



TOWN OF SMYRNA BOARD OF ZONING APPEALS

MEETING MINUTES

February 16, 2023

5:00 p.m.

Smyrna Town Hall

Chairman Steve Sullivan called the regular session of the Smyrna Board of Zoning Appeals to order on February 16, 2023 at 5:00 p.m. The invocation was given by Chairman Steve Sullivan and the Pledge of Allegiance was led by Scott Demonbreun.

The following Board of Zoning Appeals members/staff were present/absent:

Present: Steve Sullivan, Councilman; Jay Michaelson; Scott Demonbreun

Absent: Phil Wilson; Troy Powell

Staff Present: Brian Hercules, Town Manager; Todd Spearman, Assistant Town Manager; Jason King, Asst. Town Attorney; Kevin Rigsby, Town Planner; Mitchell Wensman, Planner; Kathryn Bobbitt, Office Coordinator; Charles King, Engineer

1. Citizens' Comments: None at this time.
2. Approval of Minutes of the January 19, 2023 meeting.

Motion by Scott Demonbreun, seconded by Jay Michaelson to approve the minutes of the January 19, 2023 meeting.

Vote: 3 - 0 Passed - Unanimously

3. New Business:

- a. Setback Variance:

1. Joshua Eldred
3911 Henricks Hill Drive

Location: 3911 Henricks Hill Drive	Property Owner(s): Joshua & Ansley Eldred
Tax Map/Group/Parcel #: 32L/D/11.01	Zoning/Use Classification: R-3/Single Family Medium Density Residential

Request: For a rear setback variance to allow a deck 11' 9" off the rear property line.



Staff Analysis

The applicant has requested an 8' 3" rear setback variance to place a deck 11' 9" off the rear property line. The property is zoned R-3, Medium Density Residential, and is 10,000 square feet in size. Minimum rear yard setback requirement in an R-3 zone is 20'. The elevated deck is 40' x 12' in size and connected to the home. The property has a 20' PUDE along the rear property line. Public Works has reviewed the structure and would permit the deck to be cantilevered over the drainage easement. This would shift the supporting beams within the easement towards the house, outside of the drainage easement, but would leave the deck within the air space of the easement. There is an existing fence which encloses the rear yard as well.

Section 7.080 D of the Zoning Ordinance detail the requirements for variances not involving special flood hazard areas. These are detailed below.

Zoning Variance Requirements

Section 7.080 of the Municipal Zoning Ordinance lists general requirements for a zoning variance request. Those requirements and staff's findings are as follows:

Section 7.080 Procedure for authorizing zoning variances

The purpose of a variance is to modify the strict application of the specific requirements of this ordinance in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land. The variance shall be used only where necessary to overcome some obstacle which is preventing an owner from using his property under this ordinance.

B. Standards for Variances not Involving Special Flood Hazard Areas:

The board shall not grant a variance unless it makes finding based upon evidence presented to it as follows:

1. The particular physical surroundings, shape, topographic conditions of the specific property involved that would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict application of this ordinance were carried out must be stated.
 1. Staff finds that the property has a uniquely shaped angled rear lot line in a pie shape and the lot location along an arced portion of Henricks Hill Drive, which pushes the house further back on the property.
2. The conditions upon which the petition for a variance is based would not be applicable, generally, to other property within the same district.
 1. Due to the property location along an arc on Henricks Hill Drive, the home is located further back on the property, closer to the rear setback line and the uniquely shaped rear lot lines are not comparable to other lots within the same district.
3. The variance will not authorize activities in a zone district other than those permitted by this ordinance.
 1. Attached structures are allowed by right in the R-3 zoning district, but are to adhere to all applicable setbacks of the principal structure.
4. Financial returns only shall not be considered as a basis for granting a variance.
 1. The property owner has not identified financial returns as a reason for requesting a variance.
5. The alleged difficulty or hardship has not been created by any person having an interest in the property after the effective date of this ordinance.
 1. The creation and size of the lot and house were not completed by the applicant, however the structure has been constructed and completed by the applicant.
6. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same districts.
 1. Staff finds that the variance requested may provide the applicant with special privileges denied by the ordinance to other lands, structures, or buildings in the R-3 district.
7. The variance is the minimum that will make possible the reasonable use of the land, building, or structure.
 1. Staff finds that the requested setback variance may not be the minimum to make reasonable use of this structure for the proposed use. The structure could be constructed to meet setback requirements at a smaller size.
8. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located.
 1. Staff finds that the variance should not be detrimental to the public welfare or injurious to other property or improvements in the area.
9. The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the area.
 1. Staff finds that the variance may not have any of the above effects, but is located above a drainage easement.
10. Variances may be issued for the reconstruction rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places upon a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building, and provide the proposed reconstruction, rehabilitation or restoration will not result in the structure losing its historic designation.
 1. Not applicable.

Conclusion

Staff finds that this property does have an oddly shaped rear lot line. Having the lot located in the arc of Henricks Hill Drive pushes the principal structure towards the rear lot line, creating a constricted building envelope. The structure could also be reduced in size to meet setback requirements. Public Works has indicated that it would be permissible to cantilever the deck while leaving the occupiable

deck area above the drainage easement.

At this time, Chairman Steve Sullivan acknowledged applicant Joshua Eldred to speak regarding this request.

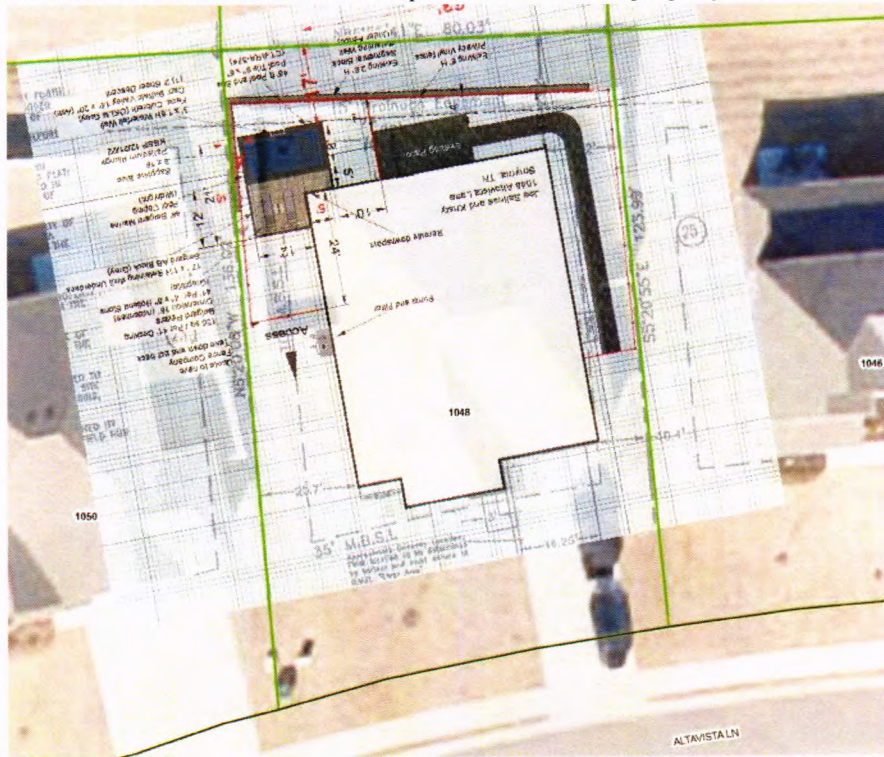
Motion by Jay Michaelson, seconded by Scott Demonbreun to approve the 8'3" rear setback variance and not to use the property within the easement for future structures.

Vote: 3 - 0 Passed - Unanimously

2. Joe & Kristy Salinas
1048 Altavista Lane

Location: 1048 Altavista Lane	Property Owner(s): Joe & Kristy Salinas
Tax Map/Group/Parcel #: 55E/G/24.00	Zoning/Use Classification: R-3/Single Family Medium Density Residential

Request: For a side setback variance to allow a pool 3' off the side property line.



Staff Analysis

The applicant has requested a 5' side setback variance to place a pool 3' off the side property line. The property is zoned R-3, Medium Density Residential, and is 10,334 square feet in size. Minimum side yard setback requirement in an R-3 zone for detached structures is 8'. There is a 15' drainage easement along the rear lot line, in which no structures may be located. There is an existing fence which encloses the rear yard as well.

Section 7.080 D of the Zoning Ordinance detail the requirements for variances not involving special flood hazard areas. These are detailed below.

Zoning Variance Requirements

Section 7.080 of the Municipal Zoning Ordinance lists general requirements for a zoning variance request. Those requirements and staff's findings are as follows:

Section 7.080 Procedure for authorizing zoning variances

The purpose of a variance is to modify the strict application of the specific requirements of this ordinance in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land. The variance shall be used only where necessary to overcome some obstacle which is preventing an owner from using his property under this ordinance.

B. Standards for Variances not Involving Special Flood Hazard Areas:

The board shall not grant a variance unless it makes finding based upon evidence presented to it as follows:

1. The particular physical surroundings, shape, topographic conditions of the specific property involved that would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict application of this ordinance were carried out must be stated.
 1. Staff finds that the property has a fairly uniform shaped lot when compared to other lots in the same district.
2. The conditions upon which the petition for a variance is based would not be applicable, generally, to other property within the same district.
 1. There is a 15' drainage easement located along the rear lot line, which constricts the building envelope for any structures located in the rear yard.
3. The variance will not authorize activities in a zone district other than those permitted by this ordinance.
 1. Pools are allowed by right in the R-3 zoning district, but are to adhere to all applicable setbacks of detached structure.
4. Financial returns only shall not be considered as a basis for granting a variance.
 1. The property owner has not identified financial returns as a reason for requesting a variance.
5. The alleged difficulty or hardship has not been created by any person having an interest in the property after the effective date of this ordinance.
 1. The creation and size of the lot and house were not completed by the applicant.
6. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same districts.
 1. Staff finds that the variance requested may not provide the applicant with special privileges denied by the ordinance to other lands, structures, or buildings in the R-3 district due to the hardship listed above.
7. The variance is the minimum that will make possible the reasonable use of the land, building, or structure.
 1. Staff finds that the requested setback variance may be the minimum to make reasonable use of this structure for the proposed use.
8. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located.
 1. Staff finds that the variance should not be detrimental to the public welfare or injurious to other property or improvements in the area.
9. The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the area.
 1. Staff finds that the variance may not have any of the above effects.
10. Variances may be issued for the reconstruction rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places upon a determination that the variance is the minimum necessary so as not to destroy the historic

character and design of the building, and provide the proposed reconstruction, rehabilitation or restoration will not result in the structure losing its historic designation.

1. Not applicable.

Conclusion

Staff finds that this property is uniform in size and shape to other lots in the subdivision and properties zoned R-3. Detached structures and pools are required to have a minimum of an 8’ setback from the side and rear lot lines. The property has a 15’ drainage easement along the rear lot line, in which no structure may be located. A typical drainage easement is 10’ wide. The 15’ wide easement leaves approximately a 16’ wide area for any use of the backyard, at the widest point.

At this time, Chairman Steve Sullivan acknowledged Amber Baker with Kevin Sparks Signature Pools to speak regarding this request.

Motion by Scott Demonbreun, seconded by Jay Michaelson to approve the 5’ side setback variance due to the hardship of the drainage easement.

Vote: 3 - 0 Passed - Unanimously

b. Special Exceptions:

1. Teresa Curry with Axis Infrastructure, LLC
800 Seven Oaks Boulevard

Location: Almadale Rd. & Seven Oaks Blvd.	Property Owner: Bob Parks
Tax Map/Group/Parcel #: 50L, A, 7.00	Zoning/Use Classification: C-2/Car Wash

Request: For a special exception to allow a car wash in a C-2 zoning district.



Staff Analysis

The applicant has requested a special exception to allow a car wash within a C-2 zone on the vacant tract at the northwestern quadrant of the intersection at Almadale Road and Seven Oaks Boulevard. Surrounding zoning consists of C-2 and PCD (oil and lube shop) to the west. As proposed, there

would be a single access point via the shared driveway with the adjacent business to the west. Three queue lanes would support approximately 14 vehicles narrowing to a single aisle upon entering the building.

Section 7.060 B of the Zoning Ordinance details the requirements for authorizing special exceptions. These are detailed below.

Special Exception Requirements

Section 7.060 of the Municipal Zoning Ordinance lists general requirements for a zoning variance request. Those requirements and staff's findings are as follows:

Section 7.060 Procedure for authorizing special exceptions

The following procedure is established to provide procedures for review of a proposed use as a conditional use or special exception by the Board of Zoning Appeals. The procedure shall be the same whether review is required under Section 13-7-206 of the Tennessee Code Annotated, by this ordinance, or whether a review is requested by the Building Official to determine whether a proposed use is potentially noxious, dangerous or offensive.

B. General Requirements:

A conditional use permit (a special exception) shall be provided the Board finds that it:

1. Is so designed, located, and proposed to be operated so that the public health, safety, and welfare will be protected.
 1. Staff finds the proposed use of a car wash should not negatively affect the health, safety, and welfare of the public.
2. Will not adversely affect other property in the area in which it is located.
 1. Staff finds that the proposed use has the potential to adversely affect other properties in the surrounding area due to noise produced from this use onto the adjacent residential single family dwellings. The entrance of the building would be approximately 330' from the nearest home.
3. Is within the provisions of "Special Exceptions" as set forth in this ordinance.
 1. Section 5.052.2 C lists "car washes and automobile detailing" as a special exception in the C-2 district.
4. Conforms to all applicable provisions of this ordinance for the district in which it is to be located as well as the provisions cited in Sections 7.060 and 7.061, and is necessary for public convenience in the location planned.
 1. Staff finds that this site may be able to conform to all provisions of the Municipal Zoning Ordinance as listed in Criteria Review Section 7.060 C.

C. Criteria for Review:

Prior to the issuance of a special exception, the Board shall make written findings certifying compliance with the specific rules governing individual special exceptions (Section 7.061), and that satisfactory provisions and arrangement has been made concerning all the following where applicable:

1. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
 1. Access to the site is proposed to utilize a single shared access drive with the adjacent tract to the west.
2. Off-street parking and loading areas where required, with particular attention to the items in item 1. above, and the economic, noise, vibrations, glare, or odor effects of the special exception on or by adjoining properties and properties generally in or near the district.
 1. Staff finds that the development of this vacant property will increase traffic, more than currently exists, thus more noise for surrounding property owners, notably the residential

district west of the parcel.

3. Refuse and service areas, with particular reference to the items in 1. and 2. above.
 1. Refuse collection would need to be coordinated with a local company for proper disposal of any waste.
4. Utilities, with reference to locations, availability, and compatibility.
 1. This location has access to gas, water and sewer, all of which are located at the property.
5. Screening and buffering with reference to type, dimensions and character.
 1. The surrounding properties are commercially zoned and would not require any additional buffer other than the requirements set forth by the Design Review Manual.
6. Signs, if any, and proposed exterior lighting with reference to glare, traffic, safety, economic effect, and compatibility and harmony with properties in the district.
 1. Staff finds that the proposed auto wash use will fit the compatibility with properties in the same district in reference to the above effects.
7. Required yard and other open space.
 1. Staff finds that there is adequate space on this lot to support a car wash.
8. General compatibility with adjacent properties and other property in the district.
 1. Staff finds that there are commercial uses present on adjoining parcels as well as the property being located on Almadale Road, which is a minor arterial roadway.
9. The following additional rules apply for upper story residential development proposals:
 1. All upper story residential development proposals shall require a certified statement demonstrating a firm agreement for parking reserved exclusively for the use of the upper story residential development.
 2. All upper story residential development proposals shall be in compliance with all Building, Utility, and Housing Codes within the Smyrna Municipal Code.
 1. Not applicable.

Conclusion

Staff finds that a majority of the surrounding properties are commercially zoned and would fit for the use. The property is located along Almadale Road and Seven Oaks Boulevard, which are highly trafficked. The lot is of adequate size to support this use as well as adhering to regulations required per the Design Review Manual and Zoning Ordinance.

At this time, Chairman Steve Sullivan acknowledged applicant Teresa Curry to speak regarding this request.

Motion by Jay Michaelson, seconded by Scott Demonbreun to approve the special exception with staff recommendations.

Vote: 3 - 0 Passed - Unanimously

2. Michael & Mary-Kaye Mattson with Iluzion Meads, Inc.
1001 Bolton Drive

Location: 1001 Bolton Drive	Property Owner: Michael Mattson
Tax Map/Group/Parcel #: 49H/C/18.00	Zoning/Use Classification: R-3/Single Family Residential

Request: For a special exception to allow an in-home business.



Staff Analysis

The applicant has requested a special exception to allow an at-home business at 1001 Bolton Drive. The property is zoned R-3, medium density single family residential, and is approximately 1.68 acres in size. The applicant is requesting to construct a building which would include the manufacturing, packaging and off-site sales of mead. The structure to be constructed for the business to operate within would be 30' x 40' (1,200 SF); the maximum allowed detached accessory square footage for a property of this size. All sales would be conducted off-site; no customers would be visiting the property. Sales would consist of kegs, bottles and cans to local bars, tap houses, restaurants and online sales. Deliveries to the site would be minimal, averaging a few per month, primarily performed by the owner. Any outgoing shipments would be handled by common carriers (FedEx, UPS, USPS, etc.).

Mead is similar to wine in that the wine process includes fermentation of grapes, but mead is fermented from honey. The TBB (The Alcohol and Tobacco Tax and Trade Bureau) and TABC (Tennessee Beverage Commission) consider mead under the same classification, governed rules and taxation as wine. All federal and state licensing and permits would be required to be obtained by the applicant if approval is granted by the Board of Zoning Appeals. Section 7.060 B of the Zoning Ordinance details the requirements for authorizing special exceptions. These are detailed below.

Special Exception Requirements

Section 7.060 of the Municipal Zoning Ordinance lists general requirements for a zoning variance request. Those requirements and staff's findings are as follows:

Section 7.060 Procedure for authorizing special exceptions

The following procedure is established to provide procedures for review of a proposed use as a conditional use or special exception by the Board of Zoning Appeals. The procedure shall be the same whether review is required under Section 13-7-206 of the Tennessee Code Annotated, by this ordinance, or whether a review is requested by the Building Official to determine whether a proposed use is potentially noxious, dangerous or offensive.

B. General Requirements:

A conditional use permit (a special exception) shall be provided the Board finds that it:

1. Is so designed, located, and proposed to be operated so that the public health, safety, and welfare will be protected.
 1. Staff finds the proposed business of a meadery should not negatively affect the health, safety, and welfare of the public. The general public would not be visiting the place of business on site.
2. Will not adversely affect other property in the area in which it is located.
 1. Staff finds that the proposed use should not adversely affect other properties in the surrounding area as business operations were presented by the applicant. All operations would be conducted within an enclosed building.
3. Is within the provisions of "Special Exceptions" as set forth in this ordinance.
 1. In-home occupations are considered special exceptions within the Municipal Zoning Ordinance.
4. Conforms to all applicable provisions of this ordinance for the district in which it is to be located as well as the provisions cited in Sections 7.060 and 7.061, and is necessary for public convenience in the location planned.
 1. Staff finds that this site may be able to conform to all provisions of the Municipal Zoning Ordinance as listed in Criteria Review Section 7.060 C.

C. Criteria for Review:

Prior to the issuance of a special exception, the Board shall make written findings certifying compliance with the specific rules governing individual special exceptions (Section 7.061), and that satisfactory provisions and arrangement has been made concerning all the following where applicable:

1. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
 1. Access to the site would utilize the existing driveway off of Bolton Drive. A walking pathway would be added by the applicant to access the building from the driveway.
2. Off-street parking and loading areas where required, with particular attention to the items in item 1. above, and the economic, noise, vibrations, glare, or odor effects of the special exception on or by adjoining properties and properties generally in or near the district.
 1. Staff finds that the existing driveway would provide sufficient space for off-street parking.
3. Refuse and service areas, with particular reference to the items in 1. and 2. above.
 1. Refuse collection will continue in the same manner as currently. If additional refuse and service areas are required, it would be coordinated by the applicant accordingly.
4. Utilities, with reference to locations, availability, and compatibility.
 1. This location has all the necessary utilities present on site.
5. Screening and buffering with reference to type, dimensions and character.
 1. Not applicable.
6. Signs, if any, and proposed exterior lighting with reference to glare, traffic, safety, economic effect, and compatibility and harmony with properties in the district.
 1. Any proposed signage will have to meet Sign Ordinance requirements.
7. Required yard and other open space.
 1. Staff finds that the property has sufficient space for the operation of a meadery as the site is approximately 1.68 acres in size.
8. General compatibility with adjacent properties and other property in the district.
 1. Staff finds that the use may not be compatible with adjacent properties as there are no other in-home occupations present within the subdivision that have been presented to the BZA.
9. The following additional rules apply for upper story residential development proposals:

1. All upper story residential development proposals shall require a certified statement demonstrating a firm agreement for parking reserved exclusively for the use of the upper story residential development.
10. All upper story residential development proposals shall be in compliance with all Building, Utility, and Housing Codes within the Smyrna Municipal Code.
 1. Not applicable.

Conclusion

Staff finds that the property provides sufficient space for the business of a meadery. Customers would not be visiting the property with deliveries to be handled by the owner. Staff would recommend, if approved:

- No employees at the property other than those that live in the home.
- There can be no more than one (1) client at a time at the property.
- No outside storage of any item(s) at any time in conjunction with this business.
- Signs are permitted with a maximum size of four (4) square feet and shall adhere to the Sign Ordinance.
- All federal and state licensing and permits would be required to be obtained by the applicant as well as local permits through the Town.

At this time, Chairman Steve Sullivan acknowledged applicants Mary-Kaye & Michael Mattson to speak regarding this request.

At this time, Chairman Steve Sullivan acknowledged Town Planner Kevin Rigsby to speak regarding this request.

Motion by Scott Demonbreun, seconded by Jay Michaelson to deny the special exception request due to the commercial character use in a residential area.

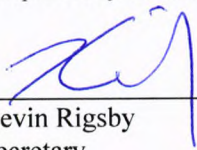
Vote: 3 - 0 Passed - Unanimously

4. Staff comments and/or other business

Chairman Steve Sullivan spoke regarding the one open position on the Board of Zoning Appeals. The month for appointing someone is March, and you can find the application on our website if you are interested in applying .


5. Adjournment

Respectfully submitted:



Kevin Rigsby
Secretary

Certified by:



Councilman Steve Sullivan
Chairman