

**CITY OF CHESTERFIELD
BOARD OF ADJUSTMENT
MEETING SUMMARY
Thursday, October 6, 2011**

The Board of Adjustment meeting was called to order at 6:00 p.m. on Thursday, October 6, 2011, by Mr. Leon Kravetz, Vice-Chair of the Board of Adjustment.

I. Introduction of Board and City Staff

The following individuals were in attendance:

Mr. Leon Kravetz, Vice-Chair
Mr. Richard Morris
Ms. Barb Whitman
Ms. Melissa Heberle
Mr. Robert Tucker, Alternate

Mr. Bruce Geiger, Mayor, City of Chesterfield
Mr. Matt Segal, City Council Liaison
Mr. Harry O'Rourke, Representing City Attorney, City of Chesterfield
Ms. Aimee Nassif, Planning and Development Services Director
Ms. Kathy Reiter, Administrative Secretary
Court Reporter, Midwest Litigation Services

II. Approval of September 1, 2011 Meeting Summary

Barb Whitman made a motion to approve the Meeting Summary. The motion was seconded by Richard Morris.

The motion passed by a vote of 5 to 0.

III. Request for Affidavit of Publication

The Chair noted that the Affidavit of Publication and exhibits for the Petition had been placed on the dais.

IV. Public Hearing Items:

The Chair read the Opening Comments for the Public Hearing.

- A. B.A. 04-2011 17550 Wild Horse Creek Rd (DLJ Chesterfield, LLC):** A request for a variance from Section 1003.105.7.1(a) for Lot 2 of the Mary

Schaeffer Estates Subdivision Adjustment Plat to allow a primary school to be operated on a 4.16 acre site in lieu of the 5.0 acre minimum lot size for primary schools. (18V610063)

Staff Presentation:

Ms. Aimee Nassif, Planning and Development Services Director for the City of Chesterfield, outlined the exhibits supporting the request for an area variance to allow a primary school to be operated on a 4.16 acre site in lieu of the 5.0 acre minimum lot size for a primary school.

Ms. Nassif stated the following:

- The application was before the Board of Adjustment on September 1, 2011 and was withdrawn without prejudice to allow the applicant to make clarifications to his application. He has since that time made the corrected changes.
- The applicant is requesting a variance to maintain and operate a primary school, which is considered kindergarten through 6th grade, on less than the required five acres minimum lot size. The City Code requirement has been the same since the City was incorporated in 1988. All schools in Chesterfield do maintain that minimum lot size.
- The site currently has a church operating on it. An occupancy permit application was received in May of this year to allow a school on this site, which was denied. The applicant contended that a primary school previously existed on this site. The City has no permits, applications or licenses that the City has approved or seen to that effect. If there was a school operating on this site previously, it was done so illegally. Staff has reviewed the variance request and recommends denial based upon the requirements that must be met. Staff believes the applicant has not met his burden of proof which is *“that a variance can only be granted when the applicant has proven an unnecessary hardship or practical difficulty exists with the site”*. Based upon the application and meetings with the applicant, this has not been proven.
- The site was originally 14.16 acres, but several years ago the previous property owner did a boundary adjustment plat to reduce the acreage to 4.16 acres. The applicant contended that the previous property owners reduced the lot size and that the applicant was not aware of it. However, when the applicant bought the property it was only 4.16 acres in size and the code requirement had not changed at any time.

During discussion, Ms. Nassif clarified that there are other existing land uses which are permissible for this 4.16 acre lot such as a religious institution, nursery school, day nursery or kindergarten.

Petitioner's Presentation

Mr. Randy Johnston, 14323 South Outer 40 Drive, Suite 604 South, principle owner of Lighthouse Architects in Chesterfield. Randy Johnston was sworn in by the Court Reporter.

Mr. Johnston confirmed that the church was originally built in 1986 on a 14.16 acre site before Chesterfield was incorporated. In 1994 a large addition was added. Ten acres were sold in 2004, leaving the 4.16 acre site. DLJ Properties took possession of the land through a foreclosure in 2009 and is now attempting to sell the property. The owner feels he would be able to expand his pool of interested buyers if he has this school component as a permitted use. For over 20 years, a school through 8th grade operated on the site out of compliance with the City of Chesterfield.

The applicant feels there is a practical difficulty due to the fact that they are "land locked" with no possibility of purchasing any surrounding properties in order to comply with the five acre requirement. Every practical effort has been made to purchase additional property but requests have been denied by both adjacent land owners. Looking at City Code 1003.105.7.1. (c), the owner will self-impose a limit on enrollment. Mr. Johnston feels that the cap of 15 students per acre, gives the City more control than to have an arbitrary assessment of 5 acres as a minimum lot size. Mr. Johnston noted that the application was corrected to request a primary school up to the 5th grade - the junior high grades have been removed from the application.

No Speakers were present to speak **in favor** of the petition.

No Speakers were present to speak **in opposition** of the petition.

DISCUSSION

During discussion, it was clarified that 1003.105.7.1.(c), of the City Code is exhibit number 5, and states: *"Specialized private schools shall be located on a tract of land containing one acre for each 15 pupils but in no case less than five acres."*

Ms. Nassif made two points of clarification on Mr. Johnston's reference to the City Code. The first one being that *"specialized private school"* is not the type of school being requested; a primary school is being requested. A specialized private school is defined as a school for special needs children. Secondly, that section of the Code specifically states that *"it shall be one acre for every 15 pupils but at no time shall the tract of land fall below five acres in size"*.

Noting that the prior school operated "under the radar" for 20 years, Mr. Morris asked if anything had occurred negatively during this time period due to the fact that it operated on less than 5 acres. Ms. Nassif answered that there are no records or documentation to verify that the school was in operation for 20 years so she cannot speak as to whether anything negative occurred.

Mr. O'Rourke then clarified that the application before the Board this evening is the only thing under consideration, not what may have taken place with any other structure that may or may not have been on the property.

It was noted that Harvest Baptist Church is presently occupying the land for worship services only. Mr. Kravetz brought up the fact that City Code section 1003.105.7.1(a) states that a church requires a minimum lot size of three acres and a primary school requires five acres. He questioned as to whether a school and church could operate together on the same piece of five acre property or whether they would need to have an eight acre lot. Ms. Nassif replied that only five acres total would be needed.

Mr. Johnston confirmed that Harvest Baptist Church is currently occupying the church for worship services only but would like to pursue a Christian school. He stated that right now it isn't a pressing issue for the tenants but it is something they would consider in the future. It is pressing for the building owner though because he wants to sell the property and being able to have a school makes it a more attractive selling point.

In conclusion, Mr. Johnston stated the applicant is pursuing an area variance and the practical difficulty is that they can't grow the property anymore because it is restricted by a previous sale.

The exhibits 1 through 8 were then accepted into evidence.

Mr. Tucker stated that he doesn't see a hardship. The fact that the owner can't use the property, sell it or market it in the way he wants doesn't constitute a legal hardship.

Mr. Johnston then again referred to the student per acre ratio, which he feels gives the City more control from a planning perspective, taking into consideration that a permitted preschool or kindergarten could have a much larger student enrollment than a primary school.

CONCLUSION

Richard Morris made a motion to approve B.A. 04-2011 17550 Wild Horse Creek Rd (DLJ Chesterfield, LLC). The motion was seconded by Melissa Heberle.

Upon roll call, the vote was as follows:

Melissa Heberle	No
Leon Kravetz	No
Richard Morris	No
Barb Whitman	No
Robert Tucker	No

The motion to approve failed by a vote of 0 to 5. The application was denied.

V. Adjournment

The meeting adjourned at 6:30 p.m.