

REGULAR MEETING
TOWN OF WAYNESVILLE
BOARD OF ADJUSTMENT
APRIL 5, 2005
TUESDAY - 5:30 P. M.
TOWN HALL

The Board of Adjustment held its regular meeting Tuesday, April 5, 2005. Members present were Jack Suddath, Neal Ensley, Mack Noland, John Richardson, and Ken Stahl. Also present at the meeting were Land Use Manager John Swift, Deputy Town Clerk Freida Rhinehart and reserve Board of Adjustment member Garnell Day. Acting Chairperson Mack Noland called the meeting to order at 5:31 p.m.

Approval of Minutes of September 7, 2004

John Richardson moved, seconded by Neal Ensley, to approve the minutes of September 7, 2004 as presented. The motion carried unanimously.

Request for Variance - Enmark Stations Inc. - Location of Primary Building Behind Accessory Structures

John Swift stated that Interstate Stations Incorporated owns the Enmark Station at 1961 South Main Street. The .85 acre parcel is located in the South Main Street Business District (SM-BD). The SM-BD is a commercial zoning designation and land uses such as "gasoline service stations" are permitted in this district. The petitioner wants to construct a 58' x 28' convenience store at the rear of the aforementioned parcel. The proposed convenience store will be located behind a 108' x 35' canopy which covers eight (8) gasoline traffic lanes.

The petitioner is requesting a variance for Section 154.127(B)(3), front yard requirements. The SM-BD requires the front of a primary building or structure to be located between 20' to 30' from the edge of the traveled way (in this case the edge of the street). The proposed building front will run parallel with South Main Street and it will be located 130' from the edge of the traveled way for South Main Street. A 100' variance is needed to place the building in the location preferred by the applicant.

The applicant is also requesting a variance for Section 154.127(B)(8), third bullet. This section requires building facades to form a street wall by positioning the front of the building to run parallel or perpendicular to the street in order to create a street wall. The proposed building does not create a street wall and the petitioner is requesting a variance for this section.

Mr. Swift then presented the following documents as evidence in this case:

- a. Petitioners Application and Addendum
- b. The Proposed Site Plan
- c. The Land Use Manager's Report

Mr. Swift's Land Use Manager's Report is as follows:

1. Section 154.084(A) of the Land Development Standards (LDS), second bullet under the purpose and limitations section for "VARIANCES" reads as follows: "It is not intended that variances be granted merely to remove inconveniences or financial burdens that the requirements of this chapter may impose on the property owners in general or to increase the profitability of a proposed development." I believe the petitioner's variance request is a good example of removing inconveniences and increasing profitability. Granted it would be more costly to comply with the requirements of the LDS; however, the petitioner can comply with the development requirements by making minor adjustments to the building and site plan.
2. There are seven findings of fact the Board of Adjustment must make prior to granting a variance. The findings are as follows:
 - a. **That there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this chapter.** If the convenience store is constructed to front, and forms a street wall on Long Street, the proposed development can comply with the town's development standards. This can be accomplished with minimum cost and inconvenience to the petitioner.
 - b. **That if the applicant complies with the provisions of this chapter, the property owner seeking the variance can secure no reasonable return from, or make no reasonable use of his property.** The property owner already has reasonable use of the .85 acre parcel. Currently on the lot is a 109' x 35' canopy with eight (8) fuel traffic lanes. Surely the petitioner would not have remained at this location if current use were not profitable and reasonable. The addition of the convenience store will increase the profitability for the property owner. Variances are issued to help property owners achieve reasonable use of the property, not to achieve additional or excessive use of the property.
 - c. **That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings located in the same land development district.** There is a special condition which exists with the petitioner's lot; a convenience store is just now being proposed for the property. All other gasoline service stations within the town's jurisdiction have primary buildings or convenience stores on the same lot.
 - d. **That special conditions and circumstances do not result from the actions of the applicant.** It is true that the adoption of the current Land Development Standards document in April, 2003 did create that special condition for this property; however, the petitioner can meet the current standards with minimal cost and inconvenience.

- e. **That the variance is in harmony with the general purpose and intent of this chapter and preserves its spirit.** The proposed development does not meet the purpose and intent of the Land Development Standards manual. The intent of the current development standards is to help neighborhoods develop into neo-traditional neighborhoods which are walkable and sustainable; the proposed development makes the SM-BD a less walkable area by having the pedestrian traffic cross vehicular accessways from the sidewalk into the inside of the primary building.
- f. **That the variance is the minimum necessary to afford relief.** A variance is not needed to comply with the Town's development standards. A building can be designed to front on Long Street by making a small change to the configuration of the proposed building and floor plan.
- g. **That the public safety and welfare have been assured and substantial justice has been done.** A variance will not create any threats to the public safety and welfare. The granting of the variance can actually be an injustice to property owners that want to locate the same type of land use on their property. They will be required to comply with the development standards and the petitioner will not have to comply if the variance is granted.

SUMMARY

I do not recommend granting the requested variance. The applicant can meet the town's design standards by: (1) Relocating the building to front on Long Street, (2) Adding a small addition to the Long Street side of the building to meet the front yard requirements; and (3) Redesigning the floor plan of the building so it will compliment the new configuration of the building.

John Richardson asked if the Land Development Standards require that buildings in the SM-BD front on South Main Street. Mr. Swift replied that this is not a requirement and that by fronting the building on Long Street, the ordinance could be satisfied. The owners, however, feel that this would create security concerns. Mr. Swift said that by fronting on Long Street, only minor construction changes would be required to comply.

Mr. Stewart Daniel then spoke on behalf of Enmark Stations. He stated that he had spoken with Mr. Swift regarding possible changes to the building. He does not feel that the rear of the building should be facing South Main Street. The owner of the company is not willing to consider the new design as proposed by Mr. Swift. If the building faces Long Street, the underground fuel tanks would be partially underneath the building. Enmark is required to have underground storage tanks at least 10' from the building. It would be too costly to replace the underground tanks or relocate them to another portion of the lot. If the Land Development regulations are changed, Mr. Daniel would prefer to wait and re-visit the plan as it is. Realigning the floor plan of the building would not be acceptable to management.

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Ken Stahl asked about the possibility of adding a door at the side of the building facing South Main Street if the building fronted on Long Street.

Neal Ensley said that changing a door does not change the plan.

Mr. Daniel added that this plan represents the smallest building that Enmark builds since this is the only store that would fit on this lot. He said that management just does not want to move the building or change the design. They will continue to operate the station as it is. They will keep their proposed plan as it is. The reason they like to add stores to their locations is for the convenience of their customers.

Jack Suddath moved, seconded by John Richardson, that the request for the variance be denied based on the findings presented in the Land Use Manager's Report, with the recommendation that the Planning Board review Land Development Standards and address this issue.

Other Business

John Swift announced that he will probably be with the Board of Adjustment for one more meeting before his retirement which will be effective September 1, 2005. He expressed thanks to Board members for their service and commitment to the Town.

Members expressed their gratitude to Mr. Swift as well.

Adjournment

With no further business, Neal Ensley moved, seconded by John Richardson that the meeting be adjourned at 6:15 p.m. The motion carried unanimously.

Mack Noland
Acting Chairperson

Freida F. Rhinehart
Secretary

