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WAKE COUNTY NORTH CAROLINA

Planning, Development & Inspections

A Division of Community Services
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MINUTES OF REGULAR MEETING

Wake County Board of Adjustment
Tuesday, January 8, 2019 (9:00 a.m.)
Wake County Justice Center
300 S. Salisbury St., Room 2700
Raleigh, North Carolina

Members Present: (6) Mr. Brenton McConkey (Chair), Mr. Waheed Haq, Ms. Sheree Vodicka, Mr. Will Barker, Mr. DeAntony Collins, Ms. Lisa Humphreys

Members Absent: (3) Mr. Don Mial (Vice Chair), Mr. Brian Foxx, Mr. John Barker

County Staff Present: (5) Mr. Steven Finn (Land Development Administrator), Ms. Loretta Alston (Clerk to the Board), Mr. Chris Record (Planner II), Ms. Celena Everette (Planner II), Mr. Tim Maloney (Planning Development & Inspections Director)

Guests: (2) Ms. Kimberly Wicker, Coaly Design – Landscape Architect; Mr. Jeffrey B. Robinson, Senior Pastor – Juniper Level Baptist Church

County Attorney Present: (1) Mr. Ken Murphy (Senior Assistant County Attorney)

1. **Meeting called to order:** Mr. McConkey called the meeting to order at 9:04 a.m.

2. **Approval of Minutes of the November 13, 2018 Meeting:** Mr. McConkey made a motion to approve the November 13, 2018 meeting minutes as drafted. The motion was seconded by Mr. Haq and the minutes were approved unanimously.

3. **Approval of Written Decision Regarding PLG-SU-000929-2018 - Fountain of Raleigh Church Expansion:** Mr. McConkey noted that original voting members present were: Mr. McConkey, Mr. Haq, Ms. Vodicka, and Ms. Humphreys. Mr. McConkey made a motion to approve the written decision as drafted. The motion was seconded by Ms. Vodicka. By a vote of 4-0, the written decision was adopted.

4. **PLG-ZV-000981-2018 – Variance to reduce the required 40-foot Type C bufferyard to a 15-foot Type C bufferyard along the north property line located at 9109 Sauls Rd, Garner, NC.**
Before the case was heard, Wake County staff member Mr. Chris Record was duly sworn. The voting members were identified as: Mr. McConkey, Mr. Haq, Mr. Barker, Mr. Collins and Ms. Vodicka.

Testimony and Evidence Presented

Documentary Evidence Accepted into Record
Mr. Record, Planner II with Wake County Planning, Development and Inspections, requested the Wake County Planning Staff Report, PowerPoint presentation, the Applicant's verified Zoning Hardship Variance Application with supporting documentation be accepted into record. The Chair accepted documents as described into the record as evidence.

Testimony
Mr. Record stated the applicant is requesting a variance to reduce the required 40-foot Type C bufferyard to a 15-foot Type C bufferyard along the northern property line.

WAKE COUNTY PIN: 1608 64 7830
PROPERTY ADDRESS: 9109 Sauls Rd
PROPERTY SIZE: 1.73 acres
ZONING DISTRICT: Residential-30 (R-30)
LAND USE CLASSIFICATION: Town of Garner Long Range Urban Services Area
WATERSHED: Middle Creek
CROSS REFERENCE FILES: N/A
PROPERTY OWNER: Juniper Level Missionary Baptist Church
APPLICANT: Kimberly Wicker (Coaly Design)

Project Setting – Surrounding Zoning Districts and Land Uses

DIRECTION	LAND USE	ZONING
North	Residential	Residential-30 (R-30)
East	Vacant / Residential	Residential-30 (R-30)
South	Garner Volunteer Fire Department	Residential-30 (R-30)
West	Religious Assembly	Residential-30 (R-30)

Zoning Standards
Article 16 of the Unified Development Ordinance contains a table that establishes minimum bufferyard depth and screening standards between classifications of uses. A low-intensity non-residential that abuts a low-density residential use is required to establish a 40 foot Type C bufferyard along the common property line.

Background
The existing structure on the property was built in 1917 and was used as Panther Branch Rosenwald School. The building is on the National Register and is listed as a Wake County Historic Landmark. The Juniper Level Missionary Baptist Church, located across Sauls Rd. from the property, has used the site for church use since the mid-1950s. During this time, the building was functioning as an accessory use to the church. Accessory uses are required to be on the same property as a principal use but due to the accessory use being established prior to zoning, it was allowed to remain as a legal non-conformity until the building went unoccupied for more than 12 months (UDO 7-12-2-E *Nonconforming Uses*).

Any new low-intensity nonresidential use proposed for the property would trigger the applicability of all current UDO standards for such development. One of these standards is the requirement for a 40-foot Type C bufferyard between low-intensity nonresidential uses and low-density residential uses. Three existing site features would encroach into the required 40-foot bufferyard along the northern property line: the existing building, an existing well house, and an existing cemetery. None of these features are allowed encroachments into the required bufferyard per UDO 16-10-2-J. The requested variance depth was determined by the farthest encroachment of these features, *which is the well house that sits 15.7 feet from the property line. The cemetery lies 20.2 feet from the property line and the building sits 31.6 feet from the property line. The requested reduction in buffer yard depth is for a distance of 175'.* The applicant proposes that the remaining buffer will be maintained at the full 40 foot required depth. No variance is being sought for any other required bufferyard on the site.

Mr. Record noted the site plan shows the location of the three existing features in relation to the required 40-foot Type C bufferyard along the northern property line along with their distances from that line. He also presented a video from the site.

Notification letters to adjoining property owners were mailed on November 28, 2018 and again on December 27, 2018 after the original public hearing date was cancelled due to inclement weather. A public hearing placard was placed on the site on November 28, 2018.

Recommendation

Mr. Record stated that Staff recommends that if the Board of Adjustment reaches positive conclusions on all the required findings of fact, that they approve the variance request subject to the conditions identified in the staff report as listed:

(1) The petitioner/landowner must record the notarized form pertaining to the order of the Board in the Wake County Register of Deeds and return a copy to Planning, Development and Inspections Division of Community Services.

Upon the conclusion of Mr. Record's presentation, Mr. McConkey asked if there were any questions for staff.

Mr. Haq disclosed that he and Ms. Wicker had worked previously on a project approximately 12 years ago; however, confirmed it would not affect his judgement on this case. Mr. McConkey thanked Mr. Haq for his disclosure and gave his approval to proceed.

The Board members engaged in a brief discussion.

- Mr. Haq asked if the structure is structurally sound and meets all the standards or if it needs to be upgraded. Mr. Record stated there had been a past building permit and they have gone through the restoration process in efforts to make it structurally sound. He further stated they have been working with Capital Area Preservation to make sure the window features are in line with what would be considered for the National Registry and Wake County as a landmark.

- Mr. Haq asked about the location of the cemeteries and if there are any graves on the north side of the property or just the southern side. Mr. Record stated there is a cemetery on the north side as well as a larger cemetery on the south side. He confirmed there are burials on the south side not the north side.

- Mr. McConkey summarized for clarification the following: (1) There are three features that encroach into the bufferyard; all three already exist and have existed for some time – the well house, the building, and the cemetery; and (2) the only reason those are an issue now is because there is a proposed different use of the building on the property as a community center. Mr. Record confirmed this is the intent of the church. He explained that any non-residential would kick in these bufferyards. He gave the example that if they tried to do just a religious assembly use, that would be something that staff would do administratively in terms of a review but, the bufferyard would still be an issue because of these encroachments.

- Mr. Barker asked for clarification if a variance would be required if they had continued to use the property and if it had not gone vacant for 12 months. Mr. Record explained if the property had not been vacant that the use would have been grandfathered in basically as a legal non-conforming feature – if they came in any other time to try to do a non-residential use that was different – i.e. there was no lapse – they still had the non-conforming status but they still decided they wanted to do a community center - which in our UDO there is not a perfect definition but 'Retreat House and Conference Center' is what that equates to - that would be a new use which would kick in bufferyards and we would be here today anyway (for variance).

Voting Members (5)
Mr. McConkey identified voting members: Regular members - Mr. McConkey, Mr. Haq, Mr. Barker, Alternate members voting on this issue- Mr. Collins and Ms. Vodicka. He then proceeded to hear from the petitioner.

Sworn Witnesses in Favor of the Petition
1. Ms. Kimberly Wicker, Coaly Design, Landscape Architect, 537 E. Martin St, Raleigh, NC 27601
2. Jeffrey B. Robinson, Senior Pastor, Juniper Level Baptist Church, 4921 Trotter Dr, Raleigh, NC 27603

Ms. Wicker complimented the staff on a great job in presenting the case. She reviewed the Statement of Justification of the four hardships as follows:

(1) Unnecessary hardship would result from the strict application of the ordinance.
The site requires a 40' Side Bufferyard along the north side of the property. Existing encroachments (existing building, existing well house, and existing cemetery) are located within the required 40' Side Bufferyard. The existing building, well house, and cemetery cannot be relocated (not easily moved).

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography.
The location of the existing encroachments (well house, cemetery and the existing building) are peculiar to the property. The building and site are on the National Register which prohibits structures and / or a site to be majority altered. The existing building is also listed as a Wake County Historic Landmark. The building upfit and site improvements will follow the strict guidelines set forth for historic preservation.

(3) The hardship did not result from actions taken by the applicant or the property owner.
The existing structure was built in 1917 and was originally used as the Panther Branch Rosenwald School. The Juniper Level Missionary Baptist church has used the site and structure as a church use since the mid-1950s. The well permit dates to 1975. The cemetery dates to the early part of the 20th century.

(4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.
The requested variance is for a reduction of the 40' Side Bufferyard to a 15' Side Bufferyard along the property line where the existing encroachments are located. The three encroachments and the reduction of the buffer would not alter public safety and meeting the intent of the ordinance by extending the buffers outside of the cemetery and on the south side by 20', to provide respect to the area as to not disturb the sacred space. The remaining buffer will be provided at the full 40' depth. The existing treeline will remain and be supplemented to achieve a buffer which meets the requirements of the Type C Intermittent-2 Screen. Where the buffer is reduced to 15', the buffer will also meet the requirement of the Type C Intermittent-2 Screen.

Mr. McConkey asked if there were any questions for the petitioner.

- Mr. Haq noted that the petitioner is requesting a variance only along the extent of the encroachment of the three property features and asked if there were plans for expansion of the burial ground or putting a new structure parallel to that. He further explained he was trying to understand if it would be easier to have the variance for 15 feet all along the property line which would make it flexible for the future use. Ms. Wicker stated there is no intent to use the rest of that area of the property for any development. The intent going forward would just be to use the existing structure as a community center and then do the appropriate site upgrades for that whether parking or these buffers. She also stated the other cemetery is newer and could be utilized in the future.

Mr. Robinson, Senior Pastor of Juniper Level Missionary Baptist Church, was also sworn in and gave the following testimony. He commented he agreed with the testimony given by Ms. Wicker. He stated he has been pastor now six years at Juniper Level. Pastor Robinson shared his excitement about the possibilities and the potential of the church. He briefly updated Board members of the three different phases (exterior, structural, interior) the church has gone through over the past five years. Pastor Robinson commented they want to be a great neighbor. He stated the problem at Juniper Level is they have over 100 kids and they need a place for them to play. In closing, Pastor Robinson informed the Board their vote of approval to use the facility fully and then do whatever upkeep necessary was needed to assist those 100 plus young people and get them more involved in the community.

There being no one further wishing to speak in favor or in opposition of the petition, Mr. McConkey closed the public hearing and opened the floor for Board discussion.

Board Discussion

Mr. Collins disclosed that he and Pastor Robinson knew each other through a work acquaintance and that he had done some work previously for the church graphic design and web development.; however, confirmed it would not affect his judgement on this case. Mr. McConkey thanked Mr. Collins for his disclosure and gave his approval to proceed.

Mr. McConkey explained the Board typically get requests for variances with respect to buffers that would allow for new construction; however, this was different in that (1) you know that these improvements are already on the property and have been on the property for years; and (2) another thing that makes this one unique is the circumstances of the historic nature of these improvements. Typical variance requests are not on national registers or listed as Wake County Historic Landmark.

FINDINGS OF FACT

The Board of Adjustment discussed the following findings of fact from G.S. 160A-188 in order to approve this variance request:

(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;

Mr. Barker stated the need is apparent. He commented that moving a cemetery alone out of the bufferyard would be quite an unnecessary hardship as well as the existing well and building which was mentioned has been there for years. He stated according to testimony, they want to continue to use it like it was used in the past. So again, no expansion they just want to maintain the building as it is and utilize it as designed.

(2) 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;

Ms. Vodicka stated the historic landmark and elements that have been there for decades make it a unique situation. No other comments were made.

(3) 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;

Mr. Barker stated that as mentioned, the building has been there for decades and it is not something they had done recently to make it so it does not comply.

(4) **The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.**

Mr. McConkey pointed out the variance is for 175-foot segment of that property line and they were they able to meet the 40-foot side buffer yard requirement that is being met. He stated the only request for a reduction is where it cannot be met due to existing features on the property. Mr. McConkey further stated as mentioned in the statement of justification this does meet the requirement for a Type C intermediate to screen which may be appropriate here in this case.

Mr. Haq stated for clarification since they were not proposing any new structure or any new development in the area, it is not posing any safety hazard on anything, so it is consistent with the intent of the ordinance.

There being no further discussions on the finding of facts, Mr. McConkey asked for a motion.

MOTION TO GRANT: In the matter of PLG-ZV-000981-2018, Mr. Barker moved that the Board find and conclude that the petition does meet the requirements of Article 19-26 of the Wake County Unified Development Ordinance and North Carolina General Statute Section 160A-388(d), and that the requested variance be granted to reduce the required 40 foot Type C bufferyard to a 15 foot Type C bufferyard, with the recommended condition. The motion to approve is made based on the following conclusions and findings of fact:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
2. 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;
3. 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, and
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

The motion was seconded by Mr. Collins. The variance was granted with a unanimous vote (5-0).

5. Planning, Development & Inspections Report

Mr. Finn informed the Board of subdivision requests for both preliminary approvals for new subdivisions as well as minor subdivisions have been slower than the past years. Mr. Finn stated that staff is continuing to evaluate existing tree and vegetation ordinance talking to other communities and gathering research. He anticipates moving forward with a proposal to look at a text amendment in this regard and reported there were over 68 violations over the course of the last calendar year.

6. Other Business

Mr. Ken Murphy reminded the Board that no cross examining was needed on this case because was no one in opposition. However, if there had been opposition, the applicant was not the property owner and not an attorney but in fact was a landscape architect and would not have been allowed to cross examine the witnesses by law in this quasi-judicial hearing. Mr. Murphy said that he will remind the Board of this law in the future. Mr. Murphy also confirmed for Mr. Haq that expert witness testimony was allowable in a quasi-judicial hearing.

Mr. McConkey adjourned the meeting at 9:39 a.m.

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REGULAR MEETING
WAKE COUNTY BOARD OF ADJUSTMENT
January 8, 2019

All petitions complete, Brenton McConkey declared the regular meeting of the Wake County Board of Adjustment for Tuesday, January 8, 2019 adjourned at 9:39 a.m.

Respectfully Submitted:

Brenton McConkey
Wake County Board of Adjustment

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