

**CITY OF CHESTERFIELD
BOARD OF ADJUSTMENT
MEETING SUMMARY
Thursday, September 1, 2011**

The Board of Adjustment meeting was called to order at 6:28 p.m. on Thursday, September 1, 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
Mr. Gerald Schwalbe, Alternate
Mr. Robert Tucker, Alternate

Mr. Harry O'Rourke, Representing City Attorney, City of Chesterfield
Ms. Aimee Nassif, Planning and Development Services Director
Mr. Justin Wyse, Senior Planner
Ms. Kathy Reiter, Administrative Secretary
Court Reporter, Midwest Litigation Services

II. Approval of August 4, 2011 Meeting Summary

Barb Whitman made a motion to approve the Meeting Summary. The motion was seconded by Gerald Schwalbe.

The motion passed by a voice 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. 02-2011 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 church was built on this site in 1986. At that time the site was 14.16 acres. A boundary adjustment was approved by the City in 2004 at which time ten acres were sold. The lot that remains today is 4.16 acres.
- The applicant is requesting a variance to maintain and operate a school on less than five acres of land.
- The applicant states that a burden exists because they are unable to purchase additional property necessary to operate said school.
- The Department of Planning and Public Works has reviewed this application and does not find that a hardship exists or has been proven by the applicant and Staff recommends denial.

During discussion, Ms. Nassif clarified the following:

- The land was sold by the previous property owners.
- The fact that the property was previously used for a school should have no bearing on the Board's judgment since it was operating illegally. The City has no records of any permits being approved for a school at this site. Any such applications for a school on the site would have been denied due to not meeting the five-acre requirement.
- The property was being used as a church last year until it was foreclosed on; Staff believes that a new church is moving onto the site.
- There are other permitted uses for the land, such as a religious institution, a kindergarten; or a day nursery school but a primary school (K-6) is not permitted.

The exhibits, 1 through 8c were then accepted into evidence.

Petitioner's Presentation

Randy Johnston was sworn in by the Court Reporter.

Mr. Randy Johnston, 14323 South Outer 40 Drive, owner of Lighthouse Architects in Chesterfield, stated he was representing Dan Jones, the principal owner of DLJ Properties. He confirmed that the church was originally built in 1986 and that in 1994 an addition was built to accommodate the school use of Kindergarten through 8th grade, which was in operation for about 20 years.

Mr. Johnston pointed out City Ordinance 1003.105.7.(1) (c) requires one acre of land for each 15 pupils for a specialized private school. He noted the petitioner intends to cap enrollment to the City's number of 15 students per acre. 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.

Mr. Johnston stated that a legal question had been raised regarding the Boundary Adjustment Plat approved in November of 2004 reducing the site to 4.16 acres. In question is the section stating that *the Department of Planning and the Department of Public Works have reviewed the Boundary Adjustment Plat in accordance with Boundary Adjustment regulations of the City of Chesterfield and found it to be in compliance with all the applicable ordinances.* The question being that this was reviewed and approved, yet it is being looked at as being in non-compliance.

Mr. Johnston noted that the land use is accepted, but they are having difficulty meeting the required land area because of being "land locked". The adjacent property owners have been approached but they are not interested in selling any additional property to the petitioner.

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, Mr. Kravetz asked for a definition of a *primary school*, which Ms. Nassif defined as K-6. He pointed out that the application mentions a pre-K-8 school which then incorporates a junior high school requiring 10 acres. Mr. Kravetz stated that the application would have to be changed before the Board would even consider granting the variance. Ms. Nassif also brought up the fact that the applicant wants to be considered as a *specialized private school*, which City Code defines as a school for the physically or mentally challenged or handicapped student. Said use has a specific density requirement based on the number of students and in no case shall the acreage fall below five acres. Mr. Johnston responded that the application was made on behalf of the original tenant which actually does have a K-8 school. The new tenant was advised that they would be limited to only an elementary school. The desire here is for an elementary school which may include a pre-school. The site is currently permitted by right for a pre-school and kindergarten.

Mr. O'Rourke specified that a permitted use does not need a variance if it meets the area requirements. He clarified that the application the City has received is for a pre-K-8 school and that is the application on which the Board of Adjustment will vote. If the applicant wants to amend the petition, he must withdraw this one and submit a new application. The Board only has the jurisdiction to vote on the application that is here now. Ms. Nassif added that the Public Hearing Notice referred to primary school (K-6).

Mr. Johnston asked if it was possible for the Board to approve with conditions-such as approving the land use with an enrollment cap of fifteen students per acre. Mr. O'Rourke stated that this is not a land use variance request, it is a land area variance request so the Board would not be able to approve with the conditions mentioned.

In conclusion, the applicant wishes to withdraw and restructure the application.

CONCLUSION

Richard Morris made a motion to allow the petitioner to withdraw his application.
The motion was seconded by Barb Whitman.

The motion passed by a voice vote of 5 to 0.

V. Adjournment

The meeting adjourned at 7:02 p.m.