



Planning, Development & Inspections

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A Division of Community Services
P.O. Box 550 • Raleigh, NC 27602
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MINUTES OF REGULAR MEETING

Wake County Board of Adjustment

Tuesday, September 10, 2019 (9:00a.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. Will Barker, Mr. DeAntony Collins, Mr. Dustin Engelken

Members Absent: (3) Mr. John Barker, Ms. Sheree Vodicka, Mr. Waheed Haq

Vacant Seats: (1)

County Staff Present: (7) Mr. Steven Finn (Land Development Administrator), Ms. Jenny Coats (Community Services Operations Director), Mr. Tim Maloney (Planning Development & Inspections Director), Ms. Beth Simmons (Community Services Operations Supervisor), Ms. Loretta Alston (Clerk to the Board), Mr. Geoffrey Pearson (Code Enforcement Program Manager)

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

- 1. Meeting called to order:** Mr. McConkey called the meeting to order at 9:03 a.m.
- 2. Oath of Office:** Mr. Kenneth Murphy administered the oath of office to new Board member, Mr. Dustin Engelken.
- 3. Approval of Minutes of the August 13, 2019 Meeting:** Mr. Will Barker made a motion to approve the August 13, 2019 meeting minutes as they were presented. The motion was seconded by Mr. Mial and the minutes were approved unanimously.
- 4. Approval of Written Decision Regarding PLG-ZV-001302-2019: Variance request at 3035 Banks Road:** Mr. McConkey noted that three of the four original voting members present were: Mr. McConkey, Mr. Mial, and Mr. Will Barker. Mr. McConkey made a motion to approve the written decision as drafted. The motion was seconded by Mr. Mial. By a vote of 3-0, the written decision was adopted.

Approval of Written Decision Regarding PLG-SU-001347-2019: Special Use Permit at 11713 Six Forks Road: Mr. McConkey noted that three of the four original voting members present were: Mr. McConkey, Mr. Mial, and Mr. Will Barker. Mr. Barker made a motion to approve the written decision as drafted. The motion was seconded by Mr. Mial. By a vote of 3-0, the written decision was adopted.
- 5. Appeal of Violation Notice PLG-A-001471-2019** - The petitioner is appealing the determination of planning staff, as allowed by Article 19-41 *Appeals of Administrative Decisions*, that his residential single-family property is in violation of Section 19-42-1(A) of the Wake County Unified

Development Ordinance (UDO).

Before the case was heard, Wake County Planning, Development & Inspections staff members, Greg Vance, Geoffrey Pearson, Jim Roberson, Ed Savage, Jonathan White, and Patrick Rose, were duly sworn. Planning staff member, Geoffrey Pearson, began by introducing himself and the title of the case before the board.

Voting Members (5)

The voting members were identified as: Mr. McConkey, Mr. Mial, Mr. Collins, Mr. Dustin Engelken, and Mr. Will Barker.

Documentary Evidence

Staff Report, PowerPoint presentation, Petitioner's Application

Testimony of Staff

Mr. Geoffrey Pearson, Code Enforcement Program Manager, 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 Special Use Permit request PLG-SU-001347-2019. Mr. McConkey accepted the evidence into record.

This item is an appeal of zoning staff's decision that a residential property is in violation of Section 19-42-1(A) of the Wake County Unified Development Ordinance. The petitioner is David Smoot and the site is located at 940 Stone Falls Trail, which is in the northern part of the county, west of the intersection of Falls of the Neuse Road and Raven Ridge Road.

The parcel consists of 2.43 acres and is zoned Residential-80 Watershed, in a critical area of the Falls Lake Watershed. Surrounding properties are residentially zoned and developed.

Mr. Pearson stated that on July 18, 2017 the applicant was issued a Wake County Building Permit to construct an accessory dwelling unit inside the existing single-family dwelling. The single-family dwelling consisted of 4 bedrooms and had a total square footage of 6,644 sq.-ft. The accessory dwelling unit was to occupy 1 of the existing 4 bedrooms. There were also interior renovations related to the permit.

On August 30, 2018 the Wake County Planning Division received a complaint that the property located at 940 Stone Falls Trail was being converted into a group living facility for approximately 12 unrelated seniors. Wake County Staff convened a meeting with the property owner, Mr. David Smoot, on September 6, 2018 to discuss the complaint at which time Mr. Smoot was informed that the proposed use was not allowed in the R-80W zoning district without modifying it to comply with applicable development standards. On March 11, 2019 an inspection was made of the dwelling and it was discovered that the single-family dwelling had been converted into a group living facility. No additional permit approval had been granted beyond the one accessory dwelling unit. Subsequently, on March 22, 2019 a Zoning Notice of Violation was issued to the property owners Mr. David Smoot and Mrs. Jean Smoot. Mr. Smoot filed the Zoning Appeal Application on April 18, 2019. A public hearing sign was posted on the property on August 27, 2019.

Mr. Pearson presented in his PowerPoint, an image of the submitted building permit application, which was approved by the Wake County Inspections Division. Mr. Pearson pointed out to the board that the original building permit was to construct an accessory dwelling unit within the existing single-family dwelling.

Mr. McConkey asked Mr. Pearson for clarification on the definition of an accessory dwelling unit within a residential dwelling. Mr. Pearson stated that the common term is a mother-in-law suite, which can be either

detached from the main dwelling or inside/attached to the principal dwelling.

Next, Mr. Pearson presented in his PowerPoint, images of the approved building floor plan and the modified floor plan. The approved floor plan included the approved accessory dwelling floor plan, leaving three bedrooms remaining in the structure. The unpermitted, modified floor plan shows approximately thirteen efficiency apartments built within the dwelling to accommodate a group living facility. Each of the labeled rooms in the area that was to be an approved accessory dwelling have its own living quarters, dining area, and bathroom facilities.

Mr. Pearson cited the section in violation as Section 19-42-1(A) of the Wake County Unified Development Ordinance, which states;

"No excavation may be commenced, no wall, structure, premises, or land used, building or part thereof may be built, constructed or altered, nor may any building be moved, nor may any sign be erected or structurally altered (unless exempted), until application has been made and the proper permit has been obtained. This permit requirement includes prima facie businesses or activities."

Mr. Pearson reiterated that Mr. Smoot was issued approval to construct a 2,688 sq.-ft accessory dwelling within the existing single-family dwelling. He was not granted approval to construct the multi-family arrangement as depicted in the modified floor plan. Mr. Pearson stated that additional permit approval, would be needed in order to bring the property into compliance with the Wake County Unified Development Ordinance.

Mr. Pearson continued his presentation by presenting images and a video of the property.

Mr. Pearson concluded that based on evidence presented, it is staff's determination that the Notice of Violation issue on March 22, 2019 was not issued in error, and that Section 19-42-1(A) of the Unified Development Ordinance does apply.

Mr. McConkey asked Mr. Pearson what the next steps would be for the petitioner if the Board upheld the staff's determination. Mr. Pearson that there are several different paths that the petitioner could take in modifying the plans, and depending on that decision, staff would direct Mr. Smoot in applying for the proper permits. Mr. Pearson confirmed that there are uses in the Unified Development Ordinance that could accommodate the petitioner's plans, either wholly or partly.

Mr. Barker asked Mr. Pearson if the approval of an accessory dwelling unit then make the unit a multi-family dwelling. Mr. Pearson said that it does not.

Mr. Nelson Harris, attorney for the petitioner, asked the Board to allow him to cross-examine Mr. Pearson, which Mr. McConkey allowed.

Mr. Harris presented a series of plans, that Mr. Pearson confirmed to be a copy of an original approved plan and the final plan. Mr. Pearson confirmed that the original plan was approved on the basis that there was to be an accessory dwelling with a study, dining room, den, playroom, and library. Mr. Harris asked Mr. Pearson what the substantial variance was between the plan that was approved and the plan that was built. Mr. Pearson indicated that the atrium has a pool that was not permitted, the play/recreational area on the left of the plans was not approved, the activity areas were not approved, and each unit has unapproved electrical units.

Mr. Harris presented a series of letters which Mr. Pearson confirmed to be the Notice of Violation letter and permit revocation letter. Mr. Harris asked Mr. Pearson if any notice was given prior to March 20, 2019 of the intent to revoke the permit? Mr. Pearson said that Mr. Smoot was given notice during a meeting. Mr.

Harris asked Mr. Pearson if Mr. Smoot was given any notice prior to the stop-order was entered? Mr. Pearson said prior notice was not given.

Mr. Mial asked Mr. Pearson if the areas of the plan marked 'Franklin,' 'Granville,' and 'Halifax' had approval for restrooms and kitchens. Mr. Pearson stated that those features were not part of the original plan.

Mr. Barker asked Mr. Pearson about red highlighted sections on the approved plan. Mr. Pearson indicated that there were some additional, somewhat minor renovations that were approved.

Mr. Greg Vance, Director of Permitting and Inspections, began his testimony by stating that he sent the notice of revocation of Mr. Smoot's permit. Mr. Vance cited General Statute 153-8-162 as stating that he is required to revoke permits when there is significant deviation from approved plans. Mr. Vance stated that the approved plans were converting a four-bedroom home into a three-bedroom home with a one-bedroom accessory dwelling within the home. Mr. Vance stated that when an inspector visited the site, it had become a thirteen-bedroom assisted living facility, rendering it a significant deviation from the approved plans.

Mr. Harris asked Mr. Vance was the basis for revocation due to changes in the plan or because of what was perceived to be the use for the facility. Mr. Vance said both factors played a role in the revocation decision. Mr. Vance confirmed that there were 10 bathrooms in the approved plan, but 13 bathrooms were constructed. Mr. Harris asked Mr. Vance if Mr. Smoot was sent written notice ten days before his permit was revoked. Mr. Vance confirmed that written notice was not given ten days prior.

Mr. Johnathan White, Plan Reviewer, began his testimony by stating that he received the request for the accessory dwelling within the main dwelling. Mr. White stated that his assessment was based on the shaded areas of the plan.

Mr. Barker asked Mr. White what the plans indicated would be occurring to the home. Mr. White stated that he understood there to be some minor renovation; nothing major and nothing involving the structure.

Mr. Engelken asked Mr. White if the plan called for any additional bathrooms. Mr. White stated that he did not remember any additional bathrooms were part of the plan, but that he did not have the original plans in front of him to view.

Mr. Harris asked Mr. White to confirm that there were not changes made to the exterior of the building. Mr. White agreed that there appeared not be changes to the exterior. Mr. White stated that per the presented plans, the changes were added hallways from the atrium to the outside and four bathrooms instead of five.

Mr. Ken Murphy, Wake County Government Attorney, confirmed with Mr. White that his role in this process is to review plans that are submitted in connection with an application for a building permit, and that once he approves or disapproves plans, his involvement ceases. Mr. White confirmed that is correct.

Mr. Edward Savage, Chief Mechanical Inspector, began his testimony by stating that he was the inspector assigned to perform a mechanical/electrical/plumbing inspection on the property. Mr. Savage stated that he met with Mr. Smoot's assistant, John, and immediately noticed that the work was out of the permit scope. Mr. Savage spoke with the assistant and the electrician and he was shown the stamped plan and the new plan. Mr. Savage signed and dated the new plan and advised Mr. Smoot to present the new plan to the plan reviewer. Mr. Savage further stated that would not complete the inspection because all the walls were closed-up, there were numerous electrical code violations, numerous plumbing violations, he was concerned about the number of kitchens, and there was an escape hatch in the middle of the floor that had not been filled.

Mr. Savage stated that Mr. Smoot's assistant was living in the house at the time of the scheduled inspection, and that there was a renovation permit for the house, which allowed the power to remain hooked up. Mr. Savage advised his superiors that the power should be revoked because he could not determine if there were smoke detectors or carbon monoxide detectors in the house.

Testimony of the Petitioner

Before testimony was given witnesses were duly sworn:

David Madison Smoot, 531 S. Main St, Wake Forest, NC 27587

Mr. Smoot began by answering questions introduced by his attorney, Mr. Nelson Harris. Mr. Smoot stated that he and his wife built the home in question 56 years ago and that it was 9,332 sq.-ft. He recently applied for a permit for an accessory dwelling permit to turn two garages into rooms, and to floor in the pool. The resulting renovations has resulted into one less room for the home, as a result securing four level fire exits in the case of a fire.

Mr. Smoot stated that there was only one kitchen in the home and defined 'kitchen' as having an oven. The rooms in his home have a microwave, sink, dishwasher and two burners.

Mr. Smoot stated that the inspector voice concerns that flooring in the pool created an enclosed crawl space, and he has since increased the amount of ventilation to comply with requirements on the house.

Mr. Smoot stated that there were 5.5 bathrooms, one for each bedroom, permitted to the original plan. He received permission for 10 additional bathrooms, but only implemented a number to result in a total that is one less than approved.

Mr. Smoot stated that the study does not have a fireplace, it only has a mantle with an electronic imagined fireplace. There are 4 fireplaces in the home that are original to the property. No fireplaces have been added.

Mr. Smoot stated that he does not agree that there is electrical and plumbing work behind walls that has not been inspected. Mr. Smoot stated that he had not applied for any special use permits to further his vision for the property because he stated that by right there can be a family of one or more related people or as many as 7 unrelated people living in the primary dwelling unit and the accessory dwelling unit, per the Wake County regulations.

Mr. Smoot stated that he did not receive written notice of the permit revocation, by that Mr. Greg Vance told him verbally at the meeting on March 20th that he was required to revoke the permit and did so two days later.

Mr. Smoot stated that he did not meet with the planning director before revocation, but that there as a meeting with 14 people on March 20.

Mr. Harris distributed notebooks with exhibits to the board. Mr. Smoot identified and read aloud an inspection record. Mr. Harris asked Mr. Smoot to clarify if there as a second floor and Mr. Smoot stated that there was not.

Mr. Harris asked Mr. Smoot if he was aware whey there was a reference to an accessory area in a primary area in the inspection record. Mr. Smoot stated that he believed it was because he proposed an accessory dwelling be created within the primary dwelling, as he understands that by right within Wake County it must be subordinate to the primary dwelling.

Mr. Smoot identified an inspection notice received in May 2018 in which there was an issue with the flooded over pool. Mr. Smoot stated that he complied with the request and presented the County with an engineer's letter regarding the sturdiness of the construction. Mr. Smoot stated that he also obtained engineer's letters with respect to electrical and plumbing work and that he had sheet rock removed for inspections.

Mr. Smoot identified a stop notice that he received on March 12, 2019, an appeal letter he sent to the commission of insurance within 5 days of the stop order, and a letter from Mr. Greg Vance to a representative of the insurance commission. Mr. Smoot read an email from Mr. Pearson, and he stated to believe that a family care home or a one family attached dwelling was an allowed use by right per the Wake County UDO.

Mr. Harris asked Mr. Smoot if he received a list prior to today's hearing with items that were in violation of code other than the use of the property, and Mr. Smoot stated that he did not.

Mr. McConkey clarified with Mr. Smoot the following:

- Originally, he had a four-bedroom single family dwelling
- His proposal was to add an accessory dwelling unit that would consist of one bedroom plus the additional rooms on the plans.
- That Mr. Smoot believes that 7 unrelated people can live in a dwelling without it being categorized as a group home.
- Mr. Smoot did not have that number of unrelated people living in the dwelling at the time.

Mr. Barker asked Mr. Smoot why the plan for the Verandas was not shown to the county if that was what he originally intended. Mr. Smoot stated that he had not yet honed his plans and that Mr. Jonathan White told him that he could not show any more bedrooms on the proposed plans than was already permitted.

Mr. Smoot stated that his engineer informed him that since there was an extra-large septic tank it was suitable for 8 people. He also stated that when he did extensive remodeling, he added low flow fixtures and a water meter. Mr. Smoot stated that his environmental engineer stated that at least 13 people can live in the facility and that if laundry is not handled on site, that 14 or more can live there. He stated that he currently has a permit for an additional septic tank on the east side that will satisfy the proposed use.

Mr. Mial asked Mr. Smoot how many bedrooms were in the original plans versus the current plans. Mr. Smoot stated there were four in the original and now 13 in the current.

Mr. McConkey confirmed that Mr. Smoot acknowledges that the fundamental use of the property is changed from a single-family residence to a residence that could potentially house up to 13 people. Mr. Smoot stated that it is not a change of use if the code allows it.

Mr. Collins asked Mr. Smoot if he intended to profit from the Veranda's and Mr. Smoot stated that was the intent. Mr. McConkey asked Mr. Smoot if the property would convert from a residential use to a commercial use in that case and Mr. Smoot stated that it would not be commercial use but would still be residential use allowed within your zoning code.

Mr. Barker again asked Mr. Smoot why he did not present his plans for the Veranda's upfront. Mr. Smoot indicated that he would not have been able to express it any other way than the way he did because Mr. White told him that he was only allowed to show four bedrooms on the proposed plan.

Mr. Harris asked that Exhibits A, B, C, 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 13 from the distributed notebook be accepted as evidence into the record for Appeal of Violation Notice PLG-A-001471-2019. Mr.

McConkey accepted the evidence into record.

Mr. McConkey called a recess of the Board at 10:45am and reconvened the meeting at 10:55am.

Mr. McConkey asked Mr. Pearson for clarification regarding the nature of this case. Mr. Pearson again stated that the nature of Mr. Smoot's appeal is whether the zoning notice of violation was issued appropriately or was it issued in error, based on the work that was already completed. He stated that an accessory dwelling is subordinate to the primary use. The principal use of this property is for a family of seven unrelated people. The accessory use does not allow for an additional seven unrelated persons, for a total of 14 people in the dwelling. The accessory dwelling only allows for a different arrangement of the initial seven people.

Additionally, Mr. Pearson stated that the modified plan went from bedrooms to dwelling units because each bedroom had all the elements of a dwelling until which is living facility, bathroom, and kitchen. The approved plan only had one kitchen in the atrium.

Mr. Barker asked Mr. Pearson if rezoning would be required to allow the group type facility, and Mr. Pearson said rezoning is not required.

Mr. Engelken asked Mr. Pearson if the UDO defined 'kitchen.' Mr. Pearson said the ordinance does not define 'kitchen' specifically, but they rely on Webster's dictionary which defines a kitchen as a place, such as a room, with cooking facilities.

Mr. Harris asked Mr. Pearson if only the use is changing, not the walls, plumbing, or electrical, a new building permit would not be needed. Mr. Pearson stated that was incorrect because a change of use from a zoning standpoint may put the item in a different use category and therefore trigger a different building code review.

Mr. Harris verified that there could be a family care facility in Veranda's with a View and Mr. Pearson said that it could. Mr. Harris asked Mr. Pearson if this property could have a stand-alone family care facility and Mr. Pearson stated that with modifications, there could be a stand-alone facility for up to six residents.

Mr. Greg Vance once again gave testimony regarding building codes. Mr. Vance stated that his department generally operates under state building code and general statutes in NC, which delegates the Department of Insurance with interpretation of building codes. Any questionable items regard building code is directed to DOI, and their initial input was that the accessory dwelling did not grant an additional number of people (state code only allows 5 unrelated people on the primary dwelling). Mr. Vance also stated that state residential code does define a kitchen as a place for preparation and cooking of food. Historically, Wake county inspectors have designated an area as a kitchen if there is a fixed-in-place cooking mechanism. Additionally, Mr. Vance stated that a list of code violations cannot be provided because his department is waiting on decision of the board in order to determine which code to use for this property.

Mr. Mial asked Mr. Vance how many kitchens are in the modified plan when using the DOI definition of kitchen. Mr. Vance asked Mr. Ed Savage as the assigned inspector and Mr. Savage stated there was originally one kitchen and now there are now more than six.

Mr. Weldon Jones, attorney representing all owners who live in Stone Falls Trail, except Mr. Smoot, stated that the homeowners adamantly oppose and have been negatively impacted by the construction of this facility. Mr. Jones' clients support the decision of the Wake County planning department that the structure at issue cannot be classified as a single-family dwelling as built and respectfully request the affirming of the original denial.

Mr. McConkey closed the public hearing portion of the meeting at 11:36am.

Board Discussion

Mr. McConkey reminded the Board, with verification from Mr. Murphy, that the Board of Adjustment will be reviewing Mr. Smoot's appeal of the Notice of Violation issued by the zoning officer in March 2019 and deciding whether the Board agrees with the interpretation and findings of staff.

Mr. McConkey stated that per Mr. Smoot's testimony the vision of this property was to provide housing for up to double digit unrelated persons. It was not the intent to have a single-family residence. Mr. McConkey stated that he would uphold the staff's determination because the original proposal was adding an accessory dwelling that would contain one bedroom, and it has become a functional change of use to a group living facility.

Mr. Mial agreed to support staff assessment of this situation.

Mr. Engelken agreed with the position of the Chair.

There being no further discussions, Mr. McConkey asked for a motion.

Motion and Conclusions: In the matter of PLG-A-001471-2019, based on the applicable Wake County Unified Development Ordinance provisions and on the evidence submitted, Mr. Mial moved that the board find and conclude that the Planning staff's determination should be upheld, and the issuance of the Notice of Violation is affirmed. The motion to affirm is based on the following findings of fact and conclusions of law related to evidence that the issuance of the zoning notice of violation was not issued in error, and the subject property is in violation of the Wake County UDO.

The motion was seconded by Mr. Engelken. The staff's determination was upheld unanimously.

6. Planning, Development & Inspections Report

Mr. Steven Finn noted that develop remains consistent. Mr. Finn reminded the Board that they had asked staff to review the text of the Unified Development Ordinance regarding the engineer's letter when considering a special use permit. After staff discussion, it was decided that the ordinance does not need to be amended at this time and felt that there is that emphasis on the seal and the professional engineer when considering special uses.

Mr. Tim Maloney reported that Wake County Planning is a key participant and planner in the 2020 Census and asked board members to be an advocate and to talk about the importance of the census to the community. Additionally, if any members are part of organization that would like to have a presentation on the Census, please let him know.

7. Adjournment

Mr. McConkey adjourned the meeting at 11:46 a.m.

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REGULAR MEETING
WAKE COUNTY BOARD OF ADJUSTMENT
September 10, 2019

All petitions complete, Donald Mial declared the regular meeting of the
Wake County Board of Adjustment for
Tuesday, September 10, 2019 adjourned at 11:46 a.m.

Respectfully Submitted:

A handwritten signature in black ink that reads "Donald Mial". The signature is written in a cursive style with a large initial "D" and a stylized "M".

Donald Mial
Wake County Board of Adjustment

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PETITION FOR: APPEAL OF PLANNING STAFF'S DECISION THAT A RESIDENTIAL PROPERTY IS IN VIOLATION OF SECTION 19-42-1(A) OF THE WAKE COUNTY UNIFIED DEVELOPMENT ORDINANCE

STAFF REPORT TO THE WAKE COUNTY BOARD OF ADJUSTMENT
September 10, 2019 Meeting Date

Planning Staff
Geoffrey Pearson

I. REQUEST: ITEM 1, PLG-A-001471-2019

The petitioner is appealing the determination of planning staff, as allowed by Article 19-41 *Appeals of Administrative Decisions*, that his residential single-family property is in violation of Section 19-42-1(A) of the Wake County Unified Development Ordinance (UDO).

II. PROJECT LOCATION

The site is located at 940 Stone Falls Trail, and is Tract 10 of Recombination Map BM1995-950

III. PROJECT PROFILE

WAKE COUNTY PIN: 1719 83 0994
ZONING DISTRICT: Residential-80 Watershed District (R-80W)
LAND USE CLASSIFICATION: Non-Urban Area/Water Supply Watershed (NUA/WSW)
WATERSHED: Falls Lake Critical Area
CROSS REFERENCE FILES: N/A
APPLICANT: David Smoot
PROPERTY OWNER: David & Jean Smoot
PROPERTY SIZE: 2.43 acres
CURRENT LAND USE: Residential

IV. PROJECT SETTING – SURROUNDING ZONING DISTRICTS AND LAND USES

DIRECTION	LAND USE	ZONING
North	Honeycutt Creek – Falls Lake	Residential-80W
East	Honeycutt Creek – Falls Lake	Residential 80W
South	Residential	Residential-80W
West	Honeycutt Creek – Falls Lake	Residential-80W

V. 2017 AERIAL MAP



VI. ZONING

ZONING DISTRICT

This site is located within the Residential-80 Watershed (R-80W) zoning district.

VII. APPEAL

A. REQUEST

The petitioner is appealing the determination of planning staff, as allowed by Article 19-41 *Appeals of Administrative Decisions*, that her residential single-family property is in violation of Section 19-42-1(A) of the Wake County Unified Development Ordinance (UDO).

VIII. BACKGROUND

On July 18, 2017 the applicant was issued a Wake County Building Permit to construct an accessory dwelling unit inside the existing single-family dwelling. The single-family dwelling consisted of 4 bedrooms and had a total square footage of 6, 644 square feet. The accessory dwelling unit was to occupy 1 of the existing 4 bedrooms. There were also interior renovations related to the permit.

On August 30, 2018 the Wake County Planning Division received a complaint that the property located at 940 Stone Falls Trail was being converting into a group living facility for approximately 12 unrelated seniors. Wake County Staff convened a meeting with the property owner Mr. David Smoot on September 6, 2018 to discuss the complaint at which time Mr. Smoot was informed that the proposed use was not allowed in the R-80W zoning district without modifying it to comply with applicable development standards. On March 11, 2019 an inspection was made of the dwelling and it was discovered that the single-family dwelling had been converted into a group living facility. No additional permit approval had been granted beyond the 1 accessory dwelling unit. Subsequently, on March 22, 2019 a Zoning Notice of Violation was issued to the property owners Mr. David Smoot and Mrs. Jean Smoot. Mr. Smoot filed the Zoning Appeal Application on April 18, 2019. A public hearing sign was posted on the property on August 27, 2019.

Mr. David Smoot is appealing Staff's decision that his residential single-family property is in violation of Section 19-42-1(A) of the Wake County Unified Development Ordinance (UDO). Mr. Smoot contends that he has not modified the single-family dwelling to accommodate a group living facility, and that the structure remains a single-family dwelling. Article 19 (Review and Approval Procedures) Section 19-42-1(A) (Permit Required) of the UDO states the following:

"No excavation may be commenced, no wall, structure, premises, or land used, building or part thereof may be built, constructed or altered, nor may any building be moved, nor may any sign be erected or structurally altered (unless exempted), until application has been made and the proper permit has been obtained. This permit requirement includes prima facie businesses or activities."

As stipulated on the approved Wake County Inspections Building Permit 0180182, Mr. Smoot was issued approval to construct a 2,688 square foot accessory dwelling within the existing single-family dwelling. The appellant was not granted approval to construct 13 efficiency apartments, as well as additional improvements that exceeded the scope of his residential permit. Zoning approval is needed to convert the single-family dwelling into another land use classification such as a group care facility or family care home.

IX. RELEVANT ORDINANCE SECTION

In making this determination, the planning staff relied upon the following:

- North Carolina General Statutes Section 153(A)-340 (Grant of Power)
- UDO Article 4, Use Regulations, *Section 4-11 Use Table*, which illustrates in relevant part under Residential Use Group – Group Living:
"All other group living (except as noted above) Prohibited in R-80W Zoning District"

- UDO Article 19, *Review and Approval Procedures*, Section 19-42-1, *Permits*, Sub-Section (A) *Permit Required* which reads in relevant part:

“ *No excavation may be commenced, no wall, structure, premises, or land used, building or part thereof may be built, constructed or altered, nor may any building be moved, nor may any sign be erected or structurally altered (unless exempted), until application has been made and the proper permit has been obtained. This permit requirement includes prima facie businesses or activities*”.

BOARD ACTION

TO AFFIRM THE PLANNING STAFF’S DECISION

Based on the applicable Wake County Unified Development Ordinance provisions, and on the evidence submitted in the matter of PLG-A-001471-2019, I move that the Board find and conclude that the Planning staff’s determination should be upheld and the issuance of the Notice of Violation is affirmed. The motion to affirm is based on the following findings of fact and conclusions of law related to:

1. Evidence that the issuance of the zoning notice of violation was not issued in error, and the subject property is in violation of the Wake County UDO.

TO REVERSE THE PLANNING STAFF’S DECISION

Based on the applicable Wake County Unified Development Ordinance provisions, and on the evidence submitted in the matter of PLG-A-001471-2019 , I move that the Board find and conclude that the Planning staff’s determination should be reversed based on arguments presented and evidence submitted. The motion to reverse is based on the following findings of fact and conclusions of law related to:

1. Evidence that the issuance of the zoning notice of violation was issued in error, and the subject property is not in violation of the Wake County UDO.

Board of Adjustment

PLG-A-1471-2019

September 10, 2019

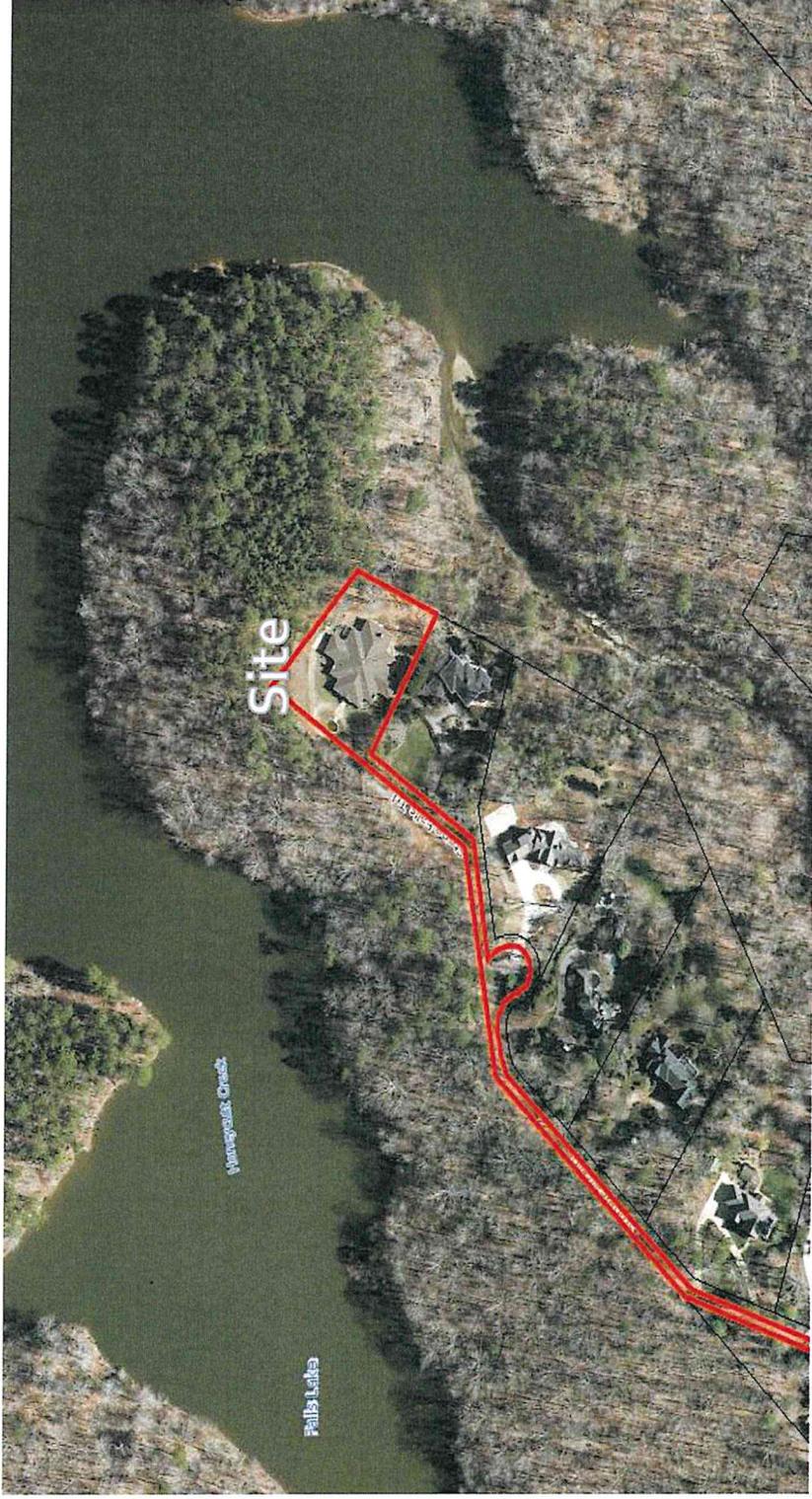


PLG-A-1471-2019

An Appeal of Planning Staff's Administrative Decision

- Appellant: David Smoot
- Landowner: David & Jean Smoot
- Zoning: Residential-80 Watershed
- Request: Applicant is appealing Planning Staff's decision that his residential property is in violation of Section 19-42-1(A) of the Wake County Unified Development Ordinance.

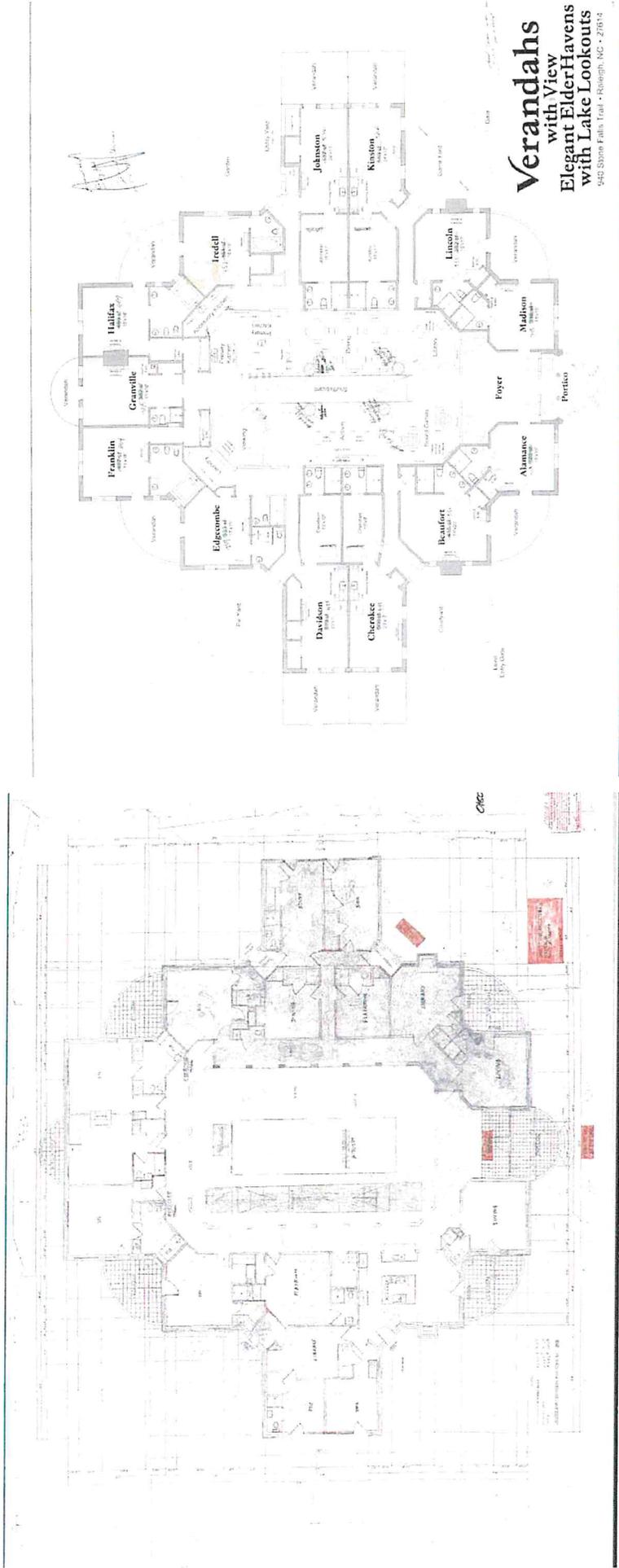
SITE LOCATION



BACKGROUND

- July 18, 2017 Applicant issued Building Permit to construct accessory dwelling unit.
- August 30, 2018 Complaint filed regarding proposed use of property.
- September 6, 2018 Meeting held with property owner.
- March 11, 2019 Inspection discovered major deviation from approved permit.
- March 22, 2019 Zoning Notice of Violation issued to property owners.
- April 18, 2019 Property owner filed appeal

Approved & Modified Plans



SECTION 19-42-1(A)

“No excavation may be commenced, no wall, structure, premises, or land used, building or part thereof may be built, constructed or altered, nor may any building be moved, nor may any sign be erected or structurally altered (unless exempted), until application has been made and the proper permit has been obtained. This permit requirement includes prima facie businesses or activities.”

PHOTOS FROM THE SITE



VIDEO FROM SITE

Staff Conclusion

Based on evidence presented it is staff's determination that the Notice of Violation issued on March 22, 2019 was not issued in error, and that Section 19-42-1(A) of the UDO Does Apply.

PLG-A-1471-2019

- Appeal of Notice of Violation
- Presentation by staff
- Presentation by appealant