

MINUTES

**Regular Meeting
Wake County Board of Adjustment
Tuesday, February 14, 2017
9:00 a.m., Room 2700
Wake County Justice Center
300 S. Salisbury St.
Raleigh, North Carolina**

Members Present: (6) Mr. Tim Clark (Chair), Mr. Brenton McConkey (Vice-Chair), Mr. Don Mial, Mr. Billy Myrick, Mr. Will Barker, and Mr. John Barker

Members Not Present: (3) Mr. Blake Cason, Mr. Terence Morrison, and Mr. Trenton Stewart

County Staff Present: (7) Mr. Steven Finn (Land Development Administrator), Mr. Tim Maloney (Planning, Development, and Inspections Director), Ms. Celena Everette (Planner II), Mr. Adam Cook (Planner II), Ms. Stacy Harper (Planner II), Mr. Charlie Johnson (Deputy Fire 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 6 members present.

IN RE MINUTES

Item 2, Approval of Minutes of the January 18, 2017 Meeting

Mr. Mial made a motion to approve the January 18th meeting minutes, and Mr. Myrick seconded. The motion carried unanimously.

Item 3, Approval of Written Decision Granting Special Use in the matter of BA-SU-2237-16

Mr. Myrick made a motion to approve the written decision granting special use in the matter of BA-SU-2237-16, and Mr. McConkey seconded. The motion carried unanimously.

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

Item 4, BA SU-2233-16

Voting Members: Mr. Clark, Mr. McConkey, Mr. Myrick, Mr. Mial, and Mr. Will Barker

Landowner: Lynn & Diane Blalock

Petitioner: Lynn & Diane Blalock

PIN#: 1607-32-6499 & 1607-32-8544

Size: 1.79 acres

Location: The site is located at 6741 Rock Service Station Road.

Zoned: Residential-30 (R-30)

Land Use Classification: Town of Garner Long Range Urban Services Area

The petitioner is requesting special use permit approval as required by section 4-11 of the Wake County Unified Development Ordinance (UDO) to establish a conference center / retreat house.

TESTIMONY AND EVIDENCE PRESENTED

Documentary Evidence: Staff report, PowerPoint presentation, site plans, application, video, aerial map, minutes of the November 10, 2009 Board of Adjustment meeting, relevant sections of the Unified Development Ordinance were shown and/or available.

Testimony:

Mr. Cook, Planner II, entered the staff report and PowerPoint presentation for BA SU-2233-16 into the record along with the minutes of the November 10, 2009 Board of Adjustment meeting. Mr. Clark accepted the staff report, PowerPoint slides, and minutes into the record. Mr. Cook stated the petitioner's name, zoning classification, background and history of the petition. The properties to the north, east, and south are a mix of vacant land and single family residences zoned R-30. The properties to the west across Rock Service Station Road are single-family residences zoned R-30. The site currently consists of two parcels that each contain a single-family residence. The applicant is proposing to convert the existing residences into a conference center / retreat house use to host weddings and corporate events on the site. The residence closest to Rock Service Station Road is a Wake County Historic Landmark and is also listed on the National Register of Historic Places. A Certificate of Appropriateness is required from the Wake County Historic Preservation Commission prior to construction on the site. A special use permit was issued for the site to conduct special events in 2009. The special use permit issued in 2009 has expired. The site plan for the proposed conference center / retreat house shows the two existing residences that are proposed to be used as for the conference center / retreat house. The use requires 20 off-street parking spaces, and the site plans shows twenty-one spaces meeting the required parking requirements. The plan also shows the required 40' Type C landscape buffer along the northern, eastern and southern property lines. A type F street front screen is provided along Rock Service Station Road. The site is currently served and will continue to be served by individual well and septic systems. The site plan shows 29.8% impervious for the site. The maximum impervious allowed is 30%. A dry detention basin stormwater BMP is proposed on the site. Adjoining property owners were notified by mail on January 24, 2017, and a public hearing notice was posted on the property on January 24, 2017.

Mr. McConkey asked if the 2009 special use permit request was identical to the petition. Mr. Cook said that the 2009 special use permit was for special events that were limited to six events per year. The petition is more of a permanent solution to having events rather than a temporary event house. Mr. Cook said that the petition had the same applicant as in 2009.

Mr. Clark asked if the same ordinance requirements were in place in 2009. Mr. Cook said that the ordinance requirements are in a different section as in 2009, but the same requirements are in place.

Mr. Murphy asked the recommended staff condition that the two parcels be recombined. Mr. Cook said that there are two separate parcels that each contain a residence. The two parcels cannot be combined yet because multiple residences on a single lot are not allowed. A condition of the approval is that once the use is changed to a retreat center the lots should be combined prior to the issuance of any building permits. Mr. Cook said that a recombination plat has been submitted for review; it is being held until the special use permit is approved.

Sworn witnesses in favor of the petition:

Ms. Diane Blalock, 6741 Rock Service Station Road, Raleigh, NC 27603

Mr. Lynn Blalock, 6741 Rock Service Station Road, Raleigh, NC 27603

Mr. Blalock said that the house has a lot of family history associated with it, and the petition is about allowing someone in the family to be able to afford the house.

Mr. Clark asked Mr. & Ms. Blalock why they did not move forward with the 2009 special use permit. Ms. Blalock said that they lived in the house, and their children were still there. She said that they will move to another house. Mr. Clark asked if they owned the surrounding property. Mr. Blalock said that his brother lives on the north side, Mr. Jerry Coleman lives on the east side, and they own land on the other side of Mr. Coleman's property.

Mr. McConkey asked about the vision for the two properties and plans for outdoor events. Ms. Blalock said that the building in the rear is the office, and it will look like an old chapel to have weddings or receptions. Most of the events will be inside the building. The larger building will be there for smaller events and for showcasing its historic qualities.

Mr. John Barker asked how the parking would work for events. Ms. Blalock said that 20 parking spaces are required. Mr. Blalock said that the parking spaces provided could accommodate 50-75 people.

Mr. Clark asked if there is a limit on the number of guests. Mr. Cook said that a limit was neither proposed by the applicant nor required by staff. He said that the constraints of the site will dictate the number of guests that the site can handle.

Mr. Murphy asked about the surrounding properties and traffic conditions. Mr. Blalock said that there is R-30 residential development across Rock Service Station Road. He said that his brother and Mr. Coleman live on adjacent parcels. Just south of there is 101 acres that is protected from development by the Triangle Land Conservancy.

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. McConkey said that a very similar use met the special use permit criteria and was already approved by the board in 2009.

The board discussed the five required findings.

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

Mr. McConkey said that the application notes that the site does have two entrances and exits with clear sight lines. The events planned for the site will be small to mid-sized events. The size of the events will not generate significant traffic, and the timing of the events on the weekends will negate any traffic impacts.

Mr. Myrick said that the minutes from the 2009 Board of Adjustment hearing reflected that the traffic patterns were not a problem in the area, and there were no issues with fire 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.

Mr. Clark said that the site plan meets all ordinance requirements according to the staff report.

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

Mr. Clark said that the uses have existed at the site for a long time. The house is on the National Register of Historic Places.

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

Mr. Mial said that the historic home will maintain harmony with the area.

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

Mr. Clark said that the site is in the Town of Garner's Long Range Urban Services Area. The use is not required to be in an activity center.

Mr. McConkey said that the proposed use will celebrate the historic residence and that part of the county.

MOTION

Mr. McConkey made a motion in the matter of BA SU-2233-16 that the Board find and conclude that the petition does meet the requirements of Article 19-23 of the Wake County Unified Development Ordinance and the special use permit be granted with the recommended staff conditions. Mr. Myrick seconded the motion. By a vote of 5-0, the motion passed, and the special use permit was granted. So ordered.

FINDINGS OF FACT:

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

Considerations:

- a. Traffic conditions in the vicinity, including the effect of additional traffic on streets, street intersections, and sight lines at street intersection and curb cuts. The site has two entrances and exits with clear sight lines. The events planned for the site will be small to mid-sized events. The size of the events will not generate significant traffic, and the timing of the events on the weekends will negate any traffic impacts.
- b. Provision of services and utilities, including sewer, water, electrical, garbage collections, fire protection. There are no issues with fire safety.
- c. Soil erosion and sedimentation.
- d. 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. The site plan meets all ordinance requirements.

(3) The proposed development will not substantially injure the value of adjoining property, or is a public necessity. The uses have existed at the site for a long time. The house is on the National Register of Historic Places. The use will celebrate the historic residence.

Considerations:

- a. 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.
- b. Whether the proposed development is necessary to the public health, safety, and general welfare of the community or County as a whole as 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. The historic home will maintain harmony with the area.

Considerations:

- a. 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. The site is in the Town of Garner's Long Range Urban Services Area. The use is not required to be in an activity center.

Considerations:

- a. 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.
- b. Consistency with the municipal and joint land use plans incorporated in the Plan.

CONCLUSIONS OF LAW

The proposed development will not materially endanger the public health or safety. 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 development will not substantially injure the value of adjoining property, or is a public necessity. The proposed development will be in harmony with the area in which it is located. The proposed development will be consistent with the Wake County Land Use Plan.

IT IS THEREFORE ORDERED:

- 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 Current Planning Section of Wake County Planning;
- 2) The petitioner must obtain and complete appropriate permits from the Wake County Inspections Development/Plans/Permits Division and Environmental Services;
- 3) The petitioner must recombine the two existing parcels into one parcel.
- 4) The petitioner must obtain a driveway permit from the North Carolina Department of Transportation.
- 5) The petitioner must obtain a Certificate of Appropriateness from the Wake County Historic Preservation Commission.

Before the next case was heard, Mr. McConkey disclosed that he worked for Parker Poe Adams & Bernstein LLP five years ago. He did not see any reason why this would prevent him from being fair and impartial in evaluating the case. The board did not see any issue with Mr. McConkey participating in the case.

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

Item 5, BA SU-2239-16

Voting Members: Mr. Clark, Mr. McConkey, Mr. Myrick, Mr. Mial, and Mr. Will Barker

Landowner: Creedmoor Road Properties, LLC

Petitioner: Parker Poe Adams & Bernstein, LLP – Jamie Schwedler, Esq.

PIN#: 0798-37-9516, 0798-37-7506, 0798-37-4577 & 0798-37-5721

Size: 4.14 acres

Location: The site is located at 8801 Creedmoor Road.

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

Land Use Classification: Non-urban area (Falls Lake Watershed)

The petitioner is requesting Special Use Permit approval as required by section 7-12 of the Wake County Unified Development Ordinance (UDO) to change an existing nonconforming use to another nonconforming use of equal or less intensity. The existing nonconforming use consists of Diverse Electric Company and Diverse Security Systems and contains a retail showroom for the electric and security companies and related office space, parking and storage. The proposed nonconforming use is boat sales and services located in the vehicle sales and service use category of the UDO use table.

TESTIMONY AND EVIDENCE PRESENTED

Documentary Evidence: Staff report, PowerPoint presentation, site plans, application, video, aerial map, Exhibit 1 – PowerPoint slides submitted by Ms. Schwedler, relevant sections of the Unified Development Ordinance were shown and/or available.

Testimony:

Mr. Cook, Planner II, entered the staff report and PowerPoint presentation for BA SU-2239-16 into the record. Mr. Clark accepted the staff report and PowerPoint slides into the record. Mr. Cook stated the petitioner's name, zoning classification, background and history of the petition. I-540 is located directly north of the subject property. To the east across Creedmoor Road is a mix of vacant property and single-family residences. To the south across Baileywick Road is vacant wooded property with single family homes farther to the south. To the west across Old Creedmoor Road are single-family residences. The subject site was originally zoned Residential-40 (R-40). The site was rezoned to Highway District (HD) in 1979. The subject site received a special use permit in 1981 to allow for a retail / wholesale service trade establishment. In 1982, the site was rezoned back to R-40 when HD zoning was removed from watershed areas. In 1984 the property was again rezoned from R-40 to Residential-40 Watershed (R-40W). In 1986 the Special Highway Overlay District (SHOD) was applied to the property. The retail / wholesale service trade establishment use obtained by a special use permit in 1981 became a non-conforming use when the property was rezoned to R-40 in 1982. The existing nonconforming use consists of Diverse Electric Company and a security company and contains related office space, parking, and storage. The proposed nonconforming use is boat sales and services located in the vehicle sales and service use category of the UDO use table. The property has frontage on Creedmoor Road and Baileywick Road. The driveway access to the property is off of Baileywick Road. The proposed boat sales and service use will be using the existing facilities, and no new impervious surface is proposed. Existing stormwater BMPs will continue to be utilized for the site. No new landscaping is required or proposed for the site. Off-street parking is required at the following rates: 3 spaces per service bay and 1 space per 1,000 feet of display area. As proposed, the facility would be required to provide 5 parking spaces. Fifteen existing parking spaces are shown on the site plan. The site plan is in compliance with parking requirements. The site is currently served and will continue to be served by individual well and septic systems. Adjoining property owners were notified by mail on January 24th, and a public hearing notice was also posted on the property on the 24th.

Mr. Clark asked about the current use. Mr. Cook said that the nonconforming use has been there for some time, and it still operating. There have not been any lapses in the nonconforming use. Mr. Clark asked if the site is in Raleigh's Urban Services Area. Mr. Cook answered that the site is in the non-urban area of the Falls Lake Watershed.

Ms. Jamie Schwedler, an attorney with Parker Poe Adams & Bernstein, LLP at 301 Fayetteville Street, Raleigh, NC, came forward to address the board.

Sworn witnesses in favor of the petition:

William Rhett Butler, 8705 Davishire Drive, Raleigh, NC 27615

John Hutton, 4708 Stiller Street, Raleigh, NC 27609

Jim Allaire, 703 Huntsworth Place, Cary, NC 27513

Belinda Bryan, 3032 Lattyes Lane, Raleigh, NC 27613

Ms. Schwedler said that the proposed use is the type of use that the ordinance was designed to capture. The site is completely surrounded by roads, including a major road, but the site is in the residential watershed zoning category. Ms. Schwedler said that the site would never be a residential use based on the intensity of the uses around it. Ms. Schwedler submitted Exhibit 1 – PowerPoint slides. Mr. Clark accepted exhibit 1 into the record. Ms. Schwedler said that the Special Highway Overlay District is another factor that makes it very unlikely that the site will be used for single-family residential development. She described the site using an aerial map, and she noted the green buffer to the west of the parking lot that buffers the site from the western property line. The various tenants over the past 20 years have included electric, lighting, and security companies. At times there have been up to 200 employees at the site, and over 80 service vehicles entering and exiting the site daily. Ms. Schwedler said that the proposed use by ProMarine will be specialized boat sales and service. ProMarine will use the existing facilities, there will be no construction of additional buildings, and no increase in impervious surface. She said that ProMarine will employ up to eight employees, it will have lower traffic volume, less congestion during peak hours, and less of an impact on the watershed.

Ms. Schwedler called Mr. Hutton forward to testify. Mr. Hutton said that he is one of the three owners of ProMarine. He said that he has an undergraduate degree in biology and a master's degree in wetlands ecology. He stated that also owns an environmental engineering company that focuses on water quality restoration. He said that he has 17 years of experience in water quality restoration. Ms. Schwedler tendered Mr. Hutton as an expert witness in water quality restoration principles. Mr. Clark accepted Mr. Hutton as an expert witness. Mr. Hutton said that ProMarine sells a specific line of boats that are high end water sports tow boats. Last year, ProMarine sold 36 boats. Since they are selling maybe one boat per week, the amount of traffic generated is not high. Mr. Hutton said that they would also be servicing the boats in the rear of the facility, and there will be a small retail operation. He said that he accepts the recommended staff condition that the storage of boats on the site would be limited to sales and servicing of boats. They will not change anything on the site; there will be a showroom in the front, and service in the rear of the facility. The location was selected since it is within ten minutes of the two Falls Lake boat ramps, and it is in an area where people live. His due diligence included reviewing site plans, utility bills, and the existing impervious surface on the property which would not be enlarged. He said that the electrical company has had 150-200 employees in the past including as many as 80 service vans that would exit and enter the facility at peak rush hour times. That activity created traffic on Baileywick Road and the intersection with Creedmoor Road. Mr. Hutton said that they looked at the impact that the proposed use would have on the site. Since there will be no change to the existing facilities, the impervious surface will not be increased. He said that parking 80 vans on the property increases the runoff from the property. He said that there will be much fewer vehicles parked there than have been parked there historically. They would maintain all of the landscaping to limit any soil erosion. The boats that would be serviced would happen indoors. All engine oil and transmission oil will be stored in a tank on the property. An outside vendor will come to drain the tank once a month to be recycled offsite. ProMarine will only have as many as eight employees with limited customers coming in on a daily basis; as a result, utility usage should significantly decrease. Ms. Schwedler asked Mr. Hutton about noise. Mr. Hutton said that Creedmoor Road has 32,000 cars per day, and I-540 has 90,000 cars per day. He said that what you hear when you are at the property is road noise. The boats will be serviced inside the facility. Mr. Hutton said that 80% of the servicing is electrical work which produces no noise. He said that based on his experience the environmental impacts of the proposed use will be less intense than the existing use. He said that they will maintain the existing dry pond stormwater BMP, and they will install a rain cistern to capture runoff from the roof for use in landscaping and washing boats. Capturing the rainfall will reduce peak runoff from the property. Mr. Hutton said that they toured the surrounding properties as part of their due diligence. He said that adding the boat sales and service fits the feel for the area, which includes a nearby golf course and the lake. He said that there have not been boat sales and service operations for boats of this kind in Raleigh and Wake County, so this will serve the local boating community.

Mr. McConkey asked what types of boats would be serviced. Mr. Hutton said that they would primarily be servicing the types of boats that they sell. There will be some minor servicing of other types of boats; about 70-80% of the boats that are serviced are the types of boats that they sell. The other boats that would be serviced would be similar water sports tow boats, or simple oil changes and winterizations for outboard motor

boats. Mr. McConkey asked if all of the sales and service would be happening inside the one building. Mr. Hutton said that the front part of the building would be the showroom, and the rear 40% of the building would be used for service. He said that they could fit about 8 boats in the showroom. The remainder of their boat inventory would be parked in the back gravel lot or on the north side nearest I-540.

Mr. Myrick asked if they would be storing any boats. Mr. Hutton said that the only boats on the property would be the ones that they are selling or servicing.

Ms. Schwedler called Mr. Allaire forward to testify. Mr. Allaire said that he has been a commercial real estate broker in the area for 25 years. He said that he is a managing director at Foundry Commercial Real Estate. He said that he is a licensed real estate broker in North Carolina and South Carolina, and he has an SIOR designation. He said that he advised clients on site selection. He said that he advises clients on the impacts of site features on the values of surrounding properties. Ms. Schwedler tendered Mr. Allaire as an expert witness in site evaluation and real estate sales. Mr. Clark accepted Mr. Allaire as an expert witness. Mr. Allaire said that ProMarine hired him as a buyer's representative to find a location in Wake County for boat sales and service. Mr. Allaire said that the subject location fit the needs based on location at I-540 and Creedmoor Road, access, lack of boat sales and service, and access to Falls Lake. He said that the existing building would work very well for boat sales and service. Since the site is surrounded by four roads, he did not see any impact on the neighborhood around the site. He said that the neighborhood is low density residential to the west, and undeveloped and heavily wooded land to the south and across Creedmoor Road. Ms. Schwedler and Mr. Allaire displayed photographs of the buffer between the site and the adjacent residential property. Mr. Allaire said that the distance from the adjacent residence to the edge of the parking lot is approximately 250 feet, and he said that you could hardly see through the trees and bushes in the buffer. Ms. Schwedler asked if he had any concerns about the effect of the proposed use on the value of adjacent properties. Mr. Allaire said that he did not think that the proposed use would have a negative impact on adjacent property values due to the surrounding roads, buffers, landscaping, and the lower intensity use. He said that the proposed use would have less of an impact on the surrounding properties than the current use.

The board took a brief recess.

Ms. Schwedler called Ms. Bryan forward to testify. Ms. Bryan said that she is an owner of the property, and she has been an owner of the property since 1996. She said that several businesses have been on the property including retail, service, electrical, and security companies. There have been as many as 200 service technician employees on the site. There were as many as 80 service vehicles on the site utilized by the service technicians. The vehicles were parked in the gravel parking area. The employees would pick up the vehicles during morning rush hour and return them during the evening rush hour. She said that the use existed on the site for around 20 years. Ms. Bryan said that there has not been a lot of change in the area except for the addition of I-540 and the related increase in traffic. She said that the addition of I-540 has added noise to the site at all times of the day. She said that she has seen an increase in the amount of boaters using Falls Lake. Ms. Bryan said that she has not heard of any opposition to the petition.

Ms. Schwedler called Mr. Butler forward to testify. Mr. Butler said that he has a bachelor's degree in biosystems engineering and a master's degree in civil engineering. He said that he has 15 years of experience in stormwater engineering. Ms. Schwedler tendered Mr. Butler as an expert witness in stormwater analysis and engineering. Mr. Clark accepted Mr. Butler as an expert witness. Mr. Butler said that he was asked to prepare plans for the existing and proposed conditions for the site. He said that there would be no increase in impervious surface coverage for the proposed use. Ms. Schwedler asked if the proposed use would result in any adverse change to the water quality. Mr. Butler said that there will be less discharge of pollutants, and any leaks on the inboard boats are contained within the vehicle. He said that the plan will not have any negative impact on water quality, soil erosion, or sedimentation in the area.

Mr. Clark asked for a description of the cistern. Mr. Butler said that the cistern will be a large storage container connected to the roof leaders to capture any rain coming from the roof. The rain that is captured will be stored for landscaping onsite or for washing boats.

Ms. Schwedler summarized her case:

- The proposed use would have less of an adverse impact than the current use.
- There would be no impact on impervious surface.
- There would be fewer parked vehicles on the site.
- There would be less pollutants getting into the water system.
- There would be reduced traffic.
- The proposed use should have less noise than the current use.
- The proposed use is more compatible with the surrounding neighborhood than the current use.
- The location is near the Falls Lake recreational area.
- There is a need for boat sales and service in the area.
- The proposed use would not endanger the public health or safety.
- There would be no construction of additional buildings.
- There would be no negative impacts on services and utilities, soil erosion and sedimentation, or water supplies.
- The hazardous materials will be taken care of, properly stored, and then taken offsite by a third party to be recycled.
- The proposed use will not substantially injure the value of neighboring property.
- The proposed use does not present excessive noise, light, or traffic.
- The proposed use will be in harmony with the surrounding area. The location is within close proximity to Falls Lake.
- There is a demonstrated need for boat sales and service in the area.
- There are similar recreational uses in the area.
- The proposed use is consistent with the Wake County Land Use Plan.
- The primary goal of the Land Use Plan is to maintain water quality in Falls Lake.
- A cistern system will be used to treat water onsite.

Mr. Clark asked what the hours of operation would be. Mr. Hutton answered that they would be open Tuesday through Friday from 9 a.m. until 5:30 p.m., and on Saturday from 9 a.m. until 2:30 p.m.

Sworn witnesses in opposition to the petition:

Shirley Mitchell, 8809 Old Creedmoor Road, Raleigh, NC 27613

Timothy James, 9904 Baileywick Road, Raleigh, NC 27613

Mark Edmond, 9916 Baileywick Road, Raleigh, NC 27613

Basil Lewis, 9920 Baileywick Road, Raleigh, NC 27613

Ms. Mitchell said that she received a notification letter about the hearing, but some of her neighbors did not. She said that the posted sign was not visible. She said that her house sits on a hill higher than most of her neighbors. She said that the parking lot was not part of the building 20 years ago; it was residential. She questioned where the boats would be housed. She expressed concern about traffic coming off of I-540 and accidents at the intersection with Creedmoor Road. Accidents at the intersection can create 2-3 hours of congestion. Ms. Mitchell expressed concern about the watershed; she said that there is already a high level of pollution. She said that a private school is being built west on Baileywick Road, and another public school will be at Baileywick Road and Strickland Road. She said that there have been break-ins in the area, and Old Creedmoor Road has been used for prostitution, drug dealing, and trash dumping. Ms. Mitchell expressed concern about parking and that people will park their cars along Old Creedmoor Road. She expressed concern about oil leaking and environmental issues. The area has deer and birds. Ms. Mitchell said that the proposed use is not a good idea in the area, and she fails to believe that the proposal will not injure the value of nearby property.

Mr. Lewis said that his house is three doors down from the location. He agreed with Ms. Mitchell's statements. He expressed concern that the proposed use will increase the visibility of the area, and this visibility will lead to more visitors and crime. He said that if there is a boat show visitors would park on the street in his yard. He said that there is a lot of runoff from the yard when it rains which can saturate the ground. He said that the water that will be on the lot can impact the drinking water.

Mr. James said that he has not had any issues with the electrical company. The company did not generate any noise. He said that the boat sales and service will generate noise which he is concerned about. He said that the increased noise can affect the property value of his house. He said that there is not a good buffer between the property and his house, and the photographs shown of the buffer are old. He said that the proposed use will jeopardize the harmony of the area.

Mr. Edmond said that he lived two properties down from the location. In the three years he has lived there, Mr. Edmond estimated that there are approximately 20 service vehicles on the site. He said that the topography of the site will make any boats parked outside noticeable. He said that it can be hard to turn left onto Creedmoor Road from Baileywick Road since there is no left turn signal. A boat trying to make that turn could be stuck for several cycles backing up traffic, or creating opportunities for accidents when making the turn. He questioned whether there would be weekend events planned at the site. He disagreed with Ms. Schwedler's statement that the boat sales and service would be in harmony with a golf course.

Mr. Clark asked Mr. Cook about the notification of the public hearing. Mr. Cook said that staff mailed notification letters to all adjacent property owners. He said that the two signs were posted at the property on January 24th.

The board took a brief recess.

Ms. Schwedler said that the mailed and posted notice of the hearing was properly served. She said that the applicant has provided competent, material, and substantial evidence on several topics including property values, environmental impacts, and stormwater analysis. She said that the opponents have not presented any competent, material, and substantial evidence. She said that they cannot be held responsible for offsite criminal activity. She noted the distance of approximately 750 feet from the building where the servicing of boats would take place to the nearest house, and any possible noise would be drowned out by the noise of I-540. Ms. Schwedler stated that Mr. Butler took the photographs during his site visit in December.

Mr. Mial asked how many employees would be there. Ms. Schwedler answered that as many as 8 employees would work there, though not all at the same time. Mr. Mial asked about the anticipated traffic generated from the use. Mr. Hutton said that they may see 2-4 people in a day.

Mr. Clark asked if there would be special events. Mr. Hutton said that all of their special events are held offsite at local lake areas. The events would not produce any traffic to the site.

Mr. McConkey asked what type of buyers they expect. Mr. Hutton said that the majority of their buyers are repeat buyers and not people driving by the facility to make an impulse purchase. He said that there will be 15 parking spots on the property for customers, and he does not expect to ever fill all of the parking spots. Mr. McConkey asked if the building where the servicing will occur will be enclosed. Mr. Hutton said that there will be a garage door at the rear of the facility to bring boats in, and the garage door will be closed to maintain the heating and cooling within the building. He added that any work to the exterior of the boats is handled at a different location.

Ms. Schwedler said that there will be flexibility for the owners to bring boats in during non-peak hours.

Mr. Clark asked if the driveways will be gated. Mr. Hutton said that the main driveway will be a wrought iron gate which will be closed during non-business hours. The rear 2.5 acres will be have a high security fence with cameras.

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. McConkey said that the proposed use will be equal or less intense than the existing use. He said that the neighbors, Ms. Mitchell, Mr. James, Mr. Edmond, and Mr. Lewis, testified that they had not had any issues with the electrical company that has been located there.

Mr. Clark said that the amount of traffic generated by the proposed use is minimal.

Mr. McConkey said that the site will stay the same regarding the building and impervious surface.

Mr. Mial said that the traffic on Creedmoor Road can be terrible. He said that he thinks the proposed use may solve some of the concerns that the neighbors may have.

Mr. Myrick said that traffic will be reduced since there will be less trucks leaving and returning to the site each day.

Mr. McConkey said that the proposed use is a retail business, but it may only sell one boat per week. He said that the traffic will be reduced. There was testimony about removing the vehicles from the site, the installation of a rain cistern, and no increase in the impervious surface. He said that the testimony shows that there should be reduced stormwater runoff and reduced discharge of pollutants from the site.

MOTION #1

Mr. Clark made a motion in the matter of BA SU-2239-16 that the Board find and conclude that the proposed non-conforming use is of equal or less intensity than the existing non-conforming use. In making the determination of equal or less intensity, the Board determines that the change will have less of an adverse impact on those most affected by it and will be more compatible with the surrounding neighborhood than the current non-conforming use in operation. Mr. McConkey seconded the motion. By a vote of 5-0, the motion passed.

BOARD DISCUSSION

The board discussed the five required findings.

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

Mr. Mial said that there is a pre-existing facility. No construction will take place. There will be fewer employees and less traffic. Any waste will be properly disposed.

(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. Clark said that the parking requirements have been met. The hours of operations are limited.

Mr. Barker said that the approved finding by the board of equal or less intensity demonstrates that this finding has been met.

Mr. Clark said that measures are in place for stormwater management.

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

Mr. Clark said that Mr. Allaire testified that the proposed use would not injure the value of adjoining property.

Mr. McConkey said that there is an existing commercial use, and the board already found that the proposed use will be less intense. He noted the buffers, landscaping, and fencing. He said that there are some vacant properties surrounding the site. He added that the property is surrounded by roads on all four sides.

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

Mr. Clark said that the proposed use is less intense than the current use.

Mr. McConkey said that the servicing of boats will occur in an enclosed area, so the noise will be minimal.

Mr. Mial said that the I-540 will create more noise than the proposed use will.

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

Mr. Clark said that the use predates the water supply watershed zoning which made the use non-conforming.

MOTION #2

Mr. Will Barker made a motion in the matter of BA SU-2239-16 that the Board find and conclude that the petition does meet the requirements of Article 19-23 of the Wake County Unified Development Ordinance and the special use permit be granted with the recommended staff conditions. Mr. Myrick seconded the motion. By a vote of 5-0, the motion passed, and the special use permit was granted. So ordered.

FINDINGS OF FACT:

(1) The proposed development will not materially endanger the public health or safety. There is a pre-existing facility. No construction will take place. There will be fewer employees and less traffic. Any waste will be properly disposed.

Considerations:

- a. Traffic conditions in the vicinity, including the effect of additional traffic on streets, street intersections, and sight lines at street intersection and curb cuts.
- b. Provision of services and utilities, including sewer, water, electrical, garbage collections, fire protection.
- c. Soil erosion and sedimentation.
- d. 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. The parking requirements have been met. The hours of operations are limited. The board made a finding that the proposed use is of equal or less intensity. Measures are in place for stormwater management.

(3) The proposed development will not substantially injure the value of adjoining property, or is a public necessity. There was expert testimony that the proposed use would not injure the value of adjoining property. There is an existing commercial use, and the proposed use will be less intense. There are buffers, landscaping, and fencing in place. There are some vacant properties surrounding the site. The property is surrounded by roads on all four sides.

Considerations:

- a. 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.

b. Whether the proposed development is necessary to the public health, safety, and general welfare of the community or County as a whole as 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. The proposed use is less intense than the current use. The servicing of boats will occur in an enclosed area, so the noise will be minimal.

Considerations:

- a. 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. The use predates the water supply watershed zoning which made the use non-conforming.

Considerations:

- a. 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.
- b. Consistency with the municipal and joint land use plans incorporated in the Plan.

CONCLUSIONS OF LAW

The proposed development will not materially endanger the public health or safety. 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 development will not substantially injure the value of adjoining property, or is a public necessity. The proposed development will be in harmony with the area in which it is located. The proposed development will be consistent with the Wake County Land Use Plan.

IT IS THEREFORE ORDERED:

- 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 Current Planning Section of Wake County Planning;
- 2) The petitioner must obtain and complete appropriate permits from the Wake County Inspections Development/Plans/Permits Division and Environmental Services.
- 3) The storage of boats on the site is limited to sales and servicing of boats by the petitioner.

Before the next case was heard, staff members Ms. Harper and Mr. Finn were duly sworn.

Item 6, BA A-2247-17

Voting Members: Mr. Clark, Mr. McConkey, Mr. Myrick, Mr. Mial, and Mr. John Barker

Landowner: Jack Smith LLC

Petitioner: Tim Sivers

PIN#: 0733-65-9170

Size: 5.47 acres

Location: The site is located at 2117 NC 55 Highway in Cary.

Zoned: Highway District (HD)

The petitioner is appealing the determination of Planning staff, as allowed by Article 19-41 *Appeals of Administrative Decisions*, that the required landscape bufferyard cannot be located in an easement off the site proposed for development.

TESTIMONY AND EVIDENCE PRESENTED

Documentary Evidence: Staff report, PowerPoint presentation, site plan, application, video, relevant sections of the Unified Development Ordinance were shown and/or available.

Testimony:

Ms. Harper, Planner II, entered the staff report and PowerPoint presentation for BA A-2247-17 into the record. Mr. Clark accepted the staff report and PowerPoint slides into the record. Ms. Harper stated the petitioner's name and history of the petition. Ms. Harper explained that while this property developer has filed an appeal to staff's decision, the decision of the board would not be site specific as it was not a variance. The board's decision would apply to all parcels within the County's zoning jurisdiction. The appellant was developing a self-service storage facility at 2117 NC Highway 55 in Cary. The site was recently rezoned to accommodate for the self-service storage facility. Wake County received a Special Use Permit application on December 5, 2016 to establish a self-storage facility on the subject parcel. The submitted site plan proposed a three-story 108,000 square foot building on the 5.47 acre lot. This would constitute a floor area ratio of 45.3 percent, classifying the proposed use as high-intensity non-residential as outlined in the bufferyard table in UDO Article 16-10-2-(D). Due to the adjoining property to the south being classified as low-density residential, an 80-foot Type A bufferyard is required between the self-service storage facility and the property to the south. The applicant is requesting the bufferyard depth be reduced to 60 feet with the construction of a wooden fence for a portion of the required southern buffer near the right-of-way for NC 55 Highway. The applicant is proposing that part of this required buffer be located within a landscape easement on the adjacent residential property. On January 23, 2017, the applicant was notified via email that staff would not support the proposed landscape easement as being consistent with the intent of the bufferyard standards in the UDO. The applicant was also notified that the staff report presented as evidence to the Board of Adjustment would reflect this determination, thus providing the position that the application did not meet the required conclusion of approval for a Special Use Permit outlined in UDO Article 19-23-8 (B) which states "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." Ms. Harper stated that staff has consistently interpreted the UDO to mean all landscape buffers have to go on the interior perimeter of the parcel under development. She said that the interpretation has been made considering the following sections of the UDO: 16-10-2 (A)(1), 16-10-3 (C)(1), 21-11.

Mr. McConkey asked if there are other jurisdictions that allow buffering to be located offsite. Ms. Harper said that said that all of the 8 or 9 jurisdictions in Wake County that were surveyed do not allow buffering to be located offsite.

Mr. Will Barker asked if there was a potential buffer that could be installed onsite to meet the requirements without needing the easement. Ms. Harper said that the only reduction allowed would be for a fence or wall located onsite; such a reduction would bring the required buffer to 60 feet.

Mr. John Barker asked if purchasing the easement is an option. Ms. Harper said that purchasing a portion of the adjacent property is one possible solution.

Sworn witness in favor of the appeal:

Tim Sivers, Horvath Associates, PA, 16 Consultant Place, Suite 201, Durham, NC 27707

Mr. Sivers said that he is a Registered Landscape Architect.

Ms. Jamie Schwedler, an attorney with Parker Poe Adams & Bernstein, LLP at 301 Fayetteville Street, Raleigh, NC, came forward to address the board on behalf of the appellant. She said that a Special Use Permit application was submitted in December. On the site plan, the building needs to be angled to avoid the buffer from the stream. Along with the other buffer and parking requirements, it is a tight squeeze to fit the building on the site. Ms. Schwedler said that purchasing property from the adjacent site is an option that is not currently available. She said that the Durham UDO allows offsite easements to make up for the buffer. She said that the intent is to protect the higher intense use from the adjacent uses. Some jurisdictions have recognized that the intent of the buffering can be met by using an offsite easement if the adjacent property owner is willing to place the easement on their site. Ms. Schwedler said that the easement could have requirements that the buffer needs to be maintained, and the easement would be connected to the special use permit. This would give the county the legal protection that the same protection is in place even though the buffer is not within the same parcel. She said that by the landowner consenting to the easement, the landowner would be protected as well. Ms. Schwedler said that the UDO states that the buffer needs to be "along the perimeter," but staff's interpretation has been that the buffers need to be "within" the perimeter. She stated three reasons why she believed staff's interpretation to be in error:

1. The language of the UDO does not require the buffer to be completely within the parcel line. The words in the UDO are "along the perimeter of a lot or parcel." Ms. Schwedler cited case law (*Yancey v. Heafner*) that says that where conduct is not expressly prohibited by a zoning ordinance or a land use ordinance, courts will interpret the ordinance in favor of the landowner.
2. Other portions of the UDO (such as 16-10-2(C)(1) and 5-30-5(C)(1)(a)) use the word "within" along with specific guidelines on where the bufferyards can be located. Those words and restrictions were not chosen for the part of the UDO in question.
3. The appellant's interpretation still meets the intent of the UDO. The intent that the more intense use be buffered from the less intense use does not dictate that the bufferyard should be within the parcel. Ms. Schwedler said that the intent is that the property owner who is developing the site should take the burden of buffering itself from the existing owner. She said that as long as the adjacent property owner is agreeable to the location of the buffer and agreeable to entering into a legal document stating that they are agreeable to it, it would not matter which side of the property line the buffer is located.

Mr. Clark asked for more information regarding the Durham UDO. Mr. Siverson said that the Durham UDO allows an offsite project boundary buffer through site plan approval using easements recorded through a plat.

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. Clark said that the requirement should be that the buffer be onsite.

Mr. McConkey said that the point is to have the buffer between the two uses regardless of where the property line is in relation to the buffer. He said that did not believe that the Board of Commissioners intended to allow this practice. Mr. Clark agreed. Mr. McConkey cited the multiple illustrations that depict that the buffers are interior to the property line.

Mr. Myrick questioned whether granting the appeal would allow a landowner to put all of their buffer outside their property line if they got an easement all the way around the property.

Mr. Mial asked about the possibility of purchasing the easement. Mr. Clark reopened the public hearing.

Ms. Schwedler said that the purchasing the easement is not an option that was available. She added that the appellant was not asking for an interpretation that the buffer be completely outside the property line. She said that a portion of the buffer would need to be within the property line.

Mr. Clark closed the public hearing.

MOTION

Mr. Mial made a motion that based on the applicable Wake County Unified Development Ordinance provisions, and on the evidence submitted in the matter of BA A-2247-17, that the Board find and conclude that the Planning staff's determination should be upheld and the decision that a required landscape bufferyard cannot be located in an easement on an adjacent parcel is affirmed. The motion to affirm is based on the following findings of fact and conclusions of law related to evidence, including the multiple illustrations in the UDO that depict that the buffers are interior to the property line, that the decision not to allow a required landscape bufferyard on an adjacent parcel was not made in error and therefore the proposed development does not comply with the requirements of Article 16 of the Unified Development Ordinance. Mr. Myrick seconded the motion. By a vote of 5-0, the motion passed, and the staff's determination was upheld. So ordered.

Item 7: New Business – Mr. Finn reported that there would be a board meeting in March. Mr. O'Melia recognized Mr. Clark for his years of service on the board, and he updated the board on the pending board appointments by the Board of Commissioners.

Item 8: Old Business – There was no old business.

Item 9: Adjournment

Hearing no additional business, the meeting was adjourned at 12:53 p.m.

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REGULAR MEETING
WAKE COUNTY BOARD OF ADJUSTMENT
February 14, 2017

All petitions complete, Tim Clark declared the regular meeting
of the Wake County Board of Adjustment for
Tuesday, February 14, 2017 adjourned at 12:53 p.m.

Respectfully Submitted:



Tim Clark
Wake County Board of Adjustment

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