

## MINUTES REGULAR MEETING OF THE ZONING BOARD OF APPEALS

Thursday, June 23, 2016  
6:00 P.M.

Town Council Chambers  
157 NW Columbia Ave, Chapin

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**Members Present:** Jerry Shealy, Crystal Campbell, Frank Mock, and Walt Shealy

**Members Absent:** Mike Sorrells

**Staff Present:** Chris Clauson

**Guest:** Stephen Goodman (Chapin & Lex, LLC), Todd Ward (Vannoy Construction) and Jason Likas (LTC Associates)

A meeting of the Town of Chapin Zoning Board of Appeals was held at Chapin Town Hall and called to order by Chairman Jerry Shealy at 6:01 P.M. on June 23<sup>rd</sup>, 2016 when a quorum was present. Chairman Shealy introduced the new member Frank Mock.

1. **CALL TO ORDER:** 6:01 P.M.
2. **APPROVAL OF MINUTES:** Chairman Shealy presented the minutes from the December 10<sup>th</sup>, 2015 meeting for review. Mr. Walt Shealy made the motion to accept, and Mrs. Campbell seconded. Minutes were unanimously approved.
3. **NEW BUSINESS:**
  - a. Review of Chapin & Lex, LLC variance request- Chairman Shealy introduced the next agenda item and asked staff to report on the ordinance in question, the variance request made and the Town's stance on the issue. Mr. Clauson proceeded to describe that the ordinance sought relief is found in Article 10, previously titled Section 1001.3.O where it reads:

*"O. Roof Treatments: a. Parapets will be used to conceal roof top equipment on the flat roofs; and b. Where overhanging eaves are used, overhangs shall not be less than 16 inches beyond the supporting walls."*

Mr. Clauson then proceeded to describe the applicant's request. In the request the applicant justified the claim that there was a valid unnecessary hardship for the following reasons:

*a) There are extraordinary and exceptional conditions pertaining to the particular piece of property.*

The parcel has extreme topography that makes the top of the building sit below the adjacent streets.

*b) These conditions do not generally apply to other property in the vicinity.*

Adjacent parcels are at the same elevation as the streets.

*c) Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.*

Require an extremely high and prohibitive treatment to the building that would be out of character with other developments within the Town.

*d) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.*

The new development is at a higher level of design than existing surrounding parcels.

Mr. Clauson then highlighted the attached site plan, photos and letter further explaining the particulars of this property.

In response staff read the report prepared verbatim stating:

*“On June 25<sup>th</sup>, 2015 the Town of Chapin Architectural Review Board held a Public Hearing to review the Chapin Crossing Plans. During this meeting the screening requirement was highlighted and it was noted that the plans did not depict the side and rear elevations. The representatives of the applicant at the meeting, when asked whether the parapets would extend on the sides of the building, claimed that the parapets would be present to provide screening on the sides of the building, which was recorded in the meeting minutes accordingly and can be heard in the audio recording of the meeting. Approval was given to the project pending the modifications discussed in the meeting and the zoning permit was subsequently released on November 10<sup>th</sup>, 2015. During construction it was found by staff that the parapet was not being extended on the side of the building and a letter was sent to the applicant reiterating the requirement for parapet coverage on April 12<sup>th</sup>, 2016. The applicant has denied being informed of this requirement until the letter was sent and subsequently has appealed to the Board.”*

Staff further finds the following to be true for the four part test:

*1) There are extraordinary and exceptional conditions pertaining to the particular piece of property.*

The building is situated in a lower point on the site and the building roof is only slightly higher than the adjacent streets. The property as a whole though has sections that are at street level. With the subdivision of the property not being recorded at this time the property would encompass the site where the Publix building and attached 14,000 square foot building is situated, but also the outparcels that are still to be developed.

*2) These conditions do not generally apply to other property in the vicinity.*

These conditions do apply to other property in the vicinity. Adjacent buildings are at higher elevations and these conditions would not apply in relation to the Publix building but not the parcel as a whole. The adjacent parcels must also adhere to the same development standards, are subject to the same screening requirements, and would not be permitted to construct new structures or expand upon existing structures (greater than 20%) without complying with the ordinance standards. Additionally, given the topography in the Town these conditions are not unique.

*3) Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.*

The conditions imposed on this property do not effectively prohibit or restrict the use of the property. An extension of the existing parapet would not constitute an unreasonable restriction of utilization of the property. Denying this variance will not prohibit or further restrict the use of this property.

*4) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.*

The authorization of this variance will pose a substantial detriment to the adjacent property and to the public good. The screening requirement was

established to promote the creation of an attractive community as allowed by S.C. Code § 6-29-710. If the variance is granted, as applied for, the remainder of the property, which have higher base elevations, would be exempt from the screening requirements as well. In addition, granting the applicant approval after the fact of constructing a building in direct violation of ordinance requirements without meeting the four-part test sets an undesirable precedent that could undermine the regulations as applied to all other parcels in the district. Town Council approved the development standards established in this district and in all other districts to protect the health, safety and welfare of the public.

In summary staff recommends the denial of this request based upon the facts that the requirements of the state-mandated four-part test have not been met; there is no hardship in this case. Draft motions were then presented to the Board. Chairman Shealy asked if staff had anything further to which Mr. Clauson claimed he didn't at this time. The Chairman then asked who would be speaking on behalf of the applicant.

Mr. Todd Ward proceeded to introduce himself and addressed the Board. Mr. Todd claimed that it was the understanding of the applicant during the ARB meeting that the concealing requirement was a main street frontage requirement and not an all four side requirement. The parapet from Chapin Road does conceal all the roof top equipment and meets that requirement. The sight lines from a vehicular standpoint were discussed and the claim was made that the development meet the requirement with the unique topography the actual building sits 18 feet below the road level which puts you at eye level with the top of the building. The additional outparcels once those are built they are at a higher elevation and will be fronting the road. Knowing the height of those buildings the belief was shared that the roof top equipment will be screened and the intent of the ordinance will be met along with the standard the town is looking for. We believe looking at the interpretation of the ordinance and the hardship criteria we believe that the standard is met.

Discussion over the height of the existing parapet ensued and several questions were raised about the possibility of extending the parapet. Chairman Shealy asked what compromise can be offered. Mr. Goodman stated that what can be offered is that once we develop the outbuildings on Lexington Avenue and Chapin Road the buildings will have parapet coverage as already approved by the ARB and they will screen any units.

Chairman Shealy again asked what compromise can be offered to provide screening.

Mr. Goodman stressed that he cannot offer any screening as told him unequivocally by Publix. Mr. Goodman reiterated that until he received the letter informing him of the requirement that they were unaware. Further claiming that the sight line will be taken care of with the future developments of the building. Nothing can be done to the building

Chairman Shealy stated that Mr. Clauson reporting in his opening remarks that someone at the Architectural Review Board meeting gave assurances the parapet would be extended, did he misconstrue that or what?

Mr. Goodman responded that he is going off the fact that Wes Taylor, the architect, and Mr. Goodman came out of the meeting with the impression that what was approved by the ARB was the existing elevation of the Publix building and the fact that the buildings to be developed will have adequate screening.

Mr. Ward addressed the Chairman and reaffirmed that ignorance to the law is no excuse and in working with the Town through this process we thought we were in full compliance and if we knew Publix were going to raise an objection we would have been in front of this Board a year ago asking this exact same question. The ruling at that time would have stood and we would have complied with it. We in no way were trying to pull a fast one and we thought we were in full compliance.

Chairman Shealy asked what guarantee do we have that the future buildings will provide

the screening necessary for compliance and asked whether Chapin Crossing would sign a statement saying that the rest of the buildings will be screened. Mr. Goodman said yes we will agree that the buildings on all outparcels will meet the screening requirements.

Chairman Shealy called for a motion. Mr. Shealy moved to approve the variance with the building of the outparcels trying all you can do to screen the area, where we are making the variance for, so that on the whole the overall project makes the best attempt it can to screen the variance. Mrs. Campbell seconded the motion. The motion was called to a vote and Mr. Shealy and Mrs. Campbell voted in favor, with Chairman Shealy and Mr. Mock opposing. The motion failed and Chairman Shealy asked what was to be done in the event of a tie. Mr. Clauson said that a two thirds majority was required to approve a variance and informed the Board that they would proceed until a motion passed or they determined to table the request and ask for more information or a study to be completed.

Chairman asked again if there was any compromise and Mr. Goodman responded that other than making absolutely certain that when the other buildings are being built we

will make certain that those units are screened in every respect because of the size of the building and the size of the units.

Mr. Clauson addressed the Chairman and proposed an assurance could be provided by the engineer that no additional parapet or screening could be provided and that all efforts would be made to screen the back of the building with the placement of the future buildings. There is no representative from Publix here and we do not have any true verification to that respect.

Chairman Shealy asked if he can get verification of that in writing to that respect and Mr. Goodman said yes.

Chairman Shealy asked that the request be stated again for the record.

Mr. Clauson stated: "In light of the fact that the building is constructed and the claims are being made that the building wasn't constructed to handle any additional parapet we need verification from a certified engineer of record to attest to the fact that based upon the wind load, which I gather is the argument, that no additional parapet can be provided on any side of the building where it is not already provided with their seal accordingly and the motion could state that the outparcels would be developed to provide as much screening as possible.

Mr. Goodman interjected and expressed his understanding of the requirements stating: "forget about the fact that an engineer says, which is also a consideration, but more importantly Publix is absolutely firm that nothing can be done to change that elevation and we will make this approval subject to that besides the other criteria reflective of the other buildings that when they come in they will meet the screening requirement of the ordinance accordingly. We will absolutely agree to that and certainly will do it, but I thought that is where we were at to get this done tonight."

Chairman Shealy responded no and requested a continuance of the meeting until that is done. Mr. Goodman responded that he would make the approval subject to that.

Chairman Shealy asked if he had the authority to make that approval why he couldn't make the approval of the screening. Mr. Goodman clarified that he couldn't speak on behalf of Publix but he felt confident they would provide a letter as promised.

Mr. Clauson said you could have a continuance and next month you could see all the documents and then rule from there accordingly or if you wanted to approve pending those documents are secured.

Chairman Shealy asked whether someone would like to make a motion to approve tonight contingent upon the paperwork arriving at the Town of Chapin as promised. Mrs. Campbell so moved and Mr. Shealy seconded the motion. The motion came to a vote and passed unanimously.

There being no further business Mrs. Campbell made a motion to adjourn the meeting and Mr. Mock seconded the motion. The motion carried unanimously and the meeting was adjourned at 7:10 P.M.

Respectfully submitted,

Chris Clauson  
Zoning Administrator