
FUQUAY-VARINA BOARD OF ADJUSTMENT
MEMORANDUM

To: Paul Sherman, Chair and Members of the Board of Adjustment
From: Kari Terwilliger, Planner I
Subject: BOA-VAR 2010-01 – Beth Ann Young; 2916 N Main Street, Suite 112
Date: March 8, 2010

Request: In this case the petitioner Beth Ann Young is requesting a variance from the required setback in a CH Highway Commercial District for a Kennel. The district, in accordance with the requirements of §9-4082a(B) which states that any building used for or in association with a kennel shall not be located closer than 50 feet to a property line. The existing building which the petitioner wishes to utilize (located at 2916 N Main Street, Suite 112) is one of three commercial shell/flex space buildings owned by Haddock Properties V, LLC. The building that the petitioner would like to lease is 14 feet from the northeast side property line, 75 feet from the front property line along N Main Street (US 401), 385 feet from northwest side property line, and approximately 1,050 feet from the rear property line. The petitioner is requesting a Variance of 36 feet from the northeast side property line.

Background: Sections 9-4072 (page), 9-4082(page) and 9-4155(3) (page 132) are pertinent to this case:

Section 9-4072 CH HIGHWAY COMMERCIAL DISTRICT. (applicable sections)

(1) Permitted Uses

xx. Kennel, boarding (subject to the requirements of § 9-4082a(B))

Staff Comment: ***The petitioner would like to open a kennel in an existing shell/flex space building owned by Haddock Properties V, LLC. The petitioner would be leasing the entire building. This building is therefore subject to the requirements of §9-4082a(B) below.***

Section 9-4082 ACCESSORY USES AND BUILDINGS. (applicable sections)

An accessory use or building as defined in this ordinance and permitted in any residential, commercial or industrial district shall be subject to the following requirements.

a. *Residential*

(B) The following conditions shall apply to kennels, boarding and breeding; stables, boarding, breeding, and riding schools; and maintaining and breeding hunting dogs:

a) Kennel, commercial boarding, kennel, commercial breeding; commercial stable boarding, breeding, and riding school; and maintaining commercial breeding of hunting dogs are permitted in Residential-20, Residential-30, and Residential-40 Districts. Kennel, commercial boarding only is permitted in the Highway Commercial District and Offensive Use District; and a special exception in the Industrial District. In addition, the following conditions shall apply to all uses:

1. Any structure used for or in association with a kennel, boarding or breeding; stable, boarding, breeding or riding school; or maintaining and breeding of hunting dogs shall not be located closer than 50 feet to a property line or 100 feet to a residential dwelling unrelated to the above uses.

Staff Comment: *The existing building at 2916 N Main Street meets this requirement on all but one side. The petitioner is requesting a 36 foot variance from the northeast side property line.*

2. A fire alarm system or personnel shall be available on site 24 hours a day for safety and fire protection.

Staff Comment: *The petitioner has provided a statement in their petition that this requirement will be met with their building plans.*

3. Bona fide farms are exempt from the conditions of the section.

Staff Comment: *This property is not a bona fide farm.*

b) Animal hospital and veterinary office and clinics in CDF-I, CDF-II, CH, LI and I may also include boarding under the following conditions:

1. The principal use of the facility if for hospital and clinic use and no more than 40% of the gross floor area may be used for boarding of animals that are not at the facility for medical reasons (surgery, observation, treatment).

Staff Comment: *According to Appendix B of the petition (floor plan) only one suite of 5 or approximately 20% of the building will be used for future veterinary use. The primary use at this time is for boarding.*

2. The medical and boarding must be in a free-standing building, and the boarding must be in the same building as the medical facility.

Staff Comment: *According to the petition, both Appendix B and the petitioner's written statement, this requirement will be met.*

3. Dog runs must be under roof, totally indoors and attached to the principal building using the same material as the principal building. These runs also count toward the 40% floor area for boarding.

Staff Comment: *According to the petitioner's written statement, this requirement will be met.*

4. The facility must be a minimum of 100 feet from a residential dwelling and provide an evergreen screen along the side of the property adjacent to residential zoning. If the proposed facility

includes boarding that is closer than 50 feet to any property line, then the wall of the indoor facility adjacent to the property line that is less than 50 feet must be a solid wall.

Staff Comment: ***According to the petitioner's written statement, this requirement will be met.***

5. The facility must be located on a tract of land no less than 30,000 square feet.

Staff Comment: ***This requirement has been met.***

6. Ventilation and noise abatement measures must be provided in accordance with county, state and federal guidelines.

Staff Comment: ***According to the petitioner's written statement, this requirement will be met.***

7. Either a fire alarm system or personnel must be available on site 24 hours a day for safety and fire protection.

Staff Comment: ***According to the petitioner's written statement, this requirement will be met.***

Section 9-4155 POWERS AND DUTIES.

(3) *Variances.* To authorize upon appeal in specific cases such variances from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. A variance from the terms of this ordinance shall not be granted by the Board of Adjustment unless and until it shall make a finding;

- a. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district. [Variance cannot be based on economic hardship, unique personal or family hardship or hardships suffered by the applicant in common with his neighbors.]
- b. That the literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance. [Requires evidence of hardship resulting from the application of the ordinance to the property. Facts and arguments need to show that the variance represents the least possible deviation from the letter of the ordinance.]
- c. The special conditions and circumstances do not result from the actions of the applicant. [Previous knowledge or violations of the ordinance prior to an application to the Board are not conditions which the Board would consider justification to grant a variance.]
- d. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other land, structures, or buildings in the same district. [State the facts and arguments that the variance will be in harmony with the general purpose and intent of the ordinance and that the public safety and welfare are secured.]

The following are items which need to be considered by the Board before a decision is made for this case:

- Will the petitioner meet all other requirements for a kennel in a CH Highway Commercial District except for the northeast side setback?

Staff Comment: Yes. According to the petitioner's statement this building will be used primarily as a kennel/boarding facility with the possibility of veterinary space in the future. All other requirements except for the side setback will be met by the petitioner.

- Was the need for this request caused by the petitioner?

Staff Comment: No. The building was built by Haddock Properties V, LLC as commercial flex space with no specific tenant/use in mind. According to the petitioner's written statement the building was near completion when she expressed interest in leasing it for use as a kennel.

Required Findings of Fact:

- That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district. [Variance cannot be based on economic hardship, unique personal or family hardship or hardships suffered by the applicant in common with his neighbors.]
- That the literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance. [Requires evidence of hardship resulting from the application of the ordinance to the property. Facts and arguments need to show that the variance represents the least possible deviation from the letter of the ordinance.]
- The special conditions and circumstances do not result from the actions of the applicant. [Previous knowledge or violations of the ordinance prior to an application to the Board are not conditions which the Board would consider justification to grant a variance.]
- That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other land, structures, or buildings in the same district. [State the facts and arguments that the variance will be in harmony with the general purpose and intent of the ordinance and that the public safety and welfare are secured.]