

MINUTES

**Regular Meeting
Wake County Board of Adjustment
Tuesday, October 11, 2016
9:00 a.m., Room 2700
Wake County Justice Center
300 S. Salisbury St.
Raleigh, North Carolina**

Members Present: (5) Mr. Tim Clark (Chair), Mr. Brenton McConkey (Vice-Chair), Mr. Terence Morrison, Mr. Billy Myrick, and Mr. Donald Mial

Members Not Present: (4) Mr. Will Barker, Mr. John Barker, Mr. Blake Cason, and Mr. Trenton Stewart

County Staff Present: (10) Mr. Steven Finn (Land Development Administrator), Ms. Celena Everette (Planner II), Mr. Chris Record (Planner I), Mr. Tim Maloney (Planning, Development, and Inspections Director), Mr. Jim Roberson (Inspections Supervisor), Mr. Geoff Pearson (Code Enforcement Complaint Coordinator), Mr. Greg Vance (Inspections Supervisor), Mr. Charlie Johnson (Deputy Fire Services Director), Mr. Frank Cope (Community Services Director), and Mr. Russ O'Melia (Clerk to the Board)

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

Item 1, Call to Order: Mr. Clark called the meeting to order at 9:02 a.m. with 5 members present.

IN RE MINUTES

Item 2, Approval of Minutes of the September 13, 2016 Meeting

Mr. McConkey made a motion to approve the September 13th meeting minutes, and Mr. Mial seconded. The motion carried unanimously.

Item 3, Approval of Written Decision Granting Special Use Permit in the matter of BA-SU-2230-16

Mr. McConkey made a motion to approve the written decision granting special use permit in the matter of BA SU-2230-16, and Mr. Morrison seconded. The motion carried unanimously.

Item 4, Approval of Written Decision Granting Special Use Permit in the matter of BA-SU-2229-16

Mr. Mial made a motion to approve the written decision granting special use permit in the matter of BA SU-2229-16, and Mr. McConkey seconded. The motion carried unanimously.

Before the case was heard, Wake County staff members Ms. Everette and Mr. Pearson were duly sworn.

Item 5, BA V-2232-16

Voting Members: Mr. Clark, Mr. McConkey, Mr. Morrison, Mr. Myrick, and Mr. Mial

Landowner: Douglas & Michele Hardy

Petitioner: Upright Builders, Inc. / Wes Carroll

PIN#s: 0771-52-9061

Size: 2.73 acres

Location: The site is located at 2704 Glassman Lane.

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

Land Use Classification: Non-Urban Area/Non-Critical Water Supply Watershed (NUAWSW)

This is a request for a variance from Article 5-11-1, *Residential Watershed Districts*, which requires residential single-family dwellings in Residential-40 Watershed Zoning Districts to be setback a minimum of 30 feet from the rear lot line.

The applicant is requesting a variance to allow the existing residential home with a room addition to encroach .7 feet (or 8.4 inches) into the required northern rear setback. The request would allow the home to be 29.3 feet from the northern rear lot line.

TESTIMONY AND EVIDENCE PRESENTED

Documentary Evidence: Staff report, PowerPoint presentation, site plans, inspection records, application, video, relevant sections of the Unified Development Ordinance were shown and/or available, Exhibit 1: an aerial photograph of the site, Exhibit 2: a recombination map of the site, and Exhibit 3: a zoomed in portion of the recombination map.

Testimony:

Mr. Pearson, Code Enforcement Complaint Coordinator, entered the staff report and PowerPoint presentation for BA V-2232-16 into the record. Mr. Clark accepted the staff report and PowerPoint slides into the record. Mr. Pearson stated the petitioner's name, zoning classification, background and history of the petition. The single-family dwelling was built in February 1995. The house was built with a valid building permit, and the petitioners are the original homeowners. In May 2008, the owners applied for and obtained a building permit for a room addition to be built on the rear of their home. The addition was to add on to the master bath & bedroom. The submitted site plan showed the addition meeting the required 30-foot rear yard setback. A zoning hold was placed on the permit, and the owners were informed that an as-built survey would be needed at the conclusion of the project to verify impervious surface coverage. In December 2010 and December 2012, notification was sent to the owners notifying them that the room addition permit was about to expire due to inactivity, mainly from the need for the as-built survey. On February 13, 2015 Wake County Planning approved a recombination map which increased the total size of the property to 2.73 acres. During the review of the exempt survey map, it was observed that the attached room addition was encroaching into the required 30 foot rear yard setback by .7 feet (or 8.4 inches). The owners were notified of this situation, and they submitted a variance application on June 14, 2016. Adjoining property owners were notified by mail on September 19, 2016, and a public hearing notice was posted on the property on September 23, 2016. A 2015 survey prepared by Turning Point Surveying shows that the home encroaches 8.4 inches into the required northern rear yard setback. Article 5, Section 5-11-1 of the Wake County Unified Development Ordinance requires residential single-family dwellings in the R-40 Watershed Zoning District to be setback a minimum of 30 feet from the rear lot line.

Mr. Clark asked if the as-built survey was ever submitted. Mr. Pearson answered that it was not submitted.

Mr. McConkey said that the encroachment may have been discovered earlier had the as-built survey been submitted, but at that point the construction was already completed.

Sworn witness in favor of the petition:

Michele Hardy, 2704 Glassman Lane, Raleigh, NC 27606

Mr. Kenneth Haywood came forward to address the board. He said that he is an attorney from Boxley Bolton Garber & Haywood at 227 W. Martin Street in Raleigh, and he was representing Douglas and Michele Hardy. Mr. Haywood said that the Hardys purchased the property in 1994, and they renovated the home in 2008. He said that the Hardys hired a licensed general contractor who obtained a building permit from Wake County, and the contractor went through all of the inspections. He said that the Hardys were not aware that the requirement for an as-built survey was never met by the general contractor. Mr. Haywood said that the Hardys have contacted the general contractor, and the as-built survey will be completed. When the Hardys submitted the recombination map, they discovered that they were encroaching into the required setback. The Hardys

attempted to purchase additional land from the adjacent property owner to satisfy the setback without needing a variance, but they were unable to do so. Mr. Haywood submitted the following into the record:

Exhibit 1: an aerial photograph of the site.

Exhibit 2: a recombination map of the site.

Exhibit 3: a zoomed in portion of the recombination map.

Mr. Clark accepted the three exhibits into the record.

Mr. Haywood said that Exhibit 1 shows how heavily vegetated the properties are. One of the properties behind the Hardy's property is an unimproved lot, and the other has a residence that is a far distance from the property line adjoining the Hardy's property. Mr. Haywood said that exhibits 2 and 3 show the corner of the house that encroaches into the 30-foot setback. The exhibits also show that an iron pin was found 0.9 feet north of the property line. Mr. Haywood said that the general contractor believed that the iron pin that was found off the property was the correct property line. If that were the case, the variance would not be needed. When the survey was done in 2015, the surveyor did not believe that the iron pin found 0.9 feet north of the property line was the correct iron pin. The surveyor found another iron pin that was closer to the dwelling which resulted in the current situation. Mr. Haywood said that the different iron pin locations are shown on exhibits 2 and 3, and this demonstrated the hardship that the Hardys have in this case.

Ms. Hardy said that she and her husband have tried to the best of their ability to comply with the Wake County UDO. She said that they trusted their general contractor. She said that if the variance is not approved, a demolition of all or part of the home addition would be needed. That corner of the house includes a concrete support for part of the bathroom.

Mr. Haywood commented that the lot is uniquely configured lot with a creek and an unbuildable area on the left side. The shape of the property resulted in the house being situated such that it created a point in the corner near the property line in question. He said that the hardship exists because the contractor believed he was using the correct iron pin. Mr. Haywood said that there are topographical conditions that exist on the property, and strict application of the ordinance would require that a portion of the home be torn down to accomplish an issue of 8.4 inches on a heavily vegetated lot that backs up to an unimproved lot.

Mr. Clark asked if there were two different surveyors involved. Mr. Haywood said that Turning Point Surveying handled the recombination map in 2015, and they were not involved during the renovation in 2008.

Mr. Clark asked what the impervious surface limitation is. Mr. Pearson answered that it is 12%, and it can be increased to 30% with stormwater management. Mr. Pearson said that the lot is currently at 7.7%.

Mr. Myrick asked if the site plan for the home addition showed the addition meeting the 30-foot setback. Mr. Haywood said that the site plan done by Stewart Proctor shows the 30-foot setback being met.

Mr. Myrick asked if the foundation and footings passed inspection, and whether the issue was discovered at that time. Mr. Pearson said that the foundation and footings passed inspection, and the inspectors were relying on the site plan that was submitted. Mr. Myrick said that it would be difficult for an inspector to see an 8-inch error on a property line of that size. Mr. Haywood noted on the Stewart-Proctor survey from 2008 the location of the existing iron pipe that was later determined to be in the wrong location in 2015. He said that this is evidence that the homeowners were not trying to do anything untoward, but instead they were working together with their general contractor with the understanding that they were meeting the required setback.

There was no one else who wished to speak in favor of or in opposition to the request. Mr. Clark closed the public hearing.

BOARD DISCUSSION

Mr. Myrick said that the location of the iron stake was the main problem. He said that it was easy for a surveyor to make an 8-inch error in this case, and the homeowners would not have the expertise to know that there is an 8-inch error. He said that he did not see anything that would be hurt if the variance were granted.

Mr. Clark said that the homeowners were acting in good faith relying on the iron pin. He added that there are topographical constraints to the lot.

Mr. Morrison said that there would be undue hardship on the homeowner if the variance were denied. He said that the homeowners acted appropriately in trusting in the professionals they hired, and when another professional discovers an error, the board can step in to help the homeowner by granting a variance.

Mr. McConkey said that the statement of justification and Mr. Haywood's remarks addressed the four required findings. He said that this is an odd shaped lot that is shallow but wide. There is a creek in the northwest corner. The shape of the lot and the unique home placement contributed to the situation.

MOTION

Mr. Morrison made a motion in the matter of BA V-2232-16 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 the existing building to encroach into the required 30-foot rear setback with the recommended condition. Mr. Myrick seconded the motion. By a vote of 5-0, the motion passed, and the variance was granted. So ordered.

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. Strict application of the ordinance would require that the homeowners demolish part of their house including a load bearing wall.
- 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. This is an odd shaped lot that is heavily wooded. The lot has topographical features, such as slopes, that have contributed to the situation. The house is uniquely placed on the property.
- 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. The homeowners acted within the Wake County UDO, and they relied on licensed professionals who performed the surveys.
- 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. This is an 8.4-inch encroachment into a 30-foot setback that adjoins an undeveloped lot.

CONCLUSIONS OF LAW

Unnecessary hardship would result from the strict application of the ordinance. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. The hardship did not result from actions taken by the applicant or the property owner. 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.

IT IS THEREFORE ORDERED:

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.

Item 6, BA V-2236-16

Before the case was heard, Wake County staff members Ms. Everette and Mr. Record were duly sworn.

Voting Members: Mr. Clark, Mr. McConkey, Mr. Morrison, Mr. Myrick, and Mr. Mial

Landowner: W.C. Hollingsworth Jr.

Petitioner: Harry Mitchell

PIN#s: 1748-82-7823

Size: 0.83 acres

Location: The site is located on the western side of Lillie Liles Road where it intersects with Louisburg Road.

Zoned: Highway District (HD) within Residential Retail Area

Land Use Classification: Short Range Urban Services Area (City of Raleigh)

This is a request for a variance from Article 3-23-4(A)(3), *Highway District*, which states that a Special Use in Highway District must have a minimum lot width and frontage of 150 feet along an access road serving 3 or more lots.

The applicant is requesting a variance to reduce the minimum lot width and frontage along an access road for a Special Use (vehicle sales) in Highway District from the required 150 feet to 24.91 feet. The variance requested is a 125.09 foot reduction.

TESTIMONY AND EVIDENCE PRESENTED

Documentary Evidence: Staff report, PowerPoint presentation, site plans, application, video, aerial map, relevant sections of the Unified Development Ordinance were shown and/or available, Exhibit 1: emails between Harry Mitchell and NCDOT, Exhibit 2: a letter from Janet Farley to Walter Hollingsworth, Exhibit 3: a landscape plan, and Exhibit 4: photographs of the site.

Testimony:

Mr. Record, Planner I, entered the staff report and PowerPoint presentation for BA V-2236-16 into the record. Mr. Clark accepted the staff report and PowerPoint slides into the record. Mr. Record stated the petitioner's name, zoning classification, background and history of the petition. The property to the north is residential and zoned Residential-30. The property to the east across Lillie Liles Road is residential within the Town of Rolesville's ETJ. The properties to the south across 401 are residential within the City of Raleigh's ETJ and residential within the Town of Rolesville's ETJ. The property to the west is a farm zoned Highway District. The property owner, W.C. Hollingsworth Jr., purchased the subject property in early 2015. The property was previously owned by the North Carolina Department of Transportation. Prior to NCDOT owning the property, there was a single family residence on the property. A Special Use Permit application for the establishment of a vehicle sales business was submitted to Wake County Planning, Development, & Inspections on May 13, 2016. Staff reviewed the application materials and provided comments to the applicant in early June. Within these comments, it was noted that the subject property in its current configuration does not meet the minimum lot width and frontage standard for Special Uses in Highway District. The site plan as submitted shows that access into the property is being proposed off of Lillie Liles Road, an access road that serves 3 or more existing parcels. Per the Unified Development Ordinance, the minimum lot width and frontage along Lillie Liles Road is required to be 150 feet. The subject property has a lot width and frontage along this access road of

24.91 feet. Adjoining property owners were notified by mail on September 23, 2016, and a public hearing notice was posted on the property on September 23, 2016.

Mr. Murphy stated 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 or corporation. In the matter of BA V-2236-16, the applicant is an engineer, and the property owner is an individual. There did not appear to be an attorney involved. The engineer may testify, but if there are any witnesses opposed the variance request, the engineer may not cross-examine those witnesses since that would be the unauthorized practice of law.

Mr. McConkey asked about the 150-foot frontage requirement on Lillie Liles Road. Mr. Record said that the requirement arises from the request for a special use. Mr. McConkey asked what uses would be allowed with the existing frontage without a special use. Mr. Record said that Highway District is primarily a residential zoning district with some smaller scale uses that serve the neighborhood. A residential use would require 30 feet of frontage which the property does not have off of Lillie Liles Road. If a driveway were to come off of US 401, the site would meet the frontage requirement for a residential use. However, for a special use, 400 feet of frontage would be required off of US 401, and the site does not meet that requirement.

Mr. Clark asked about NCDOT purchasing the property. Mr. Record said that it was part of the work to widen US 401.

Mr. Myrick asked if the area is served by water and sewer. Mr. Record said that the City of Raleigh has sewer and water in the area, but because the property is within Wake County it would not have sewer and water. The site would use a septic system and a well.

Mr. McConkey asked about the purpose of the 150-foot frontage requirement within the HD zoning district. Mr. Record said that any of the standards within the zoning district fall back on the purpose statement for the zoning district. Mr. Record referenced a portion of section 3-23 of the UDO:

3-23 HD, Highway District

3-23-1 Description

The HD, Highway District is primarily intended to accommodate residential development, although it also allows several types of nonresidential development if the Board of Adjustment first reviews and approves a site plan and special use permit for the use.

3-23-2 Purpose

...

(1) *This District is adopted for the purposes of:*

(a) *Protecting the public investment ... by expediting the free flow of traffic and reducing the hazards arising from unnecessary points of ingress and egress and cluttered roadside development;*

...

(c) *Enhancing the value of adjacent lands by preserving and extending the useful life of the highway and thoroughfare systems, avoiding land uses that conflict with the roadside and the surrounding area, and reducing the risks of creating blighted areas...*

...

(e) Reserving adequate roadside space through which neighborhood traffic may be admitted to and from the highway and thoroughfare system in a manner that avoids undue traffic concentrations, sudden turnings and stoppings, and other hazards.

(2) The Highway District accomplishes the above purposes by:

(a) Establishing more stringent regulation along major thoroughfares over the minimum width of building lots and depth of minimum front yards than are imposed along lesser roads and streets...

Sworn witnesses in favor of the petition:

Janet Farley, 75 Dixie Farms Road, Louisburg, NC 27549
W.C. Hollingsworth, P.O. Box 61, Louisburg, NC 27549-0061
Harry Mitchell, P.O. Box 2007, Wake Forest, NC 27588

Mr. Mitchell submitted the following exhibits into the record:

Exhibit 1: emails between Harry Mitchell and NCDOT.

Exhibit 2: a letter from Janet Farley to Walter Hollingsworth.

Exhibit 3: a landscape plan.

Exhibit 4: photographs of the site.

Mr. Clark accepted the exhibits into the record.

Mr. Mitchell said that the lot was created in 1965 with an area of 1.5 acres. NCDOT purchased the lot in 2009 in conjunction with improvements to US 401. In 2015, the improvements were nearing completion, and Mr. Hollingsworth purchased the property from NCDOT with the desire to develop a small auto sales business on the property. The property is now 0.83 acres since NCDOT used some of the land for the improvements to US 401. Mr. Mitchell referenced Exhibit 1 to show that a driveway permit would be possible on Lillie Liles Road according to NCDOT with some improvements to the intersection despite the limited access that the lot has to that road. Mr. Mitchell said that Exhibit 3 shows the buffers that would be in place on the lot where it adjoins residential. The buffers would be a combination of a vegetative buffer and a solid wood fence, and they would provide a buffer from the noise, lights, and traffic from US 401. Mr. Mitchell submitted Exhibit 5: a video taken from the site to illustrate the traffic volume at 7 a.m. Mr. Clark accepted the exhibit into the record. Mr. Mitchell said that NCDOT estimates that 35,000-40,000 vehicles travel through that section of US 401 each day. He said that the volume of traffic is detrimental to it being developed for residential use. Mr. Mitchell said that the section of US 401 near the site is controlled access which makes driveway access off of US 401 not feasible.

Ms. Farley, Broker/Owner of Covenant Realty of NC, testified that the property is not desirable or suitable for single family residential use due to the heavy traffic and the fact that the lot is open on non-wooded with full exposure to US 401.

Mr. Hollingsworth said that he has been a car dealer in Raleigh for 34 years. He said that everything in the area is mixed use. In the vicinity of the site, there are commercial properties mixed in with condos and single family housing. He said that NCDOT would approve a driveway permit off of Lillie Liles Road. He said that he would like to put a small country car lot on the property with 15-20 cars and trucks. He said that a car lot does not produce a lot of traffic.

Mr. Myrick asked if the lot would be paved. Mr. Hollingsworth answered that he would have the lot paved. The business would be closed on Sundays, it would be open until noon on Saturday, and it would be open until 5 p.m. during the week. He said that there would not be lights on the lot other than a security light near the office.

Mr. Mitchell said that the auto sales lot will be a low intensity use without any auto repair. The office would be a 40' x 30' building. The site is limited to 30% impervious surface. The lot has been evaluated for a septic system to handle one bathroom. There is also room on the site for a well.

Mr. Myrick asked who demolished the house that was on the property. Mr. Mitchell answered that NCDOT had the house demolished. Mr. Myrick asked if NCDOT utilized everything they need from the lot. Mr. Mitchell answered that NCDOT got what they needed from the lot and sold what they did not need.

Mr. Mitchell addressed the four required findings.

1. Unnecessary hardship would result from the strict application of the ordinance. Mr. Mitchell said that the lot given its proximity to US 401 makes it unsuitable and undesirable for a single family residence.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Mr. Mitchell said that the lot configuration was created by NCDOT in association with roadway improvements to US 401.
3. The hardship did not result from actions taken by the applicant or the property owner. Mr. Mitchell said that the property was purchased from NCDOT in its current condition.
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. Mitchell said that there are controls in place for the Highway District zoning district to protect the residential properties.

Mr. McConkey asked if other uses were considered. Mr. Hollingsworth said that he purchased the property for his automobile business. Mr. McConkey asked how much frontage exists on Louisburg Road. Mr. Mitchell said that the frontage is 385 feet, but even if they had 400 feet they would not be able to have a driveway since NCDOT imposed a controlled access restriction. He said that putting an automobile sales lot on the property is a far more compatible use for the surrounding parcels than some of the permitted uses such as a convenience store or a gas station. Those permitted uses would have more traffic, lights, and extended hours.

Sworn witness in opposition to the petition:

John O'Neal, 4216 Lillie Liles Road, Wake Forest, NC 27587

Mr. O'Neal said that he is opposed to the petition. He said that he has lived in the quiet, residential neighborhood for 23 years. He said that a car lot adjacent to his home would be detrimental to his property value and his way of life. He said that the request is a variance of more than 80%. He said that he has never seen a car lot that did not have lights. He said that he did not want his home to be lit up at night, and he did not want the walk-through traffic that will come along with the car lot.

Mr. McConkey asked Mr. O'Neal if his concerns would change if the property was developed with a gas station or convenience store. Mr. O'Neal said that a gas station or convenience store would be worse than a car lot.

Mr. Record said that a convenience store is a permitted use that would not require a special use permit.

Mr. McConkey asked if a residence would require a variance to meet the frontage requirement. Ms. Everette said that since NCDOT took most of the lot it would be considered a nonconforming lot if the landowner developed it for residential use.

Mr. Morrison asked Ms. Farley if she looked at the impact of the driveway to the neighbors. Ms. Farley said that Mr. O'Neal's house is currently frontage for US 401 because there is nothing on the subject lot. If the lot was developed with trees and a fence, it would have positive effects to Mr. O'Neal's property since he would no longer have frontage on US 401.

Mr. McConkey asked if the variance, if granted, would continue to apply to the land if a special use permit request were denied. Mr. Record answered that the variance would continue to apply to the land.

There was no one else who wished to speak in favor of or in opposition to the request. Mr. Clark closed the public hearing.

BOARD DISCUSSION

Mr. Morrison said that there is controlled access on US 401 that restricts the ability to put in a driveway regardless of the use. He said that the variance would be needed to make the property useful.

Mr. Clark said that the Highway District zoning is a peculiar zoning district since a convenience store is a permitted use while an automobile sales lot is a special use.

Mr. Myrick said that the property is not suitable for residential use as a result of NCDOT taking a portion of the land. He said that he would share some of Mr. O'Neal's concerns if he lived there, but other uses besides a car lot could be more detrimental.

Mr. McConkey noted the testimony from Ms. Farley that the property is not a desirable lot for a residence. He said that the permitted use in the HD district that probably makes the most sense for this property is a convenience store. He referenced the sections of the UDO that detail the purposes of the Highway District zoning:

(c) Enhancing the value of adjacent lands by preserving and extending the useful life of the highway and thoroughfare systems, avoiding land uses that conflict with the roadside and the surrounding area, and reducing the risks of creating blighted areas...

...

(e) Reserving adequate roadside space through which neighborhood traffic may be admitted to and from the highway and thoroughfare system in a manner that avoids undue traffic concentrations, sudden turnings and stoppings, and other hazards.

Mr. McConkey said that a convenience store would have a greater impact on adjoining property that could be more problematic for the residents on Lillie Liles Road. He said that granting a variance would allow a special use that would contribute more to the purpose, spirit, and intent of the ordinance than some of the permitted uses.

MOTION

Mr. McConkey made a motion in the matter of BA V 2236-16 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 with the recommended staff conditions to allow a reduction in the minimum lot width and frontage along an access road serving 3 or more lots for a Special Use in Highway District from the required 150 feet to 24.91 feet. Mr. Myrick seconded the motion. By a vote of 5-0, the motion passed, and the variance was granted. So ordered.

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. There are few, if any, reasonable uses for the property without a variance. A residence would not be suitable. Other potential uses could be more problematic than a potential use that could be allowed with a special use.

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. The lot was created by NCDOT with a very peculiar size and no potential future access via US 401. The minimal amount of frontage on Lillie Liles Road makes a variance necessary for almost any possible use.

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. The hardship results from the shape as a result of transactions made by NCDOT.

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 purposes of the Highway District zoning district in the ordinance are better met with a variance and a special use than it would be with a permitted use.

CONCLUSIONS OF LAW

Unnecessary hardship would result from the strict application of the ordinance. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. The hardship did not result from actions taken by the applicant or the property owner. 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.

IT IS THEREFORE ORDERED:

(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.

(2) A Special Use Permit for the proposed vehicle sales business must be granted by the Board of Adjustment.

Item 7: New Business – Mr. Finn updated the board regarding recent development activity.

Item 8: Old Business – There was none.

Item 9: Adjournment

Hearing no additional business, the meeting was adjourned at 11:18 a.m.

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REGULAR MEETING
WAKE COUNTY BOARD OF ADJUSTMENT
October 11, 2016

All petitions complete, Tim Clark declared the regular meeting
of the Wake County Board of Adjustment for
Tuesday, October 11, 2016 adjourned at 11:18 a.m.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "Tim Clark", written in a cursive style.

Tim Clark
Wake County Board of Adjustment

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