

AMENDED MINUTES 09/02/2015

**STATESVILLE BOARD OF ADJUSTMENT
MEETING MINUTES**

August 04, 2015

The Statesville Board of Adjustment met Tuesday, August 04 at 12:30 p.m. in the City Hall Council Chambers located at 227 South Center Street, Statesville, NC.

Board members present: David Steele, David Aman, Sandra Campbell, John Gilbert, Nicholas Yount, Wike

Board members absent: 0

Council present: 0

Staff present: Andrew Ventresca, Brenda Fugett, Christina Clodfelter-City Attorney

Others: 2

Chairman David Steele called the meeting to order.

Election of Officers

Aman nominated Steele for Chairman, seconded by Gilbert. The nomination was approved by acclimation.

Gilbert nominated Aman for Vice-Chairman, seconded by Campbell. The nomination was approved by acclimation.

Consider approving the minutes of the October 07, 2014 BOA meeting

Upon a motion by Gilbert, seconded by Aman, the October 07, 2014 minutes were unanimously approved.

V15-01 - Request for a variance from Section 6.07 of the Unified Development Code, which limits the height of flagpoles to 40' and the size of flags to 8' x 12'. The applicant is proposing a 130 foot flagpole with a 40' x 80' American Flag. The subject property is located at 1220 Morland Drive, further described as Iredell County Tax Map 4743-78-9915.

Chairman Steele explained the quasi-judicial hearing, swore in all speakers then asked for the staff report.

Andrew Ventresca reviewed photos of the property and gave the following staff report:

Background Information

- The subject property, located at 1220 Morland Drive, is owned by Realty Income Corporation

- The subject property is approximately 7.4 acres in size
- The subject property is located within the General Business (B-5) District,
- The variance application was submitted on 6/29/15
- On October 6, 2014 Council amended the UDO to limit the size and height of flags

Variance Request

The applicant is requesting a variance from the signage requirements of the Unified Development Code. More specifically, the variance request is from Section 6.07 (l) Exempt Signs (3) Flags, which limits the height of flagpoles in all zoning districts to 40 feet and also limits the size of flags to 8 X 12. The applicant would like to build a flagpole at 130 feet in height with a 40 X 80 American Flag attached which is a variance of 90 feet in height and 3104 sq. ft. in area.

Review

Camping World has started a new policy to honor veterans by adding extra-large American flags to certain locations across the United States. The applicant states that the flag is needed as it is the company's signature to maintain a patriotic image.

Alternative

The applicant is allowed to erect a flagpole of 40 feet and height and have an 8 X 12 flag.

Campbell asked if there have been any other requests to install an oversized flag in the City. Ventresca replied there has not been. In 2014 City Council approved the current code to limit the flag poles to 40 ft. Prior to that, a flag pole could be as high as the building height that the zoning district allowed, which in this case would have been 65 ft. He pointed out that Randy Marion has an oversized flag which is a grandfathered use.

Aman said the code does not specify where a flag pole must be located, so what would preclude somebody from putting a 90 ft. flag pole on top of their building. Ventresca replied staff would still have to look at it simply as a flag pole and in that case they would have to meet the building height requirement, which in this case would be 65 ft. but considering it is still a flag pole it would be limited to 40 ft. from the ground. Aman pointed out that this is not specified in the code and could be a contentious issue and lacks definition. Mr. Ventresca agreed.

Chairman Steele declared the public hearing open and asked if anyone wished to speak in favor of this item.

Steve Simmons, representing Camping World, came forward to speak in favor of this item.

Mr. Simmons stated he represent Camping World and the people of the United States. He said this is our flag, what we stand for and that our freedoms are under attack every day. We should be able to fly a large flag with no restrictions. This would be located in a business district, not in a residential area and the applicant would understand the limitations if it were. Mr. Simmons played a video of Camping World raising the flag for the board.

Aman stated the word "patriotism" or some form of it was used in the application five times. He asked Mr. Simmons if he agreed that the height of the pole and the size of the flag is no measure of patriotism. Mr. Simmons replied he agreed. Mr. Aman pointed out on Exhibit 5 that it

shows clearly that Mr. Moody clearly understood that there are local ordinances that exist that would not allow a pole and flag this size to be erected. Mr. Aman stated that the code is not denying the use of a flag, only restricting the height of the pole and the size of the flag. Mr. Simmons agreed and asked what harm it could possibly cause anyone or any business in this business district. Aman stated that typically the board is looking for a compelling argument that denial would cause a hardship and he has not heard that argument yet. Mr. Simmons stated it would be hard to prove a hardship of any type to the Board of Adjustment. He said he has served on the Board of Adjustment in Texas and knows the Board is allowed to grant a variance based on five hardships and very seldom will anybody ever meet all of those hardships, if any of them. The Board can grant the variance for whatever reason they deem fit. He hopes that common sense will prevail here and the Board will understand that this will not hurt anyone and will only make the community prouder of where they live because it is a beautiful sight.

Aman asked what Mr. Simmons relationship is with Camping World. Mr. Simmons replied he is a vendor for them. His company manufactures the flag pole, the flag, the installation and the service work. He stated he is also their representative at any Board of Adjustment meetings that are required and so far he has only had to go to one other city. Aman asked if it would be fair to say that Mr. Simmons has a conflict of interest in presenting this case. Mr. Simmons replied that it would be fair to say that he does have a conflict of interest since obviously he is going to make money it.

Wike stated large flags are a beautiful site but the size of the flag does not show patriotism. He pointed out that there is flag protocol and if there are adequate personnel to handle a flag this size.

Mr. Simmons stated the flag weighs 95 pounds and it only takes about ten people to take it down. This flag will only come down during inclement weather.

Steele asked how many flags are currently flying and how many Camping Worlds are there nationwide. Mr. Simmons replied 52 have been put up and 33 are waiting to be put up. There are 166 Camping Worlds now with 250 planned in the next two years.

Campbell asked Mr. Simmons if he agreed that this is a device used for commercial advertising; an attention getter. Mr. Simmons replied it is but it is not the sole purpose for the owner. Campbell said she feels the flag is being used for a use that it was not intended for.

Aman asked if there is a flag currently flying at the Statesville Camping World. Mr. Simmons replied there is not.

Steele asked Mr. Ventresca what the code states regarding lighting of the flag at night. Mr. Ventresca explained the code.

Chairman Steele declared the public hearing closed.

Chairman Steele reviewed the following variance checklist questions.

- 1. If the variance is granted, it will not substantially conflict with any City adopted plans or policies, or the purposes or intent of this code.**

Steele - False
Gilbert – False

Yount – False
Wike – False
Aman – False
Campbell - False

True – 0
False – 6

2. **Hardship results from conditions that are peculiar to the property, such as location, size or topography.**

Steele - False
Gilbert – False
Yount – False
Wike – False
Aman – False
Campbell - False

True – 0
False – 6

3. **Unnecessary hardship would result from the strict application of the Zoning Ordinance.**

Steele - False
Gilbert – False
Yount – False
Wike – False
Aman – False
Campbell - False

True – 0
False – 6

4. **Granting the variance will not set a precedent for future applications.**

Steele - True
Gilbert – True
Yount – True
Wike – True
Aman – True
Campbell - True

True – 6
False – 0

5. **Granting the variance will not be detrimental to adjacent properties or the area.**

Steele - True
Gilbert – True
Yount – True

Wike – True
Aman – False
Campbell - False

True – 4
False – 2

- 6. Granting the variance will not be detrimental to public health, safety or welfare.**

Steele - True
Gilbert – True
Yount – True
Wike – True
Aman – False
Campbell - True

True – 5
False – 1

- 7. The basis for the appeal was not created by the current owner or any previous owners of the property.**

Steele - False
Gilbert – True
Yount – False
Wike – False
Aman – True
Campbell - False

True – 2
False – 4

Campbell made a motion to deny Variance V15-01, seconded by Gilbert. The motion carried unanimously.

Meeting adjourned at 1:20 p.m.