

**TOWN OF WEDDINGTON
BOARD OF ADJUSTMENT MEETING
WEDDINGTON TOWN HALL
1924 Weddington Road
Weddington, NC 28104
March 22, 2021***

**AFTER THE HISTORIC PRESERVATION COMMISSION MEETING
AGENDA**

1. Open the Meeting
2. Determination of a Quorum
3. Election of Chairman and Vice-Chairman and Appointment of Alternates A and B
4. Approval of Board of Adjustment Meeting Calendar
5. Approval of Minutes
 - a. June 15, 2020 Special Board of Adjustment Meeting Minutes
6. Call for a Special Meeting to be held on Monday, April 26, 2021 before the Planning Board Meeting for the Consideration of a Request for a Variance from Section 58-16(1) *Accessory Uses and Structures* for 2040 Kings Manor Drive, Weddington, NC 28104
7. Adjournment

****Rescheduled from January 25, 2021***

2021 BOARD OF ADJUSTMENT MEETING SCHEDULE

DATE	TIME	LOCATION
January 24, 2022	After Historic Preservation Commission Meeting	Town Hall Council Chambers
Special Meeting Called as needed	To be determined	Town Hall Council Chambers

**TOWN OF WEDDINGTON
SPECIAL MEETING
BOARD OF ADJUSTMENT
WEDDINGTON TOWN HALL
MONDAY JUNE 15, 2020 7:00 P.M.
MINUTES
PAGE 1 OF 11**

1. Open the Meeting

Chairman Hogan called the June 15, 2020 Board of Adjustment meeting to order at 7:00 p.m.

2. Determination of a Quorum

Quorum was determined with Walt Hogan - Chair, Members Jim Vivian, Steve Godfrey, and Brad Prillaman; alternate Ed Goscicki all present. Vice Chair Tami Hechtel was absent.

Staff: Town Administrator/Planner Lisa Thompson, Town Clerk Karen Dewey, Board of Adjustment Attorney Terry Sholar

Visitors: Steve McClendon, Alan Clarke, Kathleen Neel, Melanie Cox

3. Approval of the February 24, 2020 Board of Adjustment Minutes

- Motion:* Board member Godfrey made a motion to approve the February 24, 2020 Board of Adjustment minutes.
- Second:* Board member Goscicki
- Vote:* The motion passed with a unanimous vote.

4. Consideration of Request for Variance from Section 58-16(1) *Accessory Uses and Structures* for 100 Vintage Creek Drive, Matthews, NC 28104.

Chairman Hogan opened the evidentiary hearing for the request for variance from Section 58-16(1) Accessory Uses and Structures. The property is located at 100 Vintage Creek Drive and is owned by Allen Clark and Kathleen Neel. A 4/5ths vote of the board is required to grant a variance.

This hearing is a quasi-judicial evidentiary hearing. State law sets specific procedures and rules concerning how this board must make its decision. The board must base its decision on competent, relevant, and substantial evidence in the record. If speaking as a witness, please focus on facts and standards, not personal preference or opinion. The meeting is open to the public, but participation is limited. Parties may present evidence, call witnesses, and make legal arguments. Parties are limited to the applicant, the municipality, and individuals who can show they will suffer special damages. Witnesses must swear or affirm their testimony. Now we will administer the oath for all individuals who will provide testimony.

BOA attorney, Terry Sholar administered the oath “Do you solemnly swear that the testimony you are about to give to this Board in this matter is the truth, the whole truth, and nothing but the truth, so help you God”?

Applicants Alan Clarke and Kathleen Neel, Attorney Melanie Cox, and Town Administrator/Planner Lisa Thompson all replied, “I do”.

Chairman Hogan asked if any board member has any partiality to disclose and recusal to offer? All members replied none.

Chairman Hogan asked if any board member has had any conversations or other communications to disclose? All members replied none.

Town Administrator/Planner Lisa Thompson presented the case:

Alan Clarke and wife, Kathleen A Neel seek a variance from the Weddington Code of Ordinances Section 58-16(1) titled Accessory Uses and Structures to provide relief from the minimum 15’ rear yard setback requirement to accommodate a pool installation.

The current zoning for the subject lot is R-CD. The minimum principal setbacks are as follows: 20’ front, 5’ side (30’ separation between homes) and 30’ rear. The subject property is .372 Acres.

The single-family home located on the subject property was constructed in 2015 by Standard Specific Homes. A certificate of compliance was issued by the town on 8/12/2015. The house is built 42’ from the front and 37.2’ from the rear.

Accessory uses and structures are permitted on the existing lot subject to a 15’ rear yard setback or the setback of the principal structure, whichever is less

According to 2019 aerial maps, there are 11 homes within the same subdivision that have pools in the rear yard.

That applicant seeks a variance to build a swimming pool which is an accessory use according to the town’s zoning ordinance. The applicant sites (1) the shape of the lot (2) the lot size and (3) topography as the justification for a variance.

The required rear yard setback for an accessory use per *Section 58-16 (1) of the Town of Weddington Zoning Ordinance* is 15 feet. The applicant’s request is for 7.5’ of relief from the 15’ rear setback.

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. All exhibits and attachments are entered into the record.

Board member Goscicki asked if other pools in the neighborhood needed a variance. Ms. Thompson responded that they did not. He asked if this lot is configured significantly differently

than others in the community, is the house back from the street farther than others? Ms. Thompson replied that it appears so from looking at aerial photography, but she doesn't have factual information.

Board member Vivian stated that he drove by the house and looks like it is in line with other lots. Ms. Thompson stated that there is a 30-foot required setback and this house is set back at 42 feet, so it is set back 12 more feet than required.

Board member Goscicki stated that it looks set back significantly and a sculptured sidewalk/walkway across the front.

Board member Prillaman asked for clarification on the application. Ms. Thompson explained that the applicant cannot vary the setback more than $\frac{1}{2}$ the required set back. If approved, the setback requirement will be $7\frac{1}{2}$.

Board member Prillaman asked if the plans noted 6 feet between the home and the edge of the pool. Ms. Thompson confirmed that is the distance shown on the plans. She continued that there are 10 acres of conservation land surrounding entire rear of property. Board member Prillaman asked how far the existing patio is from the property line. The applicant Mr. Clark responded: about 15 feet.

Board member Prillaman confirmed that the Board is dealing with the spa and pool setbacks, the patio is not an issue as it can go to the property line. The setback is 15 feet and the variance is for the pool setback. The applicant is looking for $7\frac{1}{2}$ foot variance. There are no neighbors to the rear. It's conservation land. Neighbors are on one side only.

Melanie Cox, representing the applicant, presented the applicants' case.

Allen Clark of 100 Vintage Creek Drive testified: Ms. Cox asked how long have you resided at 100 Vintage Creek Drive. Mr. Clark responded: 2 months. Ms. Cox asked what brought Mr. Clark to Weddington. He replied he was promoted with Honeywell International Headquarters and they are looking to eventually retire in this area. Ms. Cox asked can you tell the Board of Adjustment about the process to move here. Mr. Clark responded: They had to sell their property in New Jersey. His wife had some surgery on a broken foot, and he had to physically move to Charlotte at the end of January due to his new job. There was a long process to purchase the house. They were looking for a house with a pool and a master on the first floor because of medical issues. Initially they weren't looking in Weddington, but because of the onset of the COVID pandemic, they were rushed to complete the buying process. This was the perfect house and they got it in time before everything closed down. Mr. Clark continued: They communicated their desire to purchase a house with a pool or to build one for physical therapy and recovery from medical procedures. Ms. Cox asked if there was any concern at the time of purchase that they wouldn't be able to build a pool. Mr. Clark responded: none. They saw other houses with pools, and they couldn't imagine any problem. Ms. Cox asked Mr. Clark to describe Vintage Creek. He responded: It's great. Lots of trees and open space. A diverse community, kids, it's wonderful. One entrance in and out of the neighborhood. Safe and wonderful. Ms. Cox stated: Vintage Creek is a conservation neighborhood; do you understand what that means? Mr. Cox responded: Yes. It's the area that zoning was changed with commitments to preserve a park like setting. Ms. Cox asked: When you pull into the subdivision-what is the property to the right side of your house, is it conservation land? Mr. Clark responded: I don't know. There is some land to the right. We have only one neighbor and 10 acres behind and across the back. Our house is closer to the front property line probably because of the curve of the street. It's a smaller lot. And no neighbors are seen from the back yard. Ms. Cox asked Mr. Clark to describe the pool and spa.

Mr. Clark responded: The pool is a 16 by 40 rectangle. It's not a big pool. It is flat, level with the ground and he doesn't believe anybody can see it. Ms. Cox asked if Mr. Clark will put a buffer between his house and the neighbor. Mr. Clark responded that the pool is not visible from the street. Ms. Cox presented the exhibits showing the current back yard and pool agreement. The current patio will be replaced. Ms. Cox asked Mr. Clark to describe the landscaping improvements. He responded that there will be an evergreen screen and additional landscaping will be added along the fence. Ms. Cox asked if the exhibit shows where the property line is located. Mr. Clark responded that the property line is on the opposite side of the fence. Ms. Cox asked if Mr. Clark believe they will suffer unnecessary hardship if the variance is not granted. Mr. Clark responded: yes. They wouldn't have the same use of their property as everybody else in the neighborhood. They are looking to put a pool in the middle of the back yard to look normal for the neighbors, any future buyers, and themselves. He believes this would improve the overall value of the house. Ms. Cox stated: to be clear, you are requesting a 7 ½ foot variance as opposed to the 15 ft. set back in the ordinance. Mr. Clark responded that is correct. They were surprised that the set back was that much. They understand that Weddington only allows a 50% reduction in setbacks. Ms. Cox asked if Mr. Clark believes that the variance is in harmony with the general purpose and intent of the ordinance Mr. Clark responded: I think so. I think it enhances the value; it can't be seen from the street. He believes it adds to the value. Ms. Cox asked if Mr. Clark was familiar with the Weddington Land Use Plan. Mr. Clark responded only what he's read it after the fact online. Ms. Cox asked, "Do you think that if this variance was granted, would it still meet Goal 1 of the Land Use Plan: Ensure all new development takes place in a manner that conserves open space and scenic views"? Mr. Clark responded that the variance doesn't change the view for anybody else and all privacy will be maintained. Ms. Cox asked if there are any concerns with public safety and welfare. Mr. Clark responded that the first thing they will do is follow the pool barrier ordinances. He stated that this application boils down to being able to install the pool in the middle of their yard, they wouldn't be requesting the variance if it would hurt neighboring property values.

Board member Prillaman asked when Mr. Clark moved into the home. Mr. Clark stated that they closed on April 22. They were rushed to get the closing ahead of COVID issues. Board member Prillaman asked if Mr. Clark had talked to the town at all in the due diligence phase. Mr. Clark responded that he didn't think there would be an issue, it wasn't until after their pool contractor told them there was a setback issue. Board member Prillaman stated that there was no conversation with the Town and Mr. Clark didn't do his due diligence. Mr. Clark stated that there was limited time to get their bid in on the house. Board member Prillaman asked Mr. Clark how many homes he has owned over the years Mr. Clark responded "4".

Board Alternate Goscicki asked Ms. Thompson if the setback requirements are the same for conservation developments as they are for non-conservation developments. Ms. Thompson required that they are the same for the rear yard accessory structure-- 15 feet or setback of primary structure or whatever is less. There is no relief from the rear yard setbacks in conservation developments.

Ms. Neel commented: The property line to the right as you're looking at the house, extends 8 feet beyond fence line. She also stated that she appreciates everyone meeting. She's been going through surgery since October 2019, and she would greatly appreciate this variance.

Board member Prillaman asked if there were the options for a reduced pool size? Mr. Clark responded that the pool would be like a short bowling alley if they reduced the size. Board member Prillaman responded that is how lap pools are set up. Mr. Clark replied that they would like to have a nice pool for the family to enjoy together.

Ms. Cox asked Mr. Clark if he has owned pools before. He responded that he has owned pools in two other homes they've owned before now.

Mr. Goscicki asked staff to pull up the subdivision plat. He is interested in seeing how the houses are situated on the plat. He is concerned with this house being set back farther from the street than other houses in the subdivision. The house isn't centered in the lot, it's pushed back 42 feet. Ms. Thompson showed the GIS map.

Ms. Cox asked Ms. Thompson if there were any other variance applicants for this subdivision. Ms. Thompson stated the town has not received any. Ms. Cox asked if the 11 other pools in the neighborhood didn't have to come before Board of Adjustment? She responded no, they were administratively approved.

Chairman Hogan stated that with no additional questions or presentation of relevant facts, the board will now begin deliberation and review the findings of fact. The evidentiary hearing remains open so that the board may ask clarifying questions, if needed.

(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;

Ms. Thompson stated that Board Alternate Goscicki made a valid point that the RCD lots are smaller than conventional subdivisions and subject to same setbacks as larger lots.

Board member Goscicki stated that in his experience of purchasing 9 homes over the years, he has never reviewed a town ordinance before buying a home and only looked at setbacks as drawn on the plat. His opinion is that this setback is a hardship to the property owner, and they will suffer as a result. They anticipated being able to install a pool and will suffer a hardship without a pool on their property.

Ms. Cox stated: Mr. Goscicki pointed out size of the lot and setbacks of lot. There are 11 pools in this subdivision which gives evidence that this lot is different than the rest of the lots. This house is surrounded by a conservation easement. Look at the purpose of setbacks and the reason for setbacks for privacy, but with this conservation easement behind, next to, and across the street from this house, no neighbors will be disturbed. This lot has the same setbacks as 40,000 square foot lots and it is half that size. Weddington is known to be a beautiful community with good sized lots. Pools will add value to the community. The homeowner was in a difficult situation and did everything that he could. This is a situation where a few lots in the development

aren't able to use the property as desired. Perhaps when conservation developments are approved, the Town should take a look at the lot size, so homeowners have free use of their property.

Board member Prillaman stated that the RCD minimum lot size is 12,000 square feet. This lot is 16,200 square feet. The Planning Board has no obligation or requirement to restrict what a homeowner decides to put on their property with respect to homes. That's the builder's obligation. With respect to the conservation area, that is not a privacy issue, just conservation. All RCDs have the same requirements. Not one of the 11 other pools in the neighborhood needed a variance. There are other pools in the area. The Weddington Swim and Racquet Club and the YMCA.

The Board agreed unanimously that the hardship results from the application of this chapter as the house appears to be set back farther on the property than other houses and that RCD lots are smaller than conventional subdivision lots yet still subject to the same setback requirements.

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

The Board agreed unanimously that the hardship results from the conditions that are peculiar to the property.

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 Vivian stated that driving through the neighborhood, there was nothing to trigger that the homeowner wouldn't be able to put a pool in without a variance.

Board member Prillaman stated "Is it the Town's responsibility to rectify a sales agent who didn't properly represent their client. It's not the responsibility of the Town to rectify the error. This isn't a problem created by the Town. It was created by the ineffectiveness of the real estate agent to properly represent their client.

Board alternate Goscicki stated that is why the Town has a variance process. To review individual cases and look at this in the overall intent of the land development concepts of the Town. In the spirit of the land development concepts, this variance is appropriate.

Board member Prillaman stated that he looks at it as is this a self-created hardship. He sees it as the responsibility of the home buyer to get this information. It is a self-created hardship.

The Board agreed by a 4/5 majority that the hardship is not the result of actions taken by the applicant

Chairman Hogan, Board members Vivian, Godfrey, and Goscicki agreed with the finding of fact that the hardship is not the result of actions taken by the applicant. Board member Prillaman disagreed with the finding of fact

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

Board alternate Goscicki stated that this variance is in harmony with the general purpose and intent of the ordinance. It is the purpose of the Board to look at if the property owner is under a hardship and this variance will correct that. Board member Vivian agreed that it is in the spirit of the ordinance Board member Prillaman agreed.

The Board unanimously agreed that the variance is in harmony with the general purpose and intent of this chapter and preserves its spirit.

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

Board member Goscicki stated that this variance will not be creating any public safety or welfare issues.

The Board unanimously agreed that the granting of the variance would not have any impact on the public safety and welfare. The property has common open space on three sides and will not create any public safety or welfare issues.

(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.

The Board agreed unanimously that the reasons set forth by the homeowner and the evidence presented at the hearing did establish justification for the granting of a variance for the 15-foot rear yard setback for accessory structures.

Chairman Hogan closed the evidentiary hearing.

- Motion:** Board member Prillaman made a motion to approve the application for a request for Variance from Section 58-161 (1) Accessory Uses and Structures for 100 Vintage Creek Drive Matthews, NC 28104 with landscaping improvements and drainage improvement as noted in the application.
- Second:** Board member Godfrey
- Vote:** The motion passed with a unanimous vote.

Staff will draft a final written decision to reflect the vote and reasoning for this decision. That written decision will be provided to the applicant and other parties with a right to such notice. Parties have thirty days to appeal this decision

5. Consideration of Request for Variance from section 58-8(a)(4)(a) *Screening and Landscaping* for 306 Reid Dairy Road, Weddington, NC 28104

Vice Chairman Hogan opened the evidentiary hearing for the request for a variance from Section 58-8(a)(4)(a) Screening and Landscaping. The property is located at 306 Reid Dairy Road and is owned by Wesley Chapel Volunteer Fire Department. A 4/5ths vote of the board is required to grant a variance.

This hearing is a quasi-judicial evidentiary hearing. State law sets specific procedures and rules concerning how this board must make its decision. The board must base its decision on competent, relevant, and substantial evidence in the record. If speaking as a witness, please focus on facts and standards, not personal preference or opinion. The meeting is open to the public, but participation is limited. Parties may present evidence, call witnesses, and make legal arguments. Parties are limited to the applicant, the municipality, and individuals who can show they will suffer special damages. Witnesses must swear or affirm their testimony. Now we will administer the oath for all individuals who will provide testimony.

BOA attorney, Terry Sholar administered the oath “Do you solemnly swear that the testimony you are about to give to this Board in this matter is the truth, the whole truth, and nothing but the truth, so help you God”? Ms. Thompson and Chief McLendon responded, “I do”.

Chairman Hogan stated: The parties to this case are entitled to an impartial board. Does any board member have any partiality to disclose and recusal to offer? All members replied none.

Does any board member have any conversations or other communications to disclose? All members replied none.

Town Administrator/Planner Lisa Thompson presented the case: The Wesley Chapel Volunteer Fire Department seek a variance from the Weddington Code of Ordinances Section 58-8(a)(4)a and 58-8(a)(4)f titled Screening and Landscaping to provide relief from the rear yard buffer requirements due to an overhead powerline.

The subject property is located at the northeast corner of Rea and Reid Dairy Rd. The property was rezoned from R-60 to R-40 on April 9, 2018. The property was then rezoned as a conditional district for a fire department use on June 11, 2018. Construction plans were submitted, including a landscape plan which showed a powerline easement over the rear yard buffer. The entire buffer is within 18’ of the powerline. The chart under Section 58-8(a)(14)a only allows small maturing trees within 0-18’ of the powerline. The zoning ordinance section 58-8(a)(4)a requires 40% of the trees to be large mature trees and 58-8(a)(4)f requires 25% of the trees to be evergreen. A Zuni Crape Myrtle, which is a small maturing tree, was chosen and approved by the Union Power arborist as an appropriate tree under the powerlines.

That applicant seeks a variance to allow for small maturing deciduous trees due to the size and shape of the lot and the presence of overhead powerlines.

The required buffer includes 40% of the trees to be large mature trees and 25% to be evergreen.

The applicant requests relief to plant small maturing deciduous trees due to the overhead powerlines.

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.

Board member Prillaman stated that the Board is voting to allow screening of lesser height because of a requirement from Union Power. There will screening identified as the crepe myrtle with smaller shrubs. This variance is allowing for reduction in height requirement dictated by approved lists in the ordinances.

Chief McLendon stated that the powerlines were relocated and pushed back as far as they could be. Once that was done, Union Power informed them that the density and heights of the landscaping would be accepted.

With no additional questions or presentation of relevant facts, the board will now begin deliberation and review the findings of fact. The evidentiary hearing remains open so that the board may ask clarifying questions, if needed.

(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.

Board Alternate Goscicki stated that this would be a hardship because the applicant would have to reconfigure the entire site and would lose useful property.

The Board agreed unanimously that the hardship results from the application of this chapter as the landscaping requirements would cause plans for property to be reconfigured and applicant would lose useful property.

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).

The Board agreed unanimously that the hardship results from the conditions that are peculiar to the property. It was agreed that the powerlines cause the conditions that require relief from the landscaping requirements

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).

The Board agreed unanimously that the hardship results from the conditions that are peculiar to the property. It was agreed that the powerlines cause the conditions that require relief from the landscaping requirements

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

The Board unanimously agreed that the variance is in harmony with the general purpose and intent of this chapter and preserves its spirit. The planned screening and landscaping options are in compliance with the Union Power restrictions for planting near power lines.

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

The Board unanimously agreed that the granting of the variance would not have any impact on the public safety and welfare. The landscaping and screening plan is within the Union Power requirements for plantings near power lines and will provide adequate screening for the public.

(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.

The Board agreed unanimously that the reasons set forth by the property owner and the evidence presented at the hearing did establish justification for the granting of a variance from Sections 58-8(a)(4)(a) and 58-8(a)(4)(f) to change the minimum heights required by the Weddington Code of Ordinances to meet the requirements set by Union Power.

Chairman Hogan closed the evidentiary hearing.

- Motion:** Board member Prillaman made a motion to approve the application for a request for variance from Section 58-8(a)(4)(a) Screening and Landscaping for 306 Reid Dairy Road, Weddington, NC 28104
- Second:** Board member Vivian
- Vote:** The motion passed with a unanimous vote.

Staff will draft a final written decision to reflect the vote and reasoning for this decision. That written decision will be provided to the applicant and other parties with a right to such notice. Parties have thirty days to appeal this decision.

6. Adjournment

Motion: Board member Prillaman made a motion to adjourn the June 15, 2020 Board of Adjustment Special Meeting at 8:21 p.m.
Second: Board member Goscicki
Vote: The motion passed with a unanimous vote.

Approved: _____

Walt Hogan, Chairman

Karen Dewey, Town Clerk