

# **BOARD OF ZONING APPEALS**

**Agenda**  
**April 7, 2014**  
**4:00 P.M.**

- 1. Call to Order; Roll Call**
- 2. Public Hearing**
  - A. Hear public comment on the proposed variance
  - B. Close Public Hearing
- 3. Invocation and Pledge of Allegiance**
- 4. Public Comments**
- 4. Consent Agenda**
  - A. Approval of Agenda Format
  - B. Approval of Minutes of September 24, 2013
- 5. New Business**
  - A. Variance Application – Former Be-Lo Grocery Store Property, Mason Avenue
- 6. Adjourn**



**DRAFT**  
**Board of Zoning Appeals**  
**Public Hearing & Meeting**  
**Town Hall**  
**September 24, 2013**  
**4:00 p.m.**

At 4:00 p.m. in the Town Hall, Town Planner Rob Testerman called to order the Board of Zoning Appeals Public Hearing and Meeting. In attendance were Board members Pete Baumann, Gene Kelly, Julia Parr, Ray Salopek and Jay Wiegner. Also present were Town Manager Heather Arcos, Code Official Jeb Brady, Assistant Town Clerk Amanda Hurley and Howard Simpson of Simpson Builders. There were approximately eight members of the public in attendance.

Gene Kelly led the Board in the recitation of the Pledge of Allegiance.

**NEW BUSINESS**

Rob Testerman stated that the first item on the agenda was the election of officers. Jay Wiegner nominated Gene Kelly for Chair.

**Motion made by Jay Wiegner, seconded by Ray Salopek, to appoint Gene Kelly as Chair of the Board of Zoning Appeals. The motion was approved by unanimous consent.**

Jay Wiegner nominated himself as Vice Chair.

**Motion made by Jay Wiegner, seconded by Ray Salopek, to appoint Jay Wiegner as Vice Chair of the Board of Zoning Appeals. The motion was approved by unanimous consent.**

**PUBLIC COMMENTS**

*John R. Boytos, 16430 Wanderers Port Lane, Onancock, VA 23417*  
Please see attached.

*John C. Boytos, Cape Charles, VA 23310*  
Mr. Boytos signed up, but declined the opportunity to speak.

**CONSENT AGENDA**

**Motion made by Jay Wiegner, seconded by Julia Parr to accept the agenda format as presented. The motion was approved by unanimous consent.**

The Board reviewed the minutes from the April 29, 2010 meeting.

**Motion made by Jay Wiegner, seconded by Pete Baumann, to approve the minutes from the April 29, 2010 meeting as presented. The motion was unanimously approved.**

**NEW BUSINESS**

*Variance Application – 510 Brass Ring Ave – New home with chimney encroachment into the side yard*

Rob Testerman explained that the site plan was approved in error in April 2013. Section 9.8(B)4 of the Planned Unit Development (PUD) Ordinance stated “chimneys which do not extend more than 24 inches into the yard are allowed.” However, this chimney was 28 inches and was shown as 28 inches on the plan that was approved. Section 2.6.2 B of the Zoning Ordinance stated, “No such variance shall be authorized by the board unless it finds all of the following conditions exist: 1.) That the strict application of the ordinance would produce undue hardship 2.) That such hardship is not shared generally by other properties in that same zoning district and the same vicinity and 3.) That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.” Rob Testerman stated that with the home being almost complete and consistent with the approved

building and site plans, requiring the builder to adhere to the regulation would require the chimney to be torn down and rebuilt. Had the Town not mistakenly approved the plan, this would be the required action, but since the builder was working under approved plans, enforcement of the regulation would create an undue hardship to the homeowner and builder. The hardship was not shared by other properties in the vicinity because it was created by an erroneous plan approval by the Town. Granting the variance would allow the chimney to remain as it currently stood which extended four inches farther than allowed into the side yard setback. The chimney did not extend onto any adjacent property and did not create a substantial detriment to the adjacent property. Granting the variance to allow the chimney to extend the extra four inches would not change the character of the district. The PUD Ordinance defined a variance as “a relaxation of the terms of the PUD Document where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the PUD Document would result in unnecessary and undue hardship.” Rob Testerman explained that the proposed variance would not be contrary to the public interest as the proposed variance would merely allow the chimney to remain as it stood, extending four inches further than was provided for in Section 9.8 of the PUD Documents. The conditions were peculiar to the property as the Town approved the plan in error and was not realized until after receiving citizen complaint. The violation was not a result of the actions of the applicant as the home was being built to the Town approved plans. It was Staff’s feeling that requiring the chimney to be torn down and rebuilt 24 inches into the side yard setback, rather than the current 28 inches, would be an unnecessary and undue hardship as the plans were approved by the Town. Rob Testerman read the email from the property owner of Lot 35, Mark Riddle which outlined his concerns.

Pete Baumann questioned that other than the bank getting involved, why was there a need for a variance if the permit was granted, the building took place, the permit was not rescinded and there was no directive to tear down the chimney stating that he did not understand what the property owner was appealing. The property owner, in his opinion, was not the aggrieved party.

Mr. Simpson stated that he had received a call from the mortgage company stating that Ms. Kim Boytos had called and informed her that the chimney was four inches into the setback and there was going to have to be a variance for the title company to override because the letter that was sent did not suffice.

Jay Wiegner reviewed the three conditions as follows: i) An undue hardship was created, but it was strictly monetary and asked if anyone saw any other hardship besides monetary, ii) The hardship was not shared by others, and iii) There was no substantial detriment to adjacent properties. Jay Wiegner felt that the criteria was met for all conditions.

Jay Wiegner asked if anyone saw a reason not to grant a variance. Gene Kelly replied that he did not, but stated he understood Mr. Boytos’ concern for similar future issues.

The Board invited the public to comment before they took a vote.

There was some discussion between the Board and Mr. Boytos regarding the chimney encroachment.

**Motion made by Gene Kelly, seconded by Jay Wiegner, to grant the variance for lot 35, 510 Brass Ring Avenue, for the encroachment of the chimney into the side yard setback. The motion was approved by majority vote with Ray Salopek opposed.**

**Motion made by Jay Wiegner, seconded by Pete Baumann, to adjourn the Board of Zoning Appeals Meeting. The motion was approved by unanimous consent.**

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Chairman Gene Kelly

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Assistant Town Clerk

# Board of Zoning Appeals Staff Report

From: Rob Testerman

Date: March 31, 2014

Item: 5A - Variance Application –

Attachments: Application, plan, pictures of the lot, Section 4.5.1

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## Background

The variance application is for the former Be-Lo grocery store property. The applicant, Mr. Hand, proposes to demolish the existing building and create a new mixed use development on the property. The development would also open the Strawberry Street viewshed to the harbor.

## Application Specifics

1. Section 3.9-F(3)a states: "Mason Avenue Setback Requirement. No building or structure shall be located within 8 feet of the Mason Avenue VDOT right-of-way."
  - a. The applicant requests that the setback be reduced to 4 feet at ground level. With a 4 foot setback, the building would be set back 16 feet from the curb of Mason Avenue. Portions of the building that fronts Mason Avenue would be setback at least 8 feet from the property line.
2. Section 4.2-F states "...The following unenclosed uses may extend no more than four feet, but not nearer than five feet to any property line: balconies, eaves, trims..." it goes on to state that in the C-1 district (north side of Mason Avenue), balconies located above the first floor may extend to the front lot line.
  - a. The applicant is requesting that the upper floor balconies be allowed to extend to the property line, as is allowed across the street in the C-1 district.
3. Section 4.5.1 Table of Parking Standards lists the various parking space requirements for different uses. I have attached the table for your reference.
  - a. The applicant requests than rather than the various requirements depending on the use, that 1 parking space per 400 square feet of commercial be allowed.
4. Section 3.9-G states that "open space shall be provided equivalent to 25 percent of lot area." For purposes of section 3.9, open space consists of plazas, esplanades, landscaped areas, walkways, public recreational facilities and the like designed and maintained for use by pedestrians and open to the public. Open spaces shall not be open to vehicular uses except for public safety purposes, and shall be directly accessible from the street level.
  - a. The applicant is requesting that the minimum open space requirement be reduced to 15%.

## Discussion

State Code Section 15.2-2309. Powers and Duties of Boards of Zoning Appeals states the following:

When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the

property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.

No such variance shall be authorized by the board unless it finds:

- a. That the strict application of the ordinance would produce undue hardship relating to the property;
- b. That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
- c. That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

#### Recommendation

Discuss the proposals outlined above, and determine if the Board feels that it meets the requirements listed to grant a variance on the requested items.

MUNICIPAL CORPORATION OF CAPE CHARLES, VIRGINIA

Application for Zoning Variance

Date 3/4/2014

Permit No. \_\_\_\_\_  
Fee: \$250.00

Applicant PATRICK HAND Signature *Patrick Hand*  
Address 2242 ARLINGTON CHASE Cape Charles, VA 23310 Telephone 757 377 4222

Owner PATRICK HAND (CONTRACT OWNER)  
Address SAME City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

Contractor \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_  
Town License No. \_\_\_\_\_ State License No. \_\_\_\_\_

Location of Improvement 300 MASON AVE, CAPE CHARLES  
Lot No. \_\_\_\_\_ Block No. \_\_\_\_\_ Lot Size 105 X 600 Lot Area 63,000 SQ FT  
Type of Improvement NEW CONSTRUCTION  
Proposed Use RESIDENTIAL/COMMERCIAL  
Estimated Construction Costs 2.4 MILLION

Dimension of Structure or Improvement Width 116' Length 98' Height 40'  
Total Square Footage 12,000 ± FOOTPRINT X 3 STORIES

Structure or Improvement will be set back  
6 FEET from front property line  
\_\_\_\_\_ from side property line  
8 FEET from side property line on corner lot  
1 FOOT from rear property line

Town Water Permit \_\_\_\_\_ Town Sewer Permit \_\_\_\_\_

CERTIFICATION OF APPLICANT

I hereby certify that I have the authority to make the foregoing application, that the information given is true and correct, and that the construction or improvements will conform to the regulations in the Virginia Statewide Building Code, all pertinent Town Ordinances, including fire, sewer, and water ordinances, and private building restrictions, if any, which may be imposed on the property by deed. Furthermore, I certify that the changes to the improvement before or during construction will be provided to the Zoning Administrator and Building Official before such changes are constructed.

Signature of Owner/Agent *Patrick Hand*

BUILDING PERMIT

Issuance of the Zoning Variance in itself does not permit the applicant, owner, or contractor to proceed with the improvements noted above. Improvements can proceed only after issuance of a building permit from the Cape Charles Building Official, whose office is in the Municipal Building at 2 Plum Street in Cape Charles and who can be reached at 757-331-2176.

Date Approved \_\_\_\_\_ Date Denied \_\_\_\_\_

Zoning Administrator \_\_\_\_\_

22 March, 2014

To- Board of Zoning Appeal  
Cape Charles, Va

From- Patrick Hand  
2242 Arlington Chase  
Cape Charles, Va

Regarding- 300 Mason Ave  
Tax map# 083A3-0A-00-07

I am preparing to redevelop the 600ft on the south side of Mason Ave previously A grocery store and two parking lots. If allowed there will be a maximum of 240 feet of structure total width of the 600 feet of property fronting on Mason Ave creating two concentrated clusters of commercial and residential space and maintaining the openness to the railroad yard and town harbor south of the property as well as functional open and green space.

I am requesting 3 variances to the rules in the harbor district zoning. All three are based on the limited depth of the property which is only 105 feet.

1. I am requesting number one that the front setback from the VDOT right of way on Mason Ave be 4 feet at ground level instead of the 8 feet in the zoning and that upper floor balconies be allowed to extend to the property line. At a 4 foot set back the building would set back 16 feet from the curb of Mason Ave. Portions of the building would be set back 8 feet or more from the VDOT right of way.
2. I am requesting that 1 parking space per 400 sq ft of commercial space be allowed instead of the various requirements depending on use in the code.
3. I am requesting a minimum open space as defined in the zoning open space requirement on any individual parcel to be 15% in addition to parking areas instead of the 20% requirement in the zoning.

Please allow these variances as they will allow me to build using substantially less frontage and actual allowing much more green space and view South.

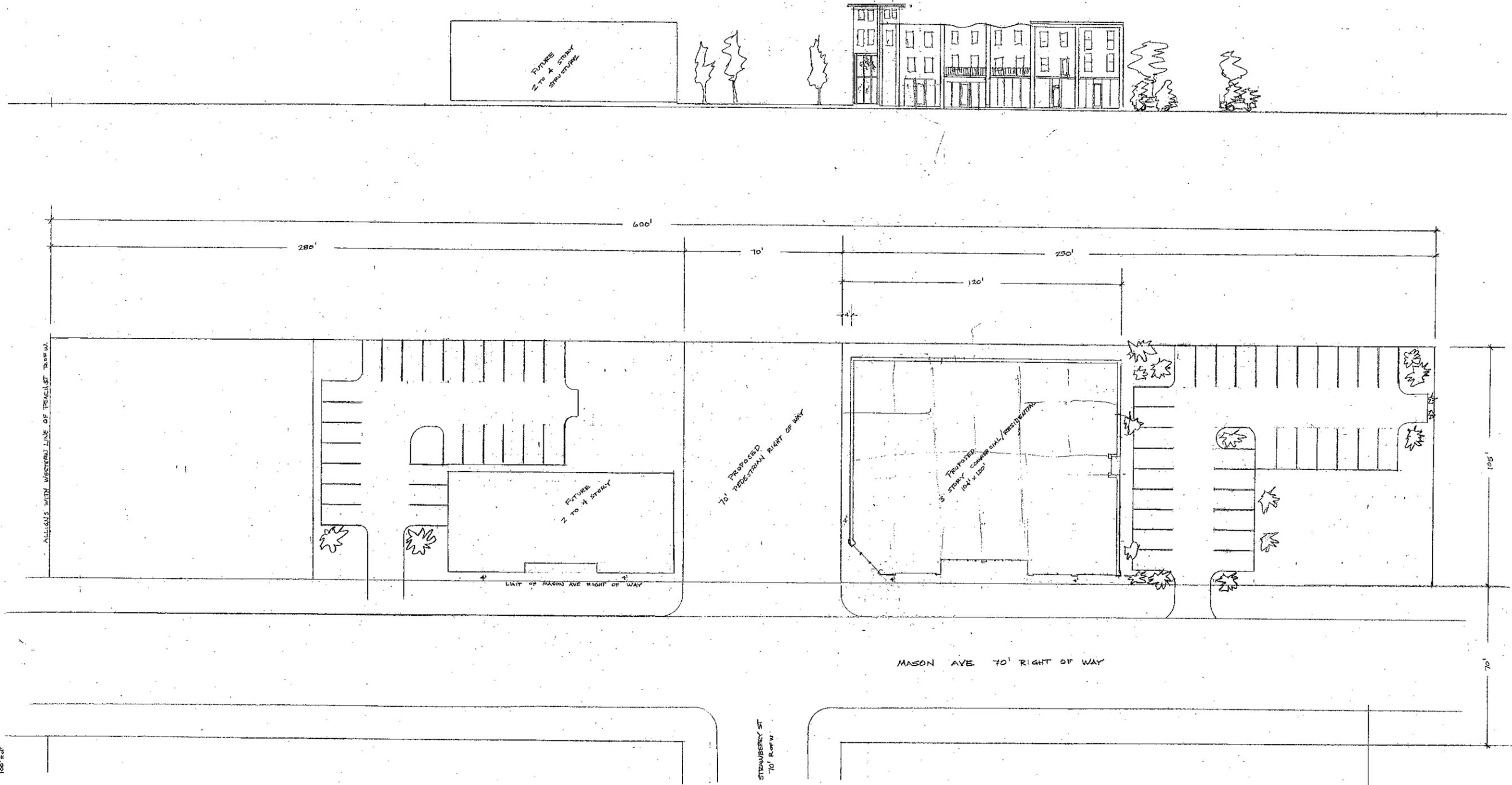
Respectfully submitted,



Patrick Hand

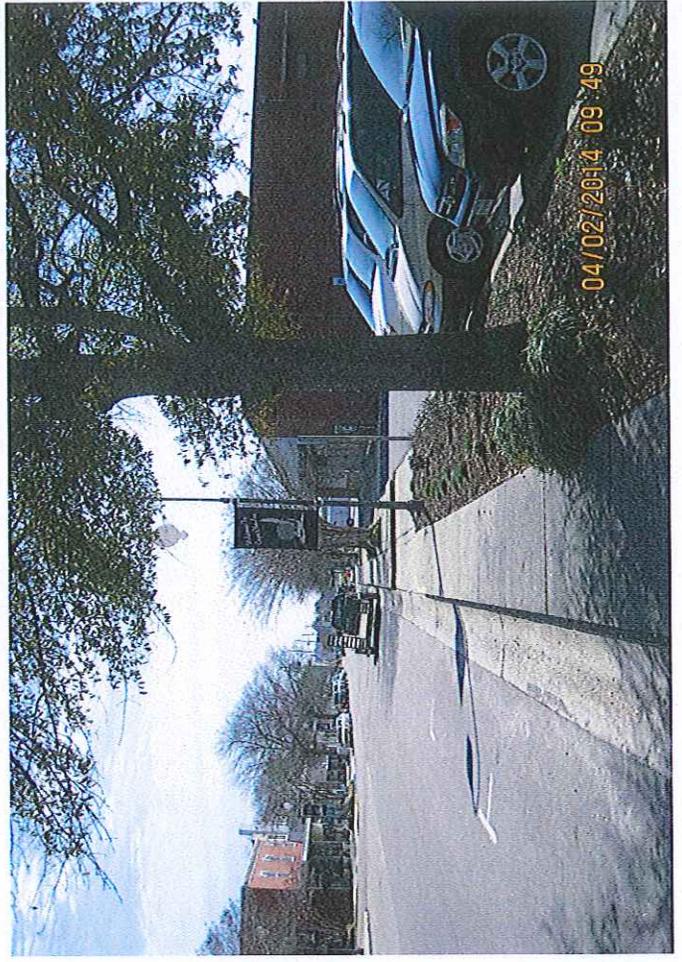
600' SOUTHSIDE OF MASON AVE  
300 MASON AVE

1" = 20'

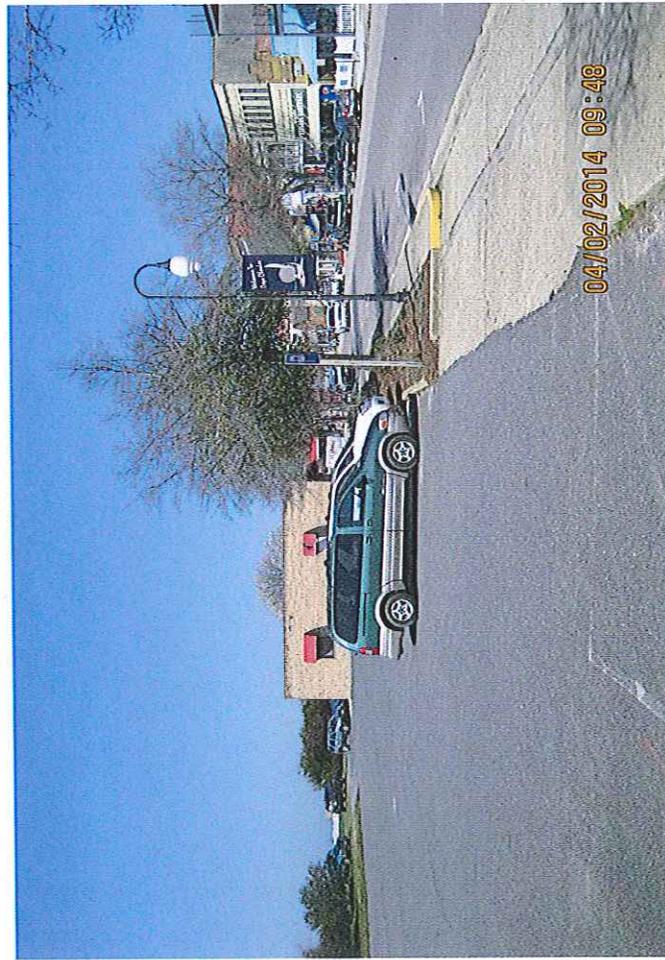




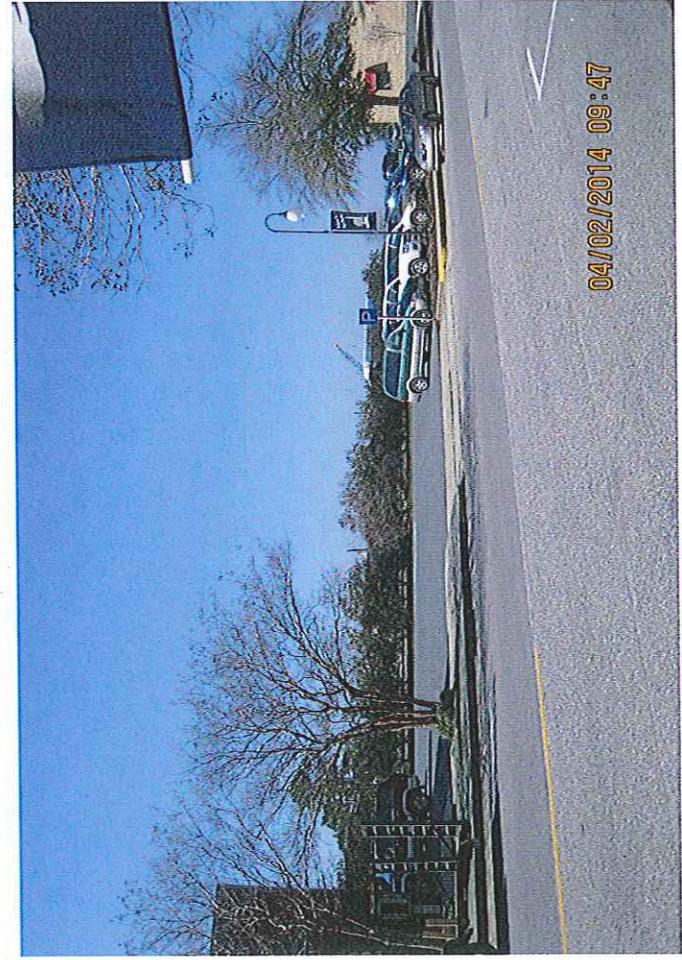
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