

## MINUTES

**Regular Meeting  
Wake County Board of Adjustment  
Tuesday, September 12, 2017  
9:00 a.m., Room 2700  
Wake County Justice Center  
300 S. Salisbury St.  
Raleigh, North Carolina**

**Members Present:** (5) Mr. Brenton McConkey (Chair), Mr. Brian Foxx, Mr. Waheed Haq, Mr. John Barker, and Mr. DeAntony Collins

**Members Not Present:** (4) Mr. Don Mial (Vice-Chair), Mr. Terence Morrison, Ms. Sheree Vodicka, Mr. Will Barker

**County Staff Present:** (6) Ms. Celena Everette (Planner II), Mr. Steven Finn (Land Development Administrator), Mr. Lee Gupton (Deputy Fire Marshal), Mr. Geoffrey Pearson (Code Enforcement Complaint Coordinator), Mr. Tim Maloney (Planning, Development & Inspections Director), and Mr. Russ O'Melia (Clerk to the Board)

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

**Item 1, Call to Order:** Mr. McConkey called the meeting to order at 9:12 a.m. with 5 members present.

### IN RE MINUTES

#### **Item 2, Approval of Minutes of the August 8, 2017 Meeting**

Mr. McConkey made a motion to approve the August 8<sup>th</sup> meeting minutes, and Mr. John Barker seconded. The motion carried unanimously.

#### **Item 3, Approval of Written Decision Granting the Special Use in the matter of BA SU-2255-17**

Mr. McConkey made a motion to approve the written decision granting the special use in the matter of BA-SU-2255-17, and Mr. John Barker seconded. The motion carried unanimously.

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

#### **Item 4, BA V-2256-17**

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, firm, or corporation. In the matter of BA V-2256-17, the applicant was a landscape architect acting as a consultant, and the property owner was a church. There did not appear to be an attorney involved. The applicant may testify, but if there were any witnesses opposed the variance request, the landscape architect would not be able to cross-examine those witnesses since that would be the unauthorized practice of law.

**Voting Members:** Mr. McConkey, Mr. Foxx, Mr. Haq, Mr. Collins, and Mr. John Barker

**Landowner:** Good Hope Missionary Baptist Church

**Petitioner:** Brian Starkey

**PIN#:** 1762-45-5747

**Location:** The site is located at 4209 S. Smithfield Road.

**Zoned:** Residential-30 (R-30)

**Land Use Classification:** Raleigh Long Range Urban Services Area

The petitioner is requesting a variance to reduce the bufferyard screening (plant) density of two bufferyards by more than 25%.

## **TESTIMONY AND EVIDENCE PRESENTED**

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

### **Testimony:**

Mr. Pearson, Code Enforcement Complaint Coordinator, entered the staff report and PowerPoint presentation for BA V-2256-17 into the record. Mr. McConkey 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. On June 13, 2017 the Board of Adjustment granted Special Use Permit Approval in the matter of BA-SU-2249-17 to the applicant in order to operate an outdoor athletic field on the 4-acre parcel of land. The Board approved the Special Use Permit with the revision that buffers labeled Buffer #2 and Buffer #4 on the applicant's Layout and Planting Plan would utilize plantings that are up to, but not more than, 25% less dense than the required Type C Intermittent-2 Screen, and that the buffer depths would be increased to 50 feet. The applicant is now requesting a variance to allow the planting density reduction to exceed 25%. As shown on the submitted site plan, the applicant was requesting to reduce certain elements of the required bufferyard plantings between 80 to 100%.

Mr. McConkey asked about the difference between what is required versus what was proposed. Mr. Pearson responded that the approved special use permit and UDO requirements call for 21 understory trees and 187 shrubs with the 25% reduction in buffer #2. The applicant is proposing a 100% reduction in the understory trees and an 80% reduction in shrubs. For buffer #4, the applicant proposed a 100% reduction in the understory trees and an 80% reduction in shrubs.

### **Sworn witnesses in favor of the petition:**

Brian Starkey, PO Box 28504, Raleigh, NC 27611

Doug Herakovich, 8505 Bournemouh Drive, Raleigh, NC 27615

Bob Henry, 4209 S. Smithfield Road, Knightdale, NC 27545

Mr. Starkey stated that they are requesting a reduction in the number of plants. He said that the request also includes a solid line of evergreen trees which would provide a better buffer than the required deciduous trees which would lose their leaves in the autumn. The buffer width was increased from 40 feet to 50 feet. He said that the proposal would meet the intent of the ordinance. Mr. Starkey said that the athletic field would not have any lighting or permanent seating.

Mr. McConkey asked if there was anything peculiar to the property that leads to a hardship. Mr. Starkey said that there is not any hardship related to topography or lot size. He said that the adjacent land use is agricultural. He said that there is not any existing vegetation except in the northeast corner. Implementing the required buffer would make the project not feasible.

Mr. McConkey commented that there could be a legislative matter to consider if there needs to be another standard that an athletic field could reach with the surrounding land uses that are similar to this site.

Mr. Foxx asked if other athletic field projects have existing vegetation. Mr. Starkey answered that some cases involve sites with existing vegetation that provides the required buffer.

Mr. Collins asked what the estimated cost difference would be between the required buffer and what is proposed. Mr. Herakovich answered that the required buffers would cost \$25,000 - \$30,000 more than what is proposed.

Mr. Henry said that he is the financial secretary for Good Hope Missionary Baptist Church. He said that the church would be happy with less vegetation on the site. The church is in favor of the request.

Mr. Starkey said that the property on the other site of buffer #4 is owned by a parishioner of the church.

Mr. McConkey asked staff about the distinction in the UDO between evergreen and deciduous plantings. Mr. Pearson said that the UDO buffer requirements call for a mixture of plantings to provide a screen throughout the year. Mr. McConkey asked if staff reviews the UDO on a routine basis to consider proposing changes. Mr. Pearson answered that staff has done so in the past.

Mr. Haq asked if there is an option for the applicant to propose alternate compliance that could be approved at the staff level. Mr. Pearson answered that this use required a special use permit which could not be approved by staff; the Board of Adjustment would need to approve any alternate requirements.

Staff member Mr. Steven Finn came forward and was duly sworn. Mr. Finn commented regarding the various amendments made to the UDO since it was adopted in 2006.

Ms. Everette said that the UDO allows for a variation of plantings, including both deciduous and evergreen plantings. Staff can approve reduction in the number of plantings up to 25%; any reduction beyond 25% would need to be approved by the Board of Adjustment.

There was no one else wishing to speak either in favor of or in opposition to the petition. Mr. McConkey closed the public hearing.

#### BOARD DISCUSSION

Mr. McConkey said that he did not see how the hardship in the case resulted from conditions that were peculiar to the property, such as location, size, or topography. He noted that the applicant acknowledged that there is not a topographical or shape issue with the property. He said that the petition meets findings 1 and 3.

Mr. John Barker questioned whether the lack of existing vegetation could be considered peculiar to the property. Mr. McConkey replied that hardships resulting from conditions that are common to the neighborhood or the general public may not be the basis for granting a variance. He said that there are a lot of properties that do not have sufficient plantings.

Mr. Foxx expressed concern about setting a precedent of granting a variance from UDO requirements for a good cause to avoid a financial burden.

Mr. Collins said that he struggled visualizing the difference in the proposed buffer versus the required buffer. He said that he does not think that the findings are met to grant a variance.

Mr. Haq said that staff should have the authority to approve alternate compliance methods. He said that the testimony from Mr. Starkey was that the proposed buffer would accomplish the goal of providing a screen.

Mr. McConkey opened the public hearing.

Mr. Henry said that the entire east side of the field is a tobacco field. He commented that there is very little surrounding the property.

Mr. McConkey closed the public hearing.

#### MOTION

Mr. McConkey made a motion in the matter of BA V-2256-17 that the Board find and conclude that the petition does not meet the requirements of Article 19-26 of the Wake County Unified Development Ordinance and

North Carolina General Statute Section 160A-388(d) for the reason that the second requirement that the hardship results from conditions that are peculiar to the property, such as location, size, or topography had not been met and that the requested variance be denied. Mr. Foxx seconded the motion. By a vote of 3-2, with Mr. Haq and Mr. John Barker voting against, the motion passed, and the variance was denied. So ordered.

**Item 5: New Business** – Mr. O'Melia reported that he had accepted a new position with the Wake County Finance Department, and he would no longer serve as clerk to the Board of Adjustment. The board recognized Mr. O'Melia for his service to the board.

**Item 6: Old Business** – There was no old business.

**Item 7: Adjournment**

Hearing no additional business, the meeting was adjourned at 10:24 a.m.

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REGULAR MEETING  
WAKE COUNTY BOARD OF ADJUSTMENT  
September 12, 2017

All petitions complete, Brenton McConkey declared the regular meeting  
of the Wake County Board of Adjustment for  
Tuesday, September 12, 2017 adjourned at 10:24 a.m.

Respectfully Submitted:



Brenton McConkey  
Wake County Board of Adjustment

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