

# NEW BERN BOARD OF ADJUSTMENT MINUTES

**December 17, 2012**

The New Bern Board of Adjustment held its regularly scheduled meeting on Monday, December 17, 2012 at 6:30 PM in the City Hall Courtroom, 2nd floor, 300 Pollock Street.

**Members Present:** Ms. Sarah Afflerbach, Chairman  
Mr. Kenneth Brown  
Mr. Benjamin Beasley  
Mr. Barry Evans  
Mr. David Herndon  
Mr. Jeffrey Midgette  
Ms. Renee Murphy  
Mr. Willie Newkirk, Sr.  
Ms. Beth Walker

**Members Excused:** Mr. Phil Urick  
Ms. Lois Jamison

**Members Absent:**

**Staff Present:** Mr. Bernard George, Planning Division Manager

Chairman Sarah Afflerbach called the meeting to order.

Staff Bernard George opened with a prayer.

Roll call was taken and a quorum declared.

**Minutes:** Reading of the minutes from the previous meeting was waived by unanimous consent. Minutes were approved with a motion and seconded. Minutes were approved by unanimous vote of the Board.

**Report from Nominating Committee:** Member Barry Evans reported nominations received were for Sarah Afflerbach – Chairman and Barry Evans, Vice-Chairman. Mr. Evans advised there were no additional nominations or phone calls received. Chair Afflerbach questioned if there was input from the floor. There was not. With instruction from Staff Bernard George, a motion was made to accept the nominated members by acclamation as Chairman and Vice-Chair. Motion was seconded. Nominates were approved by unanimous vote of the Board.

Chairman Afflerbach requested any persons offering direct testimony for the record, be sworn in.

Staff Bernard George swore in two attendees

**New Business:**

- A. **Consideration of a variance request for relief from the Trent Road Corridor design guidelines and performance standards requiring side and rear yard parking, a 35'-50' front yard building setback, and at least 60% front yard green space as provided by Section 15-463(b)(1, 2, & 3) of the Land Use Ordinance. The applicant proposes to construct an addition to the existing theater located at 2806 Trent Road.**

**Applicant Comments:**

The applicant was represented by Attorney Gary Clemmons. He provided material for each Board member to review. He advised his client is Trent Road Properties II, LLC a Limited Liability Corporation. It is a manager-directed LLC. The three managers were in attendance, and were introduced. He summarized the application, noting that the location of the property at 2806 Trent Road is divided into two tracts. Tract one consists of an existing building including a college, smaller businesses and a law firm. There are existing parking spaces in tract one that recently have been landscaped voluntarily by the property owners to make it consistent with what is proposed in the variance. The existing theater consists of 6 theaters, comprising 950 seats total. The proposed building is for four additional theaters, two with 175 seats, and two with 145 seats for an approximate total of 600 additional seats. The addition would be attached to the existing building. He noted two existing access ways into the theatre and three exits to Trent Road. The property is landlocked in the rear; therefore there are no rear access points on the property. Mr. Clemmons noted existing parking, advising there would be additional 110 parking spaces planned with the new addition. Traffic flow was discussed, noting the new addition and additional parking spaces would not create a bottle neck.

Mr. Clemmons stated based on current ordinance provisions, the variance request addressed three issues. The Board members were provided copies of the ordinance, Section 15-463(b)(1,2, & 3). B1 requires a setback of 35-50' for buildings. B2 requires that 60% of the front 50' setback must be green space. B3 pertains to parking, which requires one parking space for every 4 seats, which would require 387.5 parking spaces. The maximum number of parking spaces they can provide is 350 spaces. Mr. Clemmons explained the hardship with the proposed building locating within the required 50' of Trent Road creates concern for the safety and security of their customers having to walk a considerable distance between the rear parking spaces and the entrance to the theatre. Additionally, Mr. Clemmons noted with a separate building, the need for a second ticket booth would be required, which would increase the overhead costs for the theatre owners, as well as add additional security concerns. He noted the benefits to the proposed addition, citing increased revenue, job creation, and safety for customers by keeping them in town instead of driving the highways to a neighboring city.

Mr. Clemmons advised landscaping for the new project will be consistent with existing landscaping for a seamless flow. He advised 5 trees would need to be removed, but the landscaping plan maintains 15 existing trees. A major concern is the existing structure does not

include the 60% green space, therefore providing that same space for the new addition would compromise traffic flow as well as parking.

Mr. Clemmons noted the timing of movies provides ample time between start times to allow for ease in traffic flow and available parking spaces. He noted the surrounding businesses are day-time operations, therefore the parking lots will be empty in the evening hours and available for any needed overflow from the movie theatre. He concluded his presentation with a summarization of above noted points, advising the owners will be happy to work with the Planning Department.

Board member Murphy asked if there would be ample lighting for the additional parking, as well as sufficient security and video cameras that can be monitored. Mr. Clemmons noted the security pertains to fencing in the back, as well as the type of vegetation and trees used. He noted the additional physical security was a detail that would need to be worked out. Board member White noted due to the children and families that attend this theatre, it is a valid and important concern.

Board member Herndon clarified with Mr. Clemmons that there would not be an entrance from the back of the building.

The theatre's manager was sworn in and addressed concerns regarding safety at the theatre. He advised additional security has been put in place on all exterior doors, providing an alarm any time these doors are opened and stays on until a theatre manager comes with a key to shut off the alarm. He also advised they installed a state of the art security camera system that is monitored. On weekend nights they have hired police officers to be a presence at the theatre for additional security. All lights surrounding the building have been replaced and upgraded.

Board member Newkirk asked if there would be ample handicapped parking. Theatre representative noted there would be sufficient parking. He also noted the theatre is currently undergoing bathroom renovations that will provide handicap restroom facilities.

Board member Beasley noted, based on exhibit A-1, that there was confusing verbiage regarding the new building and it's being separate or attached to the existing structure. The theatre representative advised they thought they were clear on what their intent was in continuing the new structure from the existing.

Chair Afflerbach questioned how they will handle additional storm water that will be created. Theatre representative advised they have hired a civil engineer firm out of Havelock that will handle the storm water runoff. She further questioned why they did not secure an adjacent vacant lot for additional parking. The board was advised the lot is empty and landscaped and they chose to leave it as such. The theatre representative advised the building this lot is next to is being considered by them for a restaurant space providing a dinner and movie atmosphere.

**Public Comments:** Mr. Eric Remington, representing SLS Equities, LLC, spoke. He provided a packet to the Board members for their review. SLS owns adjacent properties to the theatre. He provided background information on the multiple surrounding SLS business, describing their type of business and customer base. He provided 4 affidavits from an SLS business, TAB

Premium Homes (Andy Bayless), Pamela Melosey owner of Uniforms PRN and Shoe Boutique, and from the Mt. Olive College site manager Ms. Watson. All four affidavits mentioned parking concerns based on current parking problems that have impacted their businesses. Mr. Remington cited Section 15-92(b3i), noting issues with landscaping and potential overflow parking issues with the building addition. He further advised there are currently parking issues with the existing building. He suggested moving a current entranceway further down for better parking lot flow so as not to be directly across the street from the entrance to his client's businesses. He also suggested removing a current entranceway. Maps were provided and referenced. Mr. Remington stated that aside from the entranceways, the real concern is the number of parking spaces, or lack thereof. Due to these concerns, Mr. Remington feels the applicant has not met the requirements for approval of the variance application. He further stated should the Board approve this request, that it be approved with two conditions; 1) the entranceways be limited to the existing entrances (four), and 2) the one entranceway identified be relocated.

Chair Afflerbach requested clarification of the number of exits and the concern with these. Mr. Remington reiterated one exit is directly across from one of his client's businesses, and this business ends up getting parking overflow which hinders his business. Additional dialogue ensued regarding parking concerns.

Mr. Clemmons advised the empty green space that Chair Afflerbach questioned previously, could and would be used for parking if necessary.

Staff Bernard George explained the preferred preference of having exits and streets across from each other. He reiterated this request has not come before the Departmental Site Plan Review Committee yet, but it will be required to be presented during a future review meeting. He read the Land Use Ordinance design guidelines that must be considered and followed to maintain the residential nature of the Trent Road Entranceway Overlay Corridor.

**There being no additional public comments, Chair Afflerbach closed the public comment period.**

**Motion** made by Ms. Walker that the Board grant the variance from the required building setback so the existing building may be added on to so as to ensure the building floor plan, security floor plan and continuous parking flow efficiently for customer safety. Motion was seconded by Mr. Brown. Chair Afflerbach requested Staff Mr. George take an individual roll call.

Staff Mr. George advised a motion would need to be made for each of the three variances, addressing individually the subsets of each. There will be a total of nine votes, three votes for each request; setback, 10% parking and 60% planted front yard. Mr. George reminded the Board this required an 80% vote for the variances to be granted. Mr. George took a roll call for the first vote (1-A) on first standard-practical difficulties regarding building setback requirements. Individual roll call was taken. **Motion unanimously passed with a vote of nine (9) Yes's, and zero (0) No's.**

Board member Midgette made a motion to approve the request on the ground that it is in harmony with the general purpose and intent of the ordinance. Mr. Evans seconded the motion.

Mr. George took a roll call for the second vote (1-B) on the harmony of general purpose and intent to preserve the spirit. **Motion unanimously passed with a vote of nine (9) Yes's, and zero (0) No's.**

Board member Midgette made a motion to approve the request on the grounds of compliance with public safety and welfare based on the finding the applicant is meeting public safety requirements. Ms. Walker seconded the motion. Mr. George took a roll call for the third vote (1-C) on the safety and welfare of the public. **Motion unanimously passed with a vote of nine (9) Yes's, and zero (0) No's.**

Board member Herndon made a motion to approve variance request from the requirement that no more than 10% of the parking be located in the front yard setback. Mr. Brown seconded the motion. Mr. Evans added a condition to the motion that it is passed on the grounds that extenuating conditions would require them to comply with the ordinance pertaining to the number of parking spaces. Specifically noting the parking requirements, if needed, be placed in vacant lot one. Mr. George took a roll call for the first vote (2-A). **Motion unanimously passed with a vote of nine (9) Yes's, and zero (0) No's.**

Board member Walker made a motion to approve the request on the ground that it is in harmony with the general purpose and intent of the ordinance (2-B). Motion was seconded. Mr. George took a roll call for the second vote (2-B). **Motion unanimously passed with a vote of nine (9) Yes's, and zero (0) No's.**

Board member Herndon made a motion to approve the request on the grounds of compliance with public safety and welfare based on the finding the applicant is meeting public safety requirements. Motion was seconded. Mr. George took a roll call for the third vote (2-C). **Motion unanimously passed with a vote of nine (9) Yes's, and zero (0) No's.**

Board member Walker made a motion to approve the variance request from front yard planting of 60% due to the fact that there are practical difficulties with parking. Motion was seconded. Mr. George took a roll call for (3-A). **Motion unanimously passed with a vote of nine (9) Yes's, and zero (0) No's.**

Board member Evans made a motion to grant the variance from the 60% minimum planted area based on harmony with the general purpose and intent of the ordinance. Ms. Walker seconded the motion. Mr. George took a roll call for (3-B). **Motion unanimously passed with a vote of nine (9) Yes's, and zero (0) No's.**

Board member Brown made a motion to grant a variance from the 60% minimum planted area to on the grounds of compliance with public safety and welfare based on the finding the applicant is meeting public safety requirements. Mr. Newkirk seconded the motion. Mr. George took a roll call for (3-C). **Motion unanimously passed with a vote of nine (9) Yes's, and zero (0) No's.**

Ms. Walker made a motion to approve the three variances on condition that (1) additional parking required to comply with the Land Use Ordinance be constructed in the undeveloped area on lot #1, and (2) the entrance driveways must meet the City's Site Plan Departmental Review Committee standards for ingress and egress safety. Motion was seconded. Mr. George took individual roll call. **Motion unanimously passed with a vote of nine (9) Yes's, and zero (0) No's.**

With no further discussion, meeting adjourned.

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Sarah Afflerbach, Chairman

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Bernard George, AICP, Secretary