

Approved by the Board of Adjustment on March 26, 2009

***BUTNER
BOARD OF ADJUSTMENT
MINUTES***

The Butner Board of Adjustment held its regular Board Meeting on February 26, 2009, at 7:00 p.m. in the South Granville Water & Sewer Authority Meeting Room, 209 West C Street, Butner, N. C.

Present were:

Members: Ernest Thompson, Chairman
Herman Weaver, Vice Chairman
Marty Daniel
John H. Glenn, Jr.
James Russell
Constance Wortham

Member Absent: William Crosby

Alternates: Ronald Daniels
Jane Frost
Chandler Wynne (served in the absence of Board Member Crosby)

Staff: Melissa Hodges, Town Planner

Town Attorney: James Wrenn Jr.

MEETING CALLED TO ORDER

At 7:00 p.m., Chairman Ernest Thompson called the meeting to order and recognized Board Member James Russell who gave the invocation and Chairman Thompson led everyone with the Pledge of Allegiance.

BOARD APPROVES THE MEETING MINUTES OF JANUARY 22, 2009

Board Member Marty Daniel motioned to approve the Board of Adjustment (BOA) minutes for January 22, 2009. It was seconded by Board Member James Russell and was unanimously carried.

BOARD APPROVES THE FEBRUARY 26, 2009 BOARD OF ADJUSTMENT MEETING AGENDA

It was noted that no adjustments were requested of the February 26, 2009 Board of Adjustment meeting Agenda.

CHAIRMAN ERNEST THOMPSON READ THE DISCLOSURE STATEMENT

At this point, Chairman Thompson declared the public hearing open and read the Disclosure Statement to the Board. Within the Disclosure Statement, it stated that “in Accordance with the State Government ethic’s act, it is the duty of every Board Member to avoid both conflict of interest and appearances of conflict”. So at this point, Mr. Thompson asked the board if anyone had a conflict of interest or appearances of conflict with respect to any matter that might come before the Board this evening. Board Member Herman Weaver related that he has a conflict of interest with the variance request on the agenda. He noted that he is the Realtor representing the applicant, Mr. Brogden. At this time, Board Member Weaver recused himself. Ms. Melissa Hodges related that Board Member alternate Ron Daniels would sit in for Mr. Weaver.

VAR-09-001 BOARD APPROVES VARIANCE REQUEST WITH ONE (1) CONDITION FOR JAMES B. BROGDEN, CORNER OF 22ND STREET AND C STREET

Chairman Ernest Thompson noted that James B. Brogden is requesting a variance from the 30’ setback along C Street to 12.5’ in the Town Residential District to place a home on the property. The property is located on the northwest corner of C Street and 22nd Street, and is specifically identified as Tax Map #087606396354.

At this time, Chairman Thompson asked those wishing to speak for or against the variance request to come forward and to give their names and addresses and be sworn in. The following were sworn in:

1. Melissa Hodges, Town Planner, 600 Central Ave., Butner, NC 27509
2. Doug Fisher, 611 22nd Street, Creedmmor, NC 27522
3. James B. Brogden, 2530 Sam Moss Hayes Rd., Creedmoor, NC 27522
4. Lenny Wilson, 10805 Allen Court, Raleigh, NC
5. Herman Weaver, 1675 US Highway 15 S., Creedmoor, NC 27522

Ms. Melissa Hodges, Town Planner, explained that the proposed variance request is located on the corner of 22nd Street and C Street; address 300 22nd Street. She stated that Mr. Brogden is requesting a variance from the 30’ setback long C Street to 12.5’ in the Town Residential District to place a home on the property. The Butner Land Development Ordinance requires a 30’ setback along the front and/or corner side of property zoned Town Residential. A zoning permit was issued in error by the town allowing placement of the home within the 12.5’ setback from C Street. The home is already on the property and the footing has been poured. When the permit error was discovered, the permit was revoked, and Mr. Brogden stopped all work. The application submitted is a complete application. The property/development appears to meet the standards of the Land Development Ordinance (LDO).

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Ms. Hodges continued to state that all the requirements of the LDO have been accomplished. She stated that (1) the Public Hearing Notices were mailed out to everyone within 500' on February 13, 2009; (2) the sign was placed on the property February 16, 2009; and (3) the advertisement was published in the Butner Newspaper for two consecutive weeks prior to the hearing.

Mr. James Brogden, applicant, explained to the Board that he purchased the property in question so that he could place the house on the property. He noted that the placement of the house is approximately the same as the adjacent homes (if not further back). He has cleared the lot, and noted that the house has a clear view. He stated that he did not think the site of the home is a safety issue. He further noted that the reasons set forth in the application justify the granting of a variance and will make possible the reasonable use of the land or structures.

Chairman Thompson noted that 2 houses have recently been moved onto this block of 22nd Street. He noted that the house in question is located next to C and 22nd Street. Chairman Thompson asked if the other house is OK? Mr. Brogden stated, "It's OK". Mr. Thompson asked if the house, in question, is 12 ½ feet from the right of way or was it more than 12 ½ feet. Ms. Hodges, Planner, responded by stating that she measured it today and noted that it was 12 ½ feet, which made it 35 to 36 feet from the edge of the pavement.

Upon Mr. Brogden being asked, he stated that some trees would be planted on the property, and the yard will be attractive in the neighborhood.

Mr. Herman Weaver, Realtor for the applicant, stated that he measured 4 houses on 27th and 28th Street, and noted that they were 37 feet from the house to the edge of the pavement on C Street. Subject property is 34 feet, which is 3 feet different. Mr. Weaver stated that Mr. Brogden's house is sitting/facing like most of the houses on 22nd Street. He further noted that there are other houses in the neighborhood that do not meet the 30 feet setback requirement and therefore Mr. Brogden's house will be in character with other houses on C Street.

Chairman Thompson expressed concern with future planning in the neighborhood. He asked if there would be any trees or shrubs planted. Mr. Weaver stated that trees would be planted as a buffer and for beautification (this would block the house from C Street).

In response to a question, Mr. Weaver stated that it would cost \$15,150.00 to turn the house and/or move the house off the lot. Mr. Weaver continued to relate that Mr. Brogden purchased the lot for \$20,000.00 and he paid \$20,000.00 for the house. Mr. Weaver explained that if the house were turned on the lot, it would be 2 ½ feet short. He noted that it would be a hardship on the applicant if he had to relocate the house. Mr. Weaver explained that because of the stop work order on the permit, Mr. Brogden has already been delayed for approximately 30 days.

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In response to a question, Mr. Weaver stated if the house was turned, it would be facing C Street. He continued to relate that Mr. Brogden's house is not out of character with the other houses on 22nd Street.

Board Member Glenn asked if there were any possibility that 22nd Street would be widened. Planner Hodges explained that Granville County's Comprehensive Transportation Plan does not show that this Street will be widened in the near future. It is not on the Department of Transportation (DOT) list. It does have a 70-foot right-of-way, which would allow for some expansion (presently it is a 24 foot road). If you were to add a center turn lane, a shoulder, as well as sidewalks on both sides of the street (which would be the maximum anticipated improvements to this road for at least the next 50 years) that would be an 80-foot right-of-way.

Doug Fisher, 611 22nd Street, Butner, explained that he grew up in Butner and he was concerned with the precedent that would be set if the requested variance is granted. Mr. Fisher related the following information to the Board:

- Noted that since 1958, his father has developed/built approximately 175 homes in the vicinity of Butner. He stated that he held a measuring tape for his father when he was a little boy.
- He noted that the setbacks have been in place since he was a small child,
- He stated that he felt like "these gentlemen" must have known of the setbacks,
- He stated that since the early 60's, thousands of man hours and dollars have been completed compiling the setbacks,
- If the variance is granted, he is afraid a bad precedent will be set,
- Expressed concern about the future of Butner and that taxes will increase,
- Noted that nothing good can come out of a situation where there are not some strict, hard rules,
- Stated that he sees a lot of lawsuits, if we back off our rules,
- Stated that we cannot expect improvements in Butner if we set aside our rules to allow things that are substandard,
- Stated that whoever approved the permit in error should stand responsible and accountable,
- Felt like the people who placed the house on the lot were aware of the setbacks and now it needs to be undone and/or changed; and
- Would like to know that the rules apply to everyone who develops.

In rebuttal, Mr. Brogden related that "we did exactly what we were told to do by the Planning Board/Department and do not feel like that was a necessary comment by Mr. Fisher".

Mr. Lenny Wilson, Contractor for the applicant, related that he obtained the zoning and building permits. He explained that they did not go behind somebody's back to get the permits for the two- (2) houses. Completed one house and then obtained the permits for the second house. He stated that he did not appreciate the comment made by

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Mr. Fisher. Mr. Wilson acknowledged that he works in several counties, and setbacks are different in each area.

Board Member Glenn asked if a survey was completed with details, to which Mr. Weaver stated that surveys were completed on both lots. Mr. Weaver further noted that setbacks were not noted on the survey.

At this time, Town Attorney James Wrenn, summarized the testimony of Ms. Hodges, Town Planner, those speaking in favor, and those in opposition of the requested variance.

At this point, Chairman Thompson closed the public hearing.

Chairman Thompson shared with the BOA members information from the Zoning Board of Adjustment Handbook, which states: "The purpose of a Variance is to allow certain deviations from the standards of this Ordinance (such as height, yard setback, lot coverage, or similar numeric standards), when the landowner demonstrates that, owing to special circumstances or conditions beyond the landowner's control (such as exceptional topographical conditions, narrowness, shallowness, or the shape of a specific parcel of land), the literal application of the standards would result in undue and unique hardship to the landowner and the deviation would not be contrary to the public interest." He continued to state that in order to approve this petition, the Board should be mindful of the findings of fact required for variance approval:

- (1) There are practical difficulties or unnecessary hardships caused by the strict application of the Ordinance requirements; and
- (2) Any practical difficulties or unnecessary hardships are not the result of the actions of the applicant; and
- (3) The reasons set forth in the application justify the granting of a Variance, and that the Variance is the minimum action that will make possible the reasonable use of the land or structures; and
- (4) The Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit; and
- (5) In the granting of the Variance, the public health, safety and general welfare have been assured and substantial justice has been done.

The chairman further explained that the following circumstances do not constitute grounds for a variance approval:

- (1) The existence of other nonconforming or conforming uses of land or structures in the same or other districts;

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- (2) The request for a particular use expressly, or by inference, prohibited in the district; or
- (3) Economic hardship, or the fact that property may be utilized more profitably with a Variance.

Board Member Glenn asked Attorney Wrenn if the Town is liable to correct the error made by the Town. Mr. Wrenn stated that the Town is not liable.

The Board discussed the issue of moving the house down, to which Ms. Hodges related that the applicant would only gain 2 ½ feet, which would still require a variance.

Board Member Ronald Daniels **made a** motion to grant the variance based on the required findings of fact noting that the variance request clearly meets the intent of the ordinance and the required findings of fact for a variance. Board Member Chandler Wynne seconded the motion.

At this point, Board Member John Glenn made a motion to amend the previous motion to add a condition that grass would be the only thing planted along the 12 ½ foot area between the house and the right-of-way; no fences, trees, scrubs, etc. Board Member James Russell seconded the motion to amend the original motion. All members with the exception of Board Member Marty Daniel voted in favor of the amendment.

The applicant, Mr. Brogden stated that he would accept the condition as stated in the motion.

With there being no more discussion, the Chairman called for the question. The motion, as amended passed with six members voting in favor and one against as set out below.

Ayes: Ernest Thompson, James Russell, Constance Wortham, John Glenn, Chandler Wynne, and Ron Daniels

Nays: Marty Daniel

BOARD DISCUSSION ON CAROLINA SUNROCK

Board Member Marty Daniel explained to the Board that after the public hearing on the Special Use Permit for Sunrock Quarry heard in January, someone dropped off to him the minutes dated May 17, 2004 of the Granville County Commissioners Meeting. He noted that the minutes discussed a request from Carolina Sunrock (CSR) to expand its quarry. He noted that on page 12, there is testimony from Carolina Sunrock's attorney stating what standards Sunrock was supposed to adhere to, if the special use permit was granted including standards on fencing, boundaries, etc. Also attached are pictures which may indicate that CSR is not in compliance with the terms of the special use permit previously issued by the County. He stated that this Board should have Butner's ordinance administrator visit CSR and verify what is actually going on. He asked that the Ordinance Administrator verify if CSR is in compliance with the terms of the existing

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special use permit and the ordinance governing that permit and that it be made to “comply with it per the LDO”.

Ms. Hodges related that, upon Mayor Tom Lane’s request, she is investigating the requirements of Carolina Sunrock’s permit.

James Wrenn, Town Attorney, noted that Carolina Sunrock’s special use permit, issued in 2004, was issued pursuant to the standards of Granville County’s UDO. He explained that the Town of Butner has the authority to enforce the existing special use permit since CSR is in the Town’s jurisdiction now.

Upon being asked if the Board could withdraw the special use permit recently approved by the Board, Mr. Wrenn stated that he would have to research that issue. Otherwise, the permit will expire in two years unless CSR complies with the requirements of the Ordinance.

The Board discussed the issue of Carolina Sunrock not presenting accurate information to the Board and if the permit they granted on 1-29-2009 could be revoked in light of their presenting false testimony if they found that false testimony was in fact given by CSR. The Board noted that the Town’s Ordinance Administrator and Mr. Wrenn would conduct an investigation to determine if Carolina Sunrock is complying with the special use permit that was granted in 2004 and look into the legal issues involved.

ADJOURNMENT

Upon a motion of Board Member Daniel, seconded by Board Member Wortham and unanimously carried, the Board adjourned at 7:55 p.m.

Brenda K. Daniel
Secretary to the Board

Ernest Thompson, Chairman
Town of Butner Board of Adjustment

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