

BEFORE THE TOWN OF DENTON BOARD OF APPEALS

**IN RE: NUTTLE BUILDERS, INC.
APPLICATION FOR VARIANCE
FROM THE ZONING CODES**

Case No. BOA-17-004

* * * * *

MINUTES, FINDINGS OF FACT, CONCLUSIONS AND DECISION

The Board of Appeals held a Public Hearing on Monday, August 14, 2017, at 6:30 p.m., at the Denton Town Office to consider an application for a sign variance for Nuttle Builders, Inc. (hereinafter, the “Applicant”), from the strict application of the Town of Denton Zoning Code (Chapter 128-01, et seq.).

Board Members present were Chairperson, Troy Livingstone, Jennifer Shull, Florence Doherty, and Alternate Member, Brian Tyler. Also present were Counsel for the Board, Chris Drummond, Town Administrator, Donald H. Mulrine, Jr., and Administrative Aide, Donna Todd. The Applicant’s Representatives, Keith Neal and Ryan Neal, were present.

PROCEDURAL HISTORY

On July 3, 2017, the Applicant filed an application with the Board of Appeals seeking a sign variance from the strict application of the Town’s Zoning Code. The variance sought was for a decrease of signage setback. The Applicant sought relief from the required 25 foot setback and is requesting a variance to reduce the freestanding sign setback distance 3 feet 6 inches from the property line.

The application was advertised in the Times Record for two consecutive weeks, a sign was posted on the property, and all property owners within 200 feet of the property received written notification of the Public Hearing.

SUMMARY OF PROCEEDINGS

Chairperson Livingstone opened the Public Hearing and acknowledged all the Board Members were present.

Member Doherty read the Public Notice advertised in the Times Record for BOA-17-004 into the record.

The Applicant, Keith Neal, was sworn in by Chairperson Livingstone.

The Applicant provided a brief summary and history of the site for the sign variance request relative to the Nuttle Builders, Inc., site plan for property located at 1139 Industrial Parkway, Caroline County Tax Map 107, Parcel 2360, Lot 1A. The Applicant is requesting a variance from the strict application of the sign requirements set forth in the Denton Town Code Chapter 128, Attachment 9:3, as follows:

1. The Applicant is requesting a setback of 3 feet 6 inches from the property line. Under the Denton Zoning Ordinance, a setback of 25 feet is required.

Under Section 128-126 (J) of the Denton Zoning Ordinance, the Board of Appeals has the authority to grant sign specific variances provided the Applicant satisfies the variance criteria.

TESTIMONY AND EVIDENCE

Mr. Neal described the unique features of this site. Nuttle Builders, Inc., is located at 1139 Industrial Parkway (the "Property"). Industrial Parkway is the State Highway service road.

There is a 28 feet 6 inch wide State Highway Right-of-Way between the west property line and the east curb of Industrial Parkway. The Right-of-Way includes a 5 feet wide sidewalk, a drainage swale, and space for miscellaneous underground utilities. Rather than fronting directly on the road, the Property's front boundary is nearly 30 feet from the public road. The road access for the Property is unique in that it is via easement across a neighboring property to the south. The extra wide Right-of-Way, resulting distance from the road, road access issue, and the other unique aspects of the Property are important considerations.

Mr. Neal provided the following photograph exhibits for evidence:

- Exhibit #1 – Aerial Google Map referencing property location
- Exhibit #2 – Street Google Map referencing property location
- Exhibit #3 – Nuttle Builders front property line, proposed sign location
- Exhibit #4 – Perfect Touch Hair Design sign location
- Exhibit #5 – Northbound lane on Industrial Parkway sign locations
- Exhibit #6 – Intersection of Engerman Avenue, Temporary sign location
- Exhibit #7 – Hertrich parking lot, Hertrich sign location
- Exhibit #8 – Survey/Site Plan
- Exhibit #9 – Proposed Sign

Mr. Neal confirmed that the Board of Appeals would be allowing a sign variance that is consistent with the other sign variances granted in the area, granting the sign variances will not be injurious to other neighboring property owners, and the sign variance is the minimum necessary to afford relief.

Mr. Neal provided the following responses in bold italic below to the standards for granting variances.

STANDARDS FOR GRANTING VARIANCES

The Board is obliged to apply the testimony and evidence received during the hearing to the following zoning standards:

1. Zoning Variances

§128-163 (K)

(2) Standards for granting a variance:

- a) Strict enforcement of this Chapter 128, Zoning would produce unnecessary and undue hardship as distinguished from variations sought by applicants for purposes or reasons of convenience, profit, or caprice. ***The property shares an entrance with Perfect Touch Hair Design, and the entrance is currently marked only by their sign on the south side of the entrance driveway. Their sign is 16 feet 6 inches off the east curb of Industrial Parkway. Hertrich has two signs 16 feet off the service road curb as well. Their two freestanding signs are more than double the current square foot size allowance each. Hertrich's road frontage is lined solid with cars, which block the view of the Property as traffic approaches from the west on Rt. 404 and Industrial Parkway. In comparison, we are requesting a sign to be placed 32 feet from the curb and 3 feet 6 inches inside our property line. In order to meet the required 25 feet setback, our sign would be more than 65 feet from the Industrial Parkway curb and located in the existing customer driveway access. This may cause a potential safety hazard for customers due to the lack of visibility of the proposed signage that would be obscured by the neighboring properties' signage. The requested setback of 3 feet 6 inches from the property line will eliminate the visibility and safety concerns.***
- b) Such hardship is the result of special conditions and/or circumstances, not generally shared by other properties in the same zoning district or vicinity, and which are peculiar to the land, structure or building involved. Such conditions and/or circumstances may include but are not limited to the following: exceptional narrowness or shallowness or both, or irregular shape or topography of the property; unusual and limiting features of the building; or the effective frustration or prevention of reception of satellite programming due to the presence of a physical object or objects which obscure the "line of sight" when such object or objects cannot be equally removed. ***The property is unique because the***

Property has seven boundary lines and is only a half of an acre in size, the Property's road frontage is almost 30 feet from the actual road, the Property shares an access easement over neighboring property occupied by Perfect Touch Hair Design, Lot 1B, the Property shares a well easement with neighboring property, Lot 1 B, the Property shares a septic easement with neighboring property, Lot 1B, the Property shares a parking easement with neighboring property, Lot 1B. The Property, Lot 1A, is small with many special conditions and circumstances unique to the Property.

- c) Such special conditions or circumstances must not be the result of any action or actions of the applicant. *The Applicant did not create the special conditions and were pre-existing to the Applicant's ownership of 1139 Industrial Parkway.*
- d) Granting of the variance must be in harmony with the general purpose and intent of this Chapter 128, Zoning and must not be injurious to adjacent property, the character of the neighborhood or the public welfare. *Public notification requirements were satisfied. Applicant does not believe granting the request is injurious to adjacent properties. From a safety issue, it will improve the public safety and welfare by giving drivers better visibility from Rt. 404 and Industrial Parkway.*
- e) Granting the variance shall not allow a use expressly or by implication prohibited in the zoning district involved. *The construction business is an approved business for Regional Highway Commercial zoning.*
- f) The condition, situation, or intended use of the property concerned is not of so general or recurring a nature as to make practicable a general amendment to the ordinance. *The highway Right-of-way width, shared access, boundary shape and other special conditions attached to this property are unique. The sign setback relief requested for this property reflects that uniqueness. It seems unlikely that there are any undeveloped or developed properties in the town of Denton with the same limitations. Considering all of the special conditions of this property, it is difficult to imagine the approval of this variance causing a recurring condition in the general application of this ordinance.*
- g) The variance granted must be the minimum necessary to afford relief. *Our sign design is in keeping with the nature of our business and will not dominate or interfere with the visibility of either of our neighbors' existing signs or their businesses. Its size, height, etc., are all in compliance with the present ordinance. Referring to our responses in a & b, it is our view that we are requesting the minimum setback relief of 3 feet 6 inches from our property line, while still allowing our sign to direct potential customers to our business in the safest manner. We have gone to considerable length to design an attractive*

sign which will improve safe access, reflect the standards of our business and thus doing our part to foster a positive image of the town of Denton.

DELIBERATIONS

During and following the receipt of all testimony and evidence, the Board deliberated in Open Session.

Chairperson Livingstone read the response from Steve Thomas, State Highway Administration, into the record. State Highway Administration has no concerns with the sign variance request for a front yard setback of 3 feet 6 inches. The sign cannot be erected or overhang the State Highway Administration property. No other responses were received from the public or neighboring properties.

Member Doherty stated the curb is visually and effectively the setback requirement. The Applicant's request for the front yard setback is acceptable to meet the necessary variance requirements as stated by the Applicant.

Vice Chairperson Shull disclosed her mother previously owned the Nuttle Builders, Inc., property. Vice Chairperson Shull was previously the Planning Director for the Town of Denton, and provided some history of the Property. Bill Engerman previously owned all the lands, and Perfect Touch Hair Design was his office. For this reason, there are shared easements for well, septic, driveway, and parking. Mr. Engerman sold his land to the Town for the Industrial Park. There have been signs located closer to the property line than what Mr. Neal has proposed for his signage. The drainage swale is full of grass, and the sidewalk that runs along Industrial Parkway is a visual boundary. Meeting the setback from his property line is more restrictive than any of the other properties. The widening of MD404 impacted all of the businesses along the service road of Industrial Parkway.

Chairperson Livingstone confirmed the freestanding sign setback variance request is acceptable for the reasons stated by the Applicant.

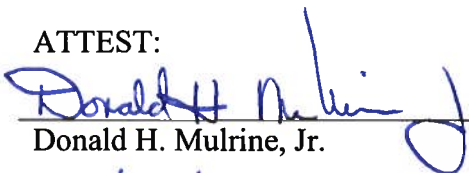
FINDINGS AND DECISIONS

Sign Variance Request #1 – Upon motion made by Vice Chairperson Shull, seconded by Member Doherty, and passed unanimously, the Board approved a variance for the front yard setback of 3 feet 6 inches from the property line for the freestanding sign with the distance of the column base 1 foot 6 inches off the property line. The decision is based on the findings of fact of the testimony, no general amendment is necessary, this is the minimum necessary to afford relief, Applicant has met the burden of proof for the safety issues, in general harmony with the area, and would not cause a reduction in the property values.

No other business items.

The meeting adjourned at 7:10 p.m.

ATTEST:



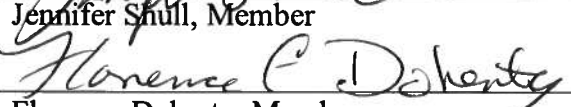
Donald H. Mulrine, Jr.
8/24/2017

Date

DENTON BOARD OF APPEALS:



Troy Livingstone, Chairman


Jennifer Shull, Member


Florence Doherty, Member