

MINUTES

**Regular Meeting
Wake County Board of Adjustment
Tuesday, March 14, 2017
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. Don Mial, Mr. Will Barker, and Mr. John Barker

Members Not Present: (4) Mr. Blake Cason, Mr. Terence Morrison, Mr. Billy Myrick, and Mr. Trenton Stewart

County Staff Present: (6) Mr. Steven Finn (Land Development Administrator), Mr. Tim Maloney (Planning, Development, and Inspections Director), Ms. Celena Everette (Planner II), Mr. Chris Record (Planner I), Ms. Kathy Williams (Planner I), 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 February 14, 2017 Meeting

Mr. Mial made a motion to approve the February 14th meeting minutes, and Mr. Will Barker seconded. The motion carried unanimously.

Item 3, Approval of Written Decision Granting Special Use in the matter of BA-SU-2233-16

Mr. Will Barker made a motion to approve the written decision granting special use in the matter of BA-SU-2233-16, and Mr. Mial seconded. The motion carried unanimously.

Item 4, Approval of Written Decision Granting Special Use in the matter of BA-SU-2239-16

Mr. Mial made a motion to approve the written decision granting special use in the matter of BA-SU-2239-16, and Mr. Will Barker seconded. The motion carried unanimously.

Item 5, Approval of Written Decision Upholding Staff Determination in the matter of BA-A-2247-17

Mr. McConkey made a motion to approve the written decision upholding staff determination in the matter of BA-A-2247-17, and Mr. John Barker seconded. The motion carried unanimously.

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

Item 6, BA V-2246-17

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

Landowner: Howard and Ivette Harnett

Petitioner: W. Travis Barkley

PIN#: 1719-68-7638

Size: 1 acre

Location: The site is located at 1628 Brook Run Drive.

Zoned: Residential-80 Watershed (R-80W)

Land Use Classification: Non-Urban Area/Water Supply Watershed (NUA/WSW)

This is a request for a variance from Article 5-11-1, Residential Watershed Districts, which requires buildings in Residential-80 Watershed zoning to be setback at least 20 feet from any side lot line. The applicant is requesting a variance to allow the existing residential home to encroach 6.4 feet into the required side setback. The request would allow the home to have a 13.6 foot side setback.

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.

Testimony:

Mr. Record, Planner I, entered the staff report and PowerPoint presentation for BA V-2246-17 into the record. Mr. Clark accepted the staff report and PowerPoint slides. Mr. Record stated the petitioner's name, zoning classification, background and history of the petition. The property owners are the fourth owners of the parcel. A permit for a residence on the property was finalized in 1977. A subsequent permit for the construction of an attached garage on the southern portion of the residence was applied for in 1982. At the time, the property was zoned Residential-40, which would have required a 15 foot side setback. The garage was constructed and the permit received signoffs from Wake County on all inspections except the building final. The permit was later voided. All properties surrounding the subject parcel are residential and zoned Residential-80 watershed. A 1985 survey of the property showed that the garage addition was 13.6 feet from the side property line, meaning that the building encroached 1.4 feet into the side setback under Residential-40 zoning. Under the property's current zoning classification of Residential-80 Watershed, the building encroaches 6.4 feet into the required 20 foot setback. Notification letters to adjoining property owners were mailed on February 21, 2017. A public hearing placard was placed on the site on February 21, 2017.

Mr. McConkey inquired about how this property came to the county's attention. Mr. Record said that the property owner approached the county during the due diligence period while trying to sell the house.

Mr. John Barker asked about the topography of the lot. Mr. Record said that the property slopes off to the back. He said that it is mostly flat where the encroachment is.

Mr. Clark asked who constructed the garage. Mr. Record answered that the second owner constructed the garage; the current homeowners are the fourth owners of the property.

Sworn witness in favor of the petition:

W. Travis Barkley, 8801 Fast Park Drive, Suite 301, Raleigh, NC 27617

Mr. Barkley stated that he is the attorney for the owners, Mr. & Mrs. Harnett. He said that the owners are trying to sell the house, and the real estate agent for the buyers inquired about the permitting. It was discovered that the garage had never been permitted. He said that the owners attempted to get a building permit but were unable to do so due to the encroachment into the setback. He said that the owners would suffer a significant hardship since there is a contract in place with a closing date set to sell the home. He said that the owners had nothing to do with the garage being built into the setback, and they had no knowledge of the encroachment when they purchased the property. He said that in order to sell the home if the variance were denied they would potentially need to remove the garage. He said that the garage has been in existence for about 30 years.

Mr. McConkey asked why the encroachment wasn't caught earlier during other sales of the property. Mr. Barkley said that real estate attorneys may not search for permitting issues, but real estate agents may search for permitting issues. He suspected that past real estate agents did not search for any permitting issues. The buyer's real estate agent discovered the permitting issue. Mr. McConkey asked about the topography of the site. Mr. Barkley said that the property slopes down in the back behind the house. Mr. McConkey noted that

the house is situated closer to the narrow end of the property. He added that the house to the south is situated closer to the southern property line which provides more buffer on the lot than if it were closer to the northern property line. Mr. Barkley said that there are landscape buffers between the garage and the neighboring lot.

Mr. Clark asked about the front yard setback. Mr. Record said that the setback is 30 feet.

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 there are issues with the topography and the shape of the lot. He said that the lot is much narrower closer to Brook Run Drive where the house is located. He said that the house to the south is pushed closer to its southern property line resulting in a larger buffer between the two houses.

Mr. Clark said that denial of the variance would cause a hardship on the owners since it would prevent the sale of the property.

Mr. John Barker said that the property has been sold twice before, and the issue had not come up. He said that this is a situation that the property owners did not create. He said that the zoning changed since the garage was constructed which changed the encroachment from 1.6 feet to 6.4 feet.

MOTION

Mr. McConkey made a motion in the matter of BA V 2246-17 that the Board find and conclude that the petition does meet the requirements of Article 19-26 of the Wake County Unified Development Ordinance and North Carolina General Statute Section 160A-388(d), and that the requested variance be granted to allow the encroachment of an existing building into the side setback, reducing the side setback for this lot from the required 20 feet to 13.6 feet, with the recommended staff conditions. Mr. Mial 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 a portion of the garage or the entire garage be removed. The current owners would be unable to sell the property without the variance.

(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 shape and topography of the lot are peculiar. The lot is narrower closer to Brook Run Drive where the house is located, and the property slopes down behind the house.

(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 garage was constructed by the second property owner; the current property owners are the fourth owners of the property. The zoning of the property changed which affected the size of the encroachment.

(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 location of the residence on the adjoining southern property is such that there is still a substantial buffer in place between the garage and the adjoining residence.

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 7: New Business – Mr. Finn updated the board on recent development trends. Mr. O’Melia updated the board regarding appointments that the Board of Commissioners made to the Board of Adjustment.

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

Closed Session – Mr. McConkey made a motion to go into closed session to consult with the board’s attorney regarding an appeal of the board’s decision in BA SU-2227-16 that was heard in Wake County Superior Court. Mr. Clark seconded the motion. The motion passed unanimously.

Following the closed session, the board returned to open session.

Item 9: Adjournment

Hearing no additional business, the meeting was adjourned at 9:42 a.m.

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REGULAR MEETING
WAKE COUNTY BOARD OF ADJUSTMENT
March 14, 2017

All petitions complete, Tim Clark declared the regular meeting
of the Wake County Board of Adjustment for
Tuesday, March 14, 2017 adjourned at 9:42 a.m.

Respectfully Submitted:

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

Brenton McConkey
Wake County Board of Adjustment

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