

BEFORE THE TOWN OF DENTON BOARD OF APPEALS

**IN RE: CHOPTANK COMMUNITY *
HEALTH SYSTEM, INC. *
APPLICATION FOR VARIANCE Case No. BOA-18-001
FROM THE ZONING CODES ***

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MINUTES, FINDINGS OF FACT, CONCLUSIONS AND DECISION

The Board of Appeals held a Public Hearing on Monday, May 7, 2018, at 6:30 p.m., at the Denton Town Office to consider an application for a sign variance for Choptank Community Health System, 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, Vice Chairperson Florence Doherty, and Member Jennifer Shull. Also present were Counsel for the Board, Chris Drummond and Administrative Aide, Donna Todd. The Applicant’s Representatives, Judy Schwartz, Gary Long, and Brett Meyers were present.

David Burroughs, adjacent property owner, was also present.

PROCEDURAL HISTORY

On April 2, 2018, 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 is for a decrease of the applicable signage setback. The Applicant seeks relief from the required 25-foot setback and is requesting a variance to reduce the freestanding sign setback distance by 16 feet to allow installation of the sign 9 feet off the right-of-way line.

The application was advertised in the Times Record for two consecutive weeks on April 18th and 25th, a sign was posted on the property, and all property owners within 200 feet of the property received written notification of the Public Hearing. All public notice requirements have been satisfied.

SUMMARY OF PROCEEDINGS

Chairperson Livingstone opened the Public Hearing at 6:30 p.m., followed by the Pledge of Allegiance.

Member Shull made a motion to nominate Troy Livingstone as the Chairperson and Florence Doherty as the Vice Chairperson of the Board. Member Doherty seconded the motion, and all were in favor.

Chairperson Livingstone swore in Judy Schwartz, Gary Long, and David Burroughs.

Vice Chairperson Doherty read the Public Notice advertised in the Times Record for BOA-18-001 into the record.

Ms. Schwartz, GMB Engineer and Applicant's Representation, provided a brief summary and history of the site for the sign variance request relative to the Choptank Community Health System, Inc., site plan for property located at 808 South Fifth Avenue, Caroline County Tax Map 105, Parcel 2291. The site plan includes the construction of a new 18,615 square foot medical building on 5.6 acres, zoned Regional Highway Commercial (RHC). The proposed structure is a single-story masonry building with multiple wings for various medical services including dentistry and pediatrics.

The Applicant is requesting a variance from the strict application of the sign requirements set forth in the Denton Town Code Chapter 128-126 (C-3), as follows:

1. The Applicant is requesting a variance of 16' allowing a setback of 9' from the front property right-of-way 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

Ms. Schwartz described the unique features of this site. The existing conditions include a street right-of-way is 60', the paved roadway width varies from 29' to 32' along the frontage of the property, the sidewalk is 5' wide on the west side of the property frontage, the distance from the back of the sidewalk to the right-of-way is 9½', and the distance from the edge of the street to the right-of-way is 15'. Ms. Schwartz testified that the site is subject to a unique hardship caused by an adjacent dense forest and vegetation that surrounds the Poor House Run perennial stream. The woodland is within a protected conservation area and cannot be logged or trimmed. Trees near the right-of-way obscure the line of sight from the intersection of and Legion Road and Fifth Avenue. Ms. Schwartz referred to the site plan exhibit submitted that shows Fifth Avenue and Legion Road off Shore Highway (MD 404). The site plan exhibit area in green is designated as the Forest Conservation Easement, and the woods' line extends to the back of the existing sidewalk. Also, the site plan exhibits show the line of sight from the intersection with the stop bar at Legion Road. The red line of sight is for the proposed 9' sign location. The blue line of sight demonstrates the required 25' sign location. Drivers and passengers of vehicles at

the Legion Road stop bar will not be able to see the Applicant's sign if located at the required 25' setback from the right-of-way.

Ms. Schwartz referred to Exhibit #1, photographs for the Line of Sight as submitted in the application. Sign markers were placed at the required 25' sign location and proposed 9' sign location. Photographs were taken walking up the sidewalk toward the sign locations and from the Legion Road intersection. Sign markers were not visible from the required 25' sign location at the Legion Road intersection but was approximately 2/3 visible from the proposed 9' sign location.

The distance from the Legion Road intersection is approximately 300' to the proposed sign location. Ms. Schwartz believes the 80 square foot sign will be visible from the proposed 9' location.

The obstructed view is caused by the natural forest and is unique to this site.

A survey was conducted by driving by other roadways within the Town of Denton that are zoned RHC. Ms. Schwartz found no other corridors that had dense forest and vegetation up to the back of the sidewalk. Photographs of these areas included with the application included MD Route 404, Double Hills Road, Greensboro Road, and Legion Road. The full width of the right-of-way in these areas are cleared. In the case of Fifth Avenue, the full width of the right-of-way has not been cleared due to the environmentally sensitive nature of the stream and surrounding woods.

The design of the sign is compatible to the features of the building with the brick piers, pergola, and blue Choptank Community Health System logo. The sign maintains harmony with the adjacent commercial neighbors. The proposed sign is allowable within the RHC zone.

The requested 16' variance for a 9' setback is the minimum differential needed to allow visibility from the stop bar at Legion Road. This hardship is a unique situation and not recurring.

Ms. Schwartz noted that property notifications were mailed on April 12, 2018. The site plan received Planning Commission approval on March 27, 2018.

Ms. Todd confirmed there were no comments received from the public.

Mr. Burroughs requested information on the lighting of the sign and the impact on the surrounding area.

Ms. Schwartz confirmed the sign is internally lit.

Mr. Long provided additional information requested by the Board. The hours of operation are Monday through Friday, 7:00 a.m. until 7:00 p.m., and Saturdays 8:00 a.m. until 1:00 p.m. Adult and pediatric physician services and dentistry services will be provided at this location. The sign will be lit 24 hours a day.

Member Shull referred to the South 5th Avenue photograph exhibit and confirmed the site is not visible in this photograph.

Member Shull referred to the site line from the Legion Road photograph exhibit and confirmed the photographs were taken from the stop bar.

Mr. Drummond confirmed the proposed location of the sign is included on the site plan in the stormwater management plan and sediment and erosion control plan, and confirmed the sign was planned around the stormwater management plan.

Ms. Schwartz acknowledged the stormwater management plan was designed around the sign. The sign interrupts the bioretention area, and it would have simplified the stormwater management plan if the sign was placed outside of the bioretention area.

STANDARDS FOR GRANTING VARIANCES

The Board is obliged to apply the testimony and evidence received during the hearing to the following zoning standards (the suggested findings in bold below were supplied by the Applicant):

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 hardship produced by the 25' required setback is a safety issue for the community navigating to this site for medical services.
- 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 hardship is a result of the dense Forest Conservation Area and vegetation surrounding the stream and is not shared with any other properties in the RHC District.
- c) Such special conditions or circumstances must not be the result of any action or actions of the applicant.
The environmental conditions are not the result of any action of the Applicant.
- 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.
The variance maintains harmony, and the design does not impact the surrounding neighbors. The buffering of the Forest Conservation Area reduces the amount of any light spillage.

- e) Granting the variance shall not allow a use expressly or by implication prohibited in the zoning district involved.
Signs are a permitted use in the RHC District, and the proposed sign meets the Town Code size requirements.

- 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.
This condition is unique to this parcel and would not require a general amendment to the Town Zoning Code.

- g) The variance granted must be the minimum necessary to afford relief.
A 16' differential is the minimum necessary, and there still remains an 18 1/2' grass buffer between the back of the sidewalk and the sign.

DELIBERATIONS

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

Member Shull stated the sign should be placed where it is visible to traffic that is arriving for appointments. The logical place for the arrival of much of the traffic headed to the facility is the Legion Road intersection. A lit sign is necessary for evening appointments. The environmental impact of the Forest Conservation Easement is an obstacle for the placement of the signage in the 25' setback required by the Town Code. If the sign was placed 25' back from the right-of-way on Fifth Avenue, there would not be a line of sight from the intersection at Legion Road. It would be safer for the left turns at the intersection of Legion Road if the sign is setback at 9'.

Member Shull noted that other properties in the RHC zone are level and flat. The primary access is from Legion Road with a decline down the road and drivers must decide to

turn left or right. This hardship is not common to any other properties in the RHC zoning district, and this site has special and unusual conditions not shared with any other site.

Vice Chairperson Doherty agreed the sign variance request was reasonable, and there was no need to change the regulations.

Chairperson Livingstone agreed the sign variance request was necessary due to the environmental constraints and it is unique to this property, and other areas in the RHC zone are clear of trees.

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

Member Shull noted that Ms. Schwartz submitted evidence for the burden of proof, Exhibit #1, photographs for the line of sight. The Board has also received a copy of the site plan and diagrams with details for the sign.

FINDINGS AND DECISIONS

Sign Variance Request – Upon motion made by Vice Chairperson Doherty, seconded by Member Shull, and passed unanimously, the Board approved a 16’ variance for the front yard setback, allowing placement of 9’ from the right-of-way line for the freestanding sign. The decision is based on the findings of fact, the credibility of Ms. Schwartz’s 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 7:00 p.m.

ATTEST:

Donna Todd
Donna Todd

5-22-2018
Date

DENTON BOARD OF APPEALS:

Troy Livingstone
Troy Livingstone, Chairperson

Jennifer Shall
Jennifer Shall, Member

Florence E Doherty
Florence Doherty, Member

