

**TOWN OF WEDDINGTON  
SPECIAL BOARD OF ADJUSTMENT MEETING  
THURSDAY, JANUARY 24, 2013 – 6:30 P.M.  
MINUTES**

The Board of Adjustment of the Town of Weddington, North Carolina, met in a Special Session in the Town Hall Council Chambers, 1924 Weddington Road, Weddington, NC 28104 on Thursday, January 24, 2013, with Chairman Rob Dow presiding.

Present: Chairman Rob Dow, Vice-Chairman Jeff Perryman, Dorine Sharp, Jim Vivian, Janice Propst, Jennifer Romaine, Town Planner Jordan Cook, Town Attorney Bobby Sullivan and Town Administrator Amy McCollum

Absent: John Giattino

Visitors: David Kost and Anson Jenkins

**Item No. 1. Open the Meeting.** Vice-Chairman Rob Dow called the January 24, 2013 Special Board of Adjustment Meeting to order at 6:31 p.m.

**Item No. 2. Determination of Quorum.** There was a quorum.

**Item No. 3. Election of Chairman and Vice-Chairman.** Ms. Dorine Sharp moved to elect Rob Dow as the Chairman of the Board of Adjustment. Ms. Janice Propst seconded the motion.

Mr. Jeff Perryman moved to close nominations. Ms. Sharp seconded the motion, with votes recorded as follows:

AYES: Sharp, Romaine, Vivian, Propst, Perryman and Dow  
NAYS: None

The vote on Ms. Sharp's motion is as follows:

AYES: Sharp, Romaine, Vivian, Propst, Perryman and Dow  
NAYS: None

Mr. Jim Vivian elected Mr. Jeff Perryman as Vice-Chairman of the Board of Adjustment. Ms. Propst seconded the motion.

Ms. Sharp moved to close nominations. Ms. Propst seconded the motion, with votes recorded as follows:

AYES: Sharp, Romaine, Vivian, Propst, Perryman and Dow  
NAYS: None

The vote on Mr. Vivian's motion is as follows:

AYES: Sharp, Romaine, Vivian, Propst, Perryman and Dow  
NAYS: None

**Item No. 4. Appointment of Alternate A and B.** Chairman Dow appointed Ms. Romaine as Alternate A and Mr. Giattino as Alternate B to the Board of Adjustment.

**Item No. 5. Approval of the January 23, 2012 Special Board of Adjustment Meeting Minutes.** Ms. Sharp moved to approve the January 23, 2012 Special Board of Adjustment Meeting Minutes. Ms. Propst seconded the motion, with votes recorded as follows:

AYES: Sharp, Romaine, Vivian, Propst, Perryman and Dow

NAYS: None

**Item No. 6. Review and Consideration of a Six Foot Variance Request for a Front Yard Setback located at 6711 Eliah Drive, Weddington, NC 28104 – Parcel # 06-066-279.** Chairman Dow opened the hearing to review the Variance Application for 6711 Eliah Drive. Town Clerk Amy McCollum swore in the following individuals wishing to give testimony: David Kost, Anson Jenkins and Jordan Cook.

The Board of Adjustment received the following memo from Town Planner Cook:

The Board of Adjustment received a copy of the Rules of Procedures, copy of Article VIII. Board of Adjustment from the Code of Ordinances and a copy of the following memo from Town Planner Jordan Cook:

True Homes, LLC request a front yard setback variance of six feet for an existing single family home located at 6711 Eliah Drive, Weddington, NC.

**Application Information**

Date of Application: January 14, 2013

Applicant & Owner Name: True Homes, LLC-David Kost, representative

Applicant Address: 2469 Brekonridge Centre Drive, Suite 104, Monroe, NC 28110

Parcel ID#: 06-066-279

Property Location: 6711 Eliah Drive, Weddington, NC 28104 (Lot 2)

Subdivision: Sanctuary at Weddington

Zoning: R-40

Existing Use: Single Family Home

Parcel Size: 1.19 Acres

**General Information:**

- The applicant requests a six foot variance to the front yard setback for an existing single family home.
- The required front yard setback for a single family dwelling per *Section 58-54 of the Town of Weddington Zoning Ordinance* is 50 feet. The house is currently built 44 feet 6 inches from the front property line. If granted, the variance would allow for a 44 foot front setback.
- The applicant was given a Zoning Permit for the house by the Town of Weddington on September 11, 2012. The zoning permit application and survey indicated a front yard setback of 53.42 feet. The applicant also submitted a Foundation Permit application and survey that indicated that the front yard setback was 53.42 feet. The applicant discovered the setback violation prior to applying for a Certificate of Compliance.
- The existing, adjacent house on Lot 1 has a front setback of 53.5 feet and the adjacent house under construction on Lot 3 has a proposed front setback of 50.5 feet.

**Minimum Standards for Single Family Dwellings in R-40 Zoning District:**

- Required Minimum Front Yard Setback- 50 feet
- Required Minimum Side Yard Setbacks- 15 feet
- Required Minimum Rear Yard Setback- 40 feet

**Exhibits Included in Variance Packet:**

- Exhibit 1- Staff Memo dated January 24, 2013
- Exhibit 2- Variance Application and Findings of Fact dated January 14, 2013
- Exhibit 3- Aerial Image of 6711 Eliah Drive
- Exhibit 4- Adjacent Property Owner Parcel Reports
- Exhibit 5- Applicants Submittal Package:
  - 5a. Applicant Letter dated January 14, 2013
  - 5b. Photographs of 6711 Eliah Drive
  - 5c. Photographs of 6707 Eliah Drive (Lot 1) and 6715 Eliah Drive (Lot 3)
  - 5d. 6711 Eliah Drive House Plans
  - 5e. Sanctuary at Weddington Final Plat
  - 5f. Current Survey of 6711 Eliah Drive and Survey of Adjacent Properties
- Exhibit 6- *Section 58-54 of the Town of Weddington Zoning Ordinance* (R-40 Zoning District)
- Exhibit 7- September 11, 2012 Zoning Permit

Town Planner Cook – If you look at Exhibit 2, which is the Variance Application and if you turn over to Page 4 of 4 and look at the information that is to be filled out by the Zoning Administrator, Items 5 and 6 where it says sign posted on property – I posted the sign on 1/15/13 not 1/22/13 and the notices were mailed on 1/16 as opposed to yesterday.

Ms. Sharp – How does Exhibit 5F compare with the plat included with Exhibit 7?

Town Planner Cook – Exhibit 5F is a current survey showing the encroachment. Exhibit 7 was the survey submitted to me by True Homes when they filled out the Zoning Permit information which shows it is behind the 50 foot setback. That shows the 53.42 that they proposed.

Mr. David Kost – Thank you for your time. We are seeking a variance of 6’ for the required 50’ front yard setback. We are seeking a reduction to 44’ for the front yard setback. The land surveyor staked this home over the front setback line. True Homes was unaware of that violation until Friday, January 11, 2013. We are the owner of the property and builder of the home. As the current owner we are scheduled to sell the home on February 1, 2013. After the sale, the home will be used as a private residence. The home is completed. The ordinance requires a 50’ front yard setback. In order to comply with the ordinance a major portion of the front of the home would have to be removed. Structurally, this would render the home uninhabitable if we were to comply with the ordinance. The application of the ordinance requires a 50’ front setback. The home is completed and in its current state cannot comply with the ordinance thus, resulting in the current hardship. The “unique” circumstance results from a hardship created by the surveyor. The hardship is suffered solely by this property and is unique to the Sanctuary at Weddington community. The hardship is not the result of any action taken by True Homes. The land surveyor made a mistake in the placement of this home and did not make True Homes aware of the error until the home was completed. The general intent of the ordinance is to provide large homesites on wooded lots. The harmony and spirit of the ordinance will be preserved by the granting of the variance as the home is setback over 44’ from the right-of-way. A 6’ variance is the least possible deviation from the letter of the ordinance. The variance of the setback will be negligible from the street, and will preserve the spirit and character of the neighborhood. Granting of the variance will in no way prevent public safety officers or officials from performing their duties. If the variance is denied, additional time will be spent tearing down the structure and then reconstructing. This will add to construction noise and traffic already experienced by adjacent property owners, creating further, undue hardships upon them.

1. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance – yes.

- a. If the property owner complies with the provisions of this ordinance, he can secure no reasonable return from or make no reasonable use of his property – yes.
  - b. The hardship results from the application of the ordinance – yes.
  - c. The hardship is suffered by the applicant's property – yes.
  - d. The hardship is not the result of the applicant's own action – yes.
  - e. The hardship is peculiar to the applicant's property – yes.
2. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit – yes.
  3. In granting of the variance, the public safety and welfare have been assured and substantial justice has been done – yes.
  4. The reasons set forth in the application justify the granting of the variance and that the variance is minimum one that will make possible the reasonable use of land or structures – yes.

Ms. Sharp – Jordan, in our ordinances it says that no variance can be given for front yard setbacks if the applicant does not get a foundation survey. Would you address that they are within our jurisdiction.

Town Planner Cook – They did apply for the Foundation Permit. It was recent. The Zoning Ordinance stipulates that they have to apply for that Foundation Permit prior to applying for a Certificate of Compliance permit. They had brought me the notification that there was a violation and they had not applied for a Certificate of Compliance permit. I instructed at that point, apply for a Foundation Permit. They had a foundation survey on file. It was not an as built house survey. It showed it being over the 50 foot setback line. We are okay because they had not applied for the Certificate of Compliance yet so they went through the proper steps.

Vice-Chairman Perryman – When the original plans were submitted, the setbacks were in compliance?

Town Planner Cook – Correct.

Vice-Chairman Perryman – The surveyor - is that an independent individual that works for you? How does that individual fit into the hierarchy of the construction of the neighborhood?

Mr. Kost – It is Jenkins and Lowery Surveying. They are one of our trade partners of which we have many trade partners that we employ during the construction of the home. They put together a plot plan for us and that plot plan showed the home at 53 ½' behind which it would have been well within the ordinance. The foundation survey was when they went out and verified it. The original foundation survey that we had showed that it was behind that line and that is where the mistake took place. The surveyor had placed the wrong calculation that did not show that they were off. During the final survey is when we were notified that the home was actually over the front setback.

Vice-Chairman Perryman – You have this company go out and do the staking for you based on their plans that they submitted and the checks and balances. I am trying to get an idea if you are a supervisor on a job site you probably have someone going behind the construction guys making sure that everything is done by the plans. It sounds to me like the surveyor comes out does this work and goes back and notifies you and says the survey is completed your team can show up and start working.

Mr. Kost – Yes.

Mr. Jenkins – I am the President of Jenkins and Lowery Land Surveying. We do not exclusively do work for True Homes. We work for a variety of builders that we survey for and provide similar services or they will contact us to place a certain house plan onto a lot. We do have checks and balances that are set in place to ensure that things like this do not happen. Unfortunately one of the ties to the house down one

of the sidelines had not been edited from a preliminary previous drawing. The tie was not edited down to a further point down the house and we will generally check into the other side of the lot. It was my younger brother who worked on it. He does a lot of houses. He got sidetracked and did not do the normal check. We assumed that our data was correct. When we presented them with the foundation survey back in October everything kind of rolled ahead as it normally would. We ended going back out two weeks ago to do the physical survey for the Certificate of Occupancy and shot the driveway. My partner John Lowery who signed the map loaded the points for the driveway on there and informed me that the driveway does not match where the house is. We go back and checked it again to make sure and all of a sudden we realize that there was a tie that had not been edited and a check to the opposing line had not been verified and that is where the issue came up.

Vice-Chairman Perryman – One of the main questions is the hardship is not a result of the applicant's own action. I am trying to understand the relationship between the surveyor and the homebuilder.

Mr. Jenkins – I am a licensed surveyor in the State of North Carolina. I am separate from any type of internal operation that goes on with True Homes. There is a standard that we are held to by our license that makes us accountable to you guys but to the licensing board as well.

Vice-Chairman Perryman – Once the surveyor completes their work, they notify you and let you know that a certain lot is ready for you to start work. Nobody from your organization goes back and double checks their work? You are relying on their licensing and credentials to say that these stakes are where they are supposed to be.

Mr. Kost – Yes.

Mr. Jenkins – If it was a square lot then going out to verify the location of the foundation would be a simple process - being that it is in a curve, we have the equipment, we are supposed to put in the right place.

Vice-Chairman Perryman – Let's say you have to tear this house down and rebuild it, what would your net loss, gain, break even be as far the expense involved with that?

Mr. Kost – It would be a very large loss. We do not have the numbers.

Vice-Chairman Perryman – The house you have there would be a total loss and you would have to start over.

Mr. Kost – If you look at the floor plan, I do not see any way that we could modify the current structure as it sits.

Mr. Jenkins – The person purchasing this home is a future Weddington resident and I believe that they are under contract to sell their current home and they are out of state.

Mr. Vivian - Are they aware of this yet?

Mr. Kost – We are waiting on the outcome tonight.

Ms. Propst – They are not aware of this hearing.

Mr. Kost – They will be notified of the outcome.

Chairman Dow - The house on one side is not finished, the house that is on the other side is completed. Is there someone is that house?

Mr. Kost – Yes.

Chairman Dow – We have sent notifications to neighbors and you have not received any feedback.

Town Planner Cook – I have not received any calls from any neighbors and I have also posted a sign.

Chairman Dow – Is there any reason that this house could have not been built in the right place?

Mr. Jenkins – Not at all. When we rough staked the home, if you were to put an envelope box around the entire structure that entire envelope box was behind the front yard setback.

Chairman Dow closed the hearing at 7:07 p.m.

1. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance. *Vice-Chairman Perryman moved to answer in the affirmative. Ms. Sharp seconded the motion, with votes recorded as follows:*

AYES: Sharp, Vivian, Propst, Perryman and Dow  
NAYS: None

- a. If the property owner complies with the provisions of this ordinance, he can secure no reasonable return from or make no reasonable use of his property. *Vice-Chairman Perryman moved to vote in the affirmative based on the fact in order to get the property in compliance the necessary structural changes would cause the house to be uninhabitable. The owner would have to demolish the house at a substantial cost and rebuild the property with the proper setbacks. Ms. Sharp seconded the motion, with votes recorded as follows:*

AYES: Sharp, Vivian, Propst, Perryman and Dow  
NAYS: None

- b. The hardship results from the application of the ordinance. *Ms. Sharp moved to answer in the affirmative because the ordinance requires a 50' setback so applying the ordinance would require 50 feet and they do not have it. Mr. Vivian seconded the motion, with votes recorded as follows:*

AYES: Sharp, Vivian, Propst, Perryman and Dow  
NAYS: None

- c. The hardship is suffered by the applicant's property. *Ms. Propst moved to vote in the affirmative because the house is not in compliance with the required setback and the applicant is the owner of the property. Ms. Sharp seconded the motion, with votes recorded as follows:*

AYES: Sharp, Vivian, Propst, Perryman and Dow  
NAYS: None

- d. The hardship is not the result of the applicant's own action. *Mr. Vivian moved to vote in the affirmative because the testimony showed that a separate entity, the surveying company, did the*

*work and not the applicant or owner of the land. Ms. Sharp seconded the motion, with votes recorded as follows:*

AYES: Sharp, Vivian, Propst, Perryman and Dow  
NAYS: None

- e. *The hardship is peculiar to the applicant's property. Ms. Sharp moved to vote in the affirmative because this is a single property in question and the ordinance states that you must have a foundation survey but not yet applied for a Certificate of Compliance and because of that we get very few of these requests. Ms. Propst seconded the motion, with votes recorded as follows:*

AYES: Sharp, Vivian, Propst, Perryman and Dow  
NAYS: None

2. *The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit. Ms. Sharp moved to vote in the affirmative based on there was evidence that you cannot visually tell from the road and this is a large lot of 1.19 acres that is located on a cul-de-sac and a curve. Ms. Propst seconded the motion, with votes recorded as follows:*

AYES: Sharp, Vivian, Propst, Perryman and Dow  
NAYS: None

3. *In granting of the variance, the public safety and welfare have been assured and substantial justice has been done. Vice-Chairman Perryman moved to vote in the affirmative based on the testimony that public safety will not be adversely affected. There is also a family waiting to move in this house. If we did not grant there would be ripple effect. Ms. Propst seconded the motion, with votes recorded as follows:*

AYES: Sharp, Vivian, Propst, Perryman and Dow  
NAYS: None

4. *The reasons set forth in the application justify the granting of the variance and that the variance is minimum one that will make possible the reasonable use of land or structures. Ms. Propst moved to vote in the affirmative because it is a large lot and it is a minimal variance. Vice-Chairman Perryman seconded the motion, with votes recorded as follows:*

AYES: Sharp, Vivian, Propst, Perryman and Dow  
NAYS: None

*Ms. Sharp moved to grant the variance based on the evidence and reasons stated above. Vice-Chairman Perryman seconded the motion, with votes recorded as follows:*

AYES: Sharp, Vivian, Propst, Perryman and Dow  
NAYS: None

**Item No. 7. Adjournment.** *Vice-Chairman Perryman moved to adjourn the January 24, 2013 Special Board of Adjustment Meeting. Ms. Sharp seconded the motion, with votes recorded as follows:*

AYES: Sharp, Romaine, Vivian, Propst, Perryman and Dow  
NAYS: None

The meeting adjourned at 7:20 p.m.

Attest:

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Robert Dow, Chairman

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Amy S. McCollum, Town Clerk