

MINUTES FOR THE FRANKLIN COUNTY BOARD OF ADJUSTMENT

October 22, 2007

The Franklin County Board of Adjustment held its regular monthly meeting on Monday, October 22, 2007 in the Franklin County Administration Building, 113 Market Street, Louisburg, North Carolina.

PRESENT: Shane Brantley, Robert Carlson, Scott Lerew, Stuart May and Cynthia Hayes.

ABSENT: Chuck Griffin and Tammy Ray.

STAFF: Tammy Davis, Scott Hammerbacher, Pat Young and Jason Rogers.

OTHER: Darnell Batton and Steve McFarlane

Chairman Shane Brantley called the meeting to order at 7:00 P.M., and welcomed those in attendance. Chairman Brantley went over the procedures of the Board of Adjustment and reminded anyone who wishes to address the Board must be sworn in by the Clerk. Chairman Brantley recognized Darnell Batton as the Board's Attorney. He stated Steve McFarlane had been invited to represent the County due to the uniqueness of the agenda.

Steve McFarlane stated it had been reported that a petitioner had contacted a board member and he questioned if anyone felt they would be impartial on their decision. Scott Lerew stated Ed Shearin had contacted him in reference to the water on the property and how it was to be dispensed. He stated he explained to the petitioner that he could not discuss the case with him. Chairman Brantley stated he was contacted by Mr. Shearin. He stated he explained that he could not discuss the matter with him since it was against the rules and the more facts that he produced the better his case could be presented since the board make their decisions based on findings of fact. No one expressed they would be impartial in their decision making so Chairman Brantley reminded the board to base their decisions on the facts presented as evidence. Mr. McFarlane stated he feels the board should vote to see if Mr. Lerew and Mr. Brantley should be recused in the variance request. Darnell Batton explained it must be in a motion format. No motion was made so the Board proceeded with the agenda items.

Agenda Items:

- #1. Request for a Variance from the Unified Development Ordinance, Article 29-7 Utilities (A) Water Facilities by Shearin Realty on 224.09 Acres located on Johnson Town Road in the Dunn Township in the R-30 District.

Scott Hammerbacher stated the petitioner is requesting a variance from the UDO that requires the developer or subdivider to connect or install a public water system in subdivisions with 16 or more lots if the lots are less than five acres in size. He stated with the variance, the petitioner would be avoiding installing a community water system within the previously approved Pilot Ridge Subdivision. He stated the subdivision was approved with 39 five acre lots on August 13, 2005, and due to the failure to record lots within the subsequent two years the subdivision has expired. He stated the petitioner is citing irregular topography, numerous streams, rock formations, and location of the property as justification for a variance. He stated if a variance is granted, the petitioner intends to resubmit a revised site plan with 1 acre minimum lot size with an average lot size of 3 acres for Planning Board consideration.

John Williamson (Attorney) was sworn in and submitted into evidence letters from Grady Pool Well & Pump Company and Williams-Pearce & Associates. He stated he represents Ed Shearin and Shearin

Realty. He stated his client had planned to put in 39 lots originally. He stated Mr. Shearin wanted to reduce size of lots to make the development into a 70 lot subdivision, which would make the average lot size of 3 acres or slightly larger. He stated the unique qualities of the land have unsuitable soils for perking and the streams provide challenges. He stated you would have higher density when you do smaller lots ordinarily but due to the problems, it wasn't feasible to create smaller lots. He explained the problem of locating a community well to service all the proposed lots would have to go around the creeks which would disturb wetlands. He explained the Division of Water Quality doesn't want the creeks and wetlands disturbed. He stated in order to run a community well, they would have to install pipes and this creates problems with disturbing the creeks. He stated the Town of Bunn will not run water to the proposed property. He questioned if his client had to provide sufficient water to supply up to 70 lots, what happens if all 70 homes lost water at the same time. He stated Mr. Poole's opinion is that individual wells would better serve the proposed subdivision (see letter). He explained the property has a lot of rock which causes problems with running lines and is very expensive. He stated at some point, the additional costs to the developer would become a hardship, so he is asking the board to grant the variance to waive community water system requirement.

Scott Lerew emphasized the septic systems and unsuitable soils are not before the board. Mr. Williamson stated due to unsuitable soils it does effect wells because if it didn't have these unsuitable soils then the developer could put in a couple of community wells. Mr. Lerew questioned the letter from Mr. Poole, specifically what evidence does he have to justify that a water system would be more apt to go dry due to high usage and overpumping system. Mr. Williamson stated he didn't know what Mr. Poole's statement was based on.

Ed Shearin was sworn in and stated he wanted to build a nice subdivision with nice homes. He stated wants to promote something that the community and Franklin County could be proud of and would help county tax base. He stated he could group houses on the areas where there are suitable soils, but he wanted to develop large attractive lots. He stated grouped houses would work with the community water system but is not attractive. He stated he originally wanted to promote homes with horses on the five acres or more lots. He stated he saw problems with those lots being maintained so he cut the lot size to create a nice 3 acre estate lot. He stated he is scared to do a community water system and foresees it as a major problem. He stated when he contacted Mr. Lerew and Mr. Brantley, he wasn't aware he was in violation of the rules since he has never been through the Board of Adjustment process before.

Scott Lerew questioned if geological study was done to provide an actual fact that there is an issue with installing pipe for community well due to problems with rocks. Mr. Shearin stated when roads were installed, they hit rock constantly and the roads were built on top of rock. He stated the land is not suitable to install pipe to run a community well for 224 acres. Robert Carlson questioned if the 39 lots previously submitted would be served by a community well. Mr. Shearin stated no since those lots were over 5 acres. Chairman Brantley questioned home sizes for the development. Mr. Shearin stated the homes would be 2500-4000 square feet with nothing less than 2000 square feet. He stated his plan is starting with 3500 square foot homes. Mr. Carlson questioned if the roads are paved. Mr. Shearin stated they are stone and it has been seeded.

Johnny King was sworn in and stated he built the roads. Scott Lerew stated he visited the site and questioned how much rock Mr. King found while building the roads. Mr. King stated he ran into rock

from the beginning. He stated he advised Mr. Shearin to run over the rock due to this would be the best option financially. He stated he had to install a French drain system.

Danny Williams (Williams-Pearce & Assoc.) was sworn in and stated that the Division of Water Quality doesn't like creek crossings. He stated if the variance was approved, the wells would be placed on the same side as homes and you would not have to cross creeks and disturb wetlands. He stated if an individual wells fail you may have one or two lots without water but with community water system you would have 70 lots without water.

Chairman Brantley questioned if the variance was denied, how many lots would be created. Mr. Shearin stated he was not sure; he would have to see how many lots he can get. He stated he feels the market is not there for the 39 lots.

Horley Johnson (8709 White Oak Rd) was sworn in and stated that if the 39 lots were developed then each lot would have their own well and septic there wouldn't be a concern of disturbing creeks. He expressed concern with the increase in traffic that possibility of 70 new homes on Johnson Town Road. Scott Lerew explained that if the variance is not granted, the petitioner could install community sewer system as well as community water and could increase the number of lots to possibly 140 lots. Scott Hammerbacher emphasized that there has not been any lots approved by the Planning Board.

Patrick Young was sworn in and gave a presentation on the water system requirements of the UDO. He stated the purpose of the requirement was to protect the county's ground water supply and help ensure safe and sustainable water supply for all County residents in subdivisions not connected to County water through the state oversight of community wells. He stated there are several properties that have the same conditions as presented by petitioner but this is not a unique hardship that justifies a variance.

Greg Gray (80 Rock on Hill Lane) was sworn in and questioned if 70 lots has been approved by the Planning Board. Mr. Hammerbacher stated the only thing the Board of Adjustment is looking at is granting a variance so the petitioner wouldn't have to put in a community water system if 16 lots or more are developed and they are less than 5 acres. He stated the board can't approve a subdivision plan. Mr. Gray stated the petitioner should have researched the property before buying. He stated with 39 lots you will have 80-100 extra vehicles on the road. He stated if subdivision is approved for more lots that will increase population in the area by 300.

June Wheeler (833 Johnstontown Rd) was sworn in and stated she was concerned with the fact if the variance is granted, it would leave the petitioner wide open to increase the number of lots. She also stated she feels the communication with the board members is not allowed by quasi-judicial proceedings.

Linda Hocutt (472 Johnstontown Rd) was sworn in and stated her grandfather owned the property being developed in the past. She stated she spoke with Mr. Brantley on 10/18/07 to inform him of the meeting and she didn't know that he as on the board. She stated Mr. Brantley informed her he intended to vote for the variance. She stated Mr. Shearin had been around in the community explaining what his intentions are. She emphasized the board is in place to enforce the rules not change the rules.

Chairman Brantley questioned Mr. Batton if he should recuse himself from voting tonight since he told Mrs. Hocutt that he may vote a certain way. Mr. Batton stated a motion would have had to been made

and voted on to recuse Mr. Brantley from the procedures. Chairman Brantley stated the board didn't know that he had spoken with other property owners so they couldn't make a motion to recuse him from the procedures.

Ron Hocutt (491 Johnson Town Rd) was sworn in and stated he looks at situation as the best for the County. He stated Mr. Young had already emphasized that the situation is not unique.

Bruce Ryman (673 Johnstontown Rd) was sworn in and stated he has lived in area for six years and is concerned with the safety on the roads with increased traffic. He complimented on how the development looks nice but would like to see the original 39 lot layout done.

Chairman Brantley questioned Mr. Shearin on the exact number of homes he is proposing to build because he wanted to try to compromise to make everyone happy. Mr. Batton advised the board that they couldn't put any conditions on the variance request. Mr. Williamson stated he thought the variance could be granted with conditions. Darnell stated the Planning Board is not governed by the Board of Adjustment. He stated the variance is not needed if the acreage is 5 acres or more and/or if lot number is less than 16 lots. Chairman Brantley called for a five minute break at 8:57 P.M. The meeting was called back to order at 9:01 P.M.

Darnell Batton wanted to clarify his previous statement by saying it is the board's decision if they want to grant a variance with conditions, but if the concern with the number of lots is a Planning Board issue. He emphasized the only thing before the Board of Adjustment is the community water and septic systems. Mr. Hammerbacher stated a variance runs with the property and not the owner. Stuart May stated he feels the board just needs to vote on if a community water system has to be put in if there are more than 16 lots. Chairman Brantley stated he would like to be recused from the vote.

Chairman Brantley made a motion, seconded by Robert Carlson to recuse himself from voting. The motion was denied since three votes weren't received supporting the motion (Lerew and May voted against the motion). Chairman Brantley closed the public hearing and the board went through the variance worksheet.

Robert Carlson made a motion, seconded by Scott Lerew to concur with the Findings of Fact. The motion carried with a 4/5ths vote with Cynthia Hayes voting against the motion.

Stuart May made a motion to approve the variance. The motion was not seconded, so it failed.

The Board decided to discuss the matter further. Scott Lerew stated after visiting the site, he knows it will be very costly to put in a community water system after observing the terrain of the property. He stated the developer will have to go through the burden of dealing with the state every time he crosses a creek or stream. He stated he sees challenges of going through rock to install pipes and he doesn't see how increasing density will solve the problem.

Cynthia Hayes stated she does see the concern of the public present with the number of houses that may be proposed but understands that issue is not what the board is here to consider. She stated if the community water system goes dry, they would have to provide water from a backup water supply and she questioned who pays for the digging of a new community water system. Mr. Lerew stated there are pros and cons in every direction.

Cynthia Hayes made motion, seconded by Stuart May to grant the variance request. The motion was denied due to the lack of a 4/5ths approval vote (Carlson and Lerew voted against the motion, Brantley declined to vote on this item).

- #2. Request for a Variance from the Unified Development Ordinance Article 8-1 (Table of Area Height & Yard Requirements) by Davson Custom Homes on .399 Acres located at 379 Sagamore Drive (Lot 832 Lake Royale) in the Cypress Creek Township in the R-1 District.

Scott Hammerbacher stated the applicant is requesting a variance to allow for a reduction of the side setback from 10-feet to 7.5 feet. He stated the applicant cites extreme slope, location of septic field, lot width/size, and aesthetics as justification for this variance. He stated if the variance is granted, the applicant intends to construct steps on the side of the rear deck.

Jason Hayes was sworn in and stated during the building process he didn't know that the steps were considered part of the house that must be within the setback. Mr. Hayes stated he is proposing a landing coming off the deck and leading beneath the deck onto a patio. Robert Carlson questioned how tall deck is. Mr. Hayes stated 16 feet with a 5 foot retaining wall. Mr. Carlson questioned if there is any other options. Mr. Hayes stated it would be cheaper to come off the back side which is feasible but coming off the left side would make it look better. Mr. Lerew questioned if Mr. Hayes is the owner or contractor. Mr. Hayes stated he is the owner and the contractor and he would be living in the house. Chairman Brantley closed the public hearing and board proceeded with the variance worksheet.

Robert Carlson made a motion, seconded by Cynthia Hayes to affirm that the Findings of Fact have been satisfied for the variance request. The motion passed unanimously.

Robert Carlson made a motion, seconded by Scott Lerew to deny the variance request. The motion was denied due to the lack of a 4/5ths vote (Shane Brantley and Stuart May voted against the motion).

- #3. Request for a Variance from the Unified Development Ordinance, Article 6-2 (Accessory Uses, Buildings and Structures) by Kevin Hopkins on .362 Acres located at 104 Shoshone Drive (Lot 875 Lake Royale) in the Cypress Creek Township in the R-1 District.

Scott Hammerbacher stated the property owner was notified by the Lake Royale Property Owner's Association that the previously installed accessory structure located on the site doesn't meet the minimum setback requirement for accessory structures. He stated accessory structures must be 10 feet from side and rear property lines. He stated a zoning permit was purchased for an accessory building on May 7, 2002. He stated the applicant is requesting a variance from the minimum setback requirement from 10 feet to 7 feet.

Cynthia Hayes stated she doesn't know the petitioner personally but she did speak with him on the telephone as a real estate agent. She stated he called her questioning if he should sell his home without the variance. She stated she told him that he needed to get his variance first.

Kevin Hopkins was sworn in and stated he lives in New York. He stated this is his vacation/retirement home. He stated he hired a builder to build the garage. He stated the problem was discovered when he

was putting up a privacy fence and the property lines appeared to be too close. He stated Surveyor William Dement surveyed the property and saw that there was encroachment into the setback. He stated Mr. Dement suggested he seek a variance. Scott Lerew questioned if it would be a financial hardship to tear down and rebuild the structure. Mr. Hopkins stated yes, very much so. Robert Carlson questioned if he received a certificate of compliance from the county. Mr. Hopkins stated he did but he didn't have it with him. Tammy Davis stated the inspections department doesn't issue certificates of compliance on accessory uses.

Jason Rogers was sworn in and stated he researched the property while preparing the communiqué. He stated the inspection report doesn't show final inspection was performed and approved. Mr. Carlson questioned if the footing inspection was approved. Mr. Rogers stated the footing inspection was approved. Scott Lerew questioned what the original plan showed. Mr. Rogers stated the plat should have shown a minimum of a 10-foot setback in order to issue a zoning permit. Chairman Brantley closed the public hearing and the board proceeded to go through the variance worksheet.

Chairman Brantley made a motion, seconded by Cynthia Hayes to affirm that the Findings of Fact have not been satisfied for the variance request. The motion passed unanimously.

Chairman Brantley made a motion, seconded by Scott Lerew to approve the variance request. The motion passed with a 4/5ths vote (Carlson voted against the motion).

- #4. Other Business Reports/Discussion
 - A). Departmental Report
 - B). Other Business/Reports/Discussion

With there being no further business before the Board, Chairman Brantley adjourned the meeting at 10:15 P.M.

Shane Brantley, Chairman
Franklin County Board of Adjustment

Tammy Davis, Clerk
Franklin County Board of Adjustment