



**TOWN OF WEDDINGTON  
SPECIAL MEETING  
BOARD OF ADJUSTMENT  
WEDDINGTON TOWN HALL  
MONDAY AUGUST 22, 2022 5:30 P.M.  
MINUTES  
PAGE 1 OF 9**

**1. Open the Meeting**

Chairman Gordon Howard Call the August 22, 2022 Board of Adjustment meeting to order at 5:35 p.m.

**2. Determination of a Quorum**

Quorum was determined with Chairman Gordon Howard, Vice Chair Travis Manning, Board members Chris Faulk, and Manish Mittal present.

Board members Ed Goscicki, Jim Vivian, and Jen Conway were absent.

Staff present: Town Planner Robert Tefft, Town Administrator/Clerk Karen Dewey, Town Board of Adjustment Attorney Terry Sholar

Applicant Gustave Ferrari

**3. Approval of the April 25, 2022 Board of Adjustment Minutes**

**Motion:** Board member Faulk made a motion to approve the April 25, 2022 Board of Adjustment minutes as presented.

**Second:** Vice Chair Manning

**Vote:** The motion passed with a unanimous vote.

**4. Consideration of Request for Variance from Unified Development Ordinance Section D-703.G. Dimensional Requirements (Minimum Front Yard Setback)**

Chairman Howard opened the evidentiary hearing for the request for variance from Unified Development Ordinance Section D-703.G. Dimensional Requirements (Minimum Front Yard Setback). The property is located at 4001 Ambassador Court and is owned by Gustave Ferrari. A 4/5ths vote of the Board is required to grant a variance.

Mr. Sholar administered the oath to Mr. Ferrari, the applicant and the Town Planner, Robert Tefft. Each Board member was polled to disclose any potential partiality to the case. No board members were recused.

Mr. Tefft presented the staff report: The subject parcel is approximately 0.872 acres (37,995 SF) and is located at the southwest corner of Ambassador Court and Foxbridge Drive within the Providence Place subdivision. The parcel (and subdivision) is zoned R-40 District and consists of a 3,200 square foot single-family dwelling that is currently under construction.

On July 22, 2020, Mr. Ferrari was issued a Zoning Permit (2020-5544) in compliance with all applicable provisions of the Town's Code of Ordinances to construct the single-family dwelling on the parcel. Subsequently, on December 4, 2020, the associated Building Permit was issued by Union County.

On July 15, 2022, Mr. Ferrari applied for a Certificate of Zoning Compliance for this new construction; however, the submittal was determined to be insufficient and a survey meeting the requirements of Appendix 2 of the UDO was requested. Mr. Ferrari obtained the necessary survey (dated August 3, 2022) and it was identified that the new single-family dwelling had been constructed within the required front yard setback.

On August 10, 2022, Mr. Ferrari applied for a Zoning Variance to reduce the minimum required front yard setback from 50' to 39.1', a reduction of 10.9'.

Mr. Tefft noted the requirements for a variance from the UDO Section D705.

Board member Faulk observed that the variance request was for a setback of 39.1 feet, but even if it were granted, the house would still not be in compliance as the far-right side of the house has a setback of 36.1 feet.

Chairman Howard asked Mr. Sholar if the application should be resubmitted. Mr. Sholar responded that might be the case if that issue becomes a material fact in the findings.

Board member Mittal asked if moving the house would be an option.

Mr. Tefft responded that theoretically it could be an option. The applicant can also demolish parts of house not in compliance or move the house. He stated that he was not sure if the house can be lifted and moved. The structure is complete.

Mr. Ferrari: We went for the original survey it never showed the real one. We did the staking, we made the mistake and measured from the edge of the pavement and not the property line. We never intended to make the mistake. I went to apply for zoning, and I measured from the corner-75 feet. So, we thought we were over the 50 feet required. I don't know the rules of the surveyor. We went on with the construction. The surveyor measured from property line. I have sewer and water approval from the county and the house is ready. From previous experience, they didn't ask for a survey. In Monroe, they ask for a survey after pouring the concrete slab. Which makes sense because the house isn't started. Now I'm facing huge hardship because this is my equity. Union County granted all approvals. Then they asked for zoning compliance. The planner asked for a survey. I followed his request and got a survey. It is my intention to follow the regulations

that you ask for. At this point there is nothing I can do. I have the septic right behind house. It's a 4500 sq. ft house and I won't be able to move it. Without zoning compliance, am not able use the house. That's what I'm facing. I can't tell you everything, it's all human error. We will improve landscaping. It will improve the appeal and will improve the appearance.

Chairman Howard asked if there was anyone who can show they would suffer special damages or would like to make a statement or comment.

Mr. Sholar swore in Nathaniel Grove. Mr. Grove testified: I live just down street in the same subdivision with my family. One of the reasons we bought it is because all the houses are set back. There are old trees- it's pretty grown up in that area, and it is nice and quiet. I will suffer damages because once you approve one, it will set a precedent. There are other undeveloped lots in that subdivision. One additional comment, I am also a builder and I always do a survey before building for staking and grade lines. This is not an unsolvable problem. You can move the house.

Mr. Ferrari: I understand his point. How will it affect you? Neighborhood is developed.

Chairman Howard responded that Mr. Grove answered that in is statement, his concern is that the Town is setting a precedent.

Mr. Ferrari stated that the whole neighborhood is being developed.

Chairman Howard asked if Mr. Ferrari had any other questions. Mr. Ferrari replied that he did not.

Board member Faulk stated the surveyor's opinion doesn't mathematically hold weight. As to using the staking on the edge of pavement. The plot plan that was submitted shows dimensions and a house orientation different than what the final survey shows. The house is parallel to the side property line and is 22 ½ feet to the side property line. The plot plan says about 36 feet or something like that, I can't read it clearly, and the front is 60 feet. If he mistakenly measured from edge of pavement and it was 60 feet where the house was supposed to be, we would still be closer to the setback than it is now. The math does not add up. Did you have a surveyor do anything?

Mr. Ferrari: When I bought the land, they gave me a survey and I worked with that. I submitted permits and I wasn't asked for a survey.

Board member Faulk: asked who laid out the house.

Mr. Ferrari: Me and a couple of guys. When we planned the house, we couldn't pour footings where the garage is. We measured straight lines and the survey showed different. This is the first house nobody requested the survey. He asked for the survey at the end. I went and had a survey. I asked for time to get it done because it's difficult to get those guys.

Board member Faulk: When you poured the foundation, did you get a survey?

Mr. Ferrari: I didn't know that was required. From the beginning to the end, nobody asked. Any town they didn't ask for a survey, it was news to me.

Board member Faulk: Since you are a builder, is this house to sell?

Mr. Ferrari: This is my personal house. I have a 6-year-old enrolled in Antioch Elementary. This is our dream home. We've worked for it for 22 years. It will be my home because that will be an equity line to keep working. My major work is renovation. I am getting old and my body is not taking very well to the renovation part of my work. So, I went to build a house. I don't build for anybody. Did build my house in Monroe. I wasn't planning on moving from there. When I saw a

house in Waxhaw, I got some equity. I decided to buy this lot. This is the location that I want, the school that I want, so I went for it. I built our dream house. The lot was complicated. Septic and well were complicated. The lot is like a bow, and I will have to do a lot of landscaping. Our dreams are in that house. If I don't have this house. We put all in that house.

Board member Mittal: Is it normal for someone to start building a home without a survey?

Mr. Tefft: What is required for a zoning permit is a to-scale drawing, not a sealed survey.

Board member Faulk: I'm a land surveyor, and we definitely do work in most municipalities and they all require some sort of verification. This is a bad checks and balance. The submitted plot plan is an injustice for this guy. I've seen a lot of plot plans. It looks like it was done by an architect.

Mr. Ferrari: It is an architect. This shouldn't set a precedent. To put your whole life into something and you get to the end and you make a mistake.

Board member Manning: Mr. Ferrari, did you have a bank loan?

Mr. Ferrari: I can't get access to it because I need the house for it. No house, no bank loan, no way of living.

Board member Manning: is the house is occupied today?

Mr. Ferrari: when I requested zoning, I was on a deadline to get out of the house I'm living in. The buyer gave us a month. I moved everything out of the house and into the garage.

Chairman Howard: who measured property line for initial site plan?

Mr. Ferrari: I did. The architect did according to what I put on it.

Chairman Howard: Are you a licensed General Contractor? I built 4 houses; I've stopped right now because I can't get the equity line on this house to continue.

Board member Faulk: does Weddington have a copy of the county septic permit?

Mr. Tefft: not to my knowledge.

Mr. Ferrari: but I can provide it.

Board member Faulk (referring to the plot plan): I see he has 3 x's. that's where the septic tank and field. The whole area is the septic area. "unknown type of barrel" septic is right behind the house None of that area can be used. The circles on the drawing are the septic.

Mr. Ferrari: when I applied for septic they told me what I needed for a three-bedroom house. The septic area is all this 50 feet from house.

Plot plan with septic marked is submitted evidence. Mr. Ferrari referenced the survey with the septic to describe where the septic drain field is.

Board member Faulk: if I'm not mistaken Union County requires 20,000 sq. ft for septic. And gets bigger with more bedrooms.

Mr. Ferrari: one of those tanks is a pump the whole area is septic.

Mr. Sholar: The septic permit has been approved by county. Do they have a copy of the drain field? We don't have that available to us?

Mr. Ferrari: I might have it on my phone.

Board member Faulk: generally speaking, the septic plan is part of plot plan to the municipality.

Mr. Sholar: Mr. Ferrari, if you started from scratch with this house knowing exactly where it had to be, can you locate this house on the property without violating the setbacks.

Mr. Ferrari: absolutely. I know a violation of that kind would get me in to trouble. I don't have resources to play around with that.

Chairman Howard: if you had to do it over and remeasure with a 50-foot front set back, you could still fit this home on the property.

Mr. Ferrari: Yes. No problem whatsoever. If I put it the house back, septic wouldn't be approved.

Board member Faulk: it would be approved; you would have to build around septic.

Mr. Sholar: Mr. Ferrari, do you contend that there is something unique about the condition of this lot that this requires you to build within violation the setback area?

Mr. Ferrari: This is a difficult question. Did I intend to violate the setback? No. It was never my intention. I thought I was farther away from the setback. The way I graded, once we poured the foundations, water was in everywhere inside. We had issues on all corners. I had to grade in different ways for the footings.

Board Member Manning asked staff if there has been a situation like this before.

Ms. Dewey answered not to her knowledge. If something like this happens again, it would go through the same variance process and require a hearing.

Mr. Sholar stated that this application stands on its own merit. There are no precedents. Other than a site that doesn't conform with standards. The difficult part is to follow the standards set in the ordinance. The Board must base the decision on the standards in the ordinance.

Mr. Tefft reviewed the findings of fact:

- a. The hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- b. The hardship results from 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. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- c. The hardship did not result from 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.
- d. The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured, and substantial justice is achieved.

Mr. Sholar: Based on the testimony heard tonight, I would urge you to make very specific findings of fact. The facts support whatever the conditions are.

Chairman Howard: In the event that we do not approve the variance, what would the applicant's next step look like,

Mr. Sholar: The applicant could bring the dwelling into compliance, whatever form that may take. I can't give a definitive answer to that other than whatever measures taken to bring into compliance. The applicant does have a right to appeal to superior court where a judge will review what has been done tonight and the evidence presented. It will not be a new evidentiary hearing, but a simple review of legal issues and what your findings of fact and conclusions are.

Chairman Howard: This is a very difficult case. We clearly understand what Mr. Ferrari has said and what the emotions are. I am reminded to focus on black and white evidence presented before us. We certainly don't want to see any resident in this type of scenario situation, and we will make recommendations tonight that we believe will help close some of those gaps.

Chairman Howard read through the findings of fact and closed public hearing.

Mr. Sholar stated that each of these findings needs to have a vote and needs to have a supporting conclusion if the condition has been met.

- a. The hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.*

Chairman Howard: we have heard that the house could have been positioned differently. This property could still have a home on this property in compliance.

Board member Faulk: a 50 ft set back is not a hardship.

**Motion:** Board member Faulk made a motion that the application has not met the finding of fact as a 50 ft. setback is not a hardship.

**Second:** Board member Manning

**Vote:** The motion passed with a unanimous vote. All members agreed that the applicant did not face a hardship resulting from the application of the ordinance.

The applicant did not meet the requirement for showing a hardship resulting from strict applications of the regulation.

Chairman Howard stated: the applicant does have recourse to take this to the superior court.

- b. The hardship results from 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. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.*

Board member Faulk: the applicant didn't state hardships in his eyes. We're going to have read between the lines as to what the hardships would be. I could make a case if I saw the septic plans, but I don't see anything peculiar with the property with regard to location, size, or topography.

Board member Mittal: If the septic requirement size was because of the size of the house, it can't be moved.

Board member Faulk: if the septic was entered into evidence we might conclude a hardship based on that

Mr. Sholar reminded the Board that the vote is based on the evidence presented at the hearing.

**Motion:** Board member Faulk made a motion that the application has not met the finding of fact as there were no conditions specific to this property that would cause a hardship.

**Second:** Board member Mittal.

**Vote:** The motion passed with a majority vote. Chairman Howard and Board members Faulk and Mittal in favor and Board member Manning opposed

The board found that there were no conditions peculiar to the property which created a hardship requiring the dwelling be located in violation of the front setback requirement

- c. *The hardship did not result from 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.*

Chairman Howard: Clearly the Applicant indicated as owner and contractor that there was an error made in the measurement of the 50-foot set back.

Board member Faulk: There's hardship on everybody involved with in the permitting for it to get to this point without checks and balances. It's amateur for it to get this far. The hardship is there, but not on property owner.

Board member Mittal: The setback was there

Board member Faulk: Consider the plot plan. That's something we can address tonight.

Board member Manning: He measured on his own without a surveyor.

Board member Faulk: I do believe there are hardships here in the spirit of the variance that were not all on his plate. He needs a surveyor and an attorney, but it did get this far without the municipality requiring a foundation survey. This would have been headed this off at the foundation if there were better checks and balances.

Chairman Howard: Mr. Ferrari measured on his own without seeking the guidance of a professional and as a result of that is in the situation he's in. Taking emotion out of this, our job tonight is to look at the UDO and review how a variance is granted. In my view this wouldn't pass because it was kind of self-inflicted. I agree with what Chris said about closing the gaps in the submittal requirements. We will close those gaps to help somebody like Mr. Ferrari in this situation.

**Motion:** Board member Faulk made a motion that a hardship did not result from the actions of the applicant. The hardship was a result of lacking submittal requirements.

**Second:** Board member Mittal

**Vote:** The motion did not pass with a tie vote (Board members Faulk and Mittal in favor, Chairman Howard and Board member Manning opposed).

The Board found that the hardship was a result of the Applicants own error although he was provided a poor site plan and the Town did not require a survey early in the construction to identify encroachments before completion of the dwelling.

- d. *The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured, and substantial justice is achieved.*

Chairman Howard: We heard from neighboring witness, if that applies here.

Board member Faulk: this is what a variance is for. It's consistent with the intent. By granting this, it would not be consistent with the UDO.

Board member Mittal: By granting the variance, we are not impacting the public safety. It is not harming the spirit of the town or the neighborhood.

Board member Faulk: a variance is not consistent with the spirit, purpose, and intent of the UDO.

**Motion:** Board member Faulk made a motion that the variance is not consistent with the spirit, purpose, and intent of the regulation.

**Second:** Board member Manning

**Vote:** The motion passed with a 3-1 vote. (Chairman Howard, Board members Faulk and Manning in favor, Board member Mittal opposed.

The Board found by a majority that granting a variance would be inconsistent with the spirit and purpose of the regulations in the UDO.

Travis

The Board of Adjustment voted on 4 separate findings of fact. Each needed to be met in order to grant the variance. The Board voted on each one and each one did not pass. That requires us to inform the applicant that the variance has been denied this variance.

**Motion:** Board member Faulk made a motion to deny the application for a request for a variance from Section D-703.G. Front Yard Setback for 4001 Ambassador Court, Weddington, NC 28104

**Second:** Board member Manning

Board member Manning: This is not a fun spot to be in. My first Board of Adjustment meeting was a variance for a setback to build a garage for children's cars to park in. This is a family home. Mr. Ferrari I'm sorry you're in this situation.

Board member Faulk: I second that. I also recommend a surveyor to be your best friend for your future projects. If this ever comes up again, get an attorney to run through your variance. This was a tough one.

Board member Mittal: This was a difficult decision.

Chairman Howard: Absent of the UDO section D705, I'd probably be voting differently this evening. But that is not what we've been asked to do. We are going to make some recommendations to keep this from happening again, as soon as we have this vote.



**Vote:** The motion to deny the application for a request for a variance from Section D-703.G. Front Yard Setback for 4001 Ambassador Court, Weddington, NC 28104 passed with a unanimous vote.

Chairman Howard: Mr. Ferrari, you have a right to take this to the court. Chris has given some good advice. Get a better survey done and prepare yourself. The court will review evidence given tonight. There will be legal arguments, but no new evidence will be presented.

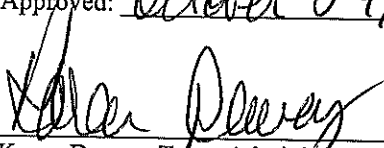
Staff will draft a final written decision to reflect the vote and reasoning for this decision. That written decision will be provided to the applicant and other parties with a right to such notice. Parties have thirty days to appeal this decision

## 5. Adjournment

**Motion:** Board member Manning made a motion to adjourn the August 22, 2022 Special Board of Adjustment Meeting at 6:44 p.m.

**Second:** Board member Mittal

**Vote:** The motion passed with a unanimous vote.

Approved: October 24, 2022  
  
Karen Dewey, Town Administrator/Clerk

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Gordon Howard, Chairman