



## 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, March 27, 2018 (9:00 a.m.)  
Wake County Justice Center  
300 S. Salisbury St., Room 2700  
Raleigh, North Carolina

#### Members Present:

(5) Mr. Brenton McConkey (Chair), Mr. Don Mial (Vice-Chair), Mr. Terence Morrison, Mr. Waheed Haq, Mr. John Barker (Alternate)

#### Members Absent:

(4) Ms. Sheree Vodicka, Mr. Will Barker, Mr. Brian Foxx, Mr. DeAntony Collins

#### County Staff Present:

(9) Mr. Steven Finn (Land Development Administrator), Mr. Tim Maloney (Planning, Development & Inspections Director), Mr. Adam Cook (Planner II), Ms. Jenny Coats (Clerk to the Board), Mr. Bryan Coates (Planner III), Ms. Celena Everette (Planner II), Ms. Terry Nolan (Planner III), Ms. Regina Irizarry (Planner I), Mr. Frank Cope (Community Services Director)

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

#### 1. Meeting called to order

Mr. McConkey called the meeting to order at 9:03 a.m. with five members present.

#### 2. Approval of Minutes of the October 10, 2017 Meeting.

Mr. Mial made a motion to approve the October 10, 2017 meeting minutes, Mr. Barker seconded. The motion carried unanimously.

#### 3. BA-SU-2208-15 – A special use request to modify and expand an existing youth camp at 9927 Falls of Neuse Rd.

Mr. Haq disclosed that he was personally acquainted with Mr. Charlie Yokley having formerly worked with him in a different capacity. Mr. McConkey asked Mr. Murphy to advise on level of conflict. Mr. Murphy asked Mr. Haq if his disclosure would impact his ability to be an impartial decision maker. Mr. Haq confirmed that it would not. Mr. Murphy gave his approval to proceed.

Mr. Ken Murphy advised the Board that North Carolina law prohibits the practice of law by a non-lawyer. The North Carolina State Bar has determined that it is the unauthorized practice of law for someone other than a licensed attorney to appear at a quasi-judicial hearing in a representative capacity to advocate the legal position of another person, firm, or corporation. In the matter of BA-SU-2208-15, the applicant is a land planner acting as a consultant, and the property owner is a non-profit organization operating a youth camp. There did not appear to be an attorney involved. The applicant may testify, but if there were any witnesses opposed the variance request, the surveyor would not be able to cross-examine those witnesses since that would be the unauthorized practice of law.

Staff Duly Sworn: Mr. Adam Cook, Wake County Planner II  
Voting Members: Mr. Brenton McConkey, Mr. Don Mial, Mr. Terence Morrison, Mr. Waheed Haq, Mr. John Barker (Alternate)  
Landowner: Childrens Bible Ministries of NC Inc.  
Petitioner: Charlie Yokley, McAdams Co  
PIN#: 1718-76-882  
Location: 9927 Falls of Neuse Road at the intersection with Durant Road  
Zoned: Split zoned Residential-40 Watershed and Residential-80 Watershed  
Land Use Classification: Non-urban Water Supply Watershed

The petitioner is requesting a special use permit approval for a youth camp as a modification and expansion of previously approved special use permit, SU-2075-07.

### **Testimony and Evidence Presented**

#### **Documentary Evidence Accepted into Record:**

Staff report and PowerPoint presentation, applicant's application with supporting documents.

#### **Testimony:**

Mr. Adam Cook, Planner II asked the Chair to accept the staff report, staff PowerPoint presentation and the petitioner's full application for BA-SU-2208-15 into record. Mr. McConkey accepted the staff report, staff PowerPoint presentation and the petitioner's full application for BA-SU-2208-15 into record.

Mr. Cook stated the petitioner's name, zoning classification, background and history of the petition. Mr. Cook provided a PowerPoint presentation and provided the following details concerning zoning requirements pertaining to the property:

The Wake County Board of Adjustment first granted a special use permit for New Life Camp on September 10, 2007. This request is to amend that special use permit by changing the layout of the site and adding amenities. The property is split zoned Residential-40 Watershed and Residential-80 Watershed (critical area). The property went through the rezoning process in June 2017 to allow the R-80W zoning line to be moved back further on the property, resulting in more of the property being zoned R-40W. Non-residential development in R-80W is limited to 6 percent while development within the R-40W district is limited to 12 percent. The rezoning of 16.89 acres of the property was granted as a technical correction based on more accurate topographical information. Currently the youth camp is configured with a central bath house but the camp wants to replace cabins in order to update them and add bathrooms. The proposed building schedule included on the site plan also shows proposed new buildings and their square footages.

At the time of permitting for each phase or building in the plan, a site plan will be required to ensure that all Unified Development Ordinance (UDO) requirements are being met including buffers, parking, and stormwater regulations.

Notification letters to adjoining property owners were mailed on February 22, 2018. Two public hearing placards (one on Falls of Neuse Road and the other on Durant Road) were placed on the site on February 22, 2018.

### **Zoning Standards**

**Utilities** - The site will be served by an individual well and individual on-site septic system.

**Streets** - The property has frontage on both Falls of Neuse Road and Durant Road. There is no planned change to the current ingress/egress points.

**Parking** - Pursuant to Section 15-10 of the Wake County Unified Development Ordinance, off-street parking is required for each use. The applicant asked the Planning Director for the ability to use the shared parking

regulations of the UDO (Article 15-10-8) since this is a youth camp with campers who do not drive to the camp individually. Parking calculations are provided on the site plan and are shown as either daytime uses (parking spaces required) or nighttime uses (shared parking allowed by Article 15-10-8(C)). The site plan is in compliance with section 15-10.

Landscaping and bufferyards - Article 16 of the UDO details the types of buffers required based on the intensity of the use on the site. Along both Falls of Neuse and Durant roads a 10-foot Type F Streetfront buffer is required. Along the western and northern property lines a 40-foot Type C buffer is required. The site plan reflects the proper buffer requirements. The site is heavily wooded and the applicant intends to use existing vegetation to satisfy the buffer requirements.

Stormwater management/impervious surface coverage - Section 5-11-1, *Conventional Development – Residential Watershed Districts*, limits the impervious surface coverage for nonresidential development of property within Residential-40 Watershed zoning districts to 12 percent, without providing stormwater devices. The site plan is proposing a total of 280,424 square feet of impervious area, or 10.4 percent of the site. There is no proposed development within the Residential-80 Watershed portion of the property.

Exterior Lighting - Section 17-11-7 *Exterior Lighting* states that: “*all exterior lighting must be shielded or directed away from any adjacent use or lot or any adjacent public street. No exterior lighting may cause illumination in excess of one-foot candle at the lot line of any use*”. Proposed lighting is not shown on the site plan.

Land Use Plan - The youth camp use is allowed with a special use permit and is not required to be in an activity center. The proposed use is consistent with the Wake County Land Use Plan.

Findings - Special Use Required Conclusions: The Board of Adjustment shall not approve a petition for a Special Use Permit unless it first reaches each of the following conclusions based on findings of fact supported by competent, substantial, and material evidence. The Board of Adjustment must make positive findings on the following findings of fact from Article 19-23 of the Wake County Unified Development Ordinance in order to approve or deny this special use request:

1. The proposed development will not materially endanger the public health or safety.  
Considerations:
  - Traffic conditions in the vicinity, including the effect of additional traffic on streets, street intersections, and sight lines at street intersection and curb cuts.
  - Provision of services and utilities, including sewer, water, electrical, garbage collections, fire protection.
  - Soil erosion and sedimentation.
  - Protection of public, community, or private water supplies, including possible adverse effects on surface waters or groundwater.
2. The proposed development will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of special use or class of special uses.
3. The proposed development will not substantially injure the value of adjoining property, or is a public necessity.  
Considerations:
  - The relationship of the proposed use and the character of development to surrounding uses and development, including possible conflicts between them and how these conflicts will be resolved.
  - Whether the proposed development is as necessary to the public health, safety, and general welfare of the community or County as a whole to justify it regardless of its impact on the value of adjoining property.

4. The proposed development will be in harmony with the area in which it is located.  
 Considerations:
  - The relationship of the proposed use and the character of development to surrounding uses and development, including possible conflicts between them and how these conflicts will be resolved.
5. The proposed development will be consistent with the Wake County Land Use Plan.  
 Considerations:
  - Consistency with the Plan's objectives for the various planning areas, its definitions of the various land use classifications and activity centers, and its locational standards.
  - Consistency with the municipal and joint land use plans incorporated in the Plan.

Staff recommendations

Staff recommends that, if the Board of Adjustment reaches positive conclusions on all of the required findings, that it approve the request subject to the following conditions:

- 1) The petitioner must record the notarized form pertaining to the Order of the Board in the Wake County Register of Deeds and return a copy to the Planning, Development and Inspections Division of Community Services;

Mr. Haq asked Mr. Cook if the water well and the septic systems could accommodate the requested use onsite. Mr. Cook confirmed that the existing water well and septic system would serve.

Sworn witness in favor of the petition

Mr. Charlie Yokley, 2905 Meridan Parkway, Durham, NC.

Mr. Phil Begany, 2206 Hopeton Avenue, Raleigh, NC

Mr. Yokley testified that the request for the New Life Youth Camp would allow the replacement of five existing cabins with more modern facilities that include restrooms in the cabins, and build an additional eight cabins to increase the ability to serve. It would also have minor modifications to the interior for the programming of the site and how the camp is used. All the development takes place outside of the R-80W zoning district – with no changes to impervious surfaces.

Mr. Yokley addressed the five finding of fact as follows:

1. The proposed development will not materially endanger the public health or safety.
  - This is not a change from the current use of the parcel as a youth camp.
  - No changes to ingress or egress
  - Interior will make it easier for drop off and pick up.
  - Modern buildings will improve services.
2. The proposed development will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of special use or class of special uses.
  - The proposed master plan does comply with all the requirements in the UDO. The County staff did approve the existing vegetation for street yard buffers. The Planning director also approved the request for a shared parking for night parking.
3. The proposed development will not substantially injure the value of adjoining property, or is public necessity.
  - The master plan includes replacing 60-year old building with new facilities. This will increase the safety of the occupants of the buildings onsite. The master plan also shows improvements on the site for pedestrians. No impact on the value of surrounding properties.
4. The proposed development will be in harmony with the area in which it is located.
  - There are no changes to the current use of a youth camp. The site has been a youth camp for 60 years and is in harmony with the area.

5. The proposed development will be consistent with the Wake County Land Use Plan.
  - The land use class is designated as low density residential and is low impact use that has been onsite for the last 60 years.

Mr. Morrison asked if there would be an increase in people attending the camps or camping sites?

Mr. Yokley stated that there would be a small increase in the number of people attending camps due to the 8-cabin expansion.

Mr. Morrison stated he would like to hear about the growth plan.

Mr. Begany testified that the plan includes growth capacity at maximum would increase from 240 to 320 participants. The master plan shows a max of 16 cabins, however, they do not intend to build out the four cabins immediately but would like the ability to expand in the future if needed.

Mr. McConkey asked for additional witness in favor or in opposition of the petition. Hearing none, he closed the public hearing and opened Board discussion.

#### Board discussion

Mr. McConkey observed that this is a modification of an existing special use permit and that the Board received a well- prepared application and staff report. He suggested the board review the five findings of fact.

1. The proposed development will not materially endanger the public health or safety.

Mr. Mial stated that he thought that the proposed changes met this criteria in that what they heard would not material endanger the public and that it would be good for the community. The additional services and capacity would not cause any traffic congestion and with the new buildings the petitioner would be adding new utilities which would also improve the site.

2. The proposed development will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of special use or class of special uses.

Mr. McConkey stated that in the staff report and in the narrative that the proposed development would comply with all applicable zoning regulations.

3. The proposed development will not substantially injure the value of adjoining property, or is public necessity.

Mr. Morrison stated that he did not hear any evidence that the proposed development would injure the value of the adjoining property. The area is surrounded by a wooded area. Mr. McConkey stated that this is also an expansion of an existing use.

4. The proposed development will be in harmony with the area in which it is located

Mr. McConkey that this is an expansion of an existing use so it is in harmony with the area it is located.

5. The proposed development will be consistent with the Wake County Land Use Plan.

Mr. McConkey noted that the staff report indicated that the proposal is consistent with the Wake County Land Use Plan.

#### Motion

Mr. Don Mial made a motion in the matter of BA-SU-2208-15 that the Board find and conclude that the petition does meet the five requirements of Article 19-23 of the Wake County Unified Development Ordinance and the special use permit be granted with the recommended staff conditions. The motion to approve is based on the following findings of fact:

1. The proposed development will not materially endanger the public health or safety.
2. The proposed development will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of special use or class of special uses.
3. The proposed development will not substantially injure the value of adjoining property, or is a public necessity.
4. The proposed development will be in harmony with the area in which it is located.
5. The proposed development will be consistent with the Wake County Land Use Plan.

Mr. McConkey noted that the staff condition was that the petitioner must record the notarized form pertaining to the Order of the Board in the Wake County Register of Deeds and return a copy to the Planning, Development and Inspections Division of Community Services;

Motion was seconded by Mr. Barker. and passed unanimously.

**4. BA-V-2258-17 –A variance request from Article 19-33-10 of the UDO, to allow for a subdivision plan to remain valid 8 years from the expiration date.**

Mr. Haq disclosed that he was similarly acquainted with Mr. Mack Paul having formerly worked with him in a different capacity. Mr. McConkey asked Mr. Haq if this disclosure would impact his ability to be an impartial decision maker. Mr. Haq confirmed that it would not.

Staff Duly Sworn: Ms. Celena Everette, Wake County Planner (II)

Voting Members: (5) Mr. Brenton McConkey, Mr. Don Mial, Mr. Terence Morrison, Mr. Waheed Haq, Mr. John Barker (Alternate)

Landowner: Branaman, Inc.

Petitioner: Mr. Mack Paul-Attorney

PIN#: 1812-90-1052, 1812-81-9103, 1812-90-5877, 1812-91-5195 and 1822-01-1008

Location: The subject properties are located south of Stone Forest Way, east of Sandybrook Lane, in the northern part of the county.

Zoned: Residential-40 Watershed (R-40W)

Land Use Classification: Non-urban Water Supply Watershed

**Testimony and Evidence Presented**

Documentary evidence

Staff report, PowerPoint presentation, and applicant's application with supporting documents into evidence. Exhibit A – Hasentree Master Development Plan.

Testimony

Ms. Celena Everette entered the staff report, the zoning hardship variance application and supporting documents, and staff PowerPoint presentation for BA-V-2258-17 into the record. Mr. McConkey accepted the staff report, the zoning hardship variance application and supporting documents, and staff PowerPoint presentation into record. Ms. Everette stated the petitioner's name, zoning classification, background and history of the petition.

Ms. Everette provided a PowerPoint presentation and provided the following details concerning zoning requirements pertaining to the property:

The applicant is requesting a variance to allow for the approval of S-07-06 approval to remain valid an additional 8 years from the expiration date, which is set to expire on June 2, 2018.

Hasentree Subdivision (S-08-04) was originally approved under the Wake County Subdivision Ordinance for a cluster development consisting of 761.45 acres into 432 lots with 365.27 acres of open space by the Planning Board on May 5, 2004. Wake County adopted the Unified Development Ordinance (UDO) in 2006, which allowed

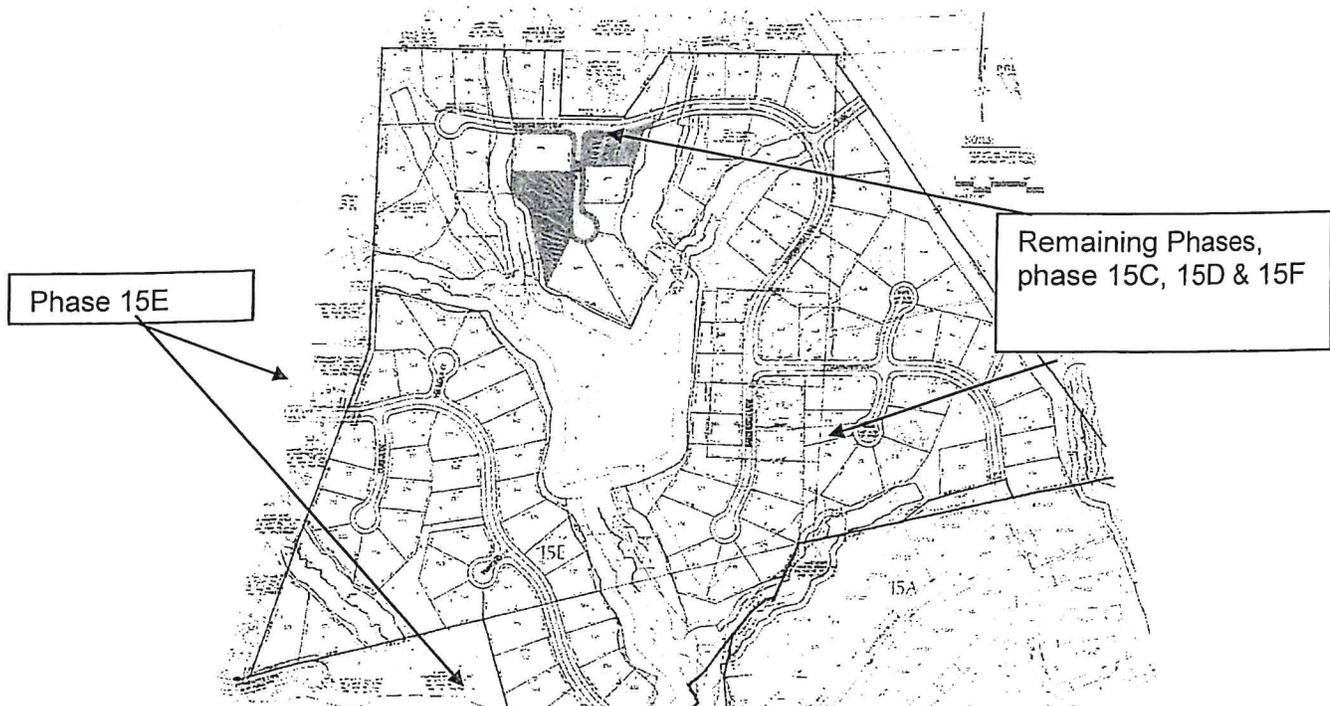
for an Open Space subdivision development option and it allowed approval of preliminary subdivisions that are in compliance with the UDO to be granted at staff level. On February 28, 2006, a new preliminary subdivision for Hasentree Subdivision was submitted to subdivide approximately 907.6 acres into a cluster and open space development consisting of 669 lots. The subdivision was approved on June 2, 2006 and the approval was set to expire on June 2, 2013, per section 19-33-10(C) of the UDO.

In 2009, the General Assembly enacted the "Permit Extension Act of 2008" (SL 2009-406), which allowed for any development approval that is current and valid at any point during the period beginning January 1, 2008 and ending December 31, 2011, the running period of the development approval would be suspended during this timeframe. Based on the Permit Extension Act, Hasentree Subdivision (S-07-06) would have expired on June 2, 2017.

On November 15, 2016, a Hasentree representative was notified that the remaining phases, phases 15B through 15F, consisting of 141 lots would have to be recorded before the preliminary approval expired on June 2, 2017. Upon the request of Hasentree's representative on January 17, 2017, a one-year extension was granted by staff allowing the approval to remain valid until June 2, 2018, as allowed by Section 19-33-10 (D) of the UDO.

On January 23, 2017, Wake County staff and Hasentree's representatives, met to discuss the options that were available for the remaining phases of this project to get recorded under the June 2, 2006 approved subdivision plan. The following options were discussed:

1. Obtain final plat approval and record remaining phases, phases 15B through 15F shown on S-07-06 Hasentree Subdivision prior to June 2, 2018;
2. Submit a new preliminary subdivision for the unrecorded phases for review and approval, upon approval of the new preliminary subdivision submittal, the validity of the approval would be 2 years for first phase getting recorded and then 7 years for the last phase to get recorded; and/or
3. Make application for a hardship variance to extend the approval, because staff has granted the one-year extension as allowed by the UDO in 2017.



Approximately 608 lots, including phase 15A have been recorded since 2006, phase 15 E consist of 41 lots has been reviewed for final approval and is under construction but not yet recorded. The remaining unconstructed phases, phase 15C, 15D and 15F consist of approximately 66 lots. The applicant is requesting a variance to allow for the approval of S-07-06 to remain valid an additional 8 years from the June 2, 2018 expiration date to record the remaining 107 lots (including the 41 lots from 15E) and the 3 unconstructed phases. If this variance is granted it will extend the approval date to June 2, 2026.

Required conclusions/findings

The Board of Adjustment shall not approve a petition for a variance unless it first reaches each of the following conclusions based on findings of fact supported by competent, substantial, and material evidence.

The Board of Adjustment must make positive findings on all of 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;
- (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.

Recommendation

Staff recommends that if the Planning Board reaches positive conclusions on all of the required findings of fact, the following condition be required:

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.

Mr. McConkey summarized the developer's two options in lieu of the variance 1) The developer finishes all construction and it is recorded by June 2, 2018 2) Start over and re-obtain the subdivision approval. Ms. Everette acknowledged that these were the only two options other than the variance.

Mr. McConkey asked Ms. Everette if the fact that the County required the installation of the infrastructure in the initial phase was unusual.

Ms. Everette responded that if a developer records each Phase separately then each Phase must stand alone. The County requires that the infrastructure be completed for any recorded subdivision. If the developer chooses to submit the subdivision by Phase, the County only requires the infrastructure on the Phase that is being submitted.

Mr. Haq asked if there were limits on how long the County can allow extensions. Ms. Everette responded that the limit is one year.

Mr. Haq asked if the developer had the option to change the layout of the subdivision without acquiring new approvals. Ms. Everette stated that the original approval does allow for minor changes.

Mr. Barker asked if there were limits on how many one-year extensions were allowed. Ms. Everette answered that the limit was one.

Mr. McConkey asked Ms. Everette to discuss the spirit or intent of the regulation that requires a subdivision to be completed within 7 years. Ms. Everette responded that the regulation was meant to prevent undeveloped subdivisions lingering. Regulations change which could impact traffic or road improvements and if a subdivision approval goes past seven years, the property could be developed under old regulations thus not meeting current standards.

Mr. Morrison asked if there were any special conditions about this property that would cause the owners to come back and ask for another extension? Ms. Everette could not speak to specifics on the property.

Sworn Witness in favor of the petition:

1. Mack Paul, Attorney, Morningstar Law Group, 421 Fayetteville Street, Raleigh, NC 27602
2. Carlton Midyette, 8310 Bandford Way, Raleigh, NC 27615

Mr. Paul asked that the petitioners application attachments, and exhibit A – Hasentree Master Development Plan be entered into evidence. Mr. McConkey accepted the documents into the record.

Mr. Paul explained that the Hasentree subdivision has been making progress every day and only has 66 lots left to develop. The developers are estimating that the project will need an additional 8 years to be fully completed. Hasentree is unusual in that the project is very large and multi-phased. Hasentree has 669 lots; 934 acres which is a substantial subdivision 2) Hasentree has substantial investments in infrastructure

Testimony

Mr. Midyette is a partner in Creedmoore Partners that specialize in the development of large upper scale communities inside and outside watersheds. Mr. Midyette described the Hasentree Community as one of the largest projects his company has developed selling the first lot at the beginning of the economic downturn in May 2008. Mr. Midyette worked with many consultants, State and local regulatory agencies, and staff to get the large, complicated project permitted. The master plan included a golf course, multiple playgrounds, community recreation center that featured swimming pools and tennis courts.

Mr. Midyette testified that the developers were faced with a decision on how to develop the property providing necessary utilities. Wake County does not allow municipal utility extensions inside a watershed leaving them two options:

1) Develop a cluster subdivision so that the land that was most developable property and the open space would be left in large swaths. He further explained that this allowed the best preservation of the natural resources on the property

2) Develop large 1-2 acre lots each having a private septic tank. This would have resulted in over 700 septic tanks in the subdivision on the shores of the watershed.

The developers chose to develop Hasentree as a cluster subdivision and develop, permit and construct a state of the art, self-contained water and sewer and recreation system. The developers drilled over 20 wells and a \$1.2M sewer plant permitted by the State. The water/sewer system could not be built by Phase as was required by Wake County. The Hasentree subdivision is "certified gold signature sanctuary" The certification is awarded only to new developments that are not only designed and constructed, but also maintained according to Audubon International's standards for planning and environmental stewardship.

Mr. Midyette asked for an extension, citing that construction has not stopped and is underway and if an extension is not granted it would be an unnecessary hardship if the remaining 66 lots had to be developed under the new ordinance. As a result, they would lose 15% of the remaining lots if they are forced to reconfigure subdivision layout under the current ordinance.

Mr. Midyette stated that the any delays and hardships were not a result of their actions. The planning and permitting of the septic and sewer took four years. The economic downturn that coincided with the construction was not of their own making.

Mr. Midyette stated their request for an extension is in no way in violation of the spirit or intent of the ordinance, they are simply asking for time to finish the high-quality project. They are not asking for more lots or a change in density, just to finish the project as it was approved.

Mr. Mial asked the significance of the 8-year estimation for the project to be complete.

Mr. Paul answered that this was based on an estimate of 12 lots per year which includes both the unsold lots and the 66 undeveloped lots.

Mr. McConkey stated that one of the findings is that the hardship did not result from actions taken by the applicant. He asked if the decision to build the cluster subdivision and the water/sewer was the applicants decision but the County's process did lead them to this decision. He asked for more information on the developer's decision to build cluster subdivisions and the community water/sewer rather than individual lots with septic.

Mr. Paul answered that individual septic systems was not the responsible path to develop and that led to the necessity to complete the infrastructure in the beginning per the permit requirements of Wake County.

Mr. Barker asked what the initial estimate for the lot take down prior to the great recession and was the recession part of the hardship.

Mr. Midyette answered that the plan was 2 lots per month. He further said that under County regulations it would have been difficult to build a neighborhood of this magnitude in seven years even without the recession, but they did lose 4-5 years because of the recession.

Mr. McConkey asked for any other questions or others who wanted to speak in favor or opposition of the petitioner. Hearing none the public hearing was closed and board discussion was opened.

#### Board Discussion

Mr. Murphy reminded the Board that this is a variance and pursuant to State law requiring a super majority 4/5ths vote to approve. At least 4 out of the 5 voting members would need to vote in favor of the variance.

Mr. Morrison requested that the Board discuss requirement #3. Mr. McConkey asked for the Board to review and discuss each of the four requirements.

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. McConkey stated that if they are to proceed under the current UDO the particular changes could have impacts on their infrastructure that has been developed for the entire subdivision.

Mr. McConkey also stated that in the materials and testimony the applicant stated they could lose 15% of the remaining lots if a variance was denied. Mr. McConkey and Mr. Morrison recognized that the applicant did show a hardship.

Mr. McConkey referred to Ms. Everette's description that the infrastructure was already in place and that staff tried to minimize the impact to the applicant.

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. Barker stated the applicant did an excellent job explaining the peculiar conditions to the property including the large size of 969 lots, how they developed the amenities of a golf course, and other recreation area, the water and sewer infrastructure and the property is located inside a watershed.

Mr. Mial agreed that the developer utilizing cluster subdivisions rather than 700 septic tanks was the right decision since Falls Lake is a major contributor to our water supply.

Mr. McConkey agreed that the petitioner mentioned that the location of inside a watershed was a hardship.

Mr. Morrison was concerned about setting a precedent for approving this variance.

Mr. McConkey stated that each case now and in the future, would be considered individually and that the applicant had demonstrated how this subdivision was different.

Mr. Haq agreed that each future case would be considered on their own merit. He further said that the septic systems are a thing of the past and that both the economic downturn and the infrastructure requirements were contributing factors to the delay.

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. McConkey stated under the County processes the building permits would not be issued unless the infrastructure was in place and that combined with economic conditions led to the need for this variance.

Mr. McConkey continued explaining that one could then say that the decision to build the subdivision this way was the developers, but development was predicated by the condition of the land and that it was the most responsible way to proceed.

Mr. Morrison reminded the Board that in past actions were never taken to approve a variance unless hardship requirements #1-#3 were met and that requirement #3 was never predicated on requirements #1 & #2.

Mr. Mial stated that it was his opinion that the hardship was not created by the applicant and that the decision to develop clusters without lots with individual septic systems was the best way to proceed.

Mr. McConkey said that the Board had to consider the evidence presented and that the evidence showed that this was a hardship and that it would be difficult to turn this down in that the cluster developments were in the best interest of the County.

Mr. Haq reminded the Board that the applicant showed that they had made their best effort to move forward with selling the lots and continued construction. Mr. McConkey agreed that the evidence showed that the developer had continued to proceed with the subdivision and that was not asking for an extension because they had stopped working.

Mr. Barker said that he did not think that a subdivision of this size could be completed in 7 years and that denying the request would be penalizing the developer for trying to do the right thing.

Mr. Morrison stated that the Board could not change the rules and that they had to make a decision based

on the sunset rules and the evidence presented. He emphasized that it was important to have a good discussion and make sure all points were in the record.

Mr. McConkey summarized that there were things that the applicant could have done differently, which could be said of almost every variance request, but the balance of how they got to the variance request was more attributable to things that were outside of the applicants control.

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. Morrison stated that the County would review any developed plans for the lot and that the majority of the subdivision had already been built out so no additional impact.

The subdivision was approved in 2006 and the UDO has changed but the spirit and intent in 2006 was to meet the requirements of the UDO.

Mr. McConkey thanked the Board for a good discussion, the petitioner and the staff for providing the information needed to make a decision and called for a motion.

#### Motion

Mr. Mial made a motion in the matter of BA V-2258-17, 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 and allow for the approval of S-07-06 to remain valid an additional 8 years from the June 2, 2018 expiration date 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.

Mr. Barker seconded the motion and the variance was granted by unanimous vote.

#### **5. Planning, Development & Inspections Report**

- Mr. Steven Finn reported that the recent report from the State was that 63 people move to the County every day – a decrease from 67 but continuing to result in a net gain.
- Mr. Finn reported that the pre-submittal process is active for the non-residential projects. Agents are dedicated to review these projects every Thursday morning that has been well received.
- Mr. Finn stated zoning violations are on the rise with lighting and noise. Most violations are reported from citizens.
- Mr. Finn re-introduced Ms. Regina Irizarry, Planner I

## 6. Other Business

- Mr. McConkey explained that the April meeting is typically the month that the Board elects a new Chair and Vice-Chair. Staff reported that there are no items for April so the Chairman asked the Board vote to suspend the rules to allow a May 8, 2018. Motion was made by Mr. McConkey; Mr. Morrison seconded the motion and was approved unanimously.
- Mr. McConkey presented Terence Morrison a plaque commending him for his service of ten years to the Board of Adjustment.

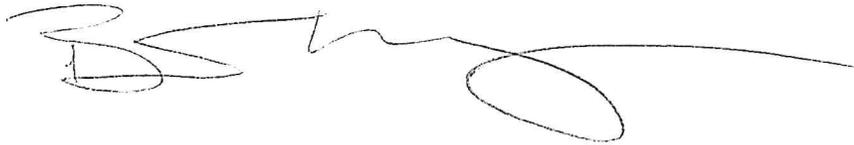
Mr. McConkey adjourned the meeting at 10:34 a.m.

=====

REGULAR MEETING  
WAKE COUNTY BOARD OF ADJUSTMENT  
March 27, 2018

All petitions complete, Brenton McConkey declared the regular meeting  
of the Wake County Board of Adjustment for  
Tuesday, March 27, 2018 adjourned at 10:30 a.m.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read 'Brenton McConkey', with a long horizontal flourish extending to the right.

Brenton McConkey  
Wake County Board of Adjustment

=====