



BOARD OF ADJUSTMENT MINUTES
Regular Meeting
Commissioner's Meeting Room
September 13, 2016

Installation of new board members

The oath of office was administered to one new Board of Adjustment member: Billy Franklin Lee by Bob Remsburg, Clerk to the Board.

Call to Order

Vice-Chair Michael Efird called the Board meeting to order at 7:30 p.m. on Tuesday, September 13, 2016, in the Commissioner's Meeting Room.

Roll Call

Board Members Presiding

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

Absent

James F. "Jim" Starnes
Marvin Smith

Staff Attending

Bob Remsburg, Planner, I

Others Present and sworn in to speak

Case ZV 16-07

Mark Clontz, owner
Renee' Nichols
Linda Olinger
Sarah Turner
Hap Turner
Vaughan Olinger
Harriet Turner
Drew Jones
Steve Wallace

Case SUP 16-01

Wendy Tomberlin
Marlene Tomberlin
Bill Martin
Chad Smith, owner
Myquillyn Smith, owner
Gary Morland

Vice-chair Efird asked if there were any corrections to the minutes of August 9, 2016.

Hearing none, the Board proceeded as follows.

Motion: David Dulin made a Motion to approve the minutes of August 9, 2016, as written.

Second: Devron Furr seconded the motion.

Action: The Board voted unanimously to approve the minutes of August 9, 2016, as written.

Vice-chair Efird asked those testifying in Case ZV 16-07 to come forward to be sworn in. Those listed above for Case ZV 16-07 swore to tell the truth.

Vice-chair Efird asked if any board member had any possible conflicts and needed to withdraw from the case. No conflicts were identified.

Vice-chair Efird opened the hearing and asked the Clerk to present the case, ZV 16-06.

Bob Remsburg, Clerk, stated that Mark and Debra Clontz had requested a variance of 5 feet on the rear yard setback, 6 feet on both side yard setbacks and 15 feet on the front yard setback in order to allow for a home with a larger main floor square footage to be placed on the lot located on Wood Land Drive, Lot 36 of the Piney Point subdivision. Mr. Remsburg used power point to show the location of the lot in relation to Norwood and the size of the lot which is approximately 44 feet wide near the lake and 42.5 feet wide at the road. The lot is approximately 110 feet from the street right-of-way to the Duke/Progress line near Lake Tillery. The lot is zoned R-20 and the required setbacks are normally are 10 feet in the rear yard (lake), 12 feet for each side yard and 40 feet on the front yard setback (road). Mr. Remsburg indicated that Mr. Clontz had informed the staff that he had attempted to purchase some additional land from adjacent property owners, but had been unsuccessful. In order to have more living space on one level, Mr. Clontz desired to have a larger footprint for the house. At this point, Mrs. Linda Olinger, asked to be recognized and challenged the idea that she had spoken with Mr. Clontz regarding selling of the property and asked if Mr. Remsburg had anything in writing indicating this. Mr. Remsburg replied that he did not have anything in writing, but that this had been conveyed verbally when Mr. Clontz applied for the Zoning Variance. Mr. Remsburg showed a diagram of the proposed footprint. The lot is approximately 4,840 square feet and if the required setbacks are followed the home would be around 20 feet wide and 60 feet deep which allows for 1,200 square feet. Mr. Remsburg pointed out that the county measures from any attached portion of the house for setbacks including overhangs and steps. Mr. Clontz has purchased land across from this lot along Wood Land Road for the purpose of placing the septic tank for the new home. He has cleared the woods from much of the lot preserving the area where he will attempt for a perk test, which is in process. Mr. Clontz had opted to seek the variance prior to conducting the perk test. The Clontz family has owned the property since 1959 having been passed to Mark Clontz by inheritance. Traffic along Wood Land Road is minimal as local traffic only. The property has never been developed other than a few picnic tables and access to a dock. Most of the properties along Wood Land were developed with small weekend fishing cabins. With the addition of public water, some current owners are trying to increase the size of the homes and to make these into permanent residences. The area has sufficient fire and emergency services and a new larger home should not be injurious to nearby properties.

Vice-chair Efird called on the applicant to come forward and present their case to the Board.

Mr. Mark Clontz came forward and indicated that his family had owned the lot in question since 1958 and that he and his wife wanted to retire there. They had owned two other homes on Lake Tillery but had sold those and now wished to utilize this property for their retirement home. He had contacted neighbor Harold Deese about his plans and whether any of his land could be acquired. He also called neighbor, Linda Olinger to inform her and see if he could purchase any of her adjoining property. According to Mr. Clontz, she indicated that she was not willing. Immediately after this discussion, Mr. Clontz indicated that he called her back on his cell phone to ask if it was OK to cut trees that were split by the property line. Mr. Clontz said she answered in the affirmative.

David Dulin, Board Member, asked about the size of the acreage involved. Mr. Clontz indicated that the land across the road was 2.8 acres and that the lot needing the variance was less than 5,000 square feet. He had not actually begun the perk test other than digging the test pits. He had been advised by the Environmental Health Department to finish the variance process first and then conduct the test for the septic system. Mr. Clontz reiterated that he and his wife were primarily interested in building a nice home in order to retire.

Vice-chair Efird asked if anyone else wished to speak in favor of the request. No one came forward.

Vice-chair Efird then asked if anyone wished to speak against the request.

Mr. Hap Turner came forward and told the board that his grandfather had developed the lots in the 1950s and created the small lots. He complained that the family had not received much information before the meeting. He saw the variance as a disadvantage for the other property owners and the only reason the Mr. Clontz was asking for the variance was because the lot was too small. He was opposed to a bigger house being constructed and felt that the front set back was more critical than the sides. He indicated that there should really be a change in zoning district.

Mrs. Renee Nichols spoke next. She lives three houses south of the property in a home built around 1965/66. Mrs. Nichols expressed concern about Mr. Steve Wallace and Mr. Clontz's clear cutting of the trees on the lots between Wood Land Drive and Piney Point Road. She indicated that she had "no dog in this fight", but did wonder about set back requirements from Duke Energy and was concerned about the distance from the road in a curve. She wondered if Mr. Clontz could construct across the road and recalled that that land had been tested for septic system about 10 years ago and did not pass. This has been a small, quiet community.

Sarah Turner addressed the Board. She is the great granddaughter of Henry Clay Turner who developed the Piney Point area along with Jack Lee. She cited some the of history of these men and there work to develop the land. She recalled visiting her grandmother at the lake as a youth and felt that her grandmother would be upset to see the lot developed.

Linda Turner Olinger and husband, Paul Olinger addressed the Board explaining that her grandfather, Henry Clay Turner, had developed the land and that the small size of the lots was what he meant to see. She expressed that she understood why the Clontz' wanted to live there. With most of the trees having been cut, this was no longer Piney Point. She had been called by Mr. Clontz after the Laughridge property was purchased. She was not willing to sell any property and she had indicated that Mr. Clontz was not given permission to cut trees that shared the property line and that those cutting trees recently had ventured too far and cut some on her property. She would be dealing with that later. Mr. Olinger shared that he did not see a hardship on the Clontz property was justified, but that the hardship would be on us for the closeness to the property line. Mrs. Olinger questioned whether the homework had really been done on this case.

Renee Nichols asked to address the Board again. She mentioned several examples of nearby lots where outbuildings, decks, etc. had crossed property lines due to the tightness of the lots.

Drew Jones, who lives on Wood Land, came forward and indicated that he thought the owners deserve the opportunity to have a lake front home, it was their right as property owners. The owners need to be able to have a livable and enjoyable home. He supported the Clontz's in their endeavor.

Steve Wallace came forward and indicated that he supported what Drew Jones had said. He told that he had to get a variance when he remodeled in the late 1990s. This is a very nice community and he did not see that granting of the variance would create a problem.

Hap Turner questioned the need for a large house to be constructed. The lots were designed for small homes.

Renee Nichols pointed out that the Turners and Olingers were closer to the Clontz property than Steve Wallace and Drew Jones.

Vice-Chair Efird called for any other testimony to be given. Being none, he closed the hearing.

Cynthia Fish, a Board Member, raised a question about the ordinance in Section 801 which states that the Board of Adjustment may not grant a variance for a Lot of Record that would "allow residential structures closer to any side property line than 7.5 feet."

Since Mr. Clontz's request was for a 6 foot side yard setback, board members questioned whether they could grant the request for a 6 foot setback. With no legal representation for the Board present to make a recommendation; the Board concluded that the best course of action would be to table the proceedings at this point and determine whether the Board was bound by the Ordinance.

Mr. Remsburg indicated that he would seek an interpretation of the Ordinance and that those sign-up to speak and adjoiners would receive a notice of when, where and what the next proceeding would be.

A motion from Buddy Clark and seconded by Cindy Fish was approved unanimously to table further action on case ZV 16-07 until the next meeting.

Mr. Efird called for a 5-minute recess of the meeting.

Vice-Chair Efird called the meeting back into order and asked those who wish to testify in the second case; SUP 16-01 – Chad Smith to come forward and be sworn in. Mr. Efird swore in those planning to testify.

He then asked Mr. Remsburg to share the staff information on the case.

Mr. Remsburg shared that Chad and Myquillyn Smith had requested a Special Use Permit to hold up to six events on almost 12 acres which they own on the Cabarrus County line southwest of Stanfield. The property is addressed as River Road; however, the driveway is located in Cabarrus County. The road changes names to Garmon Mill Road when it crosses into Cabarrus County. The road is a back way from Stanfield to Midland and is travelled by around 1,300 vehicles per day according to the NCDOT traffic count in 2012. The driveway that is in use crosses land owned by Marlene Tomberlin and Bill Martin. The Smith's property includes an approximately 60' wide section which connects to Garmon Mill Road, but a driveway has never been constructed. Mr. and Mrs. Smith have requested the opportunity to hold up to 6 events per year (three events held up to twice each). The largest event would host up to 1,000 guests spread through the day, last approximately 7 hours and include music, food trucks and vendors. A smaller event with up to 45 participants would last 3 days with 2 nights of camping and includes live music and guest speakers. A third proposed event would host up to 100 attendees and last 6 hours and end by 7:00 PM. The property is zoned RA-Residential Agricultural. The Zoning Ordinance allows "Agricultural Fairs, Carnivals, Recreational, and Entertainment Activities" with a Special Use Permit approved by the Board of Adjustment. This Board may "allow, conditionally allow, or disallow proposed activities, regulate the use and location of proposed buildings, set time of operations, or specify other conditions necessary to assure protection to the neighborhood or community in general." Mr. Remsburg used a power point presentation to show the property layout and site plan for the events.

Mr. Remsburg shared that the following conditions had been agreed to by Chad and Myquillyn Smith:

General requirements:

Limit to a maximum of 6 events per year.

Portable toilets will be provided at least one per 200 anticipated participants.

Driveway access shall be by an improved aggregate or paved surface which can accommodate two-way traffic.

If dry conditions exist, an aggregate driveway shall be sprayed with water to minimize dust.

Food preparation shall be by licensed vendor or caterer.

Music and speaker systems shall direct sound away from occupied adjacent property.

Provide parking for no more than 300 vehicles at one time.

Paid admission may be charged.

Vendor event (currently known as Nest Fest)

Held a maximum of 2 times annually for one day each.

Restrict maximum attendance to 1,000 for the total event.

Vendors may set up on the day prior to the event.

Vendors may pay a fee to participate.

Public event shall occur between 10:00 AM and 7:00 PM.

Camping event (currently known as Mantime)

Held a maximum of 2 times annually for three days and two nights.

Restrict maximum attendance to 45.

Camping shall be in tents.

Any discharge of firearms shall be between the hours of 10:00 AM and 7:00 PM.

No amplified sounds between 10:00 PM and 7:00 AM.

Fun Day (currently known as Father/Son Fun Day)

Held a maximum of 2 times annually for one day each.

Restrict maximum attendance to 100.

Event shall occur between 9:00 AM and 7:00 PM

Buddy Clark, Board Member, suggested the need to add that the Smith's should be required to notify the Planning Department of the dates of their events as one of the requirements. This was agreeable to the Smiths and would be added to the General Requirements to be completed on an annual basis.

Vice-chair Efird then invited the Smiths to come forward and present their case to the Board.

Chad and Myquillyn Smith came forward. Mr. Smith identified that he has served in ministry and works in business and that his wife has become a successful blogger using her skills in interior design. On-line she is known as "The Nester". Several years ago, they had a vision to get away from tight neighborhoods in the Charlotte area. They were not farmers, but found the 12 acre site they now own. They wanted to be able to invite people and be a host in a place created to engage, encourage and inspire. The area they are in has very cordial neighbors and a great place to invite others to do this. They had held several small private events. They invested in upgrading the property which was formerly the home of Rocky River Sawmill. They invested in how they could involve more people as an opportunity to foster community sometimes with a religious theme. The barn can host approximately 45 people. The 3 acre meadow can hold around 130 cars per acre. The Nest Fest planned for this fall is the first fully public event. The only access at present to the property is the driveway across the Tomberlin property. Mr. Smith reported that he had researched the deeds and there is no evidence of an easement including this driveway. He had preferred to utilize the existing driveway as it is further from the Tomberlin's home; however, he is prepared to construct a new driveway using the 63 foot wide strip that connects with Garmon Mill Road. Mr. Smith stated that the 1,000 amount of attendees may seem alarming, but that these would be spread through the day. They are more likely to see around 250 guests per hour. Ticket sales are in advance of the event. They anticipate that many will come together in cars. They have met with the Stanly Convention and Visitor Bureau who will be promoting their efforts. They are also being promoted by another blogger. Nest Fest will feature local and regional artists and vendors. Myquillyn has been identified in "Christianity Today" as an innovator and creator.

Vice-chair Efird invited any in opposition to the Special Use Permit to come forward.

Wendy Tomberlin came forward. She is the daughter of Marlene Tomberlin and stated that she was speaking for the family, several of whom were present. She indicated that they were opposed to all six events. She was concerned about the traffic, dust generation and that the

proposed new driveway was within 82' of her parent's back door. The constant flow of traffic would disrupt their privacy. She was concerned about the trash and parking. How would they handle overflow parking? The Mantime event held in April had constant rifle fire for 3 hours which was very disturbing. The noise generated also made the Tomberlin's suspect the use of tannerite. Ms. Tomberlin was also concerned that the Smiths had invited the whole world to Nest Fest through the online presence by Mrs. Smith. She submitted printed copies of the website presence for Nest Fest and Man Time which were accepted by the chair with no objection. Ms. Tomberlin contended that since the Smiths are charging for vendors and attendees and that the event is promoted online through the Smith's company known as Nest Media, the event should require a Rural Based Business permit as outlined in Section 415 of the Stanly County Zoning Ordinance. As a Rural Based Business, the events would not be permissible for several reasons including being only 485' from the Tomberlin home. Ms. Tomberlin contended that the events would detract from the property values of neighbors due to the disruption of the peace and quiet of the area.

Marlene Tomberlin spoke next and indicated that there was an issue with the property line and that she would not allow an easement through her property for the Smiths. She would close the old access driveway if a new access was constructed.

Chad Smith asked to speak again. He said he had met three years ago with county staff and discussed their proposed use of the property for future events. Staff had said that events should be acceptable on the property. He indicated that Man Time was a small event and not on every weekend. The reason things were listed online was to save paper and make registration easier. It is not designed as a "wild time". The event included speakers and music but there was a three hour recreation time in the afternoon which included the opportunity to shoot. The shooting included skeet and pistol shooting. Mr. Smith outlined the schedule for the Man Time event which he indicated allowed attendees to be men in a wholesome way. He has tried to be polite and neighborly with no music late at night. He indicated that Nest Media is on-line only. When they purchased the property, he was under the impression that there was a deeded perpetual easement to access the property. He has researched this and found it to not be true and that the Tomberlins could close the driveway at any time. He was hoping to not open the other access to keep the traffic further away from the Tomberlin home. He will have to develop the new driveway but would try to remove the smallest amount of trees possible and keep the drive as far from the Tomberlin home as possible; although it would have to be wider if the old access was closed. He indicated that the Tomberlins had been gracious to the previous owners and to the Smiths.

Gary Morland spoke next. He is Myquillyn Smith's father. He indicated that he thought the information shared was reasonable and that this was just 6 events in a year. He stated that the property handles cars well but it would be great if they could work out to keep the old access open, saving the trees. Vice-chair Efird reminded Mr. Marlin to address his comments to the Board and not to the audience. There is already steady traffic on the main road (Garmon Mill) and the addition of others will not be significant.

Wendy Tomberlin came forward and stated to the board that shooting is not agricultural. The former saw mill had been a part-time hobby of the past occupant. In total the six events encompass 14 days of activities. She indicated that the Tomberlins have no plans to close the driveway unless the other is constructed.

Billy Martin spoke next indicating that he knows there had been loud shooting for several hours and it was scattered through the area of the Smith property.

Chad Smith addressed the Board and indicated that he was a bit surprised by the comments about shooting. About 1/3rd of the attendees at the Man Time event had actually participated. He used the power point to show the property and indicated where the activity occurred in the back field. He does hunt on the property. The area abutting his property to the east is a large tract which Mr. Smith believes is in a conservation easement and will not be built upon.

Vice-Chair Efird asked if there were any further testimony from the audience or any questions from the Board. Hearing none, Mr. Efird declared the public hearing over and indicated that the Board would now consider the Findings of Fact.

Finding #1 That the project will maintain or enhance the public health, safety, and general welfare if located where proposed, and if developed and operated according to the plan submitted.

Mr. Efird asked if there were any comments from the Board. Mr. Buddy Clark reiterated that an additional condition to include would be that the Planning Department be notified annually about the planned dates for the events. Mr. Remsburg indicated that he would add that to the requirements if that was the consensus of the Board. Being no objection, the Vice-chair requested that this condition be added.

Motion: Devron Furr made a motion to find this fact true based on the evidence submitted.

Second: David Dulin seconded the motion

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

Finding #2 That the project will maintain or enhance the value of contiguous property.

Mr. Efird asked if there were any comments from the Board concerning the second finding. There were none.

Motion: Buddy Clark made a motion to find this fact true based on the evidence submitted.

Second: Frank Lee seconded the motion

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

Finding #3 That the project has adequate sewage disposal facilities, solid waste and water provisions; police, fire and rescue squad protection; and transportation systems/roads available within and around the site.

Mr. Efird asked if there were any comments from the Board concerning the third finding. There were none.

Motion: David Dulin made the motion to find this fact true based on the evidence submitted.

Second: Devron Furr seconded the motion.

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

Finding #4 That the project complies with the general plans for the physical development of the county as contained in the County Land Use Plan and the Zoning Ordinance as adopted by the Board of County Commissioners.

Mr. Efird asked if there were any comments from the Board concerning the fourth finding. There were none.

Motion: Jennifer Lisk made the motion to find this fact true based on the evidence submitted.

Second: Devron Furr seconded the motion.

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

Mr. Efird asked if there was a motion to approve the Special Use Permit with the proposed conditions.

Motion: David Dulin made the motion to approve the Special Use Permit with the proposed conditions.

Second: Buddy Clark seconded the motion.

Action: The Board unanimously approved the Special Use Permit with the proposed conditions.

There being no further business for the Board, Mr. Efird entertained a motion to adjourn the meeting.

Motion: Devron Furr made the motion to adjourn the meeting.

Second: Buddy Clark seconded the motion.

Action: The Board unanimously approved the motion to adjourn.

The meeting adjourned at 10:30 p.m.

Michael Efird, Vice-chair

Bob Remsburg, Clerk to the Board