

TO: Board of Adjustment

Item Number: 1

FROM: Planning Department Staff

DATE: January 10, 2017

SUBJECT: Petition BA-16-09 VAR: CHW Inc., agent for Beville Holdings LLC, owner. Request for a variance in accordance with section 30-354(d)(3) and section 30-78(d)(6)(a) of the Land Development Code, to reduce the required setback from an adjacent collector or arterial road from 40 feet to 25 feet for construction of a medical office building. Zoned: CP (corporate park district). Located at 4411 NW 8th Avenue.

Background and Explanation:

The subject parcel is an existing legal parcel which is part of the Triangle Special Area Plan with an underlying zoning of Corporate Park (CP). The parcel is located at the intersection of a major arterials, NW 43rd Street and NW 6th Place, which is a local internal roadway to the Triangle Area. Due to the CP zoning standards, there is a required 40-foot setback along a collector or arterial roadway as well as an average 25-foot landscaped area around the perimeter of a CP district (see Appendix B). Given the need to accommodate a suitable building placement, setback from sensitive environmental features, stormwater, parking, landscaping and open space, the current standards impose strong constraints on the subject parcel making it difficult to achieve the required standards.

The applicant is therefore requesting a reduction of the arterial/collector street setback, along NW 43rd Street, from 40' to 25' for construction of a new building with associated facilities. In granting a variance, the board must make a number of findings as stated in Sec 30-354 of the Land Development Code. Staff reviewed the proposal in relationship to those findings.

Analysis of request:

The general policy of the City, as expressed in the Comprehensive Plan and Land Development code is to create a compatible relationship between adjoining streets and the placement of buildings. That policy is more directly articulated in the Build-to line requirement which is applicable to developments fronting most roadways within the Transportation Mobility Program Area (TMPA). Therefore, in most areas, subject to Special Area plans, the build-to line standard overrides the front setbacks required by the local zoning district. Although it is desirable to bring the subject building closer to the street, because of the original nature and character of the Triangle Area, the development standards of the CP zoning requires a 40-foot setback which is not over-ridden by the Triangle Area Special Area Plan or the other overlay districts. The applicant is therefore requesting a variance from the CP district standard to reduce the arterial setback from 40 feet to 25.

Staff has reviewed this petition in the context of Section 30-354(d) (3) and 30-78 of the Land Development Code. Those sections of the code define development standards and variances; it authorizes the Board of Adjustment to grant variances from certain provisions of the code. It places restrictions on granting these

variances, and outlines the general requirement for granting a variance. The request qualifies as a type of variance that may be authorized by the Board of Adjustment.

Staff identifies the following key issues as directly related to the requested variance:

1. The subject parcel has frontage on two public roadways, one classified as collector/arterial and the other as a local roadway.
2. The property is also subject to a 25-foot landscape buffer along NW 43rd Street which is part of the perimeter of the CP district.
3. The proposed building placement is consistent with the City's policy of creating a compatible relationship between the adjacent street frontage and placement of the building.
4. The proposed design places the parking and Stormwater to the rear of the development and is a more efficient and compatible design for the site.
5. The site has wetland areas which require a 50-foot setback from the wetland area.

In considering a request for a variance, the code requires that the board establish findings that the request demonstrates the following:

- 1. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district.***

The subject property is unique in that it has frontage on two public roadways, one classified as collector/arterial and the other as a local roadway. This layout requires larger or special setbacks along each frontage which restricts the on-site development area. The site also has wetlands to the west and northwest requiring a 50-foot buffer. Those features limit the amount of developable space and restrict the freedom of design available to most parcels. While those factors do not prevent use and placement of a building at the required front setback, they fit the criteria for granting a variance and are worth due consideration by the board in formulating its decision.

- 2. That literal enforcement of the provisions of the Land Development Code or building chapters would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the Land Development Code or Building code.***

Strict application of the standards of the zoning district does not deprive the applicant of all development rights commonly enjoyed by other property owners but it limits freedom of design and the ability to utilize the full real estate potential of the subject parcel. The preferred architectural style and building orientation cannot be laid out consistent with the required front setback but a building can be designed to meet the development standards of the district.

- 3. That the special conditions and circumstances do not result from the action of the applicant.***

The action of the owners to construct a building in a preferred design and orientation is considered a direct result of the actions of the applicant but the existence of the roadways is not directly attributable to the actions of the applicant. Those roadways were not always classified as collectors/arterials but evolved with the growth of the city and have become a part of the infrastructure necessary to serve the subject parcel and the general neighborhood. They are unique to the site in terms of their impacts in restricting available space for development.

- 4. That granting the variance requested will not confer on the applicant any special privilege that is denied by this section to other lands, structures or buildings in the same district.***

Granting the variance request based on findings of fact will not confer upon the applicant any special privileges that are denied to other land, structures or buildings in the same district. The board must consider the material facts and competent substantial evidence in reaching a decision on the requested variance. The applicant has provided documentation illustrating the reasons for the request; the board must consider the evidence presented in reaching a decision. A variance based on competent substantial evidence and the listed criteria establishes a sound basis for deviating from the zoning standards and is not considered a special privilege.

- 5. The evidence presented justifies the granting of the variance and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.***

The applicant has provided documentation addressing the findings of fact necessary to grant a variance. The evidence presented by the petitioner demonstrates the site limitations given the required front setback. Evidence is also presented illustrating the relationship of surrounding developments to the required setbacks; the subject parcel is one of a few sites impacted by two roadways. The applicant also includes a general plan indicating the preferred site layout and orientation of the buildings and why the required setbacks cannot be met.

- 6. Granting of the variance will be in harmony with the general intent and purpose of the zoning or building chapters and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.***

The intent of the variance procedure is to provide relief to property owners who have demonstrated hardships in pursuing development in strict compliance with the Land Development Code. The intent of the code is to establish reasonable separation between buildings and to allow for a certain degree of outdoor space consistent with the specific neighborhood. To some extent, those factors relate to the neighborhood, lifestyle, cultural and socioeconomic factors; the setbacks therefore vary from one area to another based on the character of the respective area. The purposes of setbacks are to prevent infringement on property rights; to allow space for building amenities; to allow light and sunshine onto adjacent buildings; to lessen congestion and overcrowding of lots; to improve fire safety conditions; to facilitate the provision of public facilities serving individual properties; and to address

January 10, 2017

unique aspects of an area. In considering a request to modify established setbacks, it is therefore important that the board consider the potential impact of the modified setbacks on the immediate and surrounding neighborhoods.

Given the existing pattern of surrounding developments and the unique features of the subject parcel, granting the variance will not result in negative impact to the pattern and character of developments within the neighborhood.

The petitioner must demonstrate compliance with the findings necessary to issue a variance and show restricting hardships.

Respectfully Submitted:

Signature: _____

Title: Lead Planner

Date: Friday, January 06, 2017

LDC: ldc

Attachments:

Appendix A: Application and Supporting Documents.

Appendix B: Relevant Comprehensive Plan and Land Development Code References.