

**GUILFORD COUNTY
PLANNING AND DEVELOPMENT**

BOARD OF ADJUSTMENT MEETING MINUTES

**Old Guilford County Courthouse
Carolyn Q. Coleman Conference Room
301 W. Market St, Greensboro, NC 27401**

February 6, 2024**Regular Meeting****6:00 PM**

The Guilford County Board of Adjustment met in regular session on February 06, 2024, in the Old Guilford County Courthouse Carolyn Q. Coleman Conference Room, 301 W. Market Street, First Floor, Greensboro, NC 27401, commencing at 6:00 p.m.

Chair Ditra Miller called the meeting to order.

A. Roll Call

The following Board members were in attendance in person for this meeting:

Ditra Miller, Chair; Willie Johnson, Vice Chair; Cary Campbell; Franklin Havens; and Corey Randolph

The following Board members were not in attendance at this meeting:

Larry Standley

The following staff members were in attendance in-person for this meeting:

Aaron Calloway, Planner; Elaine Nolan, Zoning Compliance Officer; Matthew Mason, Deputy County Attorney

B. Agenda Amendments

None

C. Approval of Minutes: January 2, 2024

Mr. Randolph moved to approve the minutes of the January 2, 2024 meeting, as submitted, seconded by Mr. Johnson. The Board voted unanimously in favor of the motion. (Ayes: Miller, Johnson, Havens, Campbell, Randolph. Nays: None.)

D. Rules and Procedures

Chair Miller explained the Rules of Procedure followed by the Guilford County Board of Adjustment.

E. Old Business

None

F. New Business

Evidentiary Hearing Item(s)

Case #24-01-BOA-00006 7962 National Service Road, Greensboro, NC 27409

Administrative materials consisting of the Variance Application and the North Carolina Secretary of State Business Search Report, staff report, aerial map, approved site plan for the site construction, and blank order statements were provided to the Board before the hearing in accordance with N.C.G.S. 160D-406(c).

Swearing in of staff and those speaking on the case

Mr. Calloway was sworn in for his testimony regarding the following case(s)

National Services NC, LLC is requesting a variance from Section 6.1.I.4.a, which requires parking spaces, access drives, and loading areas shall be paved and maintained with concrete, asphalt, or similar hardened dustless materials (not gravel) of sufficient thickness and consistency to support anticipated traffic volumes and weights. The property is located in Deep River Township at 7962 National Service Road, Guilford County Tax Parcel #169803, comprising 7.95 acres and is zoned LI, Light Industrial. The applicant is requesting to allow gravel/stone as a permitted alternative to paving the parking spaces, access drives, and loading areas as shown on the approved site plan, reference case #21-08-GCCP07132. **(GRANTED)**

Aaron Calloway stated that he will give information concerning Case #24-01-BOA-00006, 7962 National Service Road, Greensboro, NC 27409. The applicant is National Services NC LLC, which owns property at 7962 National Service Road, and they are requesting a variance from Section 6.1.I.4.a, which requires parking spaces, access drives, and loading areas shall be paved and maintained with concrete, asphalt, or similar hardened dustless materials (not gravel) of sufficient thickness and consistency to support anticipated traffic volumes and weights. That is the criteria through which the site plan on record was approved. The property is located in Deep River Township at 7962 National Service Road, Guilford County Tax Parcel #169803, comprising 7.95 acres and is zoned LI, Light Industrial. The applicant is requesting to allow gravel/stone as a permitted alternative to paving the parking spaces, access drives, and loading areas as shown on the approved site plan, reference case #21-08-GCCP07132. Staff received the application on January 2, 2024, Notices were sent out on January 23, 2024, and it was posted with signs and took photos of the subject property on January 22, 2024, and the Notice was published on the County website on January 23, 2024, and tonight's hearing is February 6, 2024. The applicant is requesting that gravel or stone be an accepted alternative to paving, as shown on the site plan. From the aerial, it shows I-40 to the north abutting the property, on the east and west and southwest there are industrial or commercial uses. Directly south, across the street there is undeveloped property, but overall, the character of the surrounding properties is industrial or heavy commercial. An analysis from the Stormwater Watershed Engineer regarding the topographic and stormwater features

of the property stated that there are no streams on-site, according to the U.S.G.S. [United States Geological Survey] topo map and Guilford County Survey Map, and there are no regulated flood plains on the site, per the Flood Insurance Rate Map. Per the pre-construction, existing conditions site analysis, from the approved site plan set, the existing site generally drains from north to south and southeast, as sheet flow in or shallow, concentrated flow of the slowest range from 3% to 5%. Drainage may become concentrated at the draw at the southeast corner of the site before discharging to an existing 48" CMP storm pipe that crosses below National Service Road towards the south. There are known, well-defined channels on the existing site. There are two (2) existing driveway pipes and existing roadside swales on the north side of National Service Road right-of-way that discharges to the existing 48" CMP. That was all per the pre-construction existing conditions that were included within the approved site plan set. Per the analysis based off of the grading plan in that approved site plan set, drainage from the disturbed areas generally discharges as sheet flow or shallow concentrated flow until it reaches proposed swales on the west and east side of the proposed facility, driveway and parking areas. The swales discharge towards the south to the existing 48" CMP. A yard inlet and pipe are proposed just south of the proposed facility to convey run-off from the west side of the site, below the proposed driveway, and ultimately, to the 48" CMP. Once again, all of that analysis was based off of the grading plan in the approved site plan set. Finally, the site is proposed below 24% BUA (Built Upon Area), impervious area, which means it does not require storm water management, and notably, per the Stormwater Engineer, the analysis of the site in regard to gravel or stone, would be the same in terms of the impervious area and built upon area as it would be paved asphalt or concrete. So, the use of gravel or stone would not change the storm water calculations.

Chair Miller asked that anyone wishing to speak in favor of the request to come forward, state their name and address for the record.

Nick Blackwood, 804 Green Valley Road, Ste 200, was sworn in. He stated he is representing the owners of the property located at 7962 National Service Road, Greensboro, NC. The applicant plans to operate a vehicle sale and service business on-site. Mr. Blackwood provided a 10-page packet titled "Variance Application" to the Board members for their review. The larger rectangle towards the middle of the property is the service facility for the vehicles. The square located to the northern portion of the property, closest to I-40, is the vehicle showroom. The areas shaded in blue have already been paved and it shows the access aprons, in compliance with NC DOT's requirements paved along National Service Road and the required parking areas paved in front of the service building, as well as the required parking areas, handicap parking and pedestrian access paved around the showroom. The scope of the request tonight is related to what is shown in the gray-shaded areas, that being the access drive and that is what is currently No. 57 Washed Stone. That is what the applicant would like to proceed with, rather than paving that access drive.

In regard to the site plan, slides shown by Mr. Blackwood show images of the property and the improvements he just referenced on the site plan. The Engineer has identified the location of three (3) sinkholes that were found on the site during the construction process. Jim Galyon, Tony Collins and Mike McMillan, who are licensed General Contractors, are in attendance if there are any questions from the Board members. The sinkholes have occurred because of all the recent rain and storm events in the area. Gene Mustin is the Civil Engineer and may

be able to speak to some of the more technical components of this issue. The recommendation of the General Contractors and Civil Engineers is to maintain the #57 Washed Stone along the access drive, knowing the propensity of this property to develop sinkholes, for the purposes of identifying those sinkholes and making repairs, thus limiting the risk of injury to employees and anyone traversing that access drive and heavy trucks and vehicles. The benefit is that the owner will be able to readily identify these sink holes when they occur and they will have the means to go in and repair them immediately, rather than waiting for something catastrophic to happen due to those sink holes being hidden under a paved surface. Letters were sent out to all the neighboring properties to notify them of the sink hole issue and there were no responses from anyone.

Mr. Randolph asked if soil samples have been taken on the site and if they know, relatively, what the soil make-up is of the entire lot. Mr. Blackwood responded that they have not done soil samples. Mr. Randolph asked what is the relative risk between paving over the sinkhole and finding a new sinkhole versus the stone the applicant is now asking to be used? Mr. Blackwood responded that the risk with paving over it, is that they would not be able to identify those sinkholes until someone is traveling across that portion of the property with a vehicle, so the incident they are trying to avoid will be the reason why they are aware that the sinkhole is there and being able to address it before it becomes dangerous. It would be easier to identify the initial stages of the formation of a sinkhole with the #57 Washed Stone, rather than paving over it.

Chair Miller asked for anyone wishing to speak in opposition to the request to come forward, state their name and address for the record.

Tim Williams, with Vanguard Truck Center, 7940 National Service Road, was sworn in and stated his property is adjacent to the subject property. He is concerned about the stone the applicant is wishing to use. He has never heard of stone that is completely dust free. His property is next door to the subject property and all their property is paved with asphalt and concrete. There would be a lot of 18-wheelers, loaded with new trucks coming into the property. They have been there about 8 ½ years and have not experienced any issues with sinkholes on their property. The portions of the property that are not paved have grass planted. Mr. Williams stated that he anticipates there will be a lot of dust coming onto his property from the adjacent property causing considerable issues with their shop operations. The other businesses in the area have been required to pave their properties and they followed the City ordinances, so he is having trouble understanding why there would be a concession given in this case, with no soil samples being done. He just does not understand it and would like clarification. His business operates heavy equipment, very heavy equipment, 18-wheelers come in there loaded with about 80,000 lbs. running across his property that is paved and they have had no sink holes or any issues with the parking lot. If it becomes a dust problem, hot and dry in the summertime, it will cost them more money to wash their trucks. There is a workshop there with 16 bays and in the summer, it is not air conditioned, so the doors are open, which would cause a dust problem inside their shop. In the heavy truck business, things are already dirty enough anyway and they don't need it to get any worse. He wanted to know, if the property has sinkholes, how were the buildings constructed without potential structural issues? He is not making the argument that there are not sinkholes on the property, he is saying that they are 50 yards away and they have had no problem with sinkholes in the 8 ½ years they have been there. They were in their building when the

rain from Hurricane Matthew came through and they had no problems during that time. In response to a question posed by Mr. Randolph, Mr. Williams stated that they have not seen any dust problems yet, but he stated that with the use of the proposed stone, there will be some kind of dust being blown onto his property, especially during the summer, when it is hot and dry and the wind blowing, that is what he is concerned about. He is thinking ahead about potential issues with that.

Mr. Randolph asked how long the existing building has been on the subject property? Aaron Calloway responded that the original plan was approved in 2021 and the application for a variance was triggered because the improvements on the site have reached near completion and they were trying to get the C.O. [certificate of occupancy] for the site, but then the issue of the sinkholes came about. Mr. Randolph stated that what he is trying to understand is, was the construction only been completed since there were wet conditions or was it completed prior to this now, assuming wet conditions had existed earlier, from the winter? Mr. Williams stated that he is not in Greensboro every day, but he remembers that during the construction there was some dust there, but it was not really a concern as they created dust when they constructed their building 9 years ago. That is just part of the building process, but once the building process is complete and the business is there and established, that's when he has concerns. Then it becomes an everyday issue, not just new construction issues.

Chair Miller asked if the applicant's representatives would like to make rebuttal statements?

Rebuttal:

Nick Blackwood stated that he didn't really have anything to add, as he felt the applicant's representatives had covered just about everything, but he asked Mike McMillan to come forward to clarify some concerns.

Mike McMillan, 5826 Cadiz Road, Julian, NC, was sworn in and stated that he works for Collins Galyon, the General Contractor, and was the Project Manager on the site for the construction. Initially, they were in the process about 18 months on this project, trying to complete the project and get the required inspections done when they put the gravel down and the sinkholes started showing up. They were not aware of them during the process of the project itself. The first one showed up after the first rain event at the first of November. The drawings presented to the Board showed the hole that they over-excavated to try to fill in and correct the issue. It was approximately 12' x 12' and 14' deep and they filled it with concrete to try to mitigate the problem when the 2nd hole showed up. The other 2 areas, they undercut them approximately 3 feet and filled them with stone and compacted it as well. All three continued to show up under heavy rain events, not to the severity they did the first time, but a hole 10' x 10' and 14' deep could hold a very large truck. They documented their work and showed that the sinkholes do exist. When the owner purchased the property, they had the property designed to put the foundations in for the two buildings and they undercut those areas, brought in soil and compacted it to build the structure on. During the process of building the structures, they did create some dust, but that was before they put down any stone. He explained that the #57 stone is a stone that has been through a pre-wash process before it is shipped to them and it does not have the dust or the fines contained within it, that create the dust. It would be used in the maintenance area and will not be like a gravel road that people would use every day. That is the specific reason that they are using the #57 stone to mitigate any occurrence of dust or problems in the future with that.

Nick Blackwood returned to the podium and stated that this is a reasonable request that still accomplishes the intent of the ordinance, while taking into account the safety of the people traversing over that access drive on the property.

Counsel Mason asked if Mr. Blackwood intended to offer the 10-page packet titled "Variance Request," which was handed out, into evidence. Mr. Blackwood stated that would be his intent. Chair Miller indicated that it was accepted.

Chair Miller asked if there would be any other rebuttal and no one came forward.

Counsel Mason stated that staff would prepare an order reflecting the Board's ruling and bring it back for approval at the next meeting.

Board Discussion:

Mr. Johnson asked if the Board's decision would run with the property until perpetuity? Counsel Mason stated that was correct unless the Board sets a time period on it.

Chair Miller asked if someone would like to make a motion.

Mr. Johnson stated that the Guilford County Board of Adjustment, having held a hearing on February 6, 2024, to consider Case #24-01-BOA-00006, submitted by National Services, LLC, a request to use the property located at 7962 National Service Road, being Tax Parcel #169803 in a manner not permissible under the literal terms of the ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACTS and draws the following CONCLUSIONS:

- 1) It is the Board's conclusion that unnecessary hardship **will** result from the strict application of the Ordinance. It shall not be necessary to demonstrate that in the absence of a variance, no reasonable use can be made of the property. This conclusion is based on the following FINDINGS OF FACT: Unnecessary hardship would result from strict application of the regulation in that Applicant would be required to install asphalt over known sink-hole locations, resulting in foreseeable risk of significant injury to employees and patron of the business. Due to the location of existing utilities on site, the location of the proposed access drive is limited to that as shown on the site plan. Said location of the access drive crosses over known sinkholes which the Applicant discovered after acquiring the property, which sink-holes form after heavy rain events. Installing asphalt or other paved surface along the access drive will eliminate Applicant's ability to efficiently repair the sinkholes following heavy rain, and the sub-surface condition along the access drive will be hidden from view by the asphalt, which may appear structurally sound although compromised below the surface. If Applicant is able to maintain a gravel/rock access drive, the sinkholes will be easily visible, and Applicant will have the ability to quickly repair the drive so as not to risk harm to persons accessing the property.

Further, the topography of the property at the easternmost point of access (which is intended for truck access) is such that low-clearance vehicle hauling trailers will drag the ground upon entry to the property. If paved, this will result in damage to the asphalt/paved surface that will

require frequent repaving/repair. If gravel/rock, the Applicant will be able to quickly repair/resurface the entry point to maintain the integrity of the access drive.

- 2) It is the Board's conclusion that the hardship **does** result from conditions that are peculiar to the property, such as location, size, or topography., Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis of granting the variance. This conclusion is based on the following FINDINGS OF FACT: As noted, the hardship results from conditions peculiar to the property's topography in that the sinkholes and elevation of the property near the point of access are not conducive to a paved access drive. The Applicant is constrained in locating the access drive based on the layout of the proposed development and the site's existing utilities.
- 3) It is the Board's conclusion that the hardship **does not** result from the actions taken by the Applicant or the property owners. The act of purchasing property with knowledge that the circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. This conclusion is based on the following FINDINGS OF FACT: The applicant acquired the property in its as-is condition and took no action to create the subsurface conditions causing the occurrence of sinkholes, and the property's topography at the point of access has not been altered by Applicant.
- 4) It is the Board's conclusion that the requested variance **is** consistent with the spirit, purpose, and intent of the Ordinance, so that public safety is secured and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT: The requested variance is consistent with the spirit, purpose and intent of the regulation in that Applicant's use of gravel/stone on the access drive will have no negative impacts on neighboring property owners (i.e. dust). Applicant has considered the potential for nuisance associated with the gravel access drive and has specifically selected #57 stone (a washed stone). This stone type has no dust particles and significantly reduces the potential for any negative impacts on nearby businesses. Public safety will be enhanced by Applicant's use of gravel/stone on the access drive as new sink-hole locations will be visible and quickly repairable, eliminating the risk of an unsuspecting person driving over compromised asphalt.

Mr. Johnson moved to grant the variance and accept the changes posed by the Applicant, seconded by Mr. Randolph. The Board voted unanimously in favor of the motion, by roll call vote. (Ayes: Miller, Johnson, Havens, Campbell, Randolph.)

Chair Miller stated that the variance has been granted and the applicant will receive information from the Planning Department in regard to that.

G. Other Business

None

H. Adjournment

There being no further business before the Board, the meeting adjourned at 7:28 PM.

The next meeting is scheduled for Tuesday, March 5, 2024