

TOWN OF FUQUAY-VARINA
BOARD OF ADJUSTMENT REGULAR MEETING
August 08, 2022

CALL TO ORDER

Vice-Chairman Jeff Jaeger called the Fuquay-Varina Board of Adjustment regular meeting to order on Monday, August 08, 2022, at 7:06 p.m. Attendees participated virtually and in person.

Board Members Present: Dan Miller (Chairman)
Jeff Jaeger (Vice-Chairman)
William Hartman
Genel Webb
Qisoundra Flowers

Board Members Absent: Michelle Braxton
Andrew Rubley

Others Present: Planning Director Pam Davison
Assistant Planning Director Melissa Sigmund
Clerk Eva Mayfield
IT System Administrator Patrick Petty
Town Attorney James Adcock
Senior Planner Josh Jurius

Vice-Chairman Jeff Jaeger stated quasi-judicial hearings are a time for petitioners to present justification for special use permits or variance requests and for the members of the public to testify in support of or in opposition to these presented justifications. Quasi-judicial hearings are unlike legislative hearings in that witness testimony is limited to the field of expertise or to a party withstanding and not for general public comments in support of or in opposition to the request. He then asked *Planning Director Pam Davison* to review the protocol for the witness testimony as it relates to this meeting.

HYBRID MEETING INSTRUCTIONS

Planning Director Pam Davison read aloud the hybrid meeting protocol and instructions for public participation. Since this is a quasi-judicial meeting, she announced that everyone wishing to testify, or comment would need to be sworn in. Attendees can comment both in person and virtually via the Zoom virtual meeting platform. Anyone wishing to participate in the meeting virtually needs to either join using the Zoom media application or call the Zoom meeting with the provided list of phone numbers on the Town's website.

Vice-Chairman Jeff Jaeger asked the *Clerk to the Board of Adjustment Eva Mayfield*, to administer the oath.

Clerk Eva Mayfield swore in each expected speaker for the meeting:

- Samuel R. Gray – Petitioner’s Attorney (In Person)
- Father James Guirguis – Petitioner (In Person)
- David Hooten – Church Official (In Person)

Vice-Chairman Jeff Jaeger declared a quorum and stated that the Petitioner had been informed that the Board has a bare minimum quorum and would need a unanimous vote for each finding of fact presented. He advised that *Chairman Dan Miller* was on his way to attend the meeting, and, in the meantime, *Mr. Jaeger* would address the other items on the agenda in order to allow time for *Mr. Miller* to arrive.

Approval of The Minutes

Agenda Item No. 2. A: – Approval of the Minutes from the March 14, 2022, meeting.

The March 14, 2022, regularly scheduled Board of Adjustment meeting minutes were presented for approval.

No corrections were requested.

Motion – Approve the minutes from the March 14, 2022, meeting of the Board of Adjustment as presented.

MOTION: William Hartman
SECOND: Genel Webb
MOTION RESULT: Passed Unanimously (4-0)

Vice-Chairman Jeff Jaeger asked if he could change the order of the agenda items at his discretion.

Town Attorney James Adcock stated that he could.

Mr. Jaeger stated that he was going to hold item 4.A. He then asked if there were any items tabled from the previous meeting. No tabled items from the previous meeting. He then asked if there was any new business.

Assistant Planning Director Melissa Sigmund stated that there was no new business.

Mr. Jaeger asked if there were any old business items on the agenda?

Mrs. Sigmund stated that there were no old business items on the agenda.

Mr. Jaeger asked if there were any administrative reports from Staff?

Mrs. Sigmund stated to her knowledge, there were no administrative reports from Staff on the agenda. However, they could verify with *Mrs. Davison* before adjourning.

Mr. Jaeger asked *Mrs. Davison* if she was aware of any new business, old business, or administrative reports that would be on the agenda?

Mrs. Davison responded that there were none. *Mrs. Davison* stated that she would like to announce that the Town Board approved the Land Development Ordinance and the Land Use Plan updates on August 1, 2022, and all the updates were available online.

Vice-Chairman Jeff Jaeger stated that only one (1) item was left on the agenda and announced a short recess in order to allow time for Chairman Dan Miller to arrive.

Public Hearing

Chairman Dan Miller opened the public hearing and thanked Vice-Chairman Jeff Jaeger for taking care of the administrative business while he was away.

Agenda Item No. 4. A: – Special Use Permit Petition - 1990 Stewart Street - Father James Guirguis, St. Raphael of Brooklyn Antiochian Orthodox Mission - PIN 0667277284 - BOA-SUP-2022-04.

Purpose

The purpose of this agenda item is to consider a Special Use Permit, BOA-SUP-2022-04, at 1990 Stewart Street submitted by petitioner Father James Guirguis.

Staff Comments – Planning Director Pam Davison entered the agenda abstract and supporting documents for this agenda item into the official record of the Town.

Special Use Request – The Petitioner is requesting a special use permit to allow an expansion of the existing place of worship use to a building addition within the Residential Medium Density (RMD) zoning district as required by the Permitted Use Table in Section §9-1254 of the Land Development Ordinance (LDO).

Recommendation – Approve BOA-SUP-2022-04 as presented, under the terms and conditions identified in the applicant's application, testimony, site layout exhibit, and preserving all conditions of the special use permit BOA-SUP-2022-04 not inconsistent therewith. OR Deny BOA-SUP-2022-04 as presented.

Mr. Miller requested the Petitioner to please present BOA-SUP-2022-04.

Samuel R. Gray, 7621 Purfoy Road, Suite 211, Fuquay-Varina, stated that he is the attorney representing the Petitioner, St. Raphael of Brooklyn Antiochian Orthodox Mission Church. Mr. Gray advised that the Planning Director Pam Davison presented the evidence to the Board and advised that he would be providing responses to the Findings of Fact before the Board. He explained that he was talking with Mrs. Davison before the meeting and felt this would be an uneventful request for several reasons.

Mr. Gray provided the following responses to the Findings of Fact:

Finding of Fact #1: The proposed use will not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted because a special use permit had already been granted and was deemed at the time that the church use would not present a material risk to anyone thereby its operation by virtue of it being a church. He stated that it would stand here that expanding the church should present no greater risk than being there by virtue of being a church.

Finding of Fact #2: The proposed use meets all required conditions and specifications. Mr. Gray stated that per section §9-1255 c. (6) of the Land Development Ordinance, a place of worship within a residential zone shall be a minimum of three (3) acres in lot size and have a minimum setback of fifty (50) feet from all property lines and public right of ways. Mr. Gray stated that as Planning Director Pam Davison stated earlier in the presentation of the evidence to the Board, the Petitioner is within those

requirements and will maintain a landscape barrier that is currently there. Mr. Gray stated that the landscape barrier would aid with any sound and lights that the expansion to the church might present.

Finding of Fact #3: The proposed use will not substantially injure the value of adjoining property or the use as a public necessity because the construction will not damage the values of adjoining properties. He stated that the use has existed for so long without damaging the adjoining properties' values. He stated that the expanded use should not harm the resident property owners. Mr. Gray stated that creating a larger worship space would benefit the property owners. He stated that the expansion would, in turn, attract parishioners outside of Fuquay-Varina to come to church and, after church, get lunch and spend some time in town, which will increase value in that way. He stated that they would also have a potential polling place, a place for secular meetings, and anything that the church would allow and, for that reason, would benefit the community.

Finding of Fact #4: The location and character of the proposed use, if developed according to the plan submitted, will be in harmony with the area in which it is to be located and in general conformity with the plan of development of the Town of Fuquay-Varina and its ordinances because the expanded church use was harmonious when the Special Use Permit was granted. He stated that it would remain harmonious with the expanded use. Mr. Gray stated that the church is expanding to reflect the area's expanding population and felt the request is very harmonious with the area.

Mr. Gray provided the following responses for contributing factor descriptions:

Circulation: Circulation for safety and convenience for automotive, bicycle, pedestrian movement, and public safety. Mr. Gray explained that the church's expansion would not likely affect efficient traffic circulation. The only time the building would have a substantial increase in traffic would be on Sunday mornings and afternoons when church begins and ends and on Wednesday for vespers services. Mr. Gray stated that it is an Orthodox Christian church that he has been to personally. He stated that the church is a beautiful building. He stated that it is not a massive megachurch that would cause an extensive lineup of cars that would hold up traffic. Mr. Gray stated that the only time any increase in traffic would be in non-business, non-rush hour times and would not create any dangerous traffic patterns.

Parking & Loading Location Areas – Parking lot and loading locations Mr. Gray stated that they are expanding from 35 parking spaces to 36 additional parking spaces. He stated that ample parking should be well within the Town's standards.

Service Entrance & Areas – As seen on the site plan, the dumpster locations shall remain in the same locations and increase as needed or directed.

Lighting – No major changes or additions to lighting. Mr. Gray stated that the church would comply with all Town regulations and ordinances related to lighting. Mr. Gray stated that there would be a landscaping barrier that should stifle any lighting that would bother any neighbors. He stated that the parking lot lighting would be fronting Stewart Street, which is a busy street. He stated that to the north is undeveloped land, and to the South, there is a thick area of wetlands that the church has no plans to develop at this time because it is wet and not suitable for construction.

Utilities – Per the site plan, there will be no major utility changes. Mr. Gray stated that utilities would be in compliance.

Open Space & Landscaping – Mr. Gray stated that there would continue to be open space for the church's activities like childcare and other uses. The church would maintain the open space to comply with the LDO and the existing environmental regulations for the blue line creek on the property and adequate foliage would remain. Mr. Gray stated that a few diseased or damaged trees might be removed, but none would make a substantial difference in the actual canopy or landscape barrier that will be there as required. He stated that there would be a 50-foot buffer in addition to the other open space.

Environmental Protection – Mr. Gray stated that the church would continue to abide by the regulations that come with the blue line creek on the property in addition to any other applicable laws or regulations.

Effect on Adjacent Property – Mr. Gray stated that the church's impact has been minimal and he did not feel that it would increase to have a negative effect on the adjacent properties by simply expanding use. It would benefit the neighboring property owners by giving them an additional gathering place, a civic center, a potential polling place, and a community meeting area.

Compatibility – Mr. Gray stated that as for compatibility, the proposed scale is in compliance with all the setbacks requirements and parking.

Mr. Gray stated that the overall and essential use of the property, which is a place of worship, will not change, it would just be larger. Mr. Gray stated that it was deemed compatible and harmonious with the surrounding area at the time and the expanded use with the expanding population would remain harmonious and continuous as the population increases. Mr. Gray stated that Father James and David Hooten were also present in case anyone had any questions for them. Mr. Gray closed by saying he was happy to go over any other information and was available to answer any questions.

Chairman Dan Miller asked if anyone on the Board had questions for the Petitioner?

Board Member William Hartman stated that in the section labeled "Open Space and Landscaping" on the fifth line, states the open space to the north will be affected. He asked if Mr. Gray could explain how it would be affected because he did not see anything on the map and had some confusion over the disconnect.

Mr. Gray explained that it states affected in the sense that there could be minor changes to any landscaping that is there as needed to expand the parking lot or for temporary dumpsters or things of that nature. He stated that, realistically, it would not be affected as there is nothing major as the plan indicates.

The Board had no further questions.

Chairman Dan Miller asked if anyone in the audience would like to speak in favor or opposition to the special use permit request.

There were no speakers in favor of or in opposition to the request.

Chairman Dan Miller closed the public hearing for Board discussion.

Board Discussion on Finding of Fact #1:

Chairman Dan Miller asked if the Board had any discussion on Finding of Fact #1.

There was no other discussion from the Board.

The Board voted on the Findings of Fact as follows:

Finding of Fact #1: *Board Member William Hartman* made a motion that the proposed use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted, because the plan is maintaining the use of the property as its current designation and no other effects to the surrounding area will be submitted. Upon second by *Board Member Qisoundra Flowers*, the Board voted 5 in favor of the motion and none in opposition of the motion. Finding of Fact #1 was unanimously approved.

Board Discussion on Finding of Fact #2:

Chairman Dan Miller asked if there was any discussion by the Board on Finding of Fact #2.

There was no other discussion from the Board.

The Board voted on the Finding of Fact as follows:

Finding of Fact #2: *Board Member Genel Webb* made a motion that the proposed use will meet all required conditions and specifications as outlined by the Town because the place of worship is within a residential zone and is a minimum of three (3) acres in lot size and will have a minimum set back of 50 feet from all property lines and public rights-of-way. The existing building and the proposed additions shall comply with the requirements, as the building will remain over 50 feet and shall include a landscape barrier. Upon second by *Board Member William Hartman*, the Board voted 5 in favor of the motion and none in opposition of the motion. Finding of Fact #2 was unanimously approved.

Board Discussion on Finding of Fact #3:

Chairman Dan Miller asked if there was any discussion by the Board on Finding of Fact #3.

There was no other discussion from the Board.

The Board voted on the Finding of Fact as follows:

Finding of Fact #3: *Vice-Chair Jeff Jaeger* made a motion that the proposed use will not substantially injure the value of the adjoining property, or the use is a public necessity because the use is not changing, there has been no previous injury to property value in the past, and light spillover and other changes to the property are anticipated to be minimal to the surrounding area. Upon second by *Board Member William Hartman*, the Board voted 5 in favor of the motion and none in opposition of the motion. Finding of Fact #3 was unanimously approved.

Board Discussion on Finding of Fact #4:

Chairman Dan Miller asked if there was any discussion by the Board on Finding of Fact #4.

There was no other discussion from the Board.

The Board voted on the Finding of Fact as follows:

Finding of Fact #4: Board Member William Hartman made a motion that the location and character of the proposed use, if developed according to the plan submitted, would be in harmony with the area in which it was to be located in general conformity with the plan of the development of the Town of Fuquay-Varina and its ordinances because the property will continue to have a harmonious use and any increased traffic from the commercial space will not be affecting the surrounding communities. Upon second by Vice-Chair Jeff Jaeger, the Board voted 5 in favor of the motion and none in opposition of the motion. Finding of Fact #4 was unanimously approved.

Motion – Approve BOA-SUP-2022-04 as presented, under the terms and conditions identified in the applicant's application, testimony, site layout exhibit, and preserving all conditions of the special use permit BOA-SUP-2022-04 as presented.

MOTION: Jeff Jaeger
SECOND: William Hartman
MOTION RESULT: Passed Unanimously (5-0)

Mr. Miller asked Mrs. Davison if there would be a September Board of Adjustment meeting and Mrs. Davison answered that there would not be.

ADJOURN – 7:42 p.m.

MOTION: William Hartman
SECOND: Genel Webb

MOTION RESULT: Passed unanimously (5-0)

Eva Mayfield, Clerk to the Board

11/13/23

Date

Dan Miller, Chairman

11/13/2023

Date