

**TOWN OF MORRISVILLE  
BOARD OF ADJUSTMENT**

**AGENDA**

Tuesday, March 21, 2006

7:00 p.m.

Commissioners Room, Morrisville Town Hall

- 1. Call to Order and Invocation**
- 2. Approval of February 21, 2006 Minutes**
- 3. Public Hearing for Variance**
  - BOA 05-04 – An appeal by Crowder Construction Company on the grounds that the Ordinance does not require a site plan for Triangle Landscape Supplies of Raleigh to conduct the activities that it is conducting on the relevant property.
- 4. Staff Comments**
- 5. Board Member Comments**
- 6. Adjournment**

PLEASE CONTACT NATALIE SPENCER AT (919) 463-6194  
IF YOU CANNOT ATTEND THE MEETING.

**MORRISVILLE BOARD OF ADJUSTMENT**  
**Agenda Item**

PETITION FOR APPEAL

**Meeting Date:** March 21, 2006

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**PURPOSE**

Part D, Article 1, Section 1.3 of the *Town of Morrisville Zoning Ordinance* identifies the powers and duties of the Board of Adjustment as follows:

*Administrative Review:* To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, permit, decision, determination, or refusal made by any administrative staff member carrying out or enforcing any provisions of the ordinance. A concurring vote of four-fifths of the members of the board shall be necessary to approve a special use, variance, or to reverse wholly or partly any decision pertaining to property within the Morrisville zoned area. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

In this case the Board is being asked to consider an appeal by the property owner of a decision of administrative staff endorsed by the Zoning Officer.

**PROJECT SUMMARY**

- **Owner:** Crowder Construction Company
- **Location:** 10706 Chapel Hill Road
- **Zoning:** Industrial Management (IM)
- **Lot Area:** 10.30 acres including right-of-way (BM 1989, Page 1297)

**APPELLANT'S GROUNDS FOR THE APPEAL**

Part D, Article II, Section 4 of the *Zoning Ordinance* sets forth that appeals from the enforcement and interpretation of the *Zoning Ordinance* may be taken to the Board of Adjustment by any person aggrieved or by any officer, department or board of the town affected. Crowder Construction Company (Crowder) appeals Notice of Violation, ZN-139-05 as follows:

Crowder appeals on the ground that the Ordinance does not require a site plan for Triangle Landscape Supplies of Raleigh, to conduct the activities that it is conducting on the relevant property. The applicant is of the opinion that the proposed Triangle Landscape Supplies use is essentially the same as a previous landscaping supplies business which ceased operations on the site in fall 2004, and a site plan is therefore not necessary. Additionally, Crowder appeals from and protests the amount of the appeal fee, which is \$500.00, on the ground that it exceeds a reasonable amount for the appeal and has the effect of being punitive and deterring appeals. Crowder requests a refund of the appeal fee." (Attachment 1)

## **BACKGROUND INFORMATION**

On July 15, 2004, Jeffrey H. Mangum, President of Triangle Landscape Supplies contacted Philip Culpepper, the previous Planning Director, regarding his company's desire to locate a facility on 10 acres of land located at 10706 Chapel Hill Road. This letter further stated that the facility would consist of concrete bulk bins to separate the different products, decorative gravels, etc, and that products would consist of all types of stone, decorative gravels, mulches, soils, erosion control materials, seeds, fertilizers, geo-tec fabrics, and irrigation parts. In addition to those materials, the letter states that a horizontal grinder is used to regrind hardwood bark obtained from a chip mill to make triple-shredded hard wood bark.

On July 21, 2004, Philip Culpepper responded to Mr. Mangum's request on the proposed use. Mr. Culpepper stated that in his opinion the business described in the letter an allowed use within the Industrial Management Zoning District. He further stated the following:

1. You will need to get a site plan approved by the Board of Commissioners.
2. You will be required to make improvements to Chapel Hill Road.
3. There is a 100' wide right-of-way that must be incorporated into your plan. This alignment bisects the property.

Triangle Landscape Supplies submitted a revised site plan for the Crowder Construction site on January 13, 2005. On March 9, 2005, Courtney Tanner, Planner, sent a review comment letter to Mr. Mangum, stating that staff did not complete a comprehensive review of the site plan since all elements of Part D, Article II, Section 1.1.1 of the *Zoning Ordinance* were not submitted with the application. A revised site plan was submitted on June 8, 2005. On July 12, 2005, Courtney Tanner sent additional review comments. No further site plan revisions or communications were submitted by the applicant.

On September 22, 2005, Crowder Construction Company was issued a Notice of Violation, ZN-139-05, for conducting a business without site plan approval.

## **ORDINANCE REQUIREMENTS**

Part A, Section 2.2(b) of the *Zoning Ordinance*, which specifies the applicability of the Ordinance to land uses and activities, states that the following is subject to the provision of the *Zoning Ordinance*:

Continuation of Existing Conforming Uses: land or structures, or uses of land, or structures which conform to the regulations for the district in which it is located may be continued, provided that any structural alteration or change in use shall conform with the regulations specified herein.

In addition to the above section, Section 11.2 of the Industrial Management District permits "manufacturing, including processing" with "site plan approval".

## **EVIDENCE AND FINDINGS**

The previous tenant of the site was Valley Crest, a landscape development company (per the expired privilege license, fall 2004). Triangle Landscape Supplies bases its current appeal on the premise that the Valley Crest business was essentially the same as Triangle Landscape. However, staff is of the opinion that there is a change in use since the previous landscaping company did not manufacture products (e.g., triple-shredded hardwood bark) on site. "Manufacturing" as defined by *A Planners Dictionary* (American Planning Association, 2004) is

the “mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the manufacturing of products, and the blending of materials, such as lubricating oils, plastics, resins, or liquors.” To produce triple-shredded hardwood bark, coarse bark is mechanically transformed using a shredder to manufacture a product. Since the previous landscape development company purchased, rather than manufactured this product, the “change of use” provision of Section 2.2(b) and the “site plan approval” provision of Section 11.2 are applicable and require site plan review.

In summary, Triangle Landscape Supplies was notified that a site plan, approved by the Board of Commissioners, was required. Triangle Landscape Supplies acknowledged this requirement by submitting a site plan application for the new proposed use. However, final site plan approval, (including addressing proposed conditions) was not completed and use of the site commenced prior to approval of the site plan.

With regard to the requested waiver of the \$500 fee, the fee (which is intended to partially recoup costs of advertising and staff time) has been established as part of the Budget Ordinance adopted by the Board of Commissioners. Neither staff nor the Board of Adjustment has the authority to waive the fees. This request must be made directly to the Board of Commissioners.

#### **STAFF RECOMMENDATION**

Staff recommends that the Board of Adjustment uphold the staff opinion to require a site plan.

#### **SITE PHOTOGRAPHS (1/12/2006)**

