



BOARD OF ADJUSTMENT MINUTES  
Regular Meeting  
Commissioner's Meeting Room  
October 11, 2016

**Call to Order**

Vice-Chair Michael Efird called the Board meeting to order at 7:30 p.m. on Tuesday, October 11, 2016, in the Commissioner's Meeting Room.

**Roll Call**

***Board Members Presiding***

Houston B. Clark, II  
Cynthia Fish  
Michael D. Efird  
Jim Starnes  
Jennifer Lisk  
David Dulin  
Billy Franklin Lee

***Absent***

Devron Furr  
Marvin Smith

**Staff Attending**

Bob Remsburg, Planner, I

Vice-chair Efird asked if there were any corrections to the minutes of September 13, 2016. Hearing none, the Board proceeded as follows.

**Motion:** David Dulin made a Motion to approve the minutes of September 13, 2016, as written.

**Second:** Cindy Fish seconded the motion.

**Action:** The Board voted unanimously to approve the minutes of September 13, 2016, as written.

Vice-chair Efird explained that the purpose of the meeting was to continue Case #ZV16-07 at the point that the action was tabled at the September 13, 2016 meeting. He asked Board members for a motion to bring Case ZV 16-07 off the table for consideration.

**Motion:** Frank Lee made a Motion to bring Case ZV 16-07 off the table for consideration.

**Second:** Cindy Fish seconded the motion.

**Action:** The Board voted unanimously to bring Case ZV 16-07 off the table for consideration.

Vice-chair Efird explained that at the previous meeting, the Board of Adjustment decided to delay consideration of Case ZV 16-07 to allow staff to research a phrase in Section 801 of the Stanly County Zoning Ordinance which states that, on a lot of record, "no such variance may be granted to allow residential structures closer to any side property line than 7.5 feet." As requested, the county staff have researched how this statement may restrict the Board of Adjustment and can now clarify whether this limits the Board of Adjustment's ability to grant a variance that results in a structure being closer than 7.5 feet from a side property line.

Mr. Efird further explained that at the September 13 meeting, the Board had heard the facts in the case from the owner, Mark Clontz and several neighbors along Wood Land Road. At the conclusion of the testimony, the hearing was closed, therefore, we can receive no more

testimony in this case. The Board will hear the result of the research on the ordinance from County staff, deliberate the facts of the case, and proceed with the Findings of Fact. Board members may question staff or those that testified at the September 13<sup>th</sup> hearing for clarification of the facts already presented but may not accept any new testimony or evidence.

Mr. Efird asked Mr. Remsburg to share the research concerning the Zoning Ordinance.

Mr. Remsburg reminded the Board that it is their purpose to determine when individual lot conditions exist in which exceptions or adjustments should be made to the zoning ordinance. As the Board of Adjustment, they are authorized to consider granting a variance as requested or for a lesser amount.

Mr. Remsburg reported that as discovered during our September 13<sup>th</sup> meeting, Section 801 of the Stanly County Zoning Ordinance states that on a lot of record, “no such variance may be granted to allow residential structures closer to any side property line than 7.5 feet.” One question the staff researched was whether the governing board, in this case, the Stanly County Board of Commissioners, has the authority to limit the authority of the Board of Adjustment. After consulting with the UNC School of Government and the attorney for Stanly County, the Planning staff has determined that the short answer to this is “no”. The governing board cannot restrict the authority of the Board of Adjustment to grant a variance. In Case ZV 16-07, in order to grant the variance to allow a 6’ setback, the Board would have to make an adjustment or an exception to the general district setback limits and to the language of Section 801. So, the Board of Adjustment has the authority to grant Mr. Clontz’s request of a 6 foot setback despite the language in Section 801 but if, and only if, the four Findings of Fact are determined to be true in each case. Keep in mind that one of the Findings of Fact is whether the request is “consistent with the spirit, purpose, and intent of the ordinance”. If, when the ordinance was adopted, the Board of Commissioner’s intent was to not have houses closer than 7.5 feet to a side property line as stated in Section 801, the Board must determine that the unique circumstances of this case override that intent in such a way that the variance will still result in maintaining the spirit of the ordinance and that substantial justice is achieved.

Since the Board has the authority to grant the requested variance or a lesser amount, a new application from Mr. Clontz was not necessary and the Board can restart the proceedings where stopped at the last meeting. This was just after the closing of the hearing and where the Board was ready to begin deliberation and consider each of the Findings of Fact.

As a point of clarification, Mr. Remsburg shared that Stanly County measures setbacks from the closest point on a house. This could be an eave, steps, a bay window, garage, porch, deck – anything that is attached to the house. So the square footage area is the buildable area but not necessarily the footprint of the foundation. With the requested front and rear yard variance and a 7.5’ setback on the sides, the buildable lot area would be no more than 2,160 square feet. With a 6’ setback on the sides, the buildable lot area would be no more than

2,400 square feet. If no variance is granted on front, side or rear; the buildable lot area would be approximately 1,080 square feet.

Before proceeding with the Findings of Fact, the Board should consider whether to proceed with the variance as requested with a side setback of 6' or whether to modify the variance to a more restrictive amount up to the 12' that is permitted in the R-20 zoning district.

Mr. Remsburg added a training note for the Board. He suggested that when the chair asks for a member of the Board to make a motion concerning a Finding of Fact, someone should go ahead and make the motion in favor of finding the Finding of Fact, true. And someone should second this motion. Then the Board may discuss the Finding of Fact and can still vote against it, even the person who made the motion can vote against it. It just makes things clearer for the record. As you know, if the Board finds all of the Findings of Fact true, then the Board will need to approve the variance. If the Board finds any of the Findings of Fact false, then the Board should not approve the variance.

Vice-chair Efird asked if there were any questions for Mr. Remsburg. There were some comments concerning making the motions in favor for the Findings of Fact and Mr. Remsburg explained that this was to help prevent creating a double negative situation which is confusing to the process.

Mr. Efird stated that the Board would now begin the process of deliberation before considering the Findings of Fact.

Jennifer Lisk, Board Member, asked to speak. She revealed that following the previous meeting, she discovered some records from her previous work for surveyor Rogell Hunsucker. This included a survey for the Clontz family of the property under consideration in 2006. She indicated that this was a routine part of her work and would not prevent her from making a non-biased decision. Mr. Efird asked the Board if any members thought that Mrs. Lisk could not make a fair judgment in this case. The consensus of the Board was that Mrs. Lisk could make a fair judgment and that her past work would not influence her decision.

Mr. Efird encouraged the Board to now consider whether to consider the Findings of Fact based on the original request of 6' or consider revising that to 7.5'. There was some discussion concerning whether to proceed with the Findings or to determine to lessen the side yard setback to 7.5'. Mr. Remsburg reminded the Board of the fourth Finding of Fact which involves determining whether the spirit, purpose and intent of the ordinance is upheld by the variance and that the Board would need to decide which way to proceed. This could either be considered at the beginning of the process or when considering the Findings of Fact.

Buddy Clark suggested that the Board of County Commissioners had likely put a lot of thought into the ordinance when they adopted Section 801 with the language requiring the 7.5 feet side yard setback.

**Motion:** Buddy Clark made a motion to consider the Findings of Fact based on the language of Section 801 which requires the 7.5 foot side yard setback.

**Second:** Frank Lee seconded the motion.

**Action:** The Board voted unanimously to consider the Findings of Fact based on a 7.5 minimum side yard setback.

Mr. Efirid asked if further discussion was needed or whether the Board could proceed with the Findings of Fact. The consensus was to move forward with the Findings of Fact.

1. That the applicant cannot secure a reasonable return from or make reasonable use of this property without the Variance.

**Motion:** Jim Starnes made a motion to find this fact true based on the evidence submitted and the fact that this allows the owner to build a reasonable sized home and does not reflect negatively on the neighboring properties.

**Second:** Jennifer Lisk seconded the motion.

**Action:** The Board voted unanimously to approve the motion to find this fact true.

2. That a hardship exists resulting from unique circumstances related to applicant's land, such as location, size or topography.

**Motion:** David Dulin made a motion to find this fact true based on the fact that the size of the lot is very limited.

**Second:** Frank Lee seconded the motion.

**Action:** The Board voted unanimously to approve the motion to find this fact true.

3. That the existing hardship is not the result of applicant's own actions.

**Motion:** Jennifer Lisk made a motion to find this fact true based on the fact that the property was inherited and was not of their own actions.

**Second:** Buddy Clark seconded the motion.

**Action:** The Board voted unanimously to approve the motion to find this fact true.

4. That the variance is consistent with the spirit, purpose, and intent of the ordinance such that public safety is secured, and substantial justice is achieved.

**Motion:** David Dulin made a motion to find this fact true based on the fact that the Commissioners adopted the 7.5 foot rule in the Ordinance to keep a reasonable distance from other properties.

**Second:** Jim Starnes seconded the motion.

**Action:** The Board voted unanimously to approve the motion to find this fact false.

**Motion:** Having reviewed the Findings of Fact, Jennifer Lisk made a motion to approve the variance for a front yard setback of 25'; a rear yard setback of 5' and side yard setback on each side of 7.5' from each property line including the Duke/Progress Energy line on the lake side of the property based on the Findings of Fact.

**Second:** Frank Lee seconded the motion.

**Action:** The Board voted unanimously to approve the motion.

Vice-chair Efird explained that those concerned had 30 days in which to appeal the decision of the Board to the Stanly County Superior Court.

Mr. Remsburg explained that there was a set of definitions to be inserted to replace the existing Article XIII of the Stanly County Zoning Ordinance. This section had been amended at the most recent Board of Commissioners meeting and was part of a plan to update much of the ordinance. Mr. Remsburg explained that revisions would include a revised sign ordinance which eliminated the use of sign content from regulation and an outdoor lighting section.

There being no further business, Vice Chair Michael Efird asked for a motion to adjourn. David Dulin made a motion to adjourn the meeting, seconded by Frank Lee. The meeting was adjourned at 8:20 p.m.

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Michael Efird, Vice-Chair

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Robert Remsburg, Clerk