten (10) by ten (10) and will be two (2) sided. He asked how the requested of the proposed
8 sign differs from what is permitted by right in the UDO under the CSP? Mr. Gordon responded by
9 referencing Table 12.1-2 Standards for Permanent Signage in CD Zoning District and stated that the
10 maximum height allowed is six (6) feet and the maximum sign area allowed is sixty-four (64) square feet
11 for buildings in excess of twenty-five thousand (25,000) square feet. Attorney Safrit asked if there is a
12 signage limitation under the package? Mr. Gordon responded "there is not". Attorney Safrit asked if Mr.
13 Gordon has visited the site? Mr. Gordon responded "yes". Attorney Safrit asked Mr. Gordon if he had an
14 opinion that the architectural nature of the proposed sign is consistent with the building on site and in
15 what way? Mr. Gordon responded that in terms of the design, the architectural rendering of the building
16 consistency between the sign and building, is a custom sign and will mirror the proposed structure on the
17 site and reflect the design theme for the property. Attorney Safrit asked Mr. Gordon to be more specific.
18 Mr. Gordon stated that the sign is a custom sign, it will be backlit, have the unique logo and be made of
19 brushed concrete which is a reflection of the applicant's concrete design company. Attorney Safrit asked,
20 based upon the information that has been provided, if all property signage will be similar? Mr. Gordon
21 responded that all signs would be similar with regards to design but added that the main sign has a
22 different feature due to it being the main signage for the property but that motif and materials would be
23 similar for all signage and maintained throughout the property. Mr. Gordon added that the CSP calls for
24 uniformity.
25

26 With regards to comparing the CSP with the UDO, Attorney Safrit asked Mr. Gordon if he has an opinion
27 as to whether the proposed signs under the CSP is more attractive than what is required in the UDO? Mr.
28 Gordon responded that the proposed design is of a higher standard than what is stated in the UDO.
29 Attorney Safrit asked if being backlit is unusual as part of the CSP versus what is in the UDO? Mr.
30 Gordon stated that he didn't think it was unusual but that the proposed sign will have unique design
31 elements and one of those will be brushed concrete and uplighting.
32

33 Chairman Parker stated with regards to the layout of the property which indicates that there would be
34 retail and asked if signage for the retail portion of the development would have to conform to the UDO
35 guidelines or would they also be permitted to submit a CSP? Mr. Gordon responded that unless
36 something else is shown on the plan, applicants would have to comply with the UDO.
37

38 Chairman Parker opened the Public Hearing and asked for a three (3) minute maximum testimony. He
39 also stated that all comments should be regarding signage and nothing else. Attorney Safrit suggested
40 that the applicant be allowed to speak and that the minimum three (3) minute maximum testimony be
41 increased.
42

43 Nick Craver, WGM Design, Inc., 916 West 5th Street, Charlotte, was sworn in and spoke on behalf of the
44 applicant. He stated that the CSP request applies to the monument sign on the main entrance as well as
45 two smaller signs for the other entrance. Mr. Craver spoke about the design of the signage and stated the
46 color will be gray, white and black; the style will be concrete, glass and metal which is reflective of the
47 building. He added that it would be backlit and that there would also be black mesh which is also
48 reflective of the building. Mr. Craver talked about placement of property signage as well as directional
49 signage.
50

1 Chairman Parker asked if the main sign would be illuminated dusk to dawn? Mr. Craver responded that
2 the sign would have a sensor and would be lit from dusk to dawn. Chairman Parker asked if all signage
3 would be dusk to dawn or would there be ground lighting as well? Mr. Craver responded that the main
4 sign would be dusk to dawn and all other signage would most likely have ground lighting.
5

6 Mr. Wilson asked if composition of the main sign would be brushed concrete or would there also be
7 color? Mr. Craver responded that it would be tinted with two (2) shades of gray. Mr. Wilson asked if
8 there would be maintenance required to maintain the color of the sign. Mr. Craver responded that the
9 concrete would be stained so that there should be no maintenance required to maintain the color of the
10 sign.
11

12 There being no further questions or comments for staff, Chairman Parker asked for public testimony.
13

14 Norman Anderson, 5484 Deer Run Court, expressed his opinion that the proposed sign is not in harmony
15 with the surrounding area and cited that surrounding neighborhoods consist of rural, farm properties, low-
16 density housing and one (1) gas station. Mr. Anderson stated that he took photos of the surrounding
17 property on his way to the hearing and cited his observations of those pictures. He feels that a twenty-two
18 (22) foot sign is inappropriate for the location and stated that a sign of that size would be more
19 appropriate on Bruton Smith Boulevard or on a street in Charlotte but not a rural farm road.
20

21 Attorney Safrit referenced a service station and asked Mr. Anderson to confirm that it is located across the
22 street from the property? Mr. Anderson confirmed location. Attorney Safrit asked if the service station
23 had a sign? Mr. Anderson responded "yes". Attorney Safrit asked Mr. Anderson if he knew what kind of
24 sign it was and Mr. Anderson responded that it was probably a monument sign. Attorney Safrit asked if it
25 had a pole and Mr. Anderson replied "yes". Attorney Safrit asked if it was a short sign? Mr. Anderson
26 responded that it was tall. Attorney Safrit asked Mr. Anderson how tall he thought the sign was and Mr.
27 Anderson responded that it was about twenty (20) feet tall. After some interruption from the audience,
28 Mr. Anderson stated that he did not know how tall the sign is for the service station. Attorney Safrit
29 asked if there were gas pumps? Mr. Anderson responded "yes". Attorney Safrit asked if the pumps had
30 coverage? Mr. Anderson responded "yes". Attorney Safrit asked Mr. Anderson how tall he thought those
31 covers were and said that it was okay if he didn't know. Mr. Anderson speculated that the pump covers
32 were about ten (10) feet tall
33

34 Yvonne Michael, 2006 Sandburg Drive, stated that she agrees with Mr. Anderson that the proposed
35 signage is inappropriate with surrounding neighborhood. She stated that there is one gas station with a
36 sign and now Mr. Wayne will be adding another sign. Ms. Michael accused the applicant of knowing the
37 right people and has all the money he needs and somehow always gets what he wants.
38

39 Heather James, 11445 Terrill Ridge Drive, thanked the staff for their work putting together the staff report
40 as well as the Board for their time. Ms. James stated that the tract of land for the proposed signage (PIN
41 #4673-56-8723), does not meet the criteria to apply for a CSP. She stated that it does not have twenty-
42 five thousand (25,000) square foot building requirement or an approved site plan and that the property
43 must meet the criteria before submitting for a CSP so the request is null and void. She also stated that per
44 North Carolina statute, 160A-388 (a2), notice of hearing to abutting property owners contained incorrect
45 meeting location information as well as the notification posted on the property was not posted ten (10)
46 days prior to the meeting. Ms. James asked that the Board postpone action until another public meeting
47 be held with notice letters and signs posted within the minimum ten (10) day requirement. She stated that
48 the proposed twenty-two (22) foot, ten (10) foot wide sign is not compatible with the surrounding area
49 and that there is nothing of this size within a five (5) mile radius of the proposed site. She asked the
50 Board to deny the request.

1
2 Sandra Straub, 11280 Olde Cedar Court, stated that she has lived near the proposed site for twenty (20)
3 years and feels the proposed size of the sign is inappropriate and not compatible with the surrounding
4 neighborhood. Ms. Straub voiced concern regarding the light from the sign. She stated that the
5 community has opposed any development of the proposed area and that there are no public utilities. She
6 urged the Board to visit the site prior to making their decision.
7

8 Fred Wally, 10800 Mooresville Road, stated he is an adjacent property owner to the Wayne Brothers
9 property. He asked that the meeting be canceled or rescheduled due to lack of notice to all adjacent
10 property owners by mail as well as change of meeting location not being communicated in a timely
11 manner. Mr. Wally assumed that other property owners were discouraged when they arrived and saw that
12 swearing in for testimony had already occurred so they left. He stated the Planning Director made the
13 comment that the proposed property is located in Northwest Kannapolis but is "satellite zoned property"
14 that been involved in a 8-1/2 year case but was dismissed because the Superior Court refused to hear the
15 case. He accused the City of pushing for what they want forgetting that the property is zoned AG-
16 Agriculture and should be used for rural use. Mr. Wally reiterated that the property is "satellite zoned
17 property" and is not in the City of Kannapolis but located in the county. Chairman Parker reminded Mr.
18 Wally that the case is not regarding development of the property and is regarding the sign only and that
19 any proposed development is not affected by their decision tonight. Mr. Wally stated that the gas station
20 that Attorney Safrit brought up does not affect the proposed development either but that he spoke on it.
21 Chairman Parker responded that Attorney Safrit was comparing the proposed sign to what is already
22 existing. Mr. Wally asked if he could continue making his point and stated that they were told that any
23 development would not affect surrounding neighborhoods but are now faced with a proposed sign that is
24 larger than it should be and will be illuminated all night. He asked that the Board allow a sign that is
25 permitted per the UDO and nothing bigger.
26

27 Becky Staton, 10899 Sudbury Road, stated that she has been a lifelong resident of the area and that she
28 lives adjacent to an existing building and storage area on the proposed sign property. Ms. Staton
29 expressed concern regarding light pollution and said that there are already existing lights and signage that
30 cast unwanted light onto her property causing difficulty sleeping. She requested that the lights be
31 shielded to prevent light pollution onto her property. She asked what is in place to prevent the property
32 owner from requesting additional signage and lighting?
33

34 James Champion, 5151 Odell School Road, stated that he owns property along Sudbury Road and that he
35 has three (3) businesses on his property with all three (3) advertised on one (1) four (4) foot by four (4)
36 foot sign. Mr. Champion said that he is representing three (3) families and stated that all are upset by the
37 proposed sign package because they were made promises by the property owner which have not been
38 kept. Mr. Champion stated that people who are "connected" get what they want while others do not. He
39 stated that elected officials are getting voted out of office because they are not following through with
40 what is said. He said that people live in this neighborhood because they wanted to be in the country and
41 away from the hustle and bustle of city life. He accused the Board of being elected City officials making
42 decisions that affect their lives by people willing to pay for it.
43

44 Chairman Parker closed the Public hearing at 6:57 PM.
45

46 Chairman Parker asked Mr. Gordon to clarify accusations regarding change of meeting location
47 notification as well as sign notification posted on the property.
48

49 Mr. Gordon responded that there was a change in location due to a conflict with a meeting previously
50 scheduled for City Hall and that notification was posted on the door as well as the City of Kannapolis

1 Planning website. Mr. Gordon stated that according to state statutes, sign notification must be posted
2 within the same time period as abutter letter notification and that signs were posted within that time
3 frame.
4

5 Attorney Safrit stated that a change of location is not uncommon and that case law states that as long as
6 notification is posted at the designated location declaring the new location, it is permissible.
7

8 Mr. Farmer (referencing a 2004 date) asked once a site plan has been submitted and construction does not
9 begin, how long before another site plan has to be submitted? Mr. Gordon clarified that the 2004
10 reference was to a Future Land Use Plan and not for the site plan. Attorney Safrit added that the building
11 has already been constructed and that typically a Comprehensive Sign Package request is submitted prior
12 to construction of a building or in conjunction with a site plan but given that a building already exists,
13 another site plan would not have to be submitted.
14

15 Mr. Baker asked Mr. Gordon to address the accusation that adjacent property owners had not been
16 notified. Mr. Gordon directed attention to the Aerial Map and stated that properties abutting the red line
17 on the map were notified per UDO definition. Mr. Gordon asked Mr. Tucker to confirm the properties
18 notified and Mr. Tucker confirmed that all properties abutting were notified. Someone asked if there was
19 a list of notified properties and Mr. Gordon responded that there was a list in the packet sent to the Board.
20

21 Chairman Parker asked Mr. Gordon to address the accusation that the proposed site is not within City
22 limits. Mr. Gordon deferred to Attorney Safrit who stated that the property was annexed in 2004 and is
23 within the City of Kannapolis.
24

25 Chairman Parker asked for a motion to accept the City's exhibit's into the record which was made by Mr.
26 Palmer, seconded by Mr. Wilson and the motion was unanimously approved.
27

28 Chairman Parker asked for a motion to approve or revise the Findings of Fact as presented by Staff.
29 Attorney Safrit requested to amend the following Finding of Fact based upon the testimony offered:
30

31 **1. The proposed conditional use will be in harmony with the area in which it is to be located and**
32 **in general conformance with the City's Land Use Plan**

33 The 2015 Land Use Plan (LUP) defines this property to be in the Western Growth Area of
34 Kannapolis. The LUP calls for this area to have a Mixed Use. The area is currently zoned
35 Campus Development (CD) which promotes mixed use. Signage is currently permitted with
36 supplemental conditions listed in Article 12.1-2 in the CD district. Therefore, the proposed
37 Comprehensive Sign Package is in conformance with the City's Land Use Plan. The property
38 meets the square foot and acreage requirements of Article 12. The comprehensive sign package
39 proposed is demonstrably more attractive due to uplit sign, brushed concrete exterior and located
40 in the median of the private street. The package is coordinated with the building by using
41 concrete, metal, glass and black mesh.
42

43 Chairman Parker asked for a motion to approve the Findings of Fact along with Attorney Safrit's
44 additions which was made by Mr. Wilson, seconded by Mr. Palmer and the motion was unanimously
45 approved.
46

47 Chairman Parker asked for a motion to approve, approve with conditions or deny the issuance of the CSP.
48 There was some discussion regarding a similar request made the previous year regarding Rowan Cabarrus
49 Community College with the same signage height. There was interruption from the Public and Chairman
50 Parker attempted to remind them that the Public Hearing had been closed and that the Board is not elected

1 but are all volunteers. There was additional conversation regarding the exact location of the signage and
2 additional interruption from the Public. Chairman Parker reminded the Board that the project has already
3 been approved, this case is regarding the sign only.
4

5 Mr. Palmer asked for confirmation of the proposed conditions and was directed to page 3 of the Staff
6 report. Mr. Palmer asked if the CSP overrides the UDO standards as it relates to signage and if the CSP
7 also relates to setback regulations as well? Chairman Parker responded that the CSP will override the
8 UDO standards as it relates to the size of the sign but not to the setbacks and reminded the Board that
9 Conrescere Parkway is a private street therefore the sign can be located in the median but still has to
10 meet guidelines.
11

12 Mr. Farmer asked the distance the sign has to be located away from the public street? Mr. Gordon
13 referenced the sight triangle which is determined by speed of traffic and a formula standard set by
14 NCDOT which the City adheres to.
15

16 Chairman Parker asked if there were any future plans to accommodate for growth? Mr. Gordon
17 responded that there are no plans at this time but added that when specific site plans are submitted for the
18 commercial portion of the property, a Traffic Impact Study will be required.
19

20 Chairman Parker asked for a motion to approve, approve with conditions or deny the CSP. Mr. Wilson
21 made the motion to approve the CSP request with conditions provided by staff and additions made by Mr.
22 Safrit which was seconded by Mr. Palmer and the motion was unanimously approved.
23

24 Chairman Parker requested a 5 minute recess at 7:15 PM.

25 **BOA-2016-02 – ROYAL OAKS RIVER/STREAM OVERLAY DISTRICT VARIANCE**

26 Senior Planner, Josh Langen, provided a PowerPoint presentation regarding a request for a River/Stream
27 Overlay District (RSOD) Variance. The applicant, Dave Burnett, is requesting a variance to allow for a
28 reduction of RSOD (buffer and vegetative setback) in order to accommodate play fields and associated
29 erosion control. The property is located at 608 Dakota Street and is further identified as Cabarrus County
30 PIN #5612-28-4977 and #5602-98-6164. The property is zoned RM-2 (Residential Medium Density) and
31 is approximately 18 acres.
32

33 Mr. Langen directed attention to the aerial and current zoning maps for the subject property as well as the
34 Future Land Use Map where he identified the floodplain designated by FEMA. He explained that the
35 proposed development site is bound by a perennial stream, Threemile Branch, which is restricted by the
36 RSOD and under Section 4.15 of the UDO, requires a fifty (50) foot undisturbed buffer with additional
37 stream slope on both bank sides as well as a twenty (20) foot vegetative setback from the RSOD buffer.
38 Mr. Langen stated that in order to proceed with construction, an encroachment into the RSOD buffer and
39 setback is necessary for the playfields as well as temporary erosion control ponds. He directed the Board's
40 attention to Variance Map 2 to further illustrate these requirements.
41

42 Mr. Langen referenced Variance Map 1 and further explained that the applicant's request for a variance
43 includes a requirement for permanent encroachment into the buffer and setback to accommodate grass play
44 fields, sidewalk, backstop fencing, stormwater drainage pipes and graded sloping. He stated that this
45 encroachment will not interfere with the 100 and 500 year Hazard Flood Area of the property and that
46 replanting of the setback will occur wherever possible.
47

48 Mr. Langen stated that in order for an applicant to be granted a variance, hardship must be demonstrated
49 per State statute §160A-388(d) as noted below:

1
2 **1. Unnecessary hardship would result from the strict application of the ordinance.**

3 Strict application of Section 4.15 of the UDO, requiring a fifty foot (50') plus stream buffer
4 and an associated twenty foot (20') vegetative setback, would allow for school expansion,
5 associated parking and drop-off areas, and one of the playfields. However, both playfields
6 could not be accommodated by the confined site and erosion control would not be practical if
7 no development or construction were to be allowed in the stream buffer or vegetative setbacks.
8 To accommodate the playfields and site construction, the development plan would require a
9 reduction in the size of the proposed buildings, parking area, or both. While the site plan
10 proposes more than the minimum number of parking spaces required, the additional spaces
11 are needed to reduce impact on the surrounding neighborhood during special events. On-street
12 parking would be difficult on narrow neighborhood streets and no sidewalks exist in this area
13 to accommodate pedestrians. Reduction of the size of the proposed parking and access drive
14 does not appear feasible and reconfiguration of the site to accommodate all the proposed
15 facilities does not appear possible.

16
17 **2. The hardship results from conditions that are peculiar to the property, such as location,**
18 **size, or topography.**

19 The construction of a substantial addition to the existing Royal Oaks Elementary is designed to
20 provide maximum utilization of a confined area which is bordered by existing residential
21 development, roads and a stream. Parking, access, and buildings are located along existing
22 property lines with no substantial remaining developable area. The proposed play fields are
23 designed to overlap, in order to maximize the confined developable area. Further overlap is not
24 possible due to the infield of the ballfield being incompatible with the grass surface of the
25 proposed soccer field. Reconfiguration of the parking, access and buildings areas, while
26 maintaining conformance with the UDO development standards and site plan review
27 requirements, does not appear possible without losing necessary facilities for school operation
28 and therefore, no alternate configuration has been proposed. The hardship of losing needed
29 recreational facilities, should a variance not be obtained, would result from conditions particular
30 to the property due to school's location, size and topography.

31
32 **3. The hardship did not result from actions taken by the applicant or the property owner.**

33 Royal Oaks Elementary has operated in this location since the 1960's in a single main building
34 with minimal parking and recreational facilities. Additional student population growth since
35 the school's inception, including a 7% district-wide increase in the past five (5) years, has
36 resulted in the need for expanded facilities. An increase in the building size, as well as parking
37 areas for busing and student drop-off has left a minimal amount of school property to install a
38 baseball and soccer field. Therefore, the hardship of having a limited configuration is a result
39 of expanding school needs due to increased vehicular usage and expanded busing, not from
40 the actions taken by the applicant.

41
42 **4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance,**
43 **such that public safety is secured, and substantial justice is achieved.**

44 The requested variance is consistent with the spirit, purpose, and intent of the UDO, which is
45 to protect Threemile Branch by limiting building expansion and stormwater runoff through
46 the provision of an undisturbed buffer and vegetative setback. The proposed variance for
47 temporary encroachment into the buffer and setback would allow for grading and temporary
48 erosion control basins, which, by their function, will minimize erosion as well as keep
49 stormwater runoff from entering the stream. The proposed variance for permanent
50 encroachment into the buffer and vegetative setbacks would mainly consist of grass playfields,
51 with a small segment of built facilities, and associated grading. The grass areas would still

1 control erosion and stormwater runoff. In addition, some amount of replanting is proposed,
2 further controlling erosion and runoff.
3

4 **Based upon assessment of the above criteria, Staff recommends approval of BOA-2016-02 with the**
5 **following conditions:**
6

- 7 **1. The applicant must submit an approved replanting plan**
- 8 **2. Must submit to the Site Plan Review process**
- 9 **3. Buffer and setback encroachment approval from the Army Corp of Engineers**

10
11 Mr. Langen reminded the Board of the actions required and asked if there were any questions.
12

13 Attorney Safrit stated that the Findings of Fact contained in the staff report are different than the findings
14 presented in the PowerPoint presentation and asked if the staff report contained all bullet points shown in
15 the PowerPoint presentation? Mr. Langen responded "yes". Attorney Safrit asked that if the Board chose
16 to approve the Finding of Fact proposed by Staff that they would be approving exactly the same Findings
17 of Fact as were presented but in different context? Mr. Langen responded "yes".
18

19 There being no further questions for staff, Chairman Parker opened the Public Hearing at 7:38 PM.
20

21 David Burnett, Director of Construction for Cabarrus County Schools, stated that he is very excited about
22 the new school and that it was originally established in 1949. Mr. Burnett said that they are very aware of
23 building limitations on the property and said that they have engineered the site to the best of their ability
24 to find an optimal solution. He also stated that Cabarrus County is looking to achieve LEED Certification
25 (sustainability criteria) for their schools and are subject to State and other agency requirements. Mr.
26 Burnett talked about the growth changes that have occurred over the years making it necessary to update
27 Royal Oaks School and cited site plan specifics such as the playfields and parking lot. He also talked
28 about a \$264MM Capital Improvement Plan (CIP) which includes funding to allow for the upgrade to the
29 school and playfields. Mr. Burnett also stated that they have a vested interest in maintaining the school at
30 its current location as opposed to finding an alternate location.
31

32 Chairman Parker asked Mr. Burnett if the playfields would be lit? Mr. Burnett responded that they would
33 not.
34

35 Attorney Safrit referenced three (3) maps presented by staff in the staff report and asked Mr. Burnett if
36 they accurately represent the conditions that are proposed? Mr. Burnett responded that they are accurate.
37

38 Lesley England, 6415 Old Plank Rd, Civil Engineer representing Cabarrus County Schools, introduced
39 herself and stated that she would be happy to answer any questions.
40

41 Attorney Safrit asked Ms. England to confirm that a playfield and parking lot is a Department of
42 Education requirement and that finding space on the current site to fulfill both requirements was their
43 challenge? Ms. England responded "yes".
44

45 Attorney Safrit asked Ms. England if the maps presented by staff in the staff report accurately represent
46 the conditions that are proposed? Ms. England stated that the maps are accurate and added that a site
47 survey was completed prior to design work for the site.
48

49 Chairman Parker stated that he lives along Threemile Branch creek and it is subject to flooding. He asked
50 if there are plans in place to contain flooding and prevent potential damage to the playfields? Ms.

1 England replied that FEMA floodmaps were accessed and determined that the proposed build is outside
2 of the critical flood area and would be located above the floodplain.

3
4 Attorney Safrit stated that as an engineering solution, as opposed to grading of the field slopes, a retaining
5 wall could have been proposed and asked if it were fair to say that sloped fields are safer than a retaining
6 wall being constructed next to a children's ballfield? Ms. England responded "absolutely".

7
8 Chairman Parker asked if the fields would be fenced? Ms. England responded that the back part of the
9 fields would be fenced.

10
11 Mr. Baker stated that increased parking would also add increased stormwater runoff and asked if the
12 parking lot would be the same elevation as the playfields? He also asked how stormwater runoff will be
13 directed? Ms. England replied that runoff from impervious areas will be captured in stormwater drainage
14 structures and either treated or released to other areas on site. Chairman Parker asked for clarification of
15 whether stormwater would be released into Threemile Branch creek. Ms. England stated that it would
16 eventually be released into the creek but not directly.

17
18 Tracie Cline, 609 Peacehaven Road, voiced concern regarding the increase in noise, mosquitoes and the
19 loss of trees separating her home from the school.

20
21 Debra Provost, 601 Peachaven Road, asked to view the proposed site plan on a map. After viewing the
22 map, she asked what the pink flags represent that she has seen near her property? Ms. England responded
23 that they represent wet lands. Ms. Provost voiced concern regarding encroachment into the fifty (50) foot
24 buffer and asked for clarification on where the 50 feet begins and ends. Ms. England responded that fifty
25 (50) foot buffer is measured from the center of the stream with additional buffer calculated based on the
26 slope adjacent to the stream. Ms. Provost asked how long construction of the project would last? Mr.
27 Burnett stated that construction would begin the summer of 2016 and end in the fall of 2017. Ms. Provost
28 asked that consideration be made with regards to wildlife in the area as well as mosquito control. She
29 also voiced concern over the loss of the trees as they provided a noise buffer and asked if there were any
30 plans in place to provide noise buffers?

31
32 Mr. Burnett clarified that erosion control prevention would begin in the spring of 2016 prior to demolition
33 and construction.

34
35 Chairman Parker asked if there have been any issues identified regarding wildlife along the creek? Mr.
36 Burnett responded "no".

37
38 Sharon Bell, 507 Peachhaven Road, stated that she is not opposed to updating the school but asked that
39 the UDO not be changed to accommodate the proposed changes. Ms. Bell stated that since Royal Oaks is
40 an Elementary School which doesn't allow for competitive sports programs that the playfields do not
41 have to be large. She also voiced concern over loss of trees, noise buffer and wildlife.

42
43 Mickey and Paula Brandle, 503 Peacehaven Road, stated that they understand erosion control, and an
44 updated school and playfields are necessary but they do not want any trees cut down. Mr. Brandle stated
45 that there had been work done previously near the same site and trees were removed that he felt was
46 unnecessary. He voiced concern regarding trees being removed to allow for a sediment pond. In
47 response to Mr. Brandle's concerns, Ms. England provided detail regarding the need for a sediment pond. In
48 Mr. Brandle also voiced concern regarding additional flooding. Ms. England stated that retention ponds
49 and drainage pipes will be in place to prevent flooding. The Brandle's also asked for some type of
50 mosquito control during construction.

1
2 There being no further questions or comments, Chairman Parker closed the Public Hearing at 8:07 PM.

3
4 Chairman Parker asked for a motion to accept the City's exhibit's into the record which was made by Mr.
5 Farmer, seconded by Mr. Baker and the motion was unanimously approved.

6
7 Chairman Parker asked for a motion to approve the Findings of Fact as presented by Staff which was
8 made by Mr. Baker. Attorney Safrit asked to revise the following Findings of Fact based upon testimony:
9

10 **1. Unnecessary hardship will result from the strict application of the ordinance.**

- 11 a. Strict application of Section 4.15 of the UDO, requiring a fifty foot (50') plus stream buffer
12 and associated twenty foot (20') vegetative setback, would allow for school expansion,
13 associated parking and drop-off areas, and one of the playfields. However, both playfields
14 could not be accommodated by the confined site and erosion control would not be practical if
15 no development or construction were to be allowed in the stream buffer or vegetative setback.
16 To accommodate the playfields and site construction, and to comply with UDO requirements,
17 the development plan would require a reduction in the size of the proposed buildings or
18 parking area, or both. While the site plan proposes more than the minimum number of parking
19 spaces required, the additional spaces are needed to reduce impact on the surrounding
20 neighborhood during special events. On-street parking would be difficult on narrow
21 neighborhood streets and no sidewalks exist in this area to accommodate pedestrians.
22 Reduction of the size of the proposed parking and access drive does not appear feasible and
23 reconfiguration of the site to accommodate all the proposed facilities does not appear possible.
24 b. Grading for fill slopes necessary as a retaining wall would create safety issues for children
25 play areas.
26 c. Sediment ponds must be constructed as proposed due to State requirements.

27
28 **2. The hardship results from conditions that are peculiar to the property, such as location, size,
29 or topography.**

- 30 (a) The construction of a substantial addition to the existing Royal Oaks Elementary is
31 designed to provide maximum utilization of a confined area which is surrounded by
32 existing residential development, roads and a stream. Parking, access, and buildings
33 are located along existing property lines with no substantial remaining developable
34 area. The proposed play fields are designed to overlap in order to maximize the
35 confined developable area. Further overlap is not possible due to the infield of the
36 ballfield being incompatible with the grass surface of the proposed soccer field.
37 Reconfiguration of the parking, access and buildings areas, while maintaining
38 conformance with the UDO development standards and site plan review
39 requirements, does not appear possible without losing necessary facilities for school
40 operation and therefore, no alternate configuration has been proposed. The hardship
41 of losing needed recreational facilities, should a variance not be obtained, would
42 result from conditions particular to the property due to school's location, size and
43 topography.
44 (b) The hardship is in part, due to compliance with State Department of Education
45 requirements for school construction.
46

47 Chairman Parker asked for a motion to approve the revised Findings of Fact. Mr. Langen requested that
48 an additional finding be added stating that the project had to be constructed as submitted in the site plan
49 due to engineering constraints. Mr. Meadows suggested that issue was already covered in Attorney
50 Safrit's revisions to Finding of Fact #1 which was agreed upon by the Board.
51

1 Chairman Parker again asked for a motion to approve the revised Findings of Fact which was made by
2 Mr. Wilson, seconded by Mr. Palmer and the motion was unanimously approved.

3
4 Mr. Palmer asked for confirmation of property lines, specifically regarding the creek. Ms. England
5 confirmed property lines. Mr. Palmer then asked if property lines for abutting neighbors included the
6 creek? Mr. Farmer added to Mr. Palmers's question by asking if there are any easements on the property?
7 Mr. Burnett responded that he assumed easements had to be out of the one hundred (100) and five
8 hundred (500) year floodplain which Ms. England confirmed. Mr. Burnett stated that property owners
9 have more of the setback than anyone else. Ms. England confirmed location of the one hundred (100) and
10 five hundred (500) year floodplain on both sides of the creek as well as location of the sewer lines. Mr.
11 Palmer asked if construction will encroach upon the creek? Ms. England stated that it would not.
12 Chairman Parker asked for easement confirmation on either side of the sewer line. Ms. England
13 responded that it was twenty (20) feet on either side of the sewer line.

14
15 Mr. Palmer asked if the new building would be one (1) or more stories tall? Mr. Burnett responded that
16 there are some areas of the school that will be two (2) stories but the majority of the building will be one
17 (1) story tall. Chairman Parker asked the timeframe to complete additions? Mr. Burnette responded that
18 construction should be complete by October of 2017.

19
20 Chairman Parker asked for a motion to approve, approved with conditions or deny the issuance of the
21 variance. Mr. Palmer made the motion to approve with the following conditions:

- 22
23 (1) The applicant shall submit and receive approval for a replanting plan for disturbed buffer areas.
24 (2) The applicant shall obtain all necessary Army Corps of Engineers permits before disturbing buffer
25 areas.
26 (3) The applicant shall comply with all erosion control and stormwater measures of the UDO and
27 comply with all comments from the Technical Review Committee resulting from Site Plan
28 Review.
29 (4) The applicant shall investigate options and prepare a mosquito control plan for the project.

30
31 Mr. Baker seconded the motion and the motion was unanimously approved.

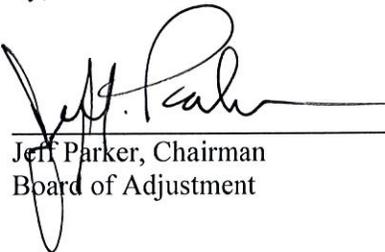
32
33 **OTHER BUSINESS**

34 No further business to discuss.

35
36 **ADJOURN**

37 There being no further questions or comments, Chairman Parker asked for a motion to adjourn which was
38 made by Mr. Meadows, seconded by Mr. Wilson and the motion was unanimously approved.

39
40 The meeting was adjourned at 8:21 PM on Tuesday, March 15, 2016.

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49


Jeff Parker, Chairman
Board of Adjustment


Zachary D. Gordon, Planning Director