

**TOWN OF WEDDINGTON
SPECIAL BOARD OF ADJUSTMENT MEETING
MONDAY, SEPTEMBER 27, 2010
MINUTES**

The Board of Adjustment of the Town of Weddington, North Carolina, met in a Special Session in the Town Hall Council Chambers, 1924 Weddington Road, Weddington, NC 28104 on Monday, September 27, 2010, with Chairman Jack Steele presiding.

Present: Chairman Jack Steele, Vice-Chairman Rob Dow, Dorine Sharp, Scott Buzzard, Beth Masurat, Janice Propst, Jeff Perryman, Board of Adjustment Attorney Bill Brown and Town Planner Jordan Cook and Town Administrator/Clerk Amy McCollum

Absent: None

Visitors: Richard Cole, Patricia Cole, Bobbie Weber, Laura Kaplan, Bill Scott, Barbara Scott, Michael L. Davis, Pat Garvey, Leslie Barry, Renee Litton, Billy Cameron

Item No. 1. Open the Meeting. Chairman Jack Steele called the September 27, 2010 Special Board of Adjustment Meeting to order at 7:07 p.m. There was a quorum.

Item No. 2. Approval of Minutes.

A. March 22, 2010 Special Board of Adjustment Meeting. Ms. Dorine Sharp moved to approve the March 22, 2010 Special Board of Adjustment Meeting minutes. Vice-Chairman Rob Dow seconded the motion, with votes recorded as follows:

AYES: Perryman, Propst, Masurat, Buzzard, Sharp and Vice-Chairman Dow
NAYS: None

B. April 26, 2010 Special Board of Adjustment Meeting. Ms. Sharp moved to approve the April 26, 2010 Special Board of Adjustment Meeting minutes. Vice-Chairman Dow seconded the motion, with votes recorded as follows:

AYES: Perryman, Propst, Masurat, Buzzard, Sharp and Vice-Chairman Dow
NAYS: None

Item No. 3. New Business.

A. Variance Request for an Accessory Structure Side Yard Setback located at 2238 Rising Sun Lane, Weddington, NC - Parcel # 06-096-196. Chairman Steele opened the public hearing to consider a variance request for an accessory structure side yard setback located at 2238 Rising Sun Lane, Weddington, NC. Town Attorney Bill Brown swore in the following individuals: Richard Cole, Bobbie Weber, Patricia Cole, Michael L. Davis, Laura Kaplan, Bill Scott and Jordan Cook.

Town Planner Jordan Cook reviewed the following Exhibits with the Board of Adjustment:

Exhibit 1 – Staff Memo
Exhibit 2 – Variance Application dated August 23, 2010
Exhibit 3 – Aerial Image
Exhibit 4 – Applicant's Submittal Package
Exhibit 4A - Survey dated August 16, 2010

Exhibit 4B - Survey prior to the construction of the detached garage
Exhibit 4C - List of adjacent property owners
Exhibit 4D - Property location maps
Exhibit 4E - Email from a neighbor
Exhibit 4F - Photos of the detached garage
Exhibit 5 - Section 58-4 of our Zoning Ordinance which gives the definition of Accessory Use
Exhibit 6 - Section 58-16 of the Zoning Ordinance which is the section on Accessory Structures
Exhibit 7 - Section 58-54 of the Zoning Ordinance which is the R-40 Zoning District
Exhibit 8 - Contract

Town Planner Cook - Richard and Patricia Cole request a 2 foot 11 inch variance to the right side yard setback for an existing detached garage. The required setback for an accessory structure per Section 58-16 of our Zoning Ordinance is 15 feet. The detached garage is currently built 12 feet 1 inch from the right side property line. The detached garage in question was constructed March 2001 while under Union County's zoning jurisdiction. This property is within Lake Providence and was annexed in 2007. At the time the structure was built, Union County required the setback to be 5 feet from the property line for any structure 12 feet tall or less. For every foot that the structure was over 12 feet in height the structure must be an additional foot from the property line. The height of the garage is 26 feet; therefore, the required setback per Union County would have been 19 feet in 2001 when that structure was built. A copy of the Union County Building Permit cannot be provided because Union County only keeps permit records for six years. In summary, the detached garage is currently 12 feet 1 inch from the right side property line; therefore the applicant is requesting a variance of 2 feet 11 inches or 19.4%.

Chairman Steele - When this structure was built, it was 35% over and too close to the property line. Weddington has a less strict side yard setback for an accessory structure of this height.

Mr. Richard Cole - As far as practical difficulties and unnecessary hardships, we cannot sell this property unless the variance is granted. Our other options would be to demolish the structure or we could try to move the structure. If we are forced to move the garage, there is no guarantee that the move will be successful. The worst case scenario would be that the garage is destroyed. We have lost one contract on the property at a price that would have benefited the entire neighborhood. Personally, I have been unemployed for 36 out of the last 39 months. This situation continues to create additional financial burdens on me and my wife. If we are forced to move the garage, even if the move is successful, it will cost approximately \$15,000 for the garage to be moved closer to the residence and the street. It cannot be moved laterally because it cannot be moved any closer to the existing well. We cannot move to the rear because of the R-40 setback requirements. When the garage was built, we contracted with the builder of the residence and the agreement included his obtaining all of the necessary permits. I have not been able to locate copies of the permits. The builder says that he does not have any of them in his files. Union County Records Retention Policy is six years. The contract to have the garage built was in accordance with all Union County Codes and Lake Providence Covenants. My wife does recall seeing notices attached to the studs during the construction process but we did not get any copies of them. On one occasion a man actually came to the door after construction was finished. He advised that he was an inspector for the garage and he just wanted to know whether it was going to be used as a residence and my wife advised him that it had no heating and air conditioning or water or plumbing and he advised that was all he needed.

Mr. Cole referred to several pictures showing the location of the garage.

Chairman Steele – Is the garage the same distance from the property line throughout its depth? What would be the furthest that it would be from the property line?

Mr. Cole – Maybe another 1 or 2 inches.

Chairman Steele – And the garage was built after you had purchased the home?

Mr. Cole – After we purchased the home, so it is not covered by any title insurance either.

Chairman Steele – At the time the garage was built, does Union County have the same rear yard setback as Weddington?

Town Planner Cook – I do not know.

Chairman Steele – At the time the garage was built, it could not have been built further into the yard because the well was already there?

Mr. Cole – The well is just a couple of feet to the left of the left corner of the garage.

Chairman Steele – If you cannot move it closer to the left because of the well, then you could not have built it further left to start with?

Mr. Cole – Correct.

Chairman Steele – If you were building it in compliance with the Union County Ordinance depending on what the rear yard setback was, you would really have had to have gone forward and closer to the house?

Mr. Cole – Correct. We can do that. If you can see all of the trees to the right and front of the garage, most of them will have to come down which makes that structure much more visible from the street. The variance requested is 2 feet 11 inches from the 15 feet offset in your code. It is just under 20% like Jordan said earlier. It is well under the maximum 50% that is allowed by your code. Our property as it now exists is one of the many attractive properties in the neighborhood. If the garage is moved it will detract from the neighborhood property appearance and most likely result in a negative impact to all the neighborhood property values. The garage has been in its current location since March 2001. To my knowledge there have never been any complaints or questions about the location of the garage. The only comments that we have ever received regarding the garage have been positive. The variance will in no way detract from the neighborhood property values and in reality will help preserve those values. Granting of the variance secures the public safety and welfare and does substantial justice. The granting of the variance will have no negative impact on public safety or welfare. If a move of the garage is required there will be substantial traffic with heavy equipment in the neighborhood for a period of 30 days or so. The traffic required by the move could have a short term impact on neighborhood safety. As noted on the pictures there is already sufficient clearance between the garage and neighboring fence to drive a vehicle in between if it is required. There is plenty of room to drive a vehicle between the fence and the garage.

Chairman Steele – That fence separates you and your neighbor on the right as you look at the garage. Is that your fence, his fence or a shared fence?

Mr. Cole – It is a shared fence. It is right on the property line. It is a six foot wood privacy fence.

Ms. Sharp – You did not know there was any issue with the garage until you put it on the market?

Mr. Cole – Not until two days before the closing. We had already moved to a rental property to make matters worse.

Ms. Sharp – You were totally unaware that this situation existed?

Mr. Cole – Unaware is a mild statement. The buyer has not yet bought a home. He may still be interested in the home if the garage does not have to be moved.

Chairman Steele – I noticed in your materials, Exhibit 4E, is an email from Michael Lawrence. If you are looking at his garage, he is the adjacent property owner to the right.

Mr. Cole – He is not here. He is a pilot and he is stationed in Hong Kong. He supports the request.

Vice-Chairman Dow – I am trying to nail down the timeline. The house was already built when you bought it or you bought it part way under construction.

Mr. Cole – The builder had built it for himself and circumstances developed that he had to sell it. We were the first people to be in the residence.

Vice-Chairman Dow – That was when?

Mr. Cole – February 2001. We contracted with the person who built the home to build the garage in March 2001.

Vice-Chairman Dow – You had owned the house, moved in and then built the garage?

Mr. Cole – We had actually contracted to build the garage prior to moving in but it was not started until after the closing on the house. As part of this process, I did go to the developer with the plans on what we were planning to do and it was signed off by the developer as well.

Chairman Steele – What accounts for the height? There was nothing above the garage such as living quarters.

Mr. Cole – There is storage up there. The reason this garage was built that way was that we tried to design the roof to match the roof of the home.

Vice-Chairman Dow – This was originally a Union County problem. The violation was actually a Union County violation.

Town Planner Cook – Right.

Vice-Chairman Dow – Are there not check-offs with Union County?

Town Planner Cook – I had a conversation with Union County's Land Use Administrator and Planner and the statement was that they do try to check these. A lot of times if it is an accessory structure like

this they may not go out for a final inspection and may do what the applicant stated is to knock on the door to verify if anyone can live in the structure. If there are a bunch of houses that need to be inspected they are going to do those first before they do these accessory structures.

Vice-Chairman Dow – If somebody were to build a home with an accessory structure in Weddington, what do we have in place that keeps this from happening?

Ms. Sharp – If someone wants to build a garage, they have to bring in a survey and pencil in where the accessory structure is going to go. They have to give us dimensions.

Vice-Chairman Dow – We do have some type of policy in place that would have caught this.

Attorney Brown – In 2001 you say that you entered into the contract and I believe that you have in the packet a handwritten note that appears to be the contract.

Mr. Cole – Yes, it was very simple.

Attorney Brown – As far as the financing for the addition of this garage was that done as part of your original financing?

Mr. Cole – No. The construction of the garage began about a month after we closed on our original mortgage.

Attorney Brown – Did you get title insurance in your original closing?

Mr. Cole – For the original - yes.

Attorney Brown – Did you add this structure to your title insurance?

Mr. Cole – I failed to do that.

Attorney Brown – Did the contractor provide an as-built survey at the time the project was completed?

Mr. Cole – No sir.

Attorney Brown – The first as-built survey that you saw was the one that you experienced in your July closing?

Mr. Cole – That is correct.

Attorney Brown – Have you put the contractor on notice of a claim and have you made any claim against the contractor's insurance for this wrongful completion of the structure?

Mr. Cole – Not yet. I wanted to get this resolved first and try to get the house sold.

Attorney Brown – You had no real reason to determine that the structure was compliant until it came time to sell it.

Mr. Cole – I know better now but I did not then. I had no reason to challenge it.

Chairman Steele – You assumed that your contractor had properly sited the foundation of the garage. We need to examine if this is a one shot deal or whether we are setting a precedent here in the future. If another homeowner comes and says, “I relied on my contractor or my developer and he built it”, and it violated the side, the rear or the front yard set back - what remedy do we have? How can that be controlled?

Town Planner Cook – It is my understanding that this stands on its own and it is a case-by-case situation.

Chairman Steele – I am not so concerned about properties that have been annexed into Weddington and grandfathered under the county. What I am focusing on is for new construction in Weddington how can we be certain that we will not be faced with a developer that goes out and builds an accessory structure or main structure that violates the Town’s setback ordinances? What are we going to say to the next homeowner that comes in and the next one or next one that innocently builds a structure in violation of the setback requirements?

Town Planner Cook – If someone comes in with a zoning permit application to the Town, we check and double check that their setbacks comply with what our code requires.

Chairman Steele – If someone is building a new structure, they have to come to the Town and you verify what they have represented complies with the setback requirements and tell them what the setbacks are?

Town Planner Cook – That is correct. They have to fill out the zoning permit, they have to fill out the actual setbacks and provide us with a sealed survey showing where that accessory structure is going to be.

Mr. Cole – Even if we have to move the garage, I would have to bring in a certified survey showing where the new foundation is going to be.

Chairman Steele – If the Town granted a permit down the road for the construction of an accessory structure, they would have to present a survey that showed that they complied with the zoning ordinance and if they built it and it did not comply with it then we would have a different situation if they were applying for a variance.

Vice-Chairman Dow – This structure because it was brought in before our zoning seems to me that it is not in violation of our zoning and the fact that it was in violation of Union County’s zoning is not our problem. I question why we are even hearing it.

Attorney Brown – It has to be legal and conforming at the time that you grandfather in the property. The odd thing about this case was it was not legal and conforming based on the testimony you heard so far and the documented evidence. It should have been 19 feet.

Ms. Bobbie Weber, the Cole’s Realtor, discussed the real estate aspect of the request and discussed the comparables and active listings on the market.

Attorney Brown – Any effort in this closing or in your continued efforts as their realtor to see if you could find a title insurance company that would insure over this encroachment as they often do?

Ms. Weber – I have not. We did talk with some title people. The buyers do not want to buy anything that they could have to deal with again in the future.

Attorney Brown – Did Mr. McMillan or the buyer have any discussion with a title insurance company?

Ms. Weber – They do not want to try to mandate it. They want a clear title.

Mr. Bill Scott – My wife and I are the largest property owners that adjoin this particular piece of property. We are located directly behind the garage itself. Since the garage has been there, it has been no problem for us at all. The Coles have maintained it impeccably the entire time. Where I would have a problem is if the garage is moved or demolished. It would create a hole there and where we have a tree line between our properties and homes that tree line would be destroyed. If the trees were taken down to remove the garage, that would adversely affect properties that are surrounding it. It is a very woodsy setting.

Mr. Michael Davis – I am a homeowner in Lake Providence. I have been there since 2002. We met the Cole's shortly thereafter. You can tell by the pictures that they maintain the property well. We could not ask for any better neighbors. I sit on the Board of the Homeowners Association. We are in one of the older neighborhoods in the Weddington area and it is a struggle to compete with some of the new developments. I have been in the garage several times. From a homeowner's perspective and neighbor's perspective, it is a perfect setting – the effort that they went to in designing it to match the house. There is not a neighbor that would do anything but support this variance and let it be done and let this house sell at a good appraised value. It is a win-win for everybody. On behalf of the board, we are anxious to get this behind us.

Ms. Laura Kaplan – I am the other neighbor that is actually in the United States. I want to say that I was totally flabbergasted when I heard that their sale did not go through. I have lived next to Richard and Trish for 8 ½ years. They have a lovely piece of property the way it stands right now. I am very worried that it is going to cause such a problem if they are going to have to move it. It looks so beautiful from the road the way that it exists right now and I would hate to see anything change.

Chairman Steele closed the evidentiary part of the hearing.

Mr. Buzzard - If we grant a variance and the next homeowner tears down the trees and lets everything go to pot, they cannot come back and say that there is an issue with the structure being too close to the line, can they?

Attorney Brown – The variance runs with the land. Once it has been granted it has been granted with respect to the structure on that property. If the structure is removed or there is a fire and it is sufficiently destroyed, then you would have to bring that area into compliance.

The Board reviewed the following findings of fact:

1. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance.

AYES:	Sharp, Masurat, Buzzard, Vice-Chairman Dow and Chairman Steele
NAYS:	None

a. If the property owner complies with the provisions of this ordinance he can secure no reasonable return from or make no reasonable use of this property.

Chairman Steele - My interpretation is clearly if the garage were removed or had to be relocated it does not destroy the use of the property. My interpretation though is that there would be a substantial diminution of the value and use of the property if the garage and trees had to be torn down. In order to sell the property they have to be able to move the structure or receive a variance.

Ms. Sharp - If the garage is not there, the property value would certainly not be what it is worth now.

AYES: Sharp, Masurat, Buzzard, Vice-Chairman Dow and Chairman Steele
NAYS: None

b. The hardship results from the application of the ordinance.

AYES: Sharp, Masurat, Vice-Chairman Dow and Chairman Steele
NAYS: Buzzard

c. The hardship is suffered by the applicant's property.

AYES: Sharp, Masurat, Buzzard, Vice-Chairman Dow and Chairman Steele
NAYS: None

d. The hardship is not the result of the applicant's own action.

Vice-Chairman Dow - We can cite the contract with the builder as evidence he did not know. He fully intended to get the permits from Union County.

Ms. Sharp - I think he would assume since he got his permits from Union County that it was all in compliance with Union County regulations. I do not think the applicant had anything to do with it. He thought it was taken care of by those who are to know what to do.

Chairman Steele - I struggle with this one because I think you are right - the Coles had every intention of complying. They had no knowledge of this. The violation was due to the agent of the Coles constructing the property in violation of the ordinance. Generally the owner of the property is responsible for what his contractor does. I do think there are some unique circumstances in this particular case having to do with the annexation and grandfathering of the property. There was no evidence that the Coles knew anything about it. Under the Weddington ordinance there will have to be a survey and if this were to happen with new construction in Weddington there really would be no excuse even for an innocent homeowner for violation of our setback requirements.

Vice-Chairman Dow - I find as much fault with Union County as I do as with the contractor. I am not sure that anybody was trying or was aware that they were doing the wrong thing.

AYES: Sharp, Masurat, Vice-Chairman Dow and Chairman Steele
NAYS: Buzzard

e. The hardship is peculiar to the applicant's property.

Attorney Brown – There was testimony about the location of trees, existing wells and things that are distinctive about this portion of the property and the location of the structure.

AYES: Sharp, Masurat, Buzzard, Vice-Chairman Dow and Chairman Steele
NAYS: None

2. The variance is in harmony with the general purpose and intent of the ordinance and preserves it spirit.

AYES: Sharp, Masurat, Buzzard, Vice-Chairman Dow and Chairman Steele
NAYS: None

3. In granting of the variance the public safety and welfare have been assured and substantial justice has been done.

AYES: Sharp, Masurat, Buzzard, Vice-Chairman Dow and Chairman Steele
NAYS: None

4. The reasons set forth in the application justify the granting of variance and the variance is a minimum one that would make the reasonable use of land or structure.

AYES: Sharp, Masurat, Buzzard, Vice-Chairman Dow and Chairman Steele
NAYS: None

Ms. Sharp - They are asking for a variance of 2 feet 11 inches. Should we go with 3 feet?

Vice-Chairman Dow moved to grant the variance for the encroachment on the side setback as shown on Exhibit 4A. Ms. Sharp seconded the motion, with votes recorded as follows:

AYES: Sharp, Masurat, Buzzard, Vice-Chairman Dow and Chairman Steele
NAYS: None

Item No. 4. Adjournment. Ms. Sharp moved to adjourn the September 27, 2010 Special Board of Adjustment Meeting. Mr. Buzzard seconded the motion, with votes recorded as follows:

AYES: Sharp, Masurat, Buzzard, Vice-Chairman Dow and Chairman Steele
NAYS: None

The meeting adjourned at 8:16 p.m.

Jack Steele, Chairman

Attest:

Amy S. McCollum, Town Clerk