



**TOWN OF WEDDINGTON
SPECIAL MEETING
BOARD OF ADJUSTMENT
WEDDINGTON TOWN HALL
MONDAY SEPTEMBER 25, 2023 6:00 P.M.
MINUTES
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1. Open the Meeting

Chairman Howard called the meeting to order at 6:07 p.m.

2. Determination of a Quorum

Quorum was determined with Chairman Gordon Howard, Vice Chair Ed Goscicki, Board members Travis Manning, Mannish Mittal, and Alternate Jen Conway present. Alternate Amanda Jarrell was also present.

Staff Present: Town Planner Robert Tefft (via phone), Town Administrator/Clerk Karen Dewey, Board of Adjustment Attorney Frank Corigliano

Applicant: Applicant was not present

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

Motion: Board member Manning made a motion to approve the March 27, 2023 Board of Adjustment Minutes as presented/amended
Second: Board member Conway
Vote: The motion passed with a unanimous vote.

4. Consideration of Application from Shantanu Das and Sabita Talukdar for a variance from Section D-703 E Lot and Building Standards Table of the Town of Weddington Unified Development Ordinance for the property owned located at 2017 Boswell Way, Weddington NC (parcel #07150676).

Chairman Howard opened the evidentiary hearing for the request for variance by Shantanu Das and Sabita Talukdar from Section D-703 (E) Lot and Building Standards Table, of the Town of Weddington Unified Development Ordinance.

Chairman Howard: 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.

Ms. Dewey stated that there is a letter from the applicant indicating they are amenable to Mr. Tefft participating remotely.

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 0.96 acres (41,817.6 SF) and is located on the southeast side of Boswell Way, approximately 340 feet southwest of the intersection at Antioch Church Road within the Weddington Acres subdivision (Lot 4). The parcel is zoned R-CD and is currently vacant. On August 16, 2023, the applicant applied for a Zoning Variance to reduce the minimum required front yard setback from 50 feet to 25 feet for the construction of a single-family detached dwelling. This reduction in setback, the maximum allowable, is due to the existence of a Duke Energy right-of-way encroachment at the rear of the subject parcel. The right of way is 25,000 square feet, which is 64.7% of the parcel. Only about 0.15 acres of the parcel is left to build on. That is 16.11% as buildable land. It is possible to build on this parcel, but questions remain if a home can be built in a manner consistent with other homes in the neighborhood. There is a great disparity between this lot and the others in the neighborhood and it is questionable if this should have been a parcel. This variance request for half of the front sent back when the other homes have 50 ft. setbacks will be noticeable.

Vice Chair Goscicki asked when and where the hand-written note "No Structures Allowed within Duke Energy Easement" appeared on the plat. It looks odd.

Mr. Tefft responded: Can't say exactly when it would have occurred. Presumably, it occurred before the Mayor Callis signed off in 2019.

Vice Chair Goscicki: It's definitely on the copy the town has?

Mr. Tefft: It's on the recorded version. Even if it wasn't written in there, there is still no building in that area

Vice Chair Goscicki: That includes no swimming pool – nothing

Mr. Tefft: Yes. Everything. They can barely plant anything other than grass.

Board member Conway: Do you know any history in the town where someone has asked for such a significant variance.

Mr. Tefft: Not to my knowledge. Not sure anybody has come to that maximum allowable yet. Some have come close, but not the full 50%.

Board member Conway: Based on the current lot, would a house fit with no additional accessory structures like pool and cabana? Or is it cutting it close keeping the 50 foot set back.

Mr. Tefft: One could definitely fit a home on there, probably not a home that is comparable to others in the neighborhood.

Board member Jarrell: Do you know if there is a minimum house size?
Mr. Tefft: That I do not know off hand.

Chairman Howard: Is this an HOA community?
Mr. Tefft: Yes

Board member Manning: This developer has done several neighborhoods in Weddington and they always have a minimum size.

Board member Jarrell: I was wondering if that minimum size would even fit on the lot.

Board member Manning: I think it would.

Board member Mittal: How much of the lot is left after setbacks and the easement.
Mr. Tefft: 0.15 acre, 16% of the entire lot.

Chairman Howard: Looking at the property standing in street, on left is a piece of land?

Mr. Tefft: That is unbuildable common open space.

Chairman Howard: On the other side of that on the corner with Antioch Church, is that another lot?

Mr. Tefft: It is not listed as common open space, it's not identified but my guess it's a landscape buffer, it also has waterline easement.

Chairman Howard: When this was platted and recorded, that easement existed, because power lines were there, correct?

Mr. Tefft: Yes.

Chairman Howard: In your experience, have you ever seen where only 16% of the lot was usable?

Mr. Tefft: If this was a proposed subdivision today, I would recommend that lot would be combined with the other lots on that side of the street.

Vice Chair Goscicki: This is just a comment: looking at the plat, you have dotted line on lot 4 with a 15-foot side set back and 40-foot rear yard setback, it is meaningless since there are 156 feet for the easement. Meanwhile if someone is looking at this map and isn't looking at the comment in marker. I am concerned with plat showing a 40-foot rear yard setback, that has no meaning to it because that property isn't not buildable. How does that get exposed to potential buyers? Not sure what requirements we can impose right now, or what we can do with future development. I feel for the property owner, but let the buyer beware. You didn't build on this yet, go sell lot back to the developer.

Chairman Howard: It's not really a lot. Our quandary is what do we do. Do we know the CCR requirement for the minimum house size?

Mr. Tefft: To my recollection I didn't see in the materials submitted.

Chairman Howard: I drove the neighborhood and saw the different sized houses.

Board member Conway: I agree with Ed. I have sympathy with the buyer and going through the submission materials and their answers to hardships, one comment made was they were moved quickly through sale of the lot and they named the person who sold the lot. Is our role and with applicant not here, do we still determine the outcome without the applicant here and do they have recourse as buyers legally against the developer. I am having a hard time leaning toward the requested variance. Anybody driving by should see the power lines. Personally, I am shocked that only 16% is left buildable. I'm just curious what is our role.

Mr. Corigliano: We can grant the variance without the applicant testifying and we cannot speculate if there is a lawsuit against the developer.

Board member Manning: Did Robert know the applicant wasn't going to be here?

Chairman Howard: Were you aware the applicant wasn't going to be present tonight?

Mr. Tefft: I was not. He was provided the meeting information with when and where and I didn't know he wasn't going to be here. I'm surprised he's not.

Board member Jarrell: has the developer/seller is that not an omission of facts on their part?

Chairman Howard it could be, but that's not in our purview this evening. What's in our purview is the four criteria that Robert mentioned. If there is no further discussion with Robert and there are no other comments while the hearing is open, I will close the hearing to go into discussion.

Chairman Howard closed the hearing at 6:28 p.m.

Discussion

Board member Conway: Based on the 4 criteria, I've made notes on item C: that the hardship did not result from actions of property owner, which is true. However, the big point is the act of purchasing the property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. In my opinion, prior to purchase, the owner should have completed their due diligence and known the dimensions of the lot, their plans for what was going to be constructed. A rush into purchase doesn't warrant a variance. I also think it's concerning that it is a significant amount. It does say 50% variance is allowable, they're right there at the bubble. I do believe it would affect the overall aesthetics of the neighborhood. It would be seriously noticed a 25 foot versus 50 foot.

Board member Manning: I agree. And it would set a precedence

Vice Chair Goscicki: As on other variances, a situation where someone came in and bought an existing home, discovered setbacks that impacted them or didn't realize the degree of impact and they came looking for variance of a few feet. Here is a situation remarkably different. The property hasn't been developed. The hardship is now to sell the property. The owners haven't made an investment in the land other than purchase. I'm seeing this as a very different situation from variances in the past.

Chairman Howard: I concur but I am struggling that the town allowed this to be a lot.

Board member Manning: This was a by-right subdivision at the time. Planner at the time was unable to make the comments on the project. When it's a by-right project, we don't get "bites of the apple".

Chairman Howard: Does that sound right, do you know?

Mr. Corigliano: I don't but it does sound right. It seems they have a buildable lot, by definition. We don't know if it will violate the CCRs only based on application. We don't know what they are, they weren't provided, and we can only go on what was presented with the application. And the applicant isn't here so we can't ask questions.

Chairman Howard: What we normally do is if discussion is over, we will go through each one of those points and make a motion indicating the condition exists or not and what evidence shows the condition exists.

Findings of fact

(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 of 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 Conway: Reasonable use can be made of the property, just limits what the owner planned for.

Board member Mittal: There is enough area to build a house, but pool, cabana, everything else, it is not possible.

Vice Chair Goscicki: Just as a point of confirmation, for us to grant a variance, all four of these tests have to be met. I would look at it and I would look at it there is a hardship from strict application of the reg

Board member Mittal, I disagree on that. there is space for a house.

Motion: Board member Mittal made a motion that there is no hardship as a result from the strict application of the regulation because a home can be built on this property.

Second: Board member Conway

Vote: The motion passed with a 4-1 vote. Chairman Howard, Board members Conway, Mittal, and Manning in favor; Vice Chair Goscicki against.

Finding of Fact Not Met

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.). 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: I think the hardship that the applicant brought forward is as a result of a small piece of lot that's left to develop, and I do think that is a direct result of conditions that are particular to that property. I would make a motion that the hardship does result from conditions that are peculiar to the property specifically the 100 ft plus right of way that cuts across the rear of the property.

Board member Mittal: I agree.

Board member Conway: I just wanted to make a comment on the definition of a pan handle lot- they are irregularly shaped lots. In the UDO panhandle lots must have minimum 35-foot road frontage. Take into consideration the odd shape of this lot as well as the easement of the

powerlines, the applicant is asking for a 25-foot variance and the UDO states 35 feet. It's like they're asking too much. I do not believe there is a hardship.

Motion: Vice Chair Goscicki made a motion that a hardship exists due to conditions that are particular to the property, specifically, the 100-foot power easement on the rear of the property.
Second: Manish Mittal
Vote: The motion failed with a 3-2 vote. Vice Chair Goscicki and Board member Mittal voted in favor; Chairman Howard, Board members Conway and Manning against.

Finding of Fact Not Met.

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 Conway: I'd like to make a motion that there is not a hardship a result of the applicant or property owner because purchasing property with knowledge that circumstances exist does not justify a variance.

Board member Manning: I second that.

Vice Chair Goscicki: Are we saying that a hardship doesn't exist because the applicant had the ability to take actions to prevent it by not buying the property.

Board member Conway: Well, if they completed due diligence to learn what the dimensions of their construction plans would be prior to purchase.

Chairman Howard: I would say we can't say that as there was no evidence of that.

Vice Chair Goscicki: On findings A and B, the board didn't agree that there was a hardship, so C becomes a moot point.

Motion: Board member Conway made a motion that no hardship exists as the property owner should have done due diligence prior to purchase of the land.
Second: Board member Manning
Vote: The motion passed with a unanimous vote.

Finding of Fact Not Met.

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 won't be granting the variance as all 4 findings had to be affirmative.

Vice Chair Goscicki: The verbiage would be a variance as requested would be inconsistent with the spirit of the regulation.

Board member Mittal: The question is that is the variance consistent with the spirit. I believe it is.

Motion: Vice Chair Goscicki made a motion that a variance would be inconsistent with the spirit and purpose of the regulation.
Second: Board member Conway
Vote: The motion passed with a 4-1 vote. Chairman Howard, Vice Chair Goscicki, Board members Manning and Conway in favor. Board member Mittal against.

Finding of Fact Not Met.

Motion: Vice Chair Goscicki made a motion that based on the foregoing findings and conclusions, to deny the Application for the variance request of the Applicant.
Second: Board member Manning
Vote: The motion passed with a unanimous vote.

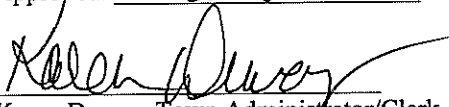
Chairman Howard: I'm a little bit shocked, what can we do to prevent something like this from happening again.

Mr. Tefft: This subdivision is from 2019, pre-UDO. The UDO is a bit different in terms of process. The town gets to have some input.

Chairman Howard: With that, the variance is denied. 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 September 25, 2023 Special Board of Adjustment Meeting at 6:50 p.m.
Second: Board member Conway
Vote: The motion passed with a unanimous vote.

Approved: December 18, 2023

Karen Dewey, Town Administrator/Clerk

Gordon Howard, Chairman