



**TOWN OF WEDDINGTON
SPECIAL MEETING
BOARD OF ADJUSTMENT
WEDDINGTON TOWN HALL
MONDAY MARCH 27, 2023 6:00 P.M.
MINUTES
PAGE 1 OF 6**

1. Open the Meeting

Chairman Gordon Howard called the meeting to order at 6:00 p.m.

2. Determination of a Quorum

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

Town Planner Robert Tefft, Town Administrator/Clerk Karen Dewey, and Town Board of Adjustment Attorney Frank Corigliano were present.

Applicant Mr. Vivek Kashyap, Attorney Zach Moretz, and Jeremy Schumacher with Arcadia Homes were present.

3. Approval of the February 27, 2023 Board of Adjustment Minutes

Motion: Vice Chair Goscicki made a motion to approve the February 27, 2023 Board of Adjustment Meeting Minutes.

Second: Board member Manning

Vote: The motion passed with a unanimous vote.

4. Consideration of Application for Variance from Vivek Kashyap, requesting a variance from Section D-703E, Lot and Building Standards Table, of the Town of Weddington Unified Development Ordinance for Parcel # 06177064 located on Landsbury Drive in Weddington NC.

Chairman Howard opened the evidentiary hearing for the request for a variance by Vivek Kashyap from Section D-703E, Lot and Building Standards Table of the Town, for the property located at Landsbury Drive in Weddington NC, parcel number 06177064.

This is an evidentiary quasi-judicial hearing. A vote of 4/5 majority of the Board is required to grant a variance.

Mr. Corigliano administered the oath to Robert Tefft, the applicant Mr. Kashyap, Attorney for the applicant Zach Moretz, and Jeremy Schumacher with Arcadia Homes.

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 application and staff report: The subject parcel is approximately 2.30 acres (100,188 SF) and is located at the northeast terminus of Landsbury Drive within the Walden at Providence subdivision (Lot 66). The parcel is zoned R-60 and is currently vacant. On February 23, 2023, Mr. Kashyap applied for a Zoning Variance to reduce the minimum required rear yard setback from 60 feet to 40 feet for the construction of a single-family detached dwelling. It is noted that the front yard setback for the property is 100 feet (as appears to be the requirement for all lots in the subdivision) rather than the 60 feet currently established in the UDO.

As required in the UDO, four criteria

Vice Chair Goscicki asked if the 100 ft. setback is a deed restriction, not a zoning requirement. Mr. Tefft responded that the setback was established on the plat.

Vice Chair Goscicki: Landsbury Drive extends through to golf course at Longview and Google Maps show that road continuing thru the golf course. Can you shed any light on that?

Mr. Tefft responded: The road appears to at one time have been intended through there. Parts of the neighborhood behind Walden would have aligned, but it's not going to continue. I don't know why it didn't. The right of way still exists to that property line.

Vice Chair Goscicki: I was wondering when this subdivision was platted, was it platted around that road continuing without the cul-de-sac and that was added later.

Mr. Tefft responded: I assume the road would have continued through without the ripple in the parcels caused by the cul-de-sac

Board member Manning: The road was at one time Mr. Graham's farm access. Mr. Graham used to own that property. The developer left that there for the farm access.

The applicant presented his request:

Mr. Kashyap: Thank you for being here on a Monday evening. Thank you Robert for the summary. My family has been in Charlotte since the 1970's. My name is Vivek Kashyap and I have been a practicing dentist in Matthews for last 17 years. We purchased this lot in 2016 with the intention of building our forever home. That vision was to have a home for family and for my parents to move in as well. We decided to start moving forward 2 years ago and met with challenges with the 2-acre lot. It is wider than it is deep, and the cul-de-sac adds restrictions. The topography has drop from front to back and left to right. This lot is not on county water, so will

need a septic permit. The septic field takes up a big chunk of the right side of the lot, the repair field on the left and the well on the back-left side and those things constrict the buildable area. When the lot was purchased, we were using information based on the plat map attached to the deed and CCRs that both show 40 ft. rear setback. At some time, it was changed to a 60ft rear setback. Many of the other houses in the neighborhood are built with a 40 ft. rear setback. I am not sure when it was changed, sometime in last 10 years. We tried to get a variance from the HOA to allow a straight line set back in front and not take the arc of the cul-de-sac into consideration. They denied it as the only way to get an HOA variance is to get a 67% favorable vote from all property owners and it's never been done before. We looked to pursue that route but were discouraged by the HOA. The only lot behind us is on Valley Run. The backyard of the house is in a natural woods area. I spoke with the property owner and walked lot with him, and he has no problem with a variance. I have a signed affidavit from him. We are trying to work with the HOA limitations. We have been working with the design and locating the house. This is our newest obstacle. I think there is good evidence of unnecessary hardship because of the conditions of the lot and the setbacks. Jeremy is our builder working through the process and challenges. He can speak to some of the construction challenges.

Board member Manning: Do you already have septic permit? And well?
Mr. Kashyap responded: Yes.

Jeremy Schumacher: I am the President and co-owner of Arcadia Homes. We've been working with Mr. Kashyap for a few years. We are with the design process, not the architectural firm. We've been working in concert with the planners and the family. This is a convergence of restrictions causing a unique situation. The setbacks with the cul-de-sac are more restrictive. The neighborhood has a 100-foot setback in front and 60 foot in back for Weddington. We are using the most restrictive setbacks in both cases: 100 ft set back in front and 60 ft set back in the rear. The most cost effective and efficient is the way to accomplish the garage situation with the motor court in the middle. Front load garages are not allowed. Because of the topography, enormous retaining walls are required for a side load garage. That is cost prohibitive. Also, in conflict is that the entire right side of home is where septic is designed to exist. The well is in rear left. On a 2- acre lot, we should be able to find space for all this. It is a small area to get the house with the setback and septic restrictions. We're requesting a variance-in keeping with the neighborhood CCRs.

Mr. Moretz: This is a pretty straight forward matter. I didn't really need to come, but being a quasi-judicial matter, I wanted to make sure the legal points were made. I'm Zach Moretz, a commercial real estate attorney. I work with contractors, construction firms, and HOAs. I wanted to reinforce the 4 findings of fact by state law and town ordinance. I wanted to briefly go over them. There is an unnecessary hardship that would result with strict application of the ordinance. We are requesting 20 feet off the 60 ft rear yard setback. The intent and goal of the ordinance can still be met. This hardship is unnecessary as there is still a large area between the planned home and the neighboring home with the woods. There is an agreement from the rear neighbor. The conditions are unique to the property. There is unique sloping topography. The front set back line from the cul-de-sac bulges creating a cut into the front yard. There are no public utilities, so the builder must accommodate a septic field and well as and a tree save area. The facts are apparent

that the topography and the size and shape of the lot are the problem here and it is nothing the applicant has brought on himself. Purchasing a lot with certain topographical aspects cannot be a reason to not grant a variance. There is no question that the variance is consistent with the spirit and intent of the ordinance. The rear neighbor is fine and the HOA is fine with the variance. We are hoping at least 4 of you will agree with us. If there is any opposition, we would like an opportunity to rebut that opposition. We think we have produced evidence that meets the four requirements. I would like Mr. Kashyap to conclude and answer any final questions.

Mr. Kashyap: We've covered all the points. We're a family just trying to build a house. We've been through a lot to get to this point. We would like to break ground and make it happen.

Questions

Chairman Howard: Any idea why the change occurred?

Mr. Tefft: The information I have found is a plat of record done in 1988. It was amended a couple times. I found another parcel plat in the neighborhood from 1997, which did reference R60 zoning. I tried to find where in that time that change occurred.

Vice Chairman Goscicki: The original plat was recorded in 1988?

Mr. Tefft: That I the most recent. It is a revision there were 2 or 3 prior that were superseded. The most recent plat is 1988.

Board member Howard closed the evidentiary hearing.

Board deliberations:

Board member Faulk: There are hardships peculiar to the lot. An existing 60-foot setback and the applicant is asking for 40-foot, which is normal. The Applicant's summary explains it all. I think all the boxes are checked for this one. This is like the last variance application.

Vice Chair Goscicki: This is definitely very similar to the other variances, particularly ones with cul-de-sacs. Looking at the plat of this property, as a result of the cul-de-sac with the 100 ft setback, 20-30% of property is taken out of the developable portion. If there wasn't a cul-de-sac, this wouldn't be an issue. Cul-de-sacs just change the typical set back of what they look like. I see this as a result of the Plat as originally structured. This puts an unreasonable burden on the property owner with regard to how much property is left to develop. Particularly that this is a wider rather than deeper lot.

Board member Manning: I agree with Chris and Ed. I appreciate that the Applicant has a real package application. This is put together professionally and it's nice to see.

Chairman Howard: When the app is filled out so thoroughly, it's obvious you've done your homework, and this helps Robert understand what needs to be looked at to make a recommendation to the Board to approve or not. Which generally does not occur. This has been very helpful to read this ahead of time. This should be a template for the next applicant.

UDO Section D-705(D), Variances.

1. When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the Board of Adjustment shall vary any of the provisions of the zoning regulation upon a showing of all the following:

- 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 Faulk made a motion that there was a hardship from strict application of the regulation based on the size, shape, dimensions of the lot including the large front yard setback and extra twenty feet added to the typical and original forty-foot setback typical for similar subdivisions. The hardship is due to the sixty rear yard setback, topography of the lot, the one hundred (100) foot front setback and the lot dimensions.

Vice Chair Goscicki seconded the motion.

The motion passed with a unanimous vote, 5-0.

- 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.

Vice Chair Goscicki made a motion that a hardship was created by property conditions specific to this parcel, such as the location on the cul-de-sac and additional rear yard setback of sixty feet rather than forty feet as originally established for the lot as is typical for similar subdivisions. In addition, the large front yard setback and necessary location of the dwelling on the lot were peculiar to the lot which reduced the amount of rear yard resulting in the proposed addition encroaching approximately twenty feet into the sixty-foot setback.

Board member Faulk seconded the motion

The motion passed with a unanimous vote, 5-0.

- 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 made a motion that the hardship was due to the lot dimensions, the established front setback in the subdivision and additional rear yard setback and not actions taken by the Applicant.

Board member Manning seconded the motion
The motion passed with a unanimous vote, 5-0.

- 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.

Board member Manning made a motion that reducing the rear yard setback to the forty-foot setback to accommodate construction of the residential dwelling would not affect public safety and the forty-foot setback would align with most other rear yard setbacks established in the Town of Weddington and the variance would be consistent with the spirit, purpose, and intent of the regulation

Vice Chair Goscicki seconded the motion.
The motion passed with a unanimous vote, 5-0.

Motion: Board member Faulk made a motion to grant the variance request of the applicant to include a forty-foot rear yard setback solely for the purpose of constructing the residence as requested in the application.

Second: Board member Manning

Vote: The motion passed with a unanimous vote.

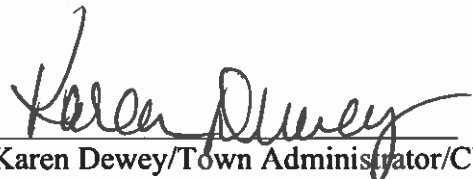
5. Adjournment

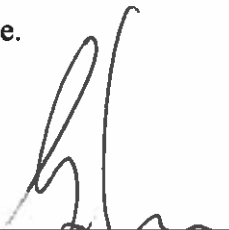
Motion: Board member Manning made a motion to adjourn the March 27, 2023 Special Board of Adjustment meeting at 6:28 p.m.

Second: Board member Faulk

Vote: The motion passed with a unanimous vote.

Approved: September 25, 2023


Karen Dewey/Town Administrator/Clerk


Gordon Howard, Chairman