

TOWN OF CARY
ZONING BOARD OF ADJUSTMENT HEARING
May 1, 2017
VARIANCE WORKSHEET

IN THE MATTER OF:

CASE NO. 17-V-01

REQUEST: The applicant requests a reduction in the masonry percentage required by the Community Appearance Manual (CAM) for mixed-use building façades from 75% to 32%.

SUBJECT PROPERTY:

300 Gathering Park Circle
Cary, NC 27519
Wake County PIN10: 0745235809
Real Estate ID: 0294610



PROPERTY OWNER:

Ferrell Land Company, LLC
1200 Morrisville Carpenter Road
Cary, NC 27519

APPLICANT NAME:

Robert A. Brady
160 Iowa Lane
Suite 104
Cary, NC 27511

STAFF CONTACT:

Kevin A. Hales
316 North Academy Street
Cary, NC 27513

(919) 462-3944
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UNDISPUTED FINDINGS:

1. A Variance Application ([Exhibit A](#)) was filed by the attorney representing the subject property owner.
2. The applicant took part in the pre-application conference required by Land Development Ordinance (LDO) Section 3.20.3(B).
3. The subject property is located in the Village Core portion of the Carpenter Village Planned Development District ('the PDD').
4. The subject property is vacant.
5. The subject property is 8.59 acres of the 10.23-acre Carpenter Village Core (84% of the Carpenter Village Core acreage).
6. The Carpenter Village Core contains four existing buildings approved between 2002 and 2005 that pre-date the Town's architectural standards adopted in July 2005. To the best of our knowledge, the existing buildings are legal non-conformities in regard to architectural design. The applicant provided three images of the existing buildings:



Exhibit 6a



Exhibit 6b



Exhibit 6c

7. The applicant's development plan includes four mixed-use (commercial first floor with two floors of residential above) buildings around the perimeter of the subject property.
8. The CAM includes a standard ('Material standard') regarding the percentage of masonry material on building façades reasonably expected to be visible from a vehicle. The Material standard for mixed-use buildings requires 75% of each façade be masonry material. The proposed façades with 75% masonry material look similar to this:



Exhibit 8a

9. The CAM establishes modification procedures consistent with LDO Section 3.19 (Minor Modifications). The maximum staff modification available (15%) could approve a building with 64% masonry material. Town Council (limited to 30%) could approve a building with 53% masonry material. The Council modification would look like the following:



Exhibit 9a

10. The applicant requests approval of building façades providing 32% masonry materials (a 57% reduction).



Exhibit 10a



Exhibit 10b

11. Note 1 under the Village Core heading on sheet 9A of the PDD states the following:

All commercial and office areas will be developed to a unified architectural theme and will be architecturally compatible in building materials and colors within the Village Core. With the first development plan for the village core, a conceptual Master Plan will be submitted.

A master plan was submitted for the Village Core as [99-SP-146](#). This plan includes no architectural information, only building footprints and site development.

12. Notice has been provided as required by law.

APPROVAL CRITERIA

The Board may approve the Variance only if it finds that all of the criteria below have been met:

3.20.5 Approval Criteria

(A) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

Applicant Position:

“Applicant wishes to satisfy the community association request for the reduction to address neighbors’ concerns regarding property valuations. The original design standards established for the development are not consistent with the subsequently adopted limitation as created by the LDO Section.”

Staff Comments:

- Strict application of the ordinance would require the applicant to comply with the Material standard, which requires 75% of each façade to be constructed with masonry materials. The applicant has not clearly identified what “unnecessary

hardship” results from this requirement. They imply that “hardship” results from a perceived inconsistency between the Carpenter Village PDD design standards and the Material standard. The Town does not agree that there is any inconsistency.

- The proposed buildings are new construction; therefore, there are no existing architectural constraints that would prevent compliance with the Material standard.
- The Carpenter Village PDD design standards are consistent with the Material standard. The PDD requires that buildings be “architecturally compatible in building materials and colors within the Village Core.” “Compatible” is not the same as “identical”. Compatible indicates a subjective level of similarity while allowing for variability between individuals.
 - Merriam-Webster defines compatible as “capable of existing together in harmony.”
 - Merriam-Webster defines identical as “being the same.”
- The proposed buildings include the following architectural elements intended to create compatibility with the four existing buildings: use of a hip roof, awnings, barrel vents, large dormers, metal accent roofs, shake siding in gables, decorative panels, mullions in windows, round columns, and a high roof pitch.
- The Carpenter Village PDD limits exterior materials in the Village Core to “brick, sandstone, cast stone, a composite material, or a fiber cement.” Brick, sandstone, and cast stone qualify as Masonry material and would satisfy the Town’s standard.
- Of the four existing buildings, all have some degree of masonry on their facades.
- The Townhomes located across Potomac Grove from one of the buildings are predominantly masonry material on their front elevations.



■ Townhouses Front



Townhouses Side

(B) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardship resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

Applicant’s Position:

“The property is subject to covenants that apply to mixed uses. The LDO Section that is in conflict with the covenants was adopted after the date of filing of these covenants.”

Staff Comments:

- A copy of the covenants that have been asserted by the applicant to apply to the property are attached to this report as Exhibit B.
- Staff has reviewed the document and has found no conflict between the proposed document and the Town’s Materials standards.
 - Specifically, the Village Core Design Standards dated April 5, 1999 covers materials and forms in Section VI B on pages 3 and 4.

- Fig.2 at the bottom of page 3 includes options for Brick & Sandstone, Sandstone & Cast Stone, and Sandstone & Brick, all of which are acceptable masonry materials.
- Section VI-B-1, entitled Wall Materials, indicates a **maximum** of three wall materials may be used on any single building. No minimum mix of materials is indicated.
- The Material standard applies to all new construction in the Town of Cary.

(C) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

Applicant’s Position:

“The Town’s adoption of the LDO is the sole causative factor of this hardship.”

Staff Comments:

- The Town disagrees that there is any conflict between the Carpenter Village PDD design standards, the covenants provided by the applicant, and the Town’s Material standard. The Material standard, requiring 75% masonry on the façade, was adopted by the Town of Cary in 2005.

(D) The requested variance is consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured, and substantial justice is achieved.

Applicant’s Position:

“Original plans that proposed development consistent with the LDO Section were met with strong resistance by property owners. The Ordinance is designed to promote uniformity of construction standards. The request is to maintain the same architectural standards that have existed in the development since it was commenced.”

Staff Comments:

- The Purpose statement of the architectural component of the CAM includes the following language:
 - “The Community Appearance Manual is intended to encourage creativity in design and to clarify procedures used in reviewing development proposals.”

- “The purpose of this manual is to create diverse design. The manual encourages unique architectural expression and does not limit modern or other contemporary building styles.”
 - Merriam-Webster defines uniform as “having always the same form, manner, or degree; not varying or variable.”
- The applicant’s assertion of the design standards purpose as creating uniformity in construction standards is clearly contradicted by the documents’ own Purpose statements.
- The intent of the Town’s Material standard specifically is to provide a message of durability and quality, providing a sense of timelessness to the viewer. In addition, modular masonry material (brick) reinforces the pedestrian scale of a building through the use of human-scale material.
- The standard also furthers the General Purposes of the LDO, specifically Section 1.3.9, which established one of the purposes of the LDO as maintaining and protecting “high quality aesthetic standards for development.”
- The Cary Community Plan also includes a policy statement (Policy 6.8) that seeks to “preserve and maintain Cary’s attractive appearance, with particular attention to the appearance of – and views from – our public spaces, while also encouraging high quality and attractive development.”

SUGGESTED MOTIONS

MOTION TO GRANT VARIANCE

For the reasons discussed, I move that we GRANT the variance as it meets all the approval criteria in section 3.20.5 of the Land Development Ordinance.

OR

MOTION TO GRANT VARIANCE WITH CONDITIONS

For the reasons discussed, I move that we GRANT the variance with the following conditions deemed necessary and appropriate to satisfy the approval criteria of section 3.20.5 of the Land Development Ordinance:

1. *[insert conditions]*
- 2.

OR

MOTION TO DENY VARIANCE

For the reasons discussed, I move that we deny the variance request as it does not meet all of the approval criteria set out in Section 3.20.5, specifically, *[indicate the reason why the request does not meet the approval criteria]*:

(A) No unnecessary hardship would result from the strict application of the ordinance.

a. Specific reasons...

(B) The hardship does not result from conditions that are peculiar to the property, such as location, size, or topography.

a. Specific reasons...

(C) The hardship is the result of actions taken by the applicant or the property owner.

a. Specific reasons...

(D) The requested variance is not consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is not secured, and substantial justice is not achieved.

a. Specific reasons...