TOWN OF WEDDINGTON
SPECIAL MEETING
BOARD OF ADJUSTMENT
WEDDINGTON TOWN HALL
MONDAY FEBRUARY 26, 2024 6:00 P.M.
MINUTES

1. Open the Meeting

Vice Chair Ed Goscicki called the meeting to order at 6:00 p.m.

2. Determination of a Quorum

Quorum was determined with Vice Chair Ed Goscicki, Board members Travis Manning, Manish Mittal, Chris Faulk, Alternates Jen Conway and Amanda Jarrell

Staff: Town Planner Robert Tefft, Town Administrator/Clerk Karen Dewey, Admin Assistant/Deputy Clerk Debbie Coram, Board of Adjustment Attorney Frank Corigliano

Applicants: Brannon and Will Howie

Visitors: Tom Smith, Chad Emerine, Melissa Emerine, Tracy Stone

3. Approval of the December 18, 2023 Board of Adjustment Minutes

Staff requested to amend the minutes to add the attending Board members and minor wording changes requested by Mr. Corigliano.

Motion:	Board member Manning made a motion to approve the December 18, 2023 Board of Adjustment Minutes as amended.
Second:	Board member Mittal
Vote:	The motion passed with a unanimous vote.

4. Consideration of Application for Variance requesting a variance from Section D-703E, Lot and Building Standards Table, of the Town of Weddington Unified Development Ordinance for Parcel # 06069142 located at 4009 Whisperwood Court in Weddington NC.

Vice Chairman Goscicki opened the evidentiary hearing for the request for variance by Brannon and Will Howie from section D-703E Lot and Building Standards Table of the Weddington Unified Development Ordinance.
Vice Chair Goscicki: 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 of office to Robert Tefft, via phone and to Mr. and Mrs. Howie who were in attendance.

Mr. Tefft gave the staff report: The subject parcel is 2.72 acres (15,137 SF) and is located on the west side of Whisperwood Court within Section 2 of the Wedgewood subdivision (Lot 56). The parcel currently consists of a single-family residence constructed in 1991 and an accessory shed at the rear of the parcel. On February 13, 2024, the applicants applied for a Zoning Variance to reduce the minimum required side yard setback from 15 feet to 11 feet for the construction of a two-story, 2,492 square foot addition to the existing dwelling. The addition would include a two-car garage and storage on the main floor, and a recreation room with kitchen and full bathroom on the second floor. It should be noted that while the proposed survey/ plot plan notes that this structure is a "Proposed ADU" the structure will not function as an accessory dwelling unit as per the UDO and will not be an accessory structure as it will be attached to the existing structure by means of a covered walkway. Accordingly, as per UDO Section D-917D(M)(1)(f), the structure "shall be considered a part of the principal structure and shall be subject to those same setback and height requirements as the principal structure."
UDO Section D-703(E), Lot and Building Standards Table.
E. Lot and Building Standards Table. Table 2, Lot and Building Standards establishes the lot and building standards for each zoning district. In the event of a conflict between the standard yard/setback requirements set forth in the Dimensional Requirements Table and any yard/setback requirements specific to a particular use as set forth in Section D-917D, the use-specific requirement shall control.
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.

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 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.

2. No change in permitted uses may be authorized by variance.
3. Additionally, no variances shall be granted by the Board of Adjustment for the following:
   a. Setbacks for signs and areas and/or height of signs.
   b. Setbacks for Essential Services, Class III.
4. No variance for setbacks shall be granted which allows the applicant to reduce the applicable setback by more than 50 percent.
5. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.
6. Any order of the Board of Adjustment in granting a variance shall expire if a zoning permit, or certificate of occupancy for such use if a zoning permit is not required, has not been obtained within one year from the date of the decision.
7. The Board of Adjustment shall hold a hearing on all complete applications no later than 40 days after the application has been filed with the zoning administrator unless consented to by the applicant.

Board member Mittal: From this survey can you see where the septic tank ends or where the septic field is?
Mr. Tefft: From my understanding it is noted on the survey by “OF” and “BF”
Board member Manning: Where is the septic?
Ms. Howie: the 4 orange flag markers are the corner of the septic tank.
Board member Manning: Union County approved the additional bathroom and the location of the septic system
Chairman Goscicki: Are there other restrictions on development on this property that are not designated here.
Mr. Tefft: not in the area that is being proposed.
Board member Mittal: is it possible to move it back away from the septic tank?
Ms. Howie: The bottom level is a garage and will be accessed by the driveway.
Board member Mittal: can you move it back?
Ms. Howie: It could be a possibility.
Mr. Howie: there is a cluster of trees that would have to be removed. Moving it back would increase impervious area and obstruct the view of the neighbor’s house.

Mr. Howie: the reason we are here is the area in the setback in an effort to preserve the tree canopy, without the variance, we will probably lose 10-15 trees. The concrete driveway would be extended. Right now, about 19 feet. Moving the structure to the east by approximately 20 feet would add impervious area and would obstruct the neighbors’ views. We have discussed with the neighbors and they are in support of the variance.
Vice Chair Goscicki: it’s not a legal opinion, but the neighbors are in support.

Mr. Howie: they appreciate that we have paid money for the variance to consider them.
Board member Faulk: How is this attached to the house? Breezeway? Covered walkway? What is the span?
Mr. Howie: 15-20 feet attached to an exterior door on screen porch to exterior door on proposed structure.
Board member Faulk: Code-wise, what does moving it back roughly 20 feet do to the covered walkway?
Mr. Tefft: it is considered the principle structure. There is nothing saying how long the covered walkway is required to be.
Chairman Goscicki: with accessory structures, do setbacks change?
Mr. Tefft: in this case, they do not change.
Chairman Goscicki: If the structure is pushed back 7 feet and over 3 feet, it wouldn't need a variance. This is a worst-case scenario.
Mr. Howie: The direction we used with the septic application. There is no definitive set back for structures from septic. The guideline is no closer than 5 feet. The structure is 7.5 feet from the septic tank.
Chairman Goscicki: this is a large addition on your property. On a lot that is 2.7 acres. Talking about a variance to accommodate a structure on a lot that size is hard to see. Why can't you work with the property you have? I have a hard time understanding the hardship.
Board member Manning: it is a large structure. A typical garage size is 1250 sq. ft. The application should read the footprint and not the actual square footage.
Board member Conway: the picture clouds it. It looks like a house.
Ms. Howie: It is a garage.
Board member Manning: "OF" is existing septic area
Mr. Howie: The existing and repair area.

The Board discussed 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.

Board member Mittal: I move that there is not a hardship here resulting from the regulation..

Vice Chairman Goscicki: I second that.

Board member Conway: I struggle with this. I see the point there are people that want larger structures. Have you looked at all the options? If you move it, you don't need a variance. Then 4 feet of a corner foundation structure on 2.7 acres.

Ms. Howie: we did point out that the lot is 2.7 acres. The back is floodplain and not developed. The property we own is 2.7 acres, but there is property in the floodplain.

Board member Conway: I understand and appreciate it. It doesn't make a hardship.

Chairman Goscicki: the hardship is the 10 more feet of driveway and 10 more feet of connecting walkway. The only hardship is economic impact. Is there additional hardship?

Board member Manning: I disagree. This is an older house with older septic. If it must be replaced, there needs to be room to get in equipment to get to the tank. It sounds like options have been explored to move to accommodate the setback. They've done their homework on saving trees and the

neighbors' privacy and this option seems to make the most sense. There have been bigger variances given for pools. This family has kids and plan to remain Weddington residents.

Mr. Corigliano: The hardship would not result from strict application from the regulation. Vote on that motion. Affirmative is agreeing with.

Board member Faulk: No

Board member Conway: when looking at the picture of flood plain, it paints another picture. Preservation of tree canopy and obviously older home. They are improving the home on the usable land. This is a struggle. I would go with no as well. If you've talked to a septic guy and 7 feet is the max number, it's hard to look at the plan and determine how it's set up.

Board member Manning: No

Board member Mittal: Yes

Vice Chair Goscicki: Yes

Mr. Corigliano: For clarification. Seems like this will be confusing. I recommend motions be withdrawn and restated as the statute reads.

Ms. Howie: if we move this, in order to access the garage, we will have to pave over the septic tank

Vice Chair Goscicki: there is no ordinance that any separation is required between structure and septic.

Ms. Howie: it was on the advice from an engineer

Board member Manning: is it best practice or does environmental health have and ordinance?

Board member Faulk: What is being presented is 15 feet is the hardship. Where the building is from septic, house, breezeway, is not the hardship.

Mr. Howie: Is the tree canopy relevant and using less impervious surface and the neighbors' viewshed. I hope those would be considered as more worthwhile. As we are trying to be considerate of the environment and the neighbors.

Mr. Howie: in an email from Larry Thompson, Thompson Environmental Consulting dated January 26, 2024. What is the required or recommended setback from septic was asked. He said personally 10 feet, but can go as close as 5 feet, but not recommended. Moving the structure 4 feet south and be 3 feet from the septic tank. Keep the distance from septic to the structure. The distance of 7.5 feet seemed to comply. We are asking for a smaller variance, decreasing the driveway length, decreasing the impervious surface, and preserving the neighbors' viewsheds. They have more of a clear view of the backyard. We are trying to be good neighbors.

Vice Chair Goscicki: there is a challenge. Not just current neighbors but future neighbors.

Board member Faulk: the hardship is the 15 foot.

Vice Chair Goscicki: with advisement of counsel, the public hearing is closed.

Board member Mittal withdrew the motion.

Vice Chair Goscicki gave a second.

The motion passed unanimously

Board member Faulk made a motion that there was a hardship from strict application of the regulation based on the information contained in the written application and testimony from the Applicants and the Town Planner.

Board member Manning seconded the motion

Board member Conway: the hardship is also the location of the septic and the recommended distance of 10 feet.

Vote: Aye: Board members Faulk, Conway, and Manning
No: Vice Chair Goscicki and Board member Mittal.
This finding of fact was not met.

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 reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

Board member Faulk made a motion that the hardship results from conditions that are peculiar to the property, such has the septic system location and topography of the parcel.
Board member Conway Seconded the motion:
Vote: Aye: Board members Faulk, Conway, Manning, and Mittal
No: Vice Chair Goscicki
This finding of fact was 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 Faulk made a motion that the hardship did not result from actions taken by the applicant.
Vice Chair Goscicki seconded the motion.
Vote: Aye: Unanimous.
This finding of fact was 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.

Mr. Corigliano: the intents is to grant a variance where hardship exists and the request by the applicant is in the spirit of the ordinance.
Board member Faulk made a motion that the requested variance is consistent with the spirit, purpose, and intent of the ordinance.
Board member Manning seconded the motion
Vote: Aye: Board members Faulk, Manning, Conway, and Mittal
No: Vice Chair Goscicki

Vice Chair Goscicki: based on the fact that the application failed to meet all of the findings of fact, the variance is denied. The only hardship seen was the additional cost of the driveway and walkway.
Board member Mittal: there is potential to move the structure to comply with the setback requirements.

Mr. Howie: can we illustrate that moving it will not fix the issue.
Vice Chair Goscicki: you haven't shown additional hardship.
Mr. Corigliano: you can change your application. For instance change to move the structure within 5 feet of the septic or another variance.

5. Adjournment

Motion: Vice Chair Goscicki made a motion to adjourn the February 26, 2024 Special Board of Adjustment Meeting at 7:02 p.m.
Second: Board member Mittal
Vote: The motion passed with a unanimous vote.

Approved: _____