



**TOWN OF WEDDINGTON
SPECIAL MEETING
BOARD OF ADJUSTMENT
WEDDINGTON TOWN HALL
MONDAY FEBRUARY 27, 2023 5:30 P.M.
MINUTES
PAGE 1 OF 6**

1. Open the Meeting

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

2. Determination of a Quorum

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

Staff present: Town Planner Robert Tefft, Town Administrator/Clerk Karen Dewey, Board of Adjustment Attorneys Terry Sholar and Frank Corigliano

Applicant: Hendrick Ellis (via phone)

Visitors: Fred Heyward (for applicant), Layton Croft, Jen Croft

3. Approval of the October 24, 2022 Board of Adjustment Minutes

Motion: Board member Manning made a motion to approve the October 24, 2022 Board of Adjustment minutes.
Second: Vice Chair Goscicki
Vote: The motion passed with a unanimous vote.

4. Consideration of Request for Variance by Hendrick H. and Diane M. Ellis from the Conditional Use Permit for Planned Residential Development for Stratford on Providence as approved by Town Council on December 11, 2000, for the property located at 5040 Oxfordshire Road, Waxhaw, NC 28173

Chairman Howard opened the evidentiary hearing for the request for variance by Hendrick H. and Diane M. Ellis from the Conditional Use Permit for Planned Residential Development for

Stratford on Providence as approved by Town Council on December 11, 2000, for the property located at 5040 Oxfordshire Road, Waxhaw NC 28173

A vote of 4/5 majority of the Board is required to grant a variance.

Mr. Sholar affirmed the applicant, Hendrick Ellis, over the phone and administered the oath to the applicant's representative, Fred Heyward, 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: On December 11, 2000, the Town Council approved a Conditional Use Permit for a Planned Residential Development to be known as Stratford on Providence. The land involved was 89.79-acre parcel zoned R-40 District, and its subdivision resulted in the creation of 87 single-family residential lots. While most of the lots within the subdivision were approved with a rear yard setback of 40 feet, four lots within Phase One (32 – 35), and nine lots within Phase Two (43 and 45 – 52) were approved with a rear yard setback of 50 feet. However, the lots within Phase Two all abutted a proposed future road, while the lots within Phase One abutted a vacant lot outside of the project area. Additionally, there are four lots within Phases Two and Three (80 – 83) that abut the same vacant lot outside of the project area; however, these lots all have a rear yard setback of 40 feet.

The approval granted by Council consisted of 14 conditions, including the following:

There shall be no changes in the size, location, and design of the proposed improvements, lighting, parking, setbacks, provision of water and sewerage, or in the proposed use of the subject property, except as amended by Council.

With the adoption of the Unified Development Ordinance (UDO) on April 21, 2021, the Conditional Use Permit development type was eliminated, and the UDO no longer contains any provisions related to the amendment or modification of previously approved Conditional Use Permits. Given this, it is the opinion of Town staff that the Board of Adjustment, based upon the duties assigned pursuant to UDO Section D-302(B), would provide the function of amending (by way of variance) the rear yard setback that is specific to this subdivision by way of the Conditional Use Permit.

The subject parcel is approximately 1.022 acres (44,518 SF) and is located at the south side of Oxfordshire Road within the Stratford on Providence subdivision (Lot 35). The parcel is zoned R-40 and consists of a two-story 6,033 square foot single-family dwelling constructed in 2003. On January 11, 2023, Mr. and Mrs. Ellis applied for a Zoning Variance to reduce the minimum required rear yard setback to construct an addition to their existing single-family dwelling from 50 feet to 45 feet.

Board member Vivian asked if the addition was one or two stories.

Mr. Tefft responded that it is one story.

Board member Mittal asked if the pool patio will meet the setback.

Mr. Tefft replied that isn't covered in the code, it would not have to meet the 50-foot setback.

Vice Chair Goscicki asked when this was approved and if the larger setback was at the request of the Council at the time.

Mr. Tefft responded that he looked through the records and minutes and couldn't find anything explaining why this lot has a 50-foot rear yard setback.

Chairman Howard asked if the parcels don't have a 50-foot set back, are they at 40 feet?

Mr. Tefft replied they are.

Chairman Howard asked if the game room is built?

Mr. Tefft replied it is not. The applicant needs the variance to get the permit to build the addition.

Chairman Howard asked if there is a requirement for pervious vs. impervious surface.

Mr. Tefft replied there is not.

Mr. Ellis asked if the reason the 50-foot setback exists was for a road?

Mr. Tefft responded that it would not have been for that behind the Ellis property.

Mr. Ellis stated: when the property was purchased, they didn't know the setback was different. He is not asking to go beyond a 40 ft set back, just that they are allowed a setback consistent with majority of people in neighborhood. With the addition to the house, they are only going a few feet into the 50 foot setback and not into the 40 foot setback.

Board member Vivian asked when the house was purchased.

Mr. Ellis responded in 2007.

Board member Manning asked how many feet into the 50-foot setback. The backyard is diagonal shaped, he's not sure how far from the drawing.

Mr. Ellis responded the variance application is for 5 feet into the 50-foot setback.

Board member Faulk asked if the majority of the property owners are the same as when the Council made the conditions for those setbacks?

Mr. Tefft responded that he believes they are.

Board member Faulk asked if the council made a condition that changes should be amended by the Council.

Mr. Tefft responded that the council used standard language and that at the time of this approval, the Town had Conditional Use Permit approvals and ways to modify them. With the current UDO, there is no longer conditional use permitting or a way to amend previously approved conditional uses. This will fall to the Board of Adjustment as the designated entity by default.

Board member Faulk asked if the Lochaven neighboring landowners were notified.

Mr. Tefft responded that they were as a part of the process.

Board member Faulk stated that this set back may have been created for the adjoining landowner and they didn't show up.

Mr. Sholar stated that typically, this situation would require an applicant to have to come back and get a conditional amendment.

Board member Faulk asked what the requested variance is and where is it in the application.

Vice Chair Goscicki stated that the board can put it in the motion.

Mr. Tefft responded that Mr. Ellis was requesting a 5-foot variance from the 50-foot rear setback.

Board member Mittal asked if any thought was given to reducing the size of the game room. Mr. Ellis responded that while it is an option, it is not optimal.

Mr. Sholar asked if the pool on the plans currently exists. Mr. Ellis responded that it doesn't.

Chairman Howard stated that Board will review and deliberate findings of fact:
Mr. Sholar stated that the Board should look at these conclusions and find what facts 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.*

Vice Chair Goscicki stated that the hardship exists because the property owner cannot build a game room of specific dimensions without the variance.

Board member Faulk stated that because of the angle of the house and the dimensions the house isn't square on the lot. The position of the house causes a hardship. Trying not to get hung up on this being a luxury. No matter what, it's still a constraint. This is a typical characteristic of that neighborhood.

Board member Vivian stated that it is still within the 40 foot.

Mr. Sholar stated that it is actually the additional setback that is causing the hardship.

Board member Goscicki stated the scale of the game room is 20x16 or 20x18.

Board member Faulk stated that nothing the applicant is doing is out of character for this neighborhood. It fits.

Chairman Howard stated that with the facts and evidence presented, does the board feel there is a hardship?

Motion: Board member Faulk made a motion that there is a hardship from the strict application of the regulation based on the size, shape,

dimensions, of the lot including the large front yard setback and the extra ten feet added to the typical 40 foot rear setback for the subdivision

Second: Board member Manning

Vote: The motion passed with 4 in favor, Chairman Howard, Board members Faulk, Manning, and Goscicki, and 1 opposed, Board member Mittal.

- 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.*

Chairman Howard stated that the lot dimensions have been noted. Are there any other observations?

Vice Chair Goscicki noted that the house is set back significantly from the road. The developer laid out the property and it doesn't appear that any allowance was made for the larger rear setback. The hardship results because of the layout of the property.

Board member Faulk agreed.

Motion: Board member Faulk made a motion that the hardship was created by the additional rear yard setback of 50 feet rather than 40 feet typical for the subdivision along with the large front yard setback and location of the home on the lot were peculiar to the lot which reduced the amount of rear yard.

Second: Board member Manning

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.*

Board member Faulk stated that the property owner did not take any actions to cause this hardship.

Motion: Board member Faulk made a motion that the hardship was due to the lot dimensions and additional rear yard setback and not due to any actions taken by the applicant.

Second: Board member Manning

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.*

Chairman Howard stated that the requested variance causes no risk to public security or safety and a variance will give justice to the property owners.

Board member Faulk stated that the requested variance is in conjunction with the Weddington ordinances.

Motion: Board member Faulk made a motion that reducing the rear yard setback to the typical 40 foot setback to accommodate construction of the addition to the home would not affect public safety and it would align with most of the other rear yard setbacks and be consistent with the spirit, purpose, and intent of the regulation.

Second: Board member Mittal
Vote: The motion passed with a unanimous vote

Motion: Board member Faulk made a motion to approve the application for a 10-foot variance of the 50 foot setback solely for the purpose of constructing the game room addition to the residence as requested in the application.

Second: Vice Chair Goscicki
Vote: The motion passed with a unanimous vote.

Chairman Howard expressed his gratitude to Mr. Sholar for his leadership and guidance and wished him a happy retirement.

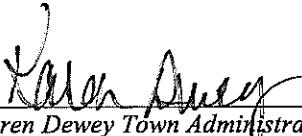
Mr. Sholar introduced Mr. Corigliano who will be taking over as Board of Adjustment Attorney.

5. Adjournment

Motion: Vice Chair Goscicki made a motion to adjourn the February 27, 2023 Special Board of Adjustment meeting at 6:06 p.m.

Second: Board member Manning
Vote: The motion passed with a unanimous vote.

Approved: March 27, 2023



Karen Dewey Town Administrator/Clerk

Gordon Howard, Chairman