

**TOWN OF WEDDINGTON
CONTINUED BOARD OF ADJUSTMENT MEETING
MONDAY, JULY 27, 2009
MINUTES**

The Board of Adjustment of the Town of Weddington, North Carolina, met in a Continued Session in the Town Hall Council Chambers, 1924 Weddington Road, Weddington, NC 28104 on Monday, July 27, 2009, with Chairman Jack Steele presiding.

Present: Chairman Jack Steele, Dorine Sharp, Scott Buzzard, Jeff Perryman, Beth Masurat and Town Planner Jordan Cook and Town Administrator/Clerk Amy McCollum.

Absent: Vice-Chairman Rob Dow

Visitors: Sam Leggett, Daniel Barry, Kenneth Owens, Jay Ross, W. and Carol Hogan, Genny Reid, Richard Sahlie, Dave Ruth, Robert Batchelor, Maleah Batchelor and Ken James.

Item No. 1. Reopen the Meeting. Chairman Jack Steele called the July 27, 2009 Continued Board of Adjustment Meeting to order at 7:06 p.m. There was a quorum. Alternate member Jeff Perryman served in the absence of regular member Rob Dow.

Item No. 2. Minimum Housing Issue - Parcel Number #06-096-023B for Property Located on Beulah Church Road - Owned by Rick and Irene Hunt. The Board of Adjustment received the following:

- Amended Decision of the Board of Adjustment Appeal by Rick Hunt – Minimum Housing Code Findings of Fact and Order (Beulah Church Road) dated May 22, 2009
- Before and After Photographs of the Property
- Offer to Purchase and Contract

The following Exhibits were made part of the record:

Exhibit P – Pictures of the Property
Exhibit Q – Offer to Purchase and Contract
Exhibit R – House Plan Drawings

Chairman Steele – This is a continuation from the May 18 Special Board of Adjustment Meeting. At the May 18 Meeting we expected Mr. Hunt by July 17 to provide a written report with photographs, receipts, etc. showing substantial progress toward the completion of the repairs necessary to correct the violations relative to the Minimum Housing Code. We did get photographs of the property showing the mowing and the securing of the property. There was nothing with respect to any repairs of the property. There was an offer to purchase and contract in the packet of information you received.

Chairman Steele swore in the following additional witnesses wishing to give testimony:

Robert Batchelor
Maleah Batchelor
Ken James
Jay Ross

Attorney Susan Matthews – There have been some changes since we last met on May 18. You will see that while Mr. Hunt has utterly failed to comply with the order he did secure a residential real estate contract contingent upon this meeting to close August 31. We will be calling the potential new property owners to testify as well as Mr. Sam Leggett, the Town Building Inspector, to speak to whether any improvements were made on that property. Mr. Leggett, did you receive a packet from Mr. Hunt on July 17?

Mr. Leggett – No, I did not.

Attorney Matthews – Did you receive a packet?

Mr. Leggett – I did when I picked it up this past Friday from the Town Administrator.

Attorney Matthews - What did it contain?

Mr. Leggett – Photographs of the property illustrating proper securing, mowing of the property, posting of Keep Out signs and a copy of an offer to purchase the property.

Attorney Matthews - Was there mention of any building materials that Mr. Hunt purchased?

Mr. Leggett – I could find none. I went by the structure today and saw that no work has been done to the structure.

Attorney Matthews - Has it changed in any regard since May 18?

Mr. Leggett – It has deteriorated more. The exterior plywood, particularly the OSB board on the second floor, is beginning to delaminate or peel off.

Attorney Matthews - Did you see any evidence that Mr. Hunt had installed an HVAC system?

Mr. Leggett – No.

Attorney Matthews - Plumbing, electrical, doors, windows?

Mr. Leggett – No change since last meeting.

Attorney Matthews - Was the building permit even posted on the property?

Mr. Leggett – Not that I could see.

Chairman Steele - Do we have a copy in any of the submittals of the septic information issued by Union County?

Attorney Matthews - I have a copy of that tonight.

Chairman Steele - Do you know how many bathrooms are approved?

Mr. Leggett – It is approved for up to six bedrooms.

Attorney Matthews - How are you affiliated with the proceedings tonight?

Mr. Robert Batchelor – We are just becoming affiliated because we have the contract to purchase the property.

Attorney Matthews -When did you go under contract?

Mr. Batchelor – I don't have the exact date.

Attorney Matthews - Was it approximately July 15?

Mr. Batchelor – Yes.

Attorney Matthews - Could you briefly tell the Board of Adjustment your intentions with the property?

Mr. Batchelor – Our realtor has been looking for property for us for a while. We currently reside in Indian Trail and our children go to Weddington schools which we have been thrilled with. When we found it necessary to move, we were looking in this particular area specifically because of the area and the schools that it provides. When we found this property, it just clicked. The location is ideal for us and our four children. We decided to move forward and make an offer and that was when we found out about all that was going on with it. We have already gotten an architect to draw up some initial drawings of the outside of what we plan to propose and a rendering of what it should look like when completed.

Attorney Matthews - What is the timetable you estimate it taking before you complete?

Mr. Batchelor - We would like from the day of closing to have four to six months to complete the project. In order for us to do it right and factor in weather and other conditions we feel that it will take that amount of time.

Attorney Matthews - Are you aware you will have to get a building permit in your name?

Mr. Batchelor – Yes.

Attorney Matthews – Where will you be living in the interim period?

Mr. Batchelor - I don't know the answer to that now. We will possibly still be in our house or we will have to look for an apartment during that transition period.

Ms. Dorine Sharp – I noticed on page 2 that the loan condition has been crossed off.

Mr. Batchelor - We have initialed off on that. We were unaware of what to put in there and for our protection our real estate agent put that in there and then after proceeding forward it was not necessary for that to be in there. We have started the process to obtain financing.

Mr. Jeff Perryman - You said that you were unaware of the other issues surrounding that property until you made the offer.

Mr. Batchelor - We were aware the property had been sitting. Our real estate agent informed us of the issues and that was one of the reasons we put in there as far as an engineering letter and something concerning this meeting. That was also contingent on that offer.

Ms. Beth Masurat - Are you planning to complete the house on the foundation as it is or are you going to start over?

Mr. Batchelor -We are going to work with what is there. The architect is here and he has some initial drawings that we will submit. The main reason we wanted to be here tonight was if we are not going to be granted the time table we need in order to complete the project then we don't want to move forward.

Chairman Steele - This will be your permanent residence?

Mr. Batchelor - Yes.

Chairman Steele - Is your obligation to close contingent on getting financing?

Mr. Batchelor – No, we have August 31 as a set closing date and that is our absolute intention.

Mr. Ken James – I was called by the Batchelors to come look at the house and state my opinion as an architect as to whether or not it could be made into a dwelling for their family.

Attorney Matthews – Were you paid a retainer by the Batchelors?

Mr. James – Yes.

Mr. James provided copies of an architectural drawing that he had prepared for the house.

Mr. James - What we are trying to do is keep as much of the structure as we can for economic reasons. There will be some walls moved within the interior. The housing having been put on a raised foundation lends itself toward the low country look which is one thing the Batchelors did like about it. We will be bricking the existing exposed concrete foundation and building a monumental set of stairs that will lead from a driveway up to a second floor porch. The upper story of the house will be horizontal clapboards and painted white. We had very little time to pull this together. This is the exact shape and roof pitch that is there now. Dormer and window location is as it exists now.

Ms. Sharp - Is six months a reasonable estimate for completing the project?

Mr. James - The fact that we aren't changing very much other than moving a few interior walls I feel like it is. We have to get windows in quickly. Based on the hope that this is going to move forward, we have already started making contacts with subcontractors, brick masons, plumbers and electricians. Once everything is signed and sealed, we plan to move forward right away. The Batchelors will be hiring a general contractor. I will be the consultant throughout the process.

Mr. Batchelor – There is not a contractor yet because we did not know what was going to happen here. We are making the calls to get things lined up.

Mr. Perryman - Based on what you have seen at the house, as far as structurally and I know this house has been sitting there for years; do you have any opinion at this time as to the structural integrity of the house?

Mr. Leggett - I didn't see any signs of water damage. The skin of the building is deteriorating. If I were a building inspector on that job I would want to see an engineer's letter telling me about the OSB. That is part of the structural integrity of the building.

Mr. James - We have contacted a structural engineer who will come out and do an appraisal and present us with a written certification of his findings.

Ms. Sharp - Is the closing contingent on that letter?

Mr. James - I don't think they have set it up that way.

Chairman Steele closed the factual testimony of the hearing.

Ms. Sharp – I would like to see the house completed.

Mr. Perryman - These proceedings began with the Town dealing with Mr. Hunt and it was all about the condition of the house. If the contract goes through and everything goes as we hope, do those conditions and proceedings transfer to the Batchelors or does this conclude the dealings with Mr. Hunt?

Chairman Steele - My assumption would be that the violations relate to the property, not to the owner. That would continue. We can continue to allow it to be completed and it may make sense to continue to do that. We may decide if the closing does not occur then that may be the end of it. If it does occur we could continue the hearing again essentially for a status report in October.

Attorney Brown - I would suggest that the actual initial decision of December, this Board's January, March and May decisions plus this decision be attached to the deed and recorded and it will run with the land. We do not as a general matter record the Board's decision but I believe it would be good to get that in the official title records of Union County.

Chairman Steele – If we did do that that does not have any affect on the validity of the Batchelor's title if they purchase title insurance. It is for record notice of the proceedings.

Attorney Brown - It is sort of like recording a restriction on the property or a covenant that has to be satisfied in the future.

Ms. Sharp – Would it not be appropriate to only attach tonight's decision? Why would we need all the prior decisions?

Attorney Brown – I am not sure there is a fixed rule. The legalities are that you are really still in a hearing that started with an appeal of the December findings. You really started your hearing in January and it has been continued and you have been in session since your initial meeting in January. That session that you started in January and continued to this day still relates back to a finding and order made in December. I would want all of that in the record on the title so you can get an understanding of what the full proceedings are. If you don't you have a decision today that references your earlier decisions and talks about findings in December but no one will be put on record notice on exactly what that was.

Chairman Steele- If I were purchasing property, I would be a little reluctant to have all that recorded. I think we can accomplish the same thing if we send certified copies of all the minutes and decisions of the board up through tonight to the prospective purchaser. That puts them on notice of everything that has gone on and they would be subject to all the restrictions.

Mr. Perryman - This sounds like a great plan for you and your family but on the possibility that something is found structurally and then you can't spend the amount of money it will take to do this, I want to make sure everyone understands the possible paths.

Attorney Brown - If they do close on the property and the economy goes bad or worse, they have taken title and they are not going to be able to meet their four to six month deadline, I don't know for sure that a

finding and decision that was done at the administrative level that has been under appeal and has never yet been recorded or made part of title runs with the land unless it is recorded. If I have it recorded, I know that it will run with the land. If they take title and cannot complete in four to six months, I do not know for sure that we can continue these proceedings. I am trying to be overprotective. We want this to be a success.

Ms. Sharp - If they don't close on the property, then our proceedings continue. If they do close then our proceedings cease? If something were to happen could Mr. Leggett copy the same letter and we start with the new owners as a new case?

Attorney Brown - If they do close and the proceedings are brought to an end, you really have no means to effectively enforce the four to six month commitment they are proposing to make to you. Mr. Leggett has to start from scratch all over again. You will have to go through the whole process.

Ms. Sharp – You do not think that attaching tonight's findings would be sufficient?

Attorney Brown - I think we need to get something in the record or deed that makes subject to this pending matter. We could agree as a body that if and when we do get it done we can record something else of record. We need to make sure to keep this alive because you don't know what will happen.

Ms. Sharp - I would hate for this not to go through because of title insurance.

Chairman Steele - One option would be to continue this hearing until our September date. If there has not been a closing at that point in time, we would be in a position to go ahead and make a decision. If there had been a closing would we not be in a position with the current owners of the property, the Batchelors, without having to put something in the record to enter some sort of an order that sets forth a timetable? By then they would have had a chance to meet with a contractor and have a realistic construction schedule.

Attorney Brown - Another option might be if they would give consent of record tonight including a term or condition in this amended decision that says they agree to accept the pending appeal and allow this matter to continue after they take title and to be subject to further enforcement proceedings as needed. Once they close on the 31st then we have something in the record and in the decision that would give us assurance that this will stay alive as well.

Chairman Steele - I would prefer to not clutter up the record. That way you don't have issues with title insurance but more importantly mortgage financing. Let's continue our hearing until September. If the property has closed, we will be able to come to a realistic time table on the construction. If for whatever reason it did not close, then we should be in a position to be able to go ahead and rule on the evidence that has been presented in the previous months.

Attorney Brown - They have a contingency on the contract based on the decision by this board. I don't know how firm the commitment they need that this board will be generally amiable to four to six additional months.

Mr. Scott Buzzard - I am reluctant to potentially push this out two more weeks. If it doesn't go through then we are another two months past all the months we should have been in the first place. We should make it record and we should come to a decision on the appeal and hold the decision until after the closing so that if it does not close, we don't have to wait.

Ms. Sharp - We can say we will meet again in September if the property has not closed. If the property does close then we wait and meet in October and see what the progress is.

Attorney Brown - If it doesn't close on or by August 31st the appeal with respect to Mr. Hunt is denied and the order December 18, 2008 becomes final. We will give him until closing. After that we see how they are doing and set a schedule in September or a progress check in October.

Ms. Masurat - I think we all want to see this house built and finished rather than destroyed.

Mr. Buzzard - The adjoining property owners want closure more than a pretty house. We have been dragging it on since January.

Ms. Sharp - These people are going for a mortgage, the bank is going to want to know we are not going to come along in two or three months and say you are not moving fast enough and they have no guarantee to back up the loan that they will give them. We have to look at it from the potential buyer's point of view. Would you loan someone money if at any month a board can say we are going to tear down the house? They need to know they have at least the six month time table to get it done.

Attorney Brown - You could preliminarily grant some amount of time subject to coming back here in September and giving an update and make any adjustments and/or additions as necessary to that preliminary time period once you have got to that point. Hopefully they have minimum assurance they need to move forward.

Mr. Buzzard - If we close the first one, do we run into the situation where once it is recorded then it would follow that property?

Attorney Brown - I would be really hesitant to close anything at this point. I would like to give us as much ability to keep this open. We want to try and keep it open.

Chairman Steele - We could as a part of that just continue but not until October. Our meeting is at the end of the month in September. As a requirement request a status report as of September including a copy of the construction contract and building permit. I would think they would have those in place by our September meeting if they are meeting with contractors now.

Mr. Perryman - The closing would not happen unless the Batchelors were certain that they were going to get to build the house the way that they wanted. If something is found then I don't see the closing happening. With all due respect to those who live around there if I understand the rules here this case is between the Town and Mr. Hunt. That is the way we have to approach it. This two prong idea of if the house does not close we are making a decision tonight if by our next meeting Mr. Hunt has failed to meet the conditions of the agreement then he is in default. If it does close which they are not going to close unless they know they can finish it and they have had the house looked at and the financing and timing is there then we can use that path and say if it has closed by the next meeting then we have it taken care of to get the house in this state rather than the state it is currently in.

Chairman Steele - We are talking about continuing this until our September meeting. If the property is not closed by that time then that is the end of it. If the property does close, at our September meeting we would be looking for architect drawings, copy of contract with the general contractor that would set out the anticipated length of time for construction and a copy of the building permit.

Ms. Sharp - We also need to agree that we would grant at least four months from the day of the closing as a minimum to get this completed. We would certainly entertain the idea of an extension for up to two to three months should that become necessary.

Chairman Steele – Guarantee the four months and whatever happens with construction they can come back and we could potentially extend it further if necessary.

Mr. Buzzard - I would not want to push the closing any further back than September 15.

Chairman Steele - September 15 would be fine with me.

Ms. Sharp made the following motion:

1. Additional time is granted in the repair schedule subject to the following conditions:

- A. The Board of Adjustment will retain jurisdiction over this matter during the progress of construction and repair.
- B. The property is to remain cleaned and the structure secured throughout the repair period.
- C. Sale of the property to Robert Hampton Batchelor Jr., and wife, Maleah Long Batchelor is to be closed by September 15, 2009. A Board of Adjustment Meeting will be held on September 28, 2009, at 7:00 p.m. in the Weddington Town Hall to review the Batchelor's architectural drawings, their contract with the builder, to get a copy of the building permit and to set future construction completion deadlines of at least four months from closing with a possible extension of up to two to three months additional. If the closing does not occur on or before September 15, 2009 the Board of Adjustment hereby denies the December Appeal by Mr. Hunt and affirms the December 18, 2008 Findings and Fact and Order.
- D. Except as modified above, the provisions of the December 18, 2008 Findings of Fact and Order, the January 28, 2009, March 24, 2009 and May 22, 2009 Decisions remain in full force and effect.

Mr. Perryman seconded the motion, with votes recorded as follows:

AYES:	Masurat, Perryman, Buzzard and Sharp
NAYS:	None

Item No. 3. Approval of Minutes.

A. Approval of May 18, 2009 Special Board of Adjustment Meeting Minutes. Ms. Sharp moved to approve the May 18, 2009 Special Board of Adjustment Meeting minutes. Ms. Masurat seconded the motion, with votes recorded as follows:

AYES:	Masurat, Perryman, Buzzard and Sharp
NAYS:	None

B. Approval of June 22, 2009 Special Board of Adjustment Meeting Minutes. Ms. Sharp moved to approve the June 22, 2009 Special Board of Adjustment Meeting Minutes. Mr. Perryman seconded the motion, with votes recorded as follows:

AYES:	Masurat, Perryman, Buzzard and Sharp
NAYS:	None

Item No. 4. Continuation. Mr. Perryman moved to continue the meeting until September 28, 2009 at 7:00 p.m. at the Weddington Town Hall. Ms. Sharp seconded the meeting, with votes recorded as follows:

AYES:	Masurat, Perryman, Buzzard and Sharp
NAYS:	None

The meeting ended at 7:55 p.m.

Jack Steele, Chairman

Attest:

Amy S. McCollum, Town Clerk