

**TOWN OF WEDDINGTON
SPECIAL MEETING
BOARD OF ADJUSTMENT
WEDDINGTON TOWN HALL
1924 WEDDINGTON ROAD
WEDDINGTON, NC 28104
WEDNESDAY AUGUST 16, 2017
7:00 P.M.
MINUTES
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1. OPEN THE MEETING

Chairman Gerry Hartman opened the meeting at 7:00 p.m.

2. DETERMINATION OF A QUORUM

Quorum was determined with Chairman Hartman, Board Members Barbara Harrison, Jim Vivian, Rob Dow, and First Alternate Brad Prillaman in attendance. Second Alternate Walt Hogan was present in a non-voting capacity.

Chairman Hartman introduced the new Board of Adjustment Attorney, Terry Sholar.

3. APPROVAL OF THE JANUARY 23, 2017 BOARD OF ADJUSTMENT MINUTES

Motion: Board Member Harrison made a motion
Second: Board Member Vivian
Vote: unanimous

4. CONSIDERATION OF REQUEST FOR VARIANCE FROM SECTION 58-54 (3)(E) MINIMUM REAR YARD SETBACK FOR 2156 WEDGEWOOD DRIVE, MATTHEWS, NC 28104.

Chairman Hartman explained the procedures of a quasi-judicial Board of Adjustment. All persons to testify will be sworn in.

Mr. Sholar swore in Town Administrator/Planner Lisa Thompson, Applicant Mr. Thomas Cragg, and General Contractor Mr. Lindsey Davis.

“Do you solemnly swear that the testimony you are about to give in this matter is the truth, the whole truth, and nothing but the truth, so help you God?”

All respond: *“I do”*.

The Board was questioned for any conflict of interest. No members had a conflict. Chairman Hartman asked if anyone present believes any board members have a conflict of interest. The response was no.

Chairman Hartman asked if any members visited the site or has special knowledge that may come up in the hearing.

Board members Dow and Hogan went separately to look at the site. They drew no conclusion or made any determination with regard to this case. Board member Harrison was serving on Town Council when this development was started, so she is familiar with issues in the neighborhood, but doesn't believe there is anything to prevent a fair hearing. The Board expressed no objections.

Chairman Hartman explained that the Planner will present the case, then the Board will hear from the Applicant and hear other comments in support or opposition to the Applicant, then the Board will discuss the testimony, develop findings of fact based on testimony, and then vote on findings of fact. The vote must be 4/5 of Board members to grant the variance.

Ms. Thompson presented the case. Thomas and Miriam E. Cragg seek a variance from the Weddington Code of Ordinances Section 58-54(3) titled Yard Regulations to provide relief from the minimum 40' rear yard setback requirement for a 18 x 18' addition on a existing home.

Background and Site Information

The house was constructed in 2000 within the Wedgewood Subdivision. Wedgewood Subdivision was recorded in 1988 under the Union County Ordinances prior to annexation from the Town. (Attachment 1-Plat recorded with Union County Register of Deeds 1988-subject properties highlighted in purple)

The current zoning is R-40. The setbacks are 50' front, 15' side, 25' street side, and 40' rear. The subject property is .98 Acres. The applicant owns the adjacent property to the north which is .95 acres. (Attachment 2-Zoning map with subject properties outlined in red. It shows the R-40 zoning)

The house was built approximately 89.77' from the front lot line and 41.9' from the rear. (Attachment 3-the foundation survey completed by Carroll Rushing in 2000)

Justification Statement

The Applicant seeks a variance to build an 18'x18' all-seasons room addition to their existing home.

The applicant cites (1) the shape of the lot (2) a creek and flood plain running adjacent to Wedgewood Drive (3) the original covenants 75' front yard setback requirement as to reasoning for the current home placement and justification for a variance. (Attachment 4-the application including: applicant's handwritten justification with findings of fact and applicant's justification for each, covenants for Wedgewood subdivision with underlined setback requirements, picture of existing patio, aerial photo, street view photo, and rendering of new addition and Attachment 5-2014 FEMA floodplain with creek and floodplain on property)

The required rear yard setback per *Section 58-16 (3)(d) of the Town of Weddington Zoning Ordinance* is 40 feet. The applicant's request is for 13' of relief from the 40' rear setback. The addition at the closest corner will be 27' from the rear property line.

The proper notices were sent by staff to all adjacent property owners and a sign was placed on the subject site at least 10 days prior to the date of the meeting.

Per the Weddington Code of Ordinances Section 58-233, the Board of Adjustment, when considering whether to approve an application for a variance request, shall review the following findings and make the decision based on substantial, competent and material evidences in the record.

If the Board is of the opinion that the above required findings can be made to approve the variance, staff recommends the site be subject to the following conditions:

- An as-built survey is submitted showing the exact encroachment and foot print of the structure; and
- All necessary zoning permits are obtained from the Town and other applicable outside agencies.

Board member Dow confirmed that the foundation survey done in 2000 by a certified surveyor has a measurement of 41'9" from the back corner of the house to the road. He asked if the measurement is to the road right of way.

Ms. Thompson confirmed that the measurement is to the recorded right of way, not to the middle of the road.

Board member Prillaman asked if there is a measurement of how far the property line is to the road.

Ms Thompson answered that the measurement isn't given. Ms Thompson entered Attachment 6 for the record. The survey shows edge of road and right of way line.

Board member Dow asked why does that measurement matter. Board member Prillaman responded that it was from the visibility standpoint.

The Board agreed to let the applicant present his case.

Mr. Cragg: What we did, at the time, we were in Union County, so we didn't have any restrictions except for Union County and the covenants. If you read the covenant, it's a 30' rear set back. To make that fit, we had to turn it, so we turned our house toward Wedgewood and the rear toward Whisperwood so we could actually make it fit. We bought the adjacent property so that we could put a driveway in that way and the septic system right where normally a person would put a driveway. So that's why we have the extra property there. To add in any additional spot the sides were added it we would have to go toward the creek an adding on to the sides we would be encroaching on our neighbor or in to the driveway so I don't want to go toward the

creek any more so this is actually the only spot we can actually add on the 18 x18 sun room. If there is anything else I can add. The paper work was very well put together and I appreciate that. If there are any construction issues you might have, I've brought my builder Dave Lindsey who can actually answer any questions you might have. Is there anything else you guys can think of that I can add to it?

Board member Dow: If I can ask a couple questions: You built the house?

Mr. Cragg: I did.

Board member Dow: In 2000 of whatever and that was prior to annexation?

Mr. Cragg: Correct

Board member Dow: And chose the location of the house where it is. Just for curiosity, you had a 75 ft. front requirement and 30 ft. rear by the subdivision at that time. Why did you go to 89 ft. in front?

Mr. Cragg: It would have went into the creek, so we moved it back as much as possible. It wouldn't have fit, so I pushed it and when they did the survey it came out to 41 ft.

Board member Dow: Another question I have, in reading the covenants: they still have a 30 ft. rear setback, do they not?

Mr. Cragg: Covenants haven't been in effect for a while.

Board member Dow: You would be encroaching there by 3 feet, with the granting of this variance.

Mr. Cragg: Yes, but they haven't been in effect.

Chairman Hartman: Is there an active HOA?

Mr. Cragg: No active HOA.

Chairman Hartman: Are neighbors aligned on this?

Mr. Cragg: So far everyone I talked to is.

Chairman Hartman: Did you consider other options? Like something not permanent?

Mr. Cragg: No. I'm pretty well set on this path.

Board member Dow: In all fairness, as far as things I did see, that you have a deck, on the side and that meets setback for the side yard?

Mr. Cragg: Yes.

Board member Dow: Why couldn't the all weather room go there?

Mr. Cragg: That would not work. The back of the house is where our living and kitchen is- the living area. To go out the side there, it would be coming out the bedroom.

Board member Dow: The only other things I saw, it's an interesting lot in that it's got street on both sides. And I don't know how noteworthy this is, so your driveway comes off just before the point of Whisperwood and Wedgewood and up through your second lot. So the front of your house is facing Wedgewood and the rear of the house faces Whisperwood. Now, the lot directly across Whisperwood from you, that is the front of that house. They are 75 feet back?

Mr. Cragg: That's what I was told.

Board member Dow: So there are two lots there that can see the back of your house. And actually the lot next to you on Whisperwood is facing Whisperwood, facing the opposite direction of yours. Driving by, I see the back of your house and the front of theirs. Those were just things I couldn't tell from this but I saw on location.

Chairman Hartman: Just a follow up question, since you saw it. I will ask for clarification. It looks like where the back of the structure will be built; it is not across from a house. The other house is over a ways?

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Mr. Cragg: Yes. It's probably 20 feet.

Board member Dow: I noticed in your application, you were talking about a berm and trees in back will buffer from Whisperwood.

Mr. Cragg: You can look at Whisperwood, it goes down a little bit and comes back up and then it comes back down to about 3 feet little berm there. There is vegetation around our septic, which is out there and I've got two trees which are right out front of that

Terry Sholar: Any plans for additional landscaping back there?

Mr. Cragg: We will put landscaping around the 18 x18 addition

Board member Prillaman: What type of landscaping?

Mr. Cragg: It's going to be some hedges mostly, maybe some flower beds.

Board member Dow: Currently you have a concrete pad back there. Roughly how big is it?

Mr. Cragg: I do. It's probably 30x12.

Board member Dow: So this might stick out 6 feet from the concrete.

Mr. Cragg: Actually I have it marked out. 6 feet

Board member Dow: Would you say the reason you have to ask for this variance is because of the position of your house and the shape of the lot?

Mr. Cragg: Absolutely.

Ms. Thompson: I think that creek in their front yard is also a factor into this plus the flood plain.

Chairman Dow: The house is nowhere near the flood plain, though.

Ms. Thompson: Right.

Mr. Cragg: If I get too much more it's probably somewhere around 20 feet from the creek. I can't build out. It comes back up to almost where our front porch is. I really can't go out.

Board member Prillaman: If I understand correctly you're basically locked into spot where you basically don't much of an option to go back or forward or up or down. It is what it is. Because you got septic line there, creek in the front, swales in the back. You're kind of positioned stuck.

Mr. Cragg: I am.

Chairman Hartman – It looks like no other homes in the neighborhood have that kind of situation? Is that true?

Board member Dow: Those two right there. There's three here. Have you owned both lots the entire time?

Mr. Cragg: Yes. We actually put our driveway to get that on to the other side of the culvert so I didn't have to actually build a bridge.

Board member Dow: Just for curiosity, did you consider building the house originally on the other tract or more toward the other tract of land, but on more flat land?

Mr. Cragg: It couldn't get in there. With the right of way, if you actually look at it, it becomes narrower. The only thing I wanted there was to build a shed down there sometime. Like a workshop or something, but I haven't done that yet. That's another time.

Board member Harrison: Was that a buildable lot?

Mr. Cragg: When we purchased the land, it was not for sale. The original that was for sale, when we went to go buy it, someone had already purchased it. That went back to the real estate agent because they couldn't figure out how to make house fit. They called us and told us it was back up for sale would you like to look at it and we did. I sat down worked for 2 weeks to see how house could fit. I spent 2-3 weeks back and forth with contractor. Septic was a big issue.

Board member Harrison: Both lots perk?

Mr. Cragg: One did. The second one, we sort of had to buy it because if this ever fails, we have another spot extended over.

Harrison: Wedgewood doesn't have common septic?

Mr. Cragg: No.

Board member Dow: Did you consider different house plan? You picked the house plan when you bought the lot prior to it.

Mr. Cragg: We had an idea, so I built it to fit on the property. I designed it.

Board member Dow: It is 60 wide roughly by maybe 40 something deep.

Mr. Cragg: Yeah.

Chairman Hartman: As far as you could tell, Rob, when you visited, there are no line of sight issues?

Board member Dow: I can't say that. I felt like when you're driving down the road you have the front of the house here with 75 ft is a good set back. And they're beautiful homes. The one most directly across the street from the back of his house is not directly in line, as you can see. But it is very clear the back of his house is very clear sighted. There are not a lot of, maybe two, trees and a very small pump, maybe three feet high. His whole back yard is very visible. So, you've got the front of a house, the front of a house, and the back of his. And then the next house 75 feet way back, the front of. It is beautiful looking up through the trees, whether it's pretty or not isn't important. It'll be clear. I was surprised, 40 feet is not much and when it's close to the road like that. I saw the concrete pad and thought the concrete pad is encroaching a few feet. Which it definitely is.

Board member Prillaman: A point of reference. Are we regulated by current code as it is now or when the house was built? Code now is 40 feet. When built it was 30. The house is grandfathered in, obviously.

Mr. Sholar: The variance is based on code of ordinances today.

Chairman Hartman: A point of clarification for my benefit. If a variance was granted, is it in perpetuity for whole width of house? Or is it just for the addition.

Ms. Thompson: That's the closest point from the corner of the house to the property line, so that is the maximum they would need.

Chairman Hartman: Full width of the house?

Board member Dow: He is asking if you're moving 40 foot setback to 27 for the entire length of the property. Is the setback for the whole length of the property?

Ms. Thompson: No.

Board member Prillaman: If I understand correctly, variance is only for the 18x18 addition today. Not for anything in the future, possibly additional annexations.

Ms. Thompson: Correct. Yes.

Board member Dow: To Lisa: I have a question that I thought of. You haven't been here forever, but you've seen, not only here but in other communities with similar zoning, have you seen a lot of homes that are built pretty close to the rear yard setback? Is it fairly common to be within 5-10 feet of the 40 ft. set back line?

Ms. Thompson: It's typical to get as close to the front as possible-so you have play area in the back.

Board member Dow: Are you telling me there are no houses with 40 feet back?

Ms. Thompson: Absolutely not.

Board member Dow: This situation could apply. There are reasons that this house was built to the 40 foot minimum, but there are a lot of homes that are that way.

Ms. Thompson: Yes.

Board member Harrison: In my neighborhood, most of the houses that perk, they have septic in the front so you've got them pushed back. They're hitting back setbacks because of the field.

Mr. Cragg: I would like to add one thing: my neighbor in the back, his house sits down 10-15 feet lower. When he looks at my house, he's looking at my roof line; he is not looking at my back yard because he is so much lower on that side.

Board member Dow: one last question for you Terry: for homes that are built close to the rear yard setback, for whatever reason, is that in your mind a peculiar situation or grounds for variance?

Mr. Sholar – I think what the ordinance contemplates is: if there is something unique about the lay of the land, the topography or situation. In this particular situation, this is not a standard run of the mill lot. With the set back lines, wherever they are, there may not be a justification for a variance. But is there something unique about the lay of the land or house that is justification for a variance. That is really what you're looking at in the ordinance.

Mr. Cragg: I think we've justified that.

Board member Dow: Now that the house is built, but a narrower house or different layout or pushing it down the hill a little bit – there are ways it could have been done.

Mr. Cragg: It could have been back then.

Board member Dow: I understand.

Board member Harrison: So 20 years from now, what happens if somebody buys the house, knocks it down? All this goes away? And they have to abide by whatever the ordinances say at the time.

Ms. Thompson: Correct. Yes. It will have to meet the current setbacks, which could be different than what they are today.

Board member Vivian: The people on Whisperwood are aware?

Mr. Cragg: Yes they are. I've already talked to the neighbor actually on the north, the one that will be impacted the most

Board member Harrison: We sent out notices, right? Any feedback from anybody?

Ms. Thompson: No. Just a lot of calls asking why there is a zoning sign.

Chairman Hartman: And when it was explained, no other questions?

Ms Thompson: Right. The Findings listed in the staff report in italics were by the applicant. You guys can go through those one by one. Accept those, add to those, amend them however you want to do it, you can have your own.

Mr. Sholar: are you aware of the findings of fact and is that your testimony?

Mr. Cragg: yes.

Mr. Sholar: so that will be your testimony.

Chairman Hartman: we will move on and consider the Findings of Fact. We won't close the hearing yet, in case there are further questions.

Chairman Hartman reviewed the Findings of Fact:

1) Unnecessary hardship would result from the strict application of the ordinance. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. This shall be construed to mean:

- a. The hardship results from the application of this chapter; 40 ft. setback requirement.

The Board of Adjustment agreed unanimously.

- b. The hardship results from the conditions that are peculiar to the property, such as location, size, or topography. (Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance); and

Chairman Hartman: *To me, this lot is a little unique in this neighborhood. Bordered by two roads.*

The Board agreed by 4/5 majority.

Yes: Chairman Hartman, Board members Vivian, Harrison, and Prillaman

No: Board member Dow

Board member Dow: *The topography is there, but as the Applicant stated, it's shared by the fact that the house was built in there. In other words, the topography alone hasn't prevented them from, they could have built the house with a sunroom had they laid it out differently.*

Chairman Hartman: *They had a lot of constraints: the covenants that were more enforced then than they are now, and then the site of the house itself to meet space for the septic and alternate field and such. There were a number of other factors. So to me it isn't the sole responsibility.*

- c. The hardship is not the result of actions taken by the applicant or the property owner. (The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.)

Board member Dow: *My question and this is open for discussion, if you can swing me, that's fine. And that's why I find it interesting they didn't chose the house, they did build the house. If it was a previously built structure that wasn't their doing to create this problem it would be one thing. In a sense, the house being built where it is, the way it is, has created the problem that they don't have room in the back yard. They've already pushed it that way. Just like a million other houses here-several probably hundred, other houses in Weddington are built to the 40 ft rear setback line. If they come in at that point, 10 years later and say they want to have a sunroom encroach, what's the difference?*

Chairman Hartman: *The Applicant didn't anticipate-that's what softens my feeling on it. It's been a long time.*

Board member Dow: *I understand. I'm sympathetic to the problem, but to say they didn't have a hand in creating the problem is a pretty clear point.*

Mr. Cragg: *To your comment, I would say, 20 years ago, I didn't have the money to build a sunroom. I do now. I didn't at that time, and the concrete is actually sort of encroaching on that 30 ft.*

Board member Dow: *I agree, I understand.*

Board member Harrison: I am also sympathetic to the fact house has been there a long time. Still, it's going to end up being a variance. There wasn't any thought about encroaching at that point. There were other issues; one lot perks and the other lot doesn't, the stream, when it was built to work out.

Board member Vivian: To add on to what Barbara is saying, add to that the fact that there's a street in front and street in back. Most houses, most lots aren't that way.

Board member Dow: Yeah, which makes the visibility to me...

Board member Vivian: Correct, but it's not these people's fault, that's the land developer.

Board member Prillaman: We have codes and standards. There are guidelines. One thing that does soften my stance on this particular case is: It was a tremendous long time ago. Yes, the homeowner fit the home in a manner which he could and he did what he had to do, so I understand that. The other piece that softens my stance is: Because it's a weird lot. Back of his house is almost in the street behind him which is a completely unusual thing, there's also a great deal of distance between the homes behind and in front of the house. So, there's a huge setback there from the visibility factor. So, from my perspective, I don't feel a whole lot of heartburn about this particular instance. I may encourage more landscaping to kind of cover some of that up, but I can definitely be a bridge to get back where we probably need to be and allow the let homeowner some flexibility to do what he wants. That would be my thought process.

Board member Dow: I understand. I'm sympathetic.

Ms. Thompson: I don't think we did a vote on that one.

Chairman Hartman asked for any other discussion. He called for the vote. There was confusion as to who was voting. Initially, vote was 3 for 2 against. There was further discussion about the votes.

Board member Prillaman asked for clarification of the finding of fact.

Mr. Sholar: The fact that the Applicant bought property knowing the property was in the condition it was in with the two streets and the creek and all that stuff. That situation can't be used as a reason.

Chairman Hartman: I'm not usually for these kinds of things, but they lived there a long time. Things change. If someone was to buy the property now, they would have an easier time than after being there a long time. Length of time makes it unique.

Board member Prillaman: I'm trying to find a reason to vote for it, but at the same time, it is what it is. What we're suggesting is time is mitigating factor.

Chairman Hartman: That's the argument, whether you buy it or not. Because it's been so long.

Board member Prillaman: I'm changing my vote.

The Board agreed by 4/5 majority.

Yes: Chairman Hartman, Board members Vivian, Harrison, and Prillaman

No: Board member Dow

(2) That the variance is in harmony with the general purpose and intent of this chapter and preserves its spirit.

Chairman Hartman: In the testimony given, the residential add-on is in keeping with style of the house. We affirm it is in harmony with the ordinance.

The Board agreed unanimously.

(3) That in the granting of the variance, the public safety and welfare have been assured and substantial justice has been done.

Chairman Hartman: There is no real impact on public safety.

Board member Dow: This doesn't impede any sight lines on the road, no traffic increase. No road cut. I see no possible public safety threat.

The Board agreed unanimously.

(4) That the reasons set forth in the application and the hearing justify the granting of a variance, and that the variance is a minimum one that will make possible the reasonable use of land or structures.

Chairman Hartman: We did establish that it is only for the 18x18 addition. The variance disappears if they rebuild house. It is less than 50% of the setback and the neighbor house is below grade, so shouldn't see anything across the street.

The Board agreed by 4/5 majority.

Yes: Chairman Hartman, Board members Vivian, Harrison, and Prillaman

No: Board member Dow

Chairman Hartman closed the public hearing.

Motion: Board member Harrison made a motion to grant a variance from Section 58-54 (3)(e) *Minimum rear yard setback* for 2156 Wedgewood Drive, Matthews, NC 28104 with conditions from staff:

- An as-built survey is submitted showing the exact encroachment and foot print of the structure;
- All necessary zoning permits are obtained from the Town and other applicable outside agencies; and
- More landscaping for screening.

2nd: Jim Vivian

Vote: The motion passed with a 4-1 vote.

In favor: Chairman Hartman, Board members Harrison, Prillaman, and Vivian

Against: Board member Dow

5. ADJOURNMENT

Motion: Board Member Prillaman made a motion to adjourn the Board of Adjustment Meeting at 7:59 p.m.
Second: Board member Harrison
Vote: The motion passed with a unanimous vote.


Gerald Hartman, Chairman

Attest:


Karen Dewey, Town Clerk

Approved: 22 Jan 2018

