



Planning, Development & Inspections

TEL (PLANNING) 919 856 6310
TEL (INSPECTIONS) 919 856 6222

A Division of Community Services
P.O. Box 550 • Raleigh, NC 27602
www.wakegov.com

MINUTES OF REGULAR MEETING

Wake County Board of Adjustment

Tuesday, October 8, 2019 (9:00a.m.)

Wake County Justice Center

300 S. Salisbury St., Room

2700 Raleigh, North Carolina

Members Present: (6) Mr. Don Mial (Vice Chair), Mr. Waheed Haq, Ms. Sheree Vodicka, Mr. Will Barker, Mr. Dustin Engelken, Mr. Jeffrey Goebel

Members Absent: (2) Mr. John Barker, Mr. DeAntony Collins

County Staff Present: (7) Mr. Steven Finn (Land Development Administrator), Mr. Tim Maloney (Planning Development & Inspections Director), Ms. Beth Simmons (Community Services Operations Supervisor), Ms. Loretta Alston (Clerk to the Board), Mr. Adam Cook (Planner)

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

- 1. Meeting called to order:** Mr. Mial called the meeting to order at 9:00 a.m.
- 2. Oath of Office:** Mr. Kenneth Murphy administered the oath of office to new Board member, Mr. Jeffrey Goebel.
- 3. Approval of Minutes of the September 10, 2019 Meeting:** Mr. Will Barker made a motion to approve the September 10, 2019 meeting minutes as they were presented. The motion was seconded by Mr. Engelken and the minutes were approved unanimously.
- 4. Approval of Written Decision Regarding PLG-A-001471-2019, Appeal of Violation Notice:** Mr. Mial noted that three of the five original voting members present were: Mr. Mial, Mr. Will Barker, and Mr. Engelken. Mr. Barker made a motion to approve the written decision as drafted. The motion was seconded by Mr. Engelken. By a vote of 3-0, the written decision was adopted.
- 5. PLG-ZV-001681-2019** - The petitioner is requesting a variance from Section 4-70-1 (F), Accessory building and structures, to allow for an encroachment of 17.3-feet into the required 50-foot setback.

Before the case was heard, Wake County Planning staff member, Adam Cook, was duly sworn. Mr. Cook began by introducing himself and the title of the case before the board.

Voting Members (5)

The voting members were identified as: Mr. Don Mial, Mr. Waheed Haq, Mr. Dustin Engelken, Ms. Sheree Vodicka, and Mr. Will Barker.

Documentary Evidence

Staff Report, PowerPoint presentation, Petitioner's Application

Testimony of Staff

Mr. Cook, Wake County Planner, asked that the staff report (attached here as Appendix 1) and the PowerPoint presentation (attached here as Appendix 2), and the petitioner's application be accepted as evidence into the record for Variance request PLG-ZV-001681-2019. Mr. Mial accepted the evidence into record.

The subject property is 2.68 acres and is owned by Charles and Marilyn Lowers. The applicant is Benjamin Kuhn with Ragsdale Liggett PLLC. The subject site is located at the northeast corner of Coit Lane and Peed Dead End Road and contains approximately 2.68 acres. The site currently contains a single-family residence.

A foundation for an accessory building was constructed 32.7 feet from the side property line by a previous owner. The foundation appears in 2010 aerial photography. No building permit was found for the construction of the accessory building permit foundation. However, impervious surface for the foundation was included in a residential building permit for a renovation to the existing residence in 2019 (building permit RABS-015192-2019).

The applicant would like to construct an accessory building on an existing foundation that is 32.7 feet from the property line. An accessory building is required to be setback 50 feet from the property line. The applicant is seeking a variance of 17.3 feet.

Notification letters to adjoining property owners were mailed on September 19, 2019. A public hearing placard was placed on the site on September 19, 2019. Mr. Cook stated that he has not received any phone calls concerning this case.

Mr. Cook presented a site plan and video of the property for consideration.

Ms. Vodicka inquired of Mr. Cook as to what type of accessory structure was going to be built. Mr. Cook stated that the petitioner was present to answer that question, but that there was already an existing concrete slab and some foundation walls built before the previous owner stopped construction.

Mr. Mial asked Mr. Cook if there was any documentation that the existing concrete slab was approved by the county. Mr. Cook stated that the previous owner built the existing structure without permits. Mr. Cook further stated that the current homeowner has applied for a building permit for interior renovations and that they have accounted for the impervious structure in order to build a building on the slab, which requires a building permit and required setbacks.

Testimony of the Petitioner

Before testimony was given, witnesses were duly sworn:

Mr. Benjamin Kuhn, Attorney, 2840 Plaza Place

Ms. Marilyn Lowers, 6700 Coit Lane

Mr. Kuhn began by presenting affidavits from most of the surrounding property owners. Mr. Kuhn stated the property is at 6700 Coit Lane, off of Peed Dead End Road in the northern section of Wake County off of Highway 50. Mr. Kuhn presented a series of maps in his PowerPoint that detailed a drainage feature on the property, the flood plan from Falls Lake, and the topography and drainage of the property.

Mr. Kuhn stated that one issue with this property is that it is a corner lot, adjacent to two side roads. This requires that the accessory building not be located nearer the street than 50 feet per the UDO. Another factor concerns low density, as detailed in the video presented by Mr. Cook and by fact that there are only two families that live nearby and both have signed affidavits of support.

Mr. Kuhn presented a photo of the accessory structure foundation and asked that the photo be submitted into evidence. Mr. Mial accepted the photo into evidence. Mr. Kuhn stated the accessory structure will be a garage and workshop.

Mr. Kuhn presented a map that detailed some of the difficulties and unnecessary hardships in complying with some of the site conditions, including the septic tank and drain lines, and the repair area beyond a chain link fence behind the accessory building. Mr. Kuhn also stated that it is an existing foundation that would be almost impossible to relocate. Building a garage elsewhere on the property would create more impervious surface to a watershed district which is inconsistent with the current zoning. Mr. Kuhn further stated that existing mature tree and vegetative screening along Peed Dead End Road effectively buffers the location of the proposed garage.

Upon conclusion of Mr. Kuhn's testimony, Mr. Mial accepted the affidavits into the record. Mr. Murphy reminded the board to assign proper weight to the affidavits, as the board will not be able to question those who signed them. Mr. Kuhn stated that the affidavits show the spirit to ensure public safety is secured.

Mr. Mial closed the public hearing portion of the meeting at 9:27am.

Board Discussion

Mr. Murphy reminded the board, that state law requires a four-fifths affirmative vote in order to grant a variance request. The Board must make positive findings on all of the following findings of fact.

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;

Mr. Barker stated that hardship would result because the current slab would be difficult to remove or relocate.

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;

Mr. Haq and Mr. Barker stated that due to the topography in regard to the septic lines, drainage fields, and corner lot location, there is not another reasonable place for the structure to be located.

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. Mial and Mr. Barker both stated that the hardship is not a result of the current property owners, as they did not build the current structure.

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. Barker also stated that there appears to be no opposition to the plan and that the petitioner stated that if the variance were approved, they would maintain the current vegetation for screening/buffering purposes.

Ms. Vodicka stated that since the homeowners were going to build a structure on the current impervious surface, that would reduce runoff instead of creating additional impervious surfaces by building in a different location.

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

Motion and Conclusions of Law:

In the matter of PLG-ZV-001681-2019, 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 allow for a 17.3 foot reduction in the accessory building setback. 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,
- 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. Haq. The variance was granted with a unanimous vote (5-0).

6. Planning, Development & Inspections Report

Mr. Finn greeted the Board and noted he had three items to share. For the benefit of newer Board members, he explained how zoning was applied in the unincorporated areas of Wake County from 1960 through 1976. He noted the relevance of legal nonconforming uses and features to determine what standards should be applied, particularly if a structure or building was not permitted. He noted development applications remain consistent with no particular trend or spike the past month. Mr. Finn further advised over the course of the first year with the new permitting system there was less than five percent of applications having an initial error or incomplete.

7. Adjournment

Mr. Mial adjourned the meeting at 9:40 a.m.

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REGULAR MEETING
WAKE COUNTY BOARD OF ADJUSTMENT
October 8, 2019

All petitions complete, Brenton McConkey declared the regular meeting
of the Wake County Board of Adjustment for
Tuesday, October 8, 2019 adjourned at 9:40a.m.

Respectfully Submitted:

Brenton McConkey
Wake County Board of Adjustment

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