

# TOWN OF GEORGETOWN - BOARD OF ADJUSTMENT

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## Draft Meeting Minutes September 6, 2017

### ATTENDANCE

#### Board Members

Jane Hovington

Eric Evans

Shirley Hitchens

Ray Hopkins

Todd Wilson - absent

#### Staff

Jocelyn Godwin

Jamie Craddock

John Paradee, BOA Solicitor

### 1. CALL MEETING TO ORDER

Chairperson Hovington called the meeting to order in the Town Hall at 5:00 p.m.

### 2. APPROVAL OF AUGUST 2, 2017 MEETING MINUTES

Member Hopkins moved, seconded by Member Hitchens, to approve the August 2, 2017 regular meeting minutes as presented. **APPROVED (UNANIMOUS)**

Mrs. Godwin confirmed the public hearings were duly advertised.

**Member Hopkins moved, seconded by Member Evans, to address the Mid Atlantic Farm Credit (agenda item 4) request first due to expected extended discussion regarding the nonconforming use application. APPROVED (UNANIMOUS)**

### 3. Public Hearing: BOA CASE #2017-14

*An application by Phillips Signs, Inc., on behalf of Mid Atlantic Farm Credit, requesting from the Code of the Town of Georgetown a variance from (1) §230-165 to allow the increase of signage to the proposed 44 square feet; (2) a variance from §230-170 (F) to allow the installation of an electronic message board sign. The property is located at 20816 Dupont Boulevard, identified as identified as Sussex County Tax Map ID 135-19.08-75.00, zoned UR2 (Medium Residential).*

Matt Phillips, of Phillips Signs, Inc., presented the application. Cara Sylvester, of Mid Atlantic Farm Credit, was also in attendance. The parcel is one of two parcels along the Route 113 corridor not zoned commercially. The sign requested is similar to those you see along the corridor. The proposed sign will meet the required setbacks and will receive DelDOT approval. The property is not requesting rezoning as the Town is working on their comprehensive plan and planning to address the two properties.

The Board expressed concern regarding the timing of the messages and distraction potential to drivers with an electronic message board. The applicant confirmed that the end user can set the appropriate timing for the changing of the messages. Guidelines are in the Town code.

Mrs. Godwin confirmed that the Electronic Message Board is permitted in any district that allows internal illumination. The UR2 zoning does not allow internal illumination.

A 44 sf sign is being requested as would normally be permitted with Highway Commercial zoning. Cara Sylvester stated the size is requested due to the current sign is not easily read from the highway, customers frequently miss the driveway because the sign is set back. The larger, illuminated sign is to draw more attention to the entrance and their location. The sign is for the convenience of current customers and for the attraction of new customers.

Mr. Paradee informed the Board that the legal standard requires a balancing of relative harms so it is not only the harm to the applicant if the request is denied, but also consideration of the harm to neighboring properties if the variance is granted.

The surrounding properties include McDonalds across the highway, a doctor's office and a motel. No residential uses adjoin the property.

The public hearing was opened to the public. No one in attendance commented either for or against the application. Mrs. Godwin confirmed that no correspondence was received either for or against the application.

**Member Hopkins moved, seconded by Member Evans, to approve the application of Phillip's Signs, on behalf of Farm Credit, as requested. APPROVED (UNANIMOUS).**

**Roll call vote:**

**Member Hitchens – Yes, with the situation of the highway location and there are other signs there, it will also help with the location of the entrance for their customers as presented.**

**Member Hopkins – Yes, there is no hardship to any neighboring properties and there are many other illuminated signs along Route 113.**

**Member Evans – Yes, there is no detrimental impact and hopefully the municipality will do the right thing and rezone it so it will be a conforming sign.**

**Member Hovington – Yes, the hardship is understood and it will not present any hindrance to the neighbors.**

**4. Public Hearing: BOA CASE #2017-07**

*An application by Archology LLC, on behalf of Jagdishkumar Vidyaben Patel, requesting from the Code of the Town of Georgetown (1) a special exception from §230-192 to allow the extension of a nonconforming use; (2) a special exception from §230-151 for a reduction of the required 13 parking space to the proposed 4 parking spaces. The property is located at 502 North Bedford Street, identified as identified as Sussex County Tax Map ID 135-14.16-15.00, zoned UB1 (Urban Business).*

Mr. Paradee informed the Board that he spoke with Mr. Witsil prior to the hearing regarding the precise nature of the relief they are seeking and if a special exception or a variance. In his opinion the hearing has been properly noticed and advertised because the substance of what they are seeking in terms of relief is in that notice.

Robert Witsil presented, on behalf of Jagdishkumar and Vidyaben Patel, the applicants, and Mark Redden of Archology LLC who submitted the application. Mr. Witsil presented the Board members with a packet including a proposed Findings of Fact. Also included on the right side is a photo of the area, a zoning map, drawings of the before and after, a survey from Adams Kemp, and a rough scale elevation. On the left side is the Findings of Fact and the Non-Conforming use section of the code.

Mr. Witsil stated that in 2012, the Town zoning code changed very minimally for the UB1 district. It eliminated off-premise liquor package stores as a permitted use. The client has been and continues to be in the UB1 district. At the instant the law was passed, the use went to a non-conforming use. Article 14 then comes into effect. Section 192 provides provisions to be met in allowing extension of the non-conforming use.

Extension is not clearly defined in the code. The applicant is reducing in size his entire structure by almost one third, from 3400 sf to 1910 sf. The footprint will increase minimally. The application was submitted without consideration of the extension provisions. The application is for approximately 225 to 250 sf of additional space when adding the corners along Douglas Street.

Jagdishkumar Patel was called as the first witness. The building was purchased in 1996 from Rosalie Walls and had operated as a liquor store for 70 to 80 years. The area of extension of the structure was confirmed. No extension has ever been asked for before. Neighbors had not expressed any concerns.

Next exhibit is the zoning map showing the location of the property and the uniformity of UB1 district in the immediate area.

Mark Redden was called as the next witness. Mr. Redden prepared the site plan presented. The footprint of the proposed building differs in the front corner towards North Bedford Street but within the same setback from the street and in the back of the building there is a little shed area that will be filled in, back away from the street. The estimated increase in the footprint would be 200 sf give or take. Estimated replacement value of the building would be \$650,000 at roughly \$200/sf. The additional square

footage would be valued at \$40,000 to \$50,000. The existing parking is a gravel area that would legally only fit two cars. The proposed parking area would be an ADA accessible space, a new dumpster enclosure and four parking spaces (including the ADA space). The parking is a large improvement and should fit what is needed for employees and customers. Many of their customers walk or bike to the store. The new building will not be a detriment to the public, newer, cleaner, safer and much more attractive. The shed will be removed and the dumpster will be moved to the back of the property with an enclosure, much more attractive and more in line with the zoning code.

Mr. Witsil addressed the requirements of §230-192, A – F.

- A. The extension of the use is necessarily incident to the existing use.
- B. The extension of the use will not impact setbacks as there are none in UB1.
- C. The estimated \$50,000 value of the increase is less than 50% replacement value of the estimated \$680,000.
- D. Applicant believes there is no expansion, yet the 240 sf is much less than 25% of the floor area.
- E. A letter was referenced as being in the file from the Hammonds, close neighbors in support of the application. Mr. Redden testified that the health, safety and welfare of the community would be advantageously affected by a new code compliant building. Mrs. Godwin confirmed that no letters had been received in opposition to the application. In summary it will not impair the value or adversely affect the character of the neighborhood.
- F. As testified, there has only been one extension requested, and this is it. There have been no applications in the past and there will be none in the future.

Mr. Witsil stated the special exception for a reduction in parking spaces from the required 13 would actually be from the code section for required off-street parking spaces instead of the §230-151 section. The required number of spaces is physically and practically impossible on a lot this size. Historically there has been on-street parking both on North Bedford Street and on Douglas Street. The four spaces proposed are an improvement over the existing two spaces. The changes to the large lot would not detrimentally impair the value or adversely affect the character of surrounding properties of the neighborhood. With the three bedroom apartment going away and the reduction of the total square footage of the building, the doubling of the parking area should be more than sufficient.

Not granting the special exception would cause the building to continue to be used in its present condition. The building needs replacement and rehabilitation. Granting the exception will not create a hardship on the neighboring properties.

Mr. Patel was asked to confirm that any representations made by Mr. Witsil on his behalf were true and correct this evening. Mr. Patel confirmed all was correct.

Mrs. Godwin stated there was one letter received in support of the application and read it into the record. The email was from Maria and Jerry Hammond.

The Board confirmed that there would be no apartment upstairs in the new building and that the customer volume with cars (not on foot or by bike) would be maybe two at a time and normally park on North Bedford Street. Concern with safety of cars exiting the parking area were expressed. The number of employees was confirmed as the owner and one part time position.

The public hearing was opened to the public. No one in attendance had a comment either for or against the application.

**Special exception request for reduction in parking spaces:**

**Member Hitchens moved, seconded by Member Hopkins, to approve the special exception to 230-182.A. for a reduction of the 13 required parking spaces. APPROVED (UNANIMOUS).**

**Roll call vote:**

**Member Hitchens – Yes, applicant has proven all standards that were needed for the special exception.**

**Member Hopkins – Yes, the applicant met and explained what was being done, adding two more spaces is better than just two and it is a betterment for the building and for the community.**

**Member Evans - Yes, for the reduction in this context, established with what there is for land.**

**Member Hovington – Yes, Mr. Patel has shown that the people visiting his business will not require additional parking.**

**Special exception to allow extension of non-conforming use:**

**Member Hopkins moved, seconded by Member Evans, to approve the special exception to allow extension of the non-conforming use. APPROVED (UNANIMOUS).**

**Roll call vote:**

**Member Hitchens – Yes, the situation has been proven**

**Member Hopkins – Yes, in support of the business, all questions have been answered and the applicant has satisfied the standards of §230-192**

**Member Evans – Yes, based on the interpretation of legal counsel, the applicant met the standards of §230-192 and it would be non-conforming because it does state in §230-82 that alcoholic beverages, consumed off premise, are not permitted however it has been going on for 80 years or so.**

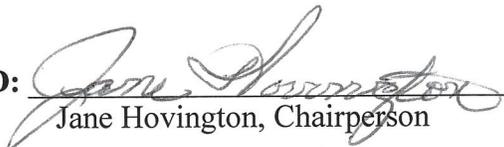
**Member Hovington – Yes, based on the application meeting the standards of §230-192.**

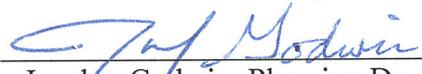
Mr. Paradee informed the Board that adopting the presented Findings of Fact is not necessary; it is optional.

The Board questioned the need of a variance for the off-street loading space or the lot area and corner visibility. Mrs. Godwin informed the Board that the non-conforming use includes pre-existing conditions that would continue as non-conforming and Mr. Paradee confirmed that the degree of non-conformity is not being changed/increased. In some instances, it could be said that it decreased. Mr. Witsil confirmed the original list of special exceptions was longer, and after the two legal counsels met, it was decided that the application was an extension of a non-conforming use and the other particulars went away.

**5. ADJOURNMENT**

Member Hopkins moved, seconded by Member Hitchens, to close the meeting at 6:35 p.m. **APPROVED** (UNANIMOUS)

**APPROVED:**   
Jane Hovington, Chairperson

**ATTEST:**   
Jocelyn Godwin, Planning Department