



**TOWN OF WEDDINGTON  
SPECIAL MEETING  
BOARD OF ADJUSTMENT  
MONDAY OCTOBER 24, 2022 5:30 P.M.  
WEDDINGTON TOWN HALL  
MINUTES  
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**1. Open the Meeting**

Chairman Gordon Howard called the meeting to order at 5:30 p.m.

**2. Determination of a Quorum**

Quorum was determined with Chairman Gordon Howard, Vice Chair Travis Manning, Board members Chris Faulk and Ed Goscicki, Alternates Jen Conway and Jim Vivian present. Board member Manish Mittal was absent.

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

Applicants Carl and Shana Hill

**3. Approval of the August 22, 2022 Board of Adjustment Minutes**

**Motion:** Vice Chair Manning made a motion to approve the August 22, 2022 Board of Adjustment Meeting Minutes as presented.  
**Second:** Board member Goscicki  
**Vote:** The motion passed with a unanimous vote.

**4. Consideration of Request for Variance from Unified Development Ordinance Section D-917D(M), Supplemental Requirements-Accessory Uses and Structures**

Chairman Howard opened the evidentiary hearing for the request for variance from Unified Development Ordinance Section D-917D(m) (Supplemental Requirements-Accessory Uses and Structures). The property is located at 405 Eden Hollow Lane and is owned by Carl and Shana Hill. A vote of 4/5 majority of the Board is required to grant a variance.

Mr. Sholar administered the oath to the applicant, Carl Hill and the Town Planner, Robert Tefft. Chairman Howard polled each board member to disclose any potential partiality or conflict of interest to the case. No board member had a conflict of interest.

Mr. Tefft presented the staff report: The subject parcel is approximately 0.48 acres (20,883 SF) and is located at the southwest end of Eden Hollow Lane within the Falls at Weddington subdivision. The parcel (and subdivision) is zoned R-CD (Conservation) and consists of a two-story 4,465 square foot single-family dwelling.

On September 14, 2022, Mr. and Mrs. Hill applied for a Zoning Permit for a new swimming pool at the rear of their existing dwelling. Upon review, the application was denied as the swimming pool was proposed within the required rear yard setback area.

On September 30, 2022, Mr. and Mrs. Hill applied for a Zoning Variance to reduce the minimum required rear yard setback for an accessory structure from 15' to 7.5', a reduction of 7.5'.

Mr. Tefft listed the requirements for a variance from the UDO Section D-917D.

Board member Goscicki: I understand that topography may come into play, based on the topography, the rear side will probably be a retaining wall. Does that come into play with the variance, compounding the issue?

Mr. Hill-Applicant: The pool will serve as its own retaining wall. Based on the design of the pool, it won't require a separate structure. With the elevation and the design there is a retaining wall. It was shown in the application. It is a cul-de-sac lot and the pool is 42 feet by 14 feet. The lot configuration is the reason for the hardship claim, including the topography. The lot backs up to the conservation easement which is a heavily wooded area with no homes, no safety, security or disturbance issues. There is a great deal of privacy. The pool design has the optimal placement and design. The design of the pool is the most efficient way to build it with the slope from the home to the easement. Changed the dimensions of the pool, it's essentially a lap pool. In terms of the topography and hardship, none of this is due to actions we the homeowners have taken. We are requesting an approval of a 7.5-foot variance from the back setback to accommodate the dimensions of the pool.

Board member Conway: Do you know the slope from the back edge of the pool closest to the natural area?

Mr. Hill: I believe it's 4.5 feet.

Board member Conway: The back edge will be 4.5 feet higher.

Mr. Hill: In our discussions with the pool builder, I believe that is the correct height.

Board member Conway: The natural area easement is for the HOA?. What is the easement?

Mr. Hill: There is a 40-foot sewer easement. The distance from the home to the easement is 36 feet.

Board member Conway: You live in a conservation subdivision you aren't building into the easement?

Mr. Hill: No. We are not crossing into that area. The pool stops at our property line and will not touch any of the conservation area.

Board member Goscicki: What is the dimension on the easement?

Mr. Tefft: 40 feet

Mr. Hill: From the home to easement is about 36 feet. The easement itself is 40 feet. There is a sanitary sewer easement. It is passive and we are not crossing into that area at all. The pool would stop. It is not touching the conservation area at all.

Board member Manning: Does it have an infinity edge on the back side? Poured in place?

Mr. Hill: Yes. Anthony Sylvan assured us that they've been down this path before. There are many residents in the Falls that are dealing with the issue. I am meeting with somebody from land development with Jones Homes. Ben Kuhn, the Vice President of Land Development. There have been a number of pools in the community that have dealt with this issue. The home was built in 2018.

Ms. Dewey stated that there have been no other variance applications for swimming pools in The Falls subdivision.

Board member Howard: How many neighbors have pools?

Mr. Hill: A number of them. There are a number that have dealt with the setback issues. Very similar issues.

Chairman Howard: Does your HOA have covenants that require a certain percentage of property to be pervious.

Mr. Hill: not to my knowledge.

Chairman Howard: Have you checked it?

Mr. Hill: I have not. I had Ben look through my package before I submitted it to the HOA for approval.

Board member Faulk: I looked it up, there is nothing with those impervious restrictions in this neighborhood.

Mr. Hill: Ben Kuhn didn't see any issues or challenges. Based on the design of pool, and dimensions of the lot, he doesn't see any issues.

Board member Conway: Does the HOA have requirements that anything built has to sit behind the house? Is there any discussion about moving the location, shifting on the right side, you have any discuss shifting to the right and that would put the pool in the view from the front?

Assuming HOA requires it to be directly behind. You're asking for half the setback and that's a large amount.

Mr. Hill: Moving the pool to that area would put the pool in the view from the front yard. The HOA may not allow that and it centered directly behind the home so that there will be no impact on the community. Neighbors on either side have no view of our backyard whatsoever. We just met our neighbor that just put in pool. I am not sure of their lot dimensions, but their pool backs up close to their setback.

Board member Conway: Do you have walkout basement?

Mr. Hill: Correct.

Vice Chair Manning: (to Mr. Sholar) Is not being able to install a pool a hardship. A pool is a luxury.

Mr. Sholar: The hardship comes from the lot itself, not the plans and being able to use the lot.

Chairman Howard: I have a satellite picture of a lot where the pool is clearly visible from the side of the house on your street. I just wanted to show that to you. I don't know if you know that person.

Mr. Hill: We have met them. Their lot is distinctly different from ours. You actually can't see the pool when you drive by. Their lot is different.

Board member Faulk: I thought having a pool couldn't be in the side yard.

Mr. Tefft: A swimming pool can be located in the side yard if the principal structure has at least a 200-foot front set back and the pool will have a minimum 150-foot side yard setback. Or it could be a conditional use.

Mr. Hill: our lot is a unique lot-with slope-shifting pool to either side would create privacy issues. Centering in on the home, with the variance would give privacy.

Vice Chair Manning: Mr. Hill's pool is on bottom side of the basement. Moving it to the side will create more grading issues and a sewer easement runs on that side of the home.

Mr. Hill: Our main focus was positioning the pool so that didn't affect the community or privacy issues for the neighbors..

Chairman Howard: On the side of the house it looks like there is stormwater drainage. What impact will changing the slope affect where the stormwater drains from your property?

Mr. Hill: There is a washout area on the back-right corner of the home. A swale drains along property line out the back-left corner.

Chairman Howard: What about the roof drains?

Mr. Hill: They are underground and run to the sloped area. Those conduits are in the ground. The building of the pool in no way would impact sewer or storm drainage.

Chairman Howard: Where do the utilities come into the home.

Mr. Hill: All of that is in the front.

Board member Goscicki: I would imagine that your sewer line runs out the back, you have to relocate that?

Mr. Hill: So, where the pool is situated will in no way impact the sewer line.

Board member Goscicki: The sewer coming out of the house?

Board member Faulk: It is out the back to the pump station forced main. Sewer line in front of house, in the ground and comes out at the base of the slope. The pump station is just off the map picture.

Chairman Howard: Are there any other questions for the applicant?

Mr. Hill: Please consider this variance approval. Our main focus was to design a pool that had no impact on the land, topography, easement, et cetera. Privacy is not an issue. Security is not an issue.

Board member Conway: Just to wrap this up. The pool you're designing sits in the confines of your lot line and you're requesting a variance for 7.5 feet on one end.

Mr. Hill: Correct because of the way the lot is shaped.

Mr. Tefft: I want to clarify that the pool is directly behind the house or not at all in the side yard.

Mr. Hill: We decreased the width and made it longer.

Chairman Howard: With no additional questions, board will begin deliberation.

Board member Faulk: I agree with Ed's point. I don't believe topography is necessarily the hardship. Looking at the plat, the front setback is reduced, but this lot has to have the house built at the back setback. I believe hardship is the lot layout, location, dimensions and that makes the variance needed in the rear yard. Because of the configuration of the cul-de-sac, the house had to be built back on the lot.

Board member Goscicki: Similarly, you could have this situation on rectangle half acre lot with a 20 to 30-foot setback in front. This house has created a 50-foot setback because of the nature of pie shaped lot. It required pushing the house back to meet side yard setbacks because of the shape of the lot. Is it a hardship? I recognize most people aren't looking at setbacks when they consider buying a house. I give the applicant credit for being here and doing this right.

Mr. Sholar: Consider the standards conclusions you have to reach-and what are the facts to support the conclusion.

- 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.*

Board member Goscicki: A hardship exists because an inground swimming pool is a normal auxiliary structure in this community and similar communities in Weddington. A homebuyer could reasonably assume they can put a swimming pool on their property. The hardship here is that they can't because the zoning regulations preclude them from doing it. It is not a hardship they created, but one they inherited when they bought this home.

Chairman Howard: I understand. But they could put a smaller pool.

Board member Faulk: I second what Ed said.

Vice Chair Manning: Yes. A 14-foot-wide pool is pretty small.

Chairman Howard: It's very small.

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| <b><i>Motion:</i></b> | Vice Chair Manning made a motion a hardship exists from the strict application of the regulation based on the size, shape, dimensions, and location of the lot. |
| <b><i>Second:</i></b> | Board member Faulk  |
| <b><i>Vote:</i></b>   | The motion passed with a unanimous vote.  |

- 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 lot configuration is peculiar to the property being on a cul-de-sac. There are just a few cul-de-sac lots in the neighborhood, it's not a typical lot.

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| <b><i>Motion:</i></b> | Board member Goscicki made a motion that a hardship was created by conditions that are peculiar to the property, particularly the dimension and location peculiar to the lot being located in a cul-de-sac making the lot pie shaped and thereby reducing the width of the rear yard in which to locate a swimming pool. |
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**Second:** Board member Faulk  
**Vote:** The motion passed with a unanimous vote.

- 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.*

Vice Chair Manning: The applicant did not cause the issue and having knowledge of the issue doesn't make it a self-inflicted hardship.

**Motion:** Vice Chair Manning made a motion that the hardship did not result from actions taken by the Applicant but from the lot dimensions.  
**Second:** Board member Conway  
**Vote:** The motion passed with a unanimous vote.

- 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.*

**Motion:** Board member Faulk made a motion that reducing the rear yard setback to accommodate the location of the swimming pool does not affect public safety because the rear yard abuts a conservation easement and the pool will not be visible from abutting properties; and the variance is consistent with the spirit, purpose, and intent of the regulation.  
**Second:** Vice Chair Manning  
**Vote:** The motion passed with a unanimous vote.

Based on the above findings of fact, the Board concludes that a variance is necessary to address a hardship on the property. The Board unanimously agreed to grant a variance from the 15-foot rear yard setback to 7 ½ feet to construct a swimming pool at 405 Eden Hollow Lane.

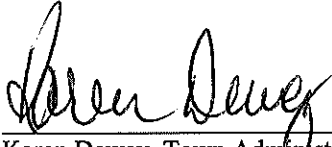
**Motion:** Board member Goscicki made a motion to approve the application for a variance from the Unified Development Ordinance Section D-917D(M), Supplemental Requirements-Accessory Uses and Structures at 405 Eden Hollow Lane, Weddington, NC.  
**Second:** Board member Conway  
**Vote:** The motion passed with a unanimous vote.

## 5. Adjournment

**Motion:** Board member Goscicki made a motion to adjourn the October 24, 2022 Special Board of Adjustment Meeting at 6:18 p.m.  
**Second:** Vice Chair Manning

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

Approved: February 27, 2023



Karen Dewey, Town Administrator/Clerk



Gordon Howard, Chairman