

BOARD OF ADJUSTMENT MINUTES
Regular Meeting
Commons Meeting Room
December 12, 2017

Call to Order

Vice-Chair David Dulin called the Board meeting to order at 7:30 p.m. on Tuesday, December 12, 2017, in the Commons Meeting Room. The Chair asked the Clerk to call the roll.

Roll Call

Board Members Presiding

Jim Starnes
Houston B. Clark, II
Devron Furr
Billy Franklin Lee
David Dulin
Michael D. Efird

Absent

Marvin Smith
Cynthia Fish
Jennifer Lisk

Staff Attending

Bob Remsburg, Planner, I
Tim Swaringen, Code Enforcement Officer

Vice-Chair Dulin called on the Board to review the minutes of the last meeting, November 13, 2017.

Motion: Michael Efird made a Motion to approve the minutes of November 13, 2017 as written.

Second: Jim Starnes seconded the motion.

Action: The Board voted unanimously to approve the minutes of November 13, 2017 as written.

Vice-Chair Dulin explained that the purpose of the meeting was to consider the Case #SUP 17-02, a request by Anthony and Elaine Nunez for a Special Use Permit to allow the placement of a mobile home in the R-20 district. The Vice-Chair explained that this is a quasi-judicial hearing and will be conducted in accordance with special due process safeguards.

Vice-Chair Dulin outlined the statutory requirements that restrict the board to base its decisions only on testimony given under oath. Any person who swears falsely is guilty of a Class 1 misdemeanor.

Vice-Chair Dulin asked those testifying to come forward to be sworn in. Richard Lee Lowder, Jill Lowder Dry, Elaine and Anthony Nunez, Taylor Lawson Dry, Tim Swaringen and Bob Remsburg were sworn in by the Vice-Chair.

Vice-Chair Dulin asked if any board member had any possible conflicts and needed to withdraw from the case. Each indicated that they believed they could rule fairly based upon the facts to be presented in the case.

Vice-Chair Dulin opened the hearing and indicated that the order of business would be that first, we will hear from the Planning Department staff, then we will hear from the Applicant and their witnesses, and lastly we will hear from opponents to the request.

Vice-Chair Dulin asked the Clerk to present the case, SUP 17-02.

Bob Remsburg, Clerk, stated that Anthony and Elaine Nunez have requested a Special Use Permit to allow the placement of a Class A (Double-wide, with masonry underpinning) Manufactured Home on a 3 acre lot located at 33523 Old Salisbury Road, Albemarle (Tax Record #15709). The property is zoned R-20 Residential and RA-Residential Agricultural. The better housing location on this lot is where a previous site-built home had stood until several years ago and is near the road in the R-20 District section.

The lot is in two zoning districts due to a zoning change many years ago which designated strips of property on several roads in the county jurisdiction as R-20 in order to help prevent the development of strips of mostly single-wide manufactured homes and to help preserve the viewshed along these roads. The previous small site-built home on the property was removed several years ago leaving a buildable lot. The lot is approximately 258 feet wide and 525 feet deep. The Nunez family wishes to place a double-wide manufactured home on the property. They will comply with the ordinance in every manner including masonry underpinning.

Section 603.2 of the Stanly County Zoning Ordinance allows the Board of Adjustment to approve a request to place a Class A Manufactured Home on an individual lot in the R-20 zoning district as long as these standards are met:

1. does not materially endanger public health or safety;
2. will not substantially injure the value of adjoining property;
3. will be in harmony with or compatible with its neighbors and is generally consistent with the comprehensive plan;
4. will meet all required conditions and specifications.

The burden of proof will be on those opposing this request. Any opposition will need to demonstrate how the manufactured home will materially endanger public health or safety. They will need to present proof that the presence of the home will substantially injure the value of adjoining property. Any opposition will need to demonstrate that the manufactured home is not in harmony with the neighborhood and is inconsistent with the comprehensive plan. This is located in a growth area per the 2010 Stanly County Land-Use Plan.

Suggested requirements of the Special Use Permit:

1. Decks/porches, minimum requirement of 35 square feet on one entrance; 9 square feet on the second entrance
2. Landscaping/trees
3. Placed with front of home facing the road
4. Outbuildings located in side or rear yard only (already required)
5. Home must meet all requirements of a Class A home as defined in the Stanly County Zoning Ordinance

Vice-Chair Dulin called on the applicant to come forward and present their case to the Board.

Elaine and Anthony Nunez came forward to address the Board. Mrs. Nunez presented that they were planning to locate the manufactured home just behind the existing garage building that had remained on the property after the home had been removed, not at the former home location. They don't want to be too far from the road partly to allow their children to not have to walk so far to get to the bus. They already own the double-wide manufactured home and plan to relocate it soon to the lot. They had already begun packing up and had plans that a contractor was coming tomorrow to begin disconnecting the two halves of the home. They will definitely do the brick underpinning as required. They've begun grading where the lot to allow the home to be placed about 200' from the road. Buddy Clark asked the clerk and Mr. Swaringen whether the existing building would be non-conforming if the home was placed behind. Mr. Swaringen replied that it would make the accessory structure as nonconforming. The Nunez' indicated that they had moved an additional storage building to the lot and it was identified as likely to be nonconforming as well. They plan to place vinyl siding on the outbuildings to match the manufactured home. Buddy Clark asked how they had found the property. They indicated that they had driven by and saw the sign and worked through a realtor. Mrs. Nunez presented about 10 photos to the Board which were accepted as evidence. Some of the photos showed the home, while others showed the lot on Old Salisbury and the work underway to grade the lot.

Vice-Chair Dulin invited those sworn in to ask any questions. Jill Dry asked about the age of the home. Mrs. Nunez replied that it is a 2004 manufactured home. She also indicated that they are flexible on where to place the home on the lot.

Vice-Chair Dulin asked if there were others to speak in favor of the Special Use Permit. There were none.

Vice-Chair Dulin asked if there were any to speak in opposition to the Special Use Permit.

Richard Lowder, 34182 Red Fox Road, came forward. Mr. Lowder indicated that he owns the property which adjoins the back of this land. He was here out of concern that the family should have worked out the zoning issue prior to purchasing the property. He didn't want to see property values reduced and does not like the idea of special exceptions to zoning.

Buddy Clark, Board member, pointed out that the communication about zoning should have been revealed by the realtor and made clear in advance. Mr. Clark explained the ordinance requirements.

Mr. Lowder asked if the Special Use Permit goes with the life of the home. Mr. Swaringen helped explain that the permit goes with this home and it can be replaced, but if the property is left without a manufactured home for 180 days or more, the Special Use Permit would go away.

Jill Lowder Dry, 33173 Old Salisbury Road, came forward. Mrs. Dry indicated that the property in this area has been owned by the Lowder family from at least 1910. Her son lives next door to this property and has invested a lot of money renovating his home. They have cherished the land. It has been R-20 for over 30 years and were glad to have that designation to protect the value of their properties. They were unaware of the provision that allowed a manufactured home by Special Use Permit. She indicated that the Nunez family had placed a storage building and

electric service on the property. She had two photos which she submitted to the board showing the storage building on the property and a plat map showing the location of homes relative to the Nunez property. These items were accepted as evidence. The board asked how Mrs. Drye felt after seeing the picture of the home to be moved onto the property. She indicated that she felt a bit better, but it was still a manufactured home.

Mr. Lowder expressed concern about the Special Use Permit allowance in the ordinance. Mr. Clark responded that we are not monkeying with the law and that changes to the ordinance would be the responsibility of the Planning Board and the County Commissioners.

Mrs. Dry commented that most of the home area was surrounded by farmland and pines.

Michael Efird, Board member, suggested that landscaping would be desired. He asked about the accessory structure and what requirements it would have to meet to be in compliance.

Mr. Swaringen informed those present that the building had been placed on to the property without a permit and was now a violation, but that no action had been taken awaiting this process. Mr. Swaringen also indicated that the accessory building must be in a side or rear yard and if more than 400 square feet, it would require a foundation. The accessory building could be brought into compliance. He knew of two other manufactured homes in this area that had been placed beyond the R-20 designated zone and in the RA district to avoid the need for a Special Use Permit.

Devron Furr, Board member, asked the Nunez family to tell more about the new accessory structure. Mrs. Nunez replied that the building contained exercise equipment and furniture from their home which they had hoped to move before Christmas. They could move it wherever needed to be in compliance with the zoning ordinance and meet any building code. It is simply a storage building.

The Board discussed the case and determined three requirements to be included in the Special Use Permit.

1. A landscape buffer as defined in the Zoning Ordinance must be installed and maintained surrounding the residential use.
2. The storage buildings must be placed in compliance with the Zoning Ordinance.
3. The manufactured home must be placed and maintained in compliance with the ordinance.

Vice-chair Dulin asked the Nunez family if they were agreeable with the requirements. Mrs. Nunez replied that they were.

Mr. Lowder asked about how the compliance would be enforced.

Mr. Remsburg explained that the county did not go looking for compliance issues, but was complaint driven. Mr. Swaringen works through the process.

Mr. Swaringen explained the typical process for the enforcement of zoning violations including the Special Use Permit.

Taylor Dry, 33217 Old Salisbury Road, came forward and explained that he was concerned about the granting of an exception to those things permitted by right.

Vice-Chair Dulin asked if there were any further comments. Seeing no one coming forward, he declared the public hearing closed.

Mr Dulin shared that the board would now consider the four standards that need to be met in order to approve the Special Use Permit.

1. That the project will not materially endanger public health or safety. The board cited that flies and other health concerns were a problem. The board voted unanimously to find this true.
2. That the project will not substantially injure the value of adjoining property. The board voted unanimously to find this true since much of the surrounding land was farmland.
3. That the project will be in harmony with or compatible with its neighbors and the land-use plan. The board voted unanimously to find this true.
4. That the project meets all other required conditions for placing a Class A home in the R-20 District. The board voted unanimously to find this true.

Vice-Chair Dulin asked if there was a motion to approve or deny the request for the Special Use Permit.

Motion: Michael Efird made a Motion to approve the request for the Special Use Permit based on the standards reviewed and with the conditions agreed upon.

Second: Jim Starnes seconded the motion.

Action: The Board voted unanimously to approve the request for the Special Use Permit, SUP 17-01.

There being no further business, Vice-Chair Dulin made a motion to adjourn. Michael Efird seconded the motion and all approved. The meeting was adjourned at 8:50 p.m.

David Dulin, Vice Chair

Robert Remsburg, Clerk