

BOARD OF ADJUSTMENT MINUTES
Regular Meeting
Commons Meeting Room
March 13, 2012

Call to Order

Chairman Andrew Eades called the Board meeting to order at 7:30 p.m. on Tuesday, March 13, 2012, in the Commons Meeting Room.

Roll Call

Board Members Presiding

Andrew Eades, Chairman
Cathy Bennett
Richard Cosgrove
Dr. John Eckman
Benton Payne
Grover Stewart
Kevin Brickman, Alternate

Absent

Todd Swaringen, Vice Chairman

Alternates

Rebecca Carter

Staff Attending

Linda Evans, CZO, Planner II, Clerk to the Board
Tim Swaringen, CZO, Zoning Enforcement Officer

Approval of January 10, 2012, Regular Meeting Minutes

Chairman Eades asked if there were any corrections to the regular minutes of January 10, 2012. Hearing no objections or corrections, Chairman Eades asked for a motion.

Motion: Richard Cosgrove made a Motion to approve the regular minutes of January 10, 2012, as written.

Second: Grover Stewart seconded the motion.

Action: The Board voted unanimously to approve the minutes of the January 10, 2012, regular meeting as written.

Chairman Eades addressed the audience and stated that the Stanly County Board of Adjustment is a quasi-judicial Board; therefore, the North Carolina State Supreme Court, under NCGS 153A-345, requires that the Board base its decisions only on testimony given under oath. He informed the audience that any person, who, while under oath during this proceeding, willfully swears falsely, is guilty of a Class 1 misdemeanor.

Chairman Eades cautioned the audience that no hearsay evidence would be accepted; that only testimony from those present would be considered by the Board. He also stated that the Board would accept any evidence such as maps, site plans, etc. and that it would be inserted into the file as permanent evidence.

BOARD OF ADJUSTMENT MINUTES
Regular Meeting
Commons Meeting Room
March 13, 2012

Chairman Eades asked the Clerk to present the first case, ZV 12-01.

Mrs. Evans stated that Donald Oliver requests a Variance to allow him to place an accessory structure (storage building) in his front yard. The property is approximately 5.6 acres and is zoned RA Residential Agricultural. Investigation shows that Mr. Oliver's manufactured home is over 1000 feet off the Hugh Road right-of-way and approximately 50 feet off his rear property line, at its closet point. A site inspection of the property revealed that the septic tank is on one side of the home and the topography on the other side and in the rear is very sloped, making it impractical to place an accessory structure in these locations. An incentive for granting a variance is that the proposed location of the accessory structure is more than 800 feet off the Hugh Road right-of-way. Also, Mr. Oliver plans on building a house in the future that will be approximately in the center of the property, which would place it in front of the accessory structure location.

Chairman Eades asked the Board members if any one of them had a conflict with hearing this case, ZV 12-01. No one responded. He asked if any Board member had any evidence he wished to submit in regard to this case. No one responded.

Chairman Eades asked that everyone who intends to speak on the first case, ZV 12-01, come forward and be sworn in. Donald Oliver, Tim Swaringen, and Linda Evans were sworn in by Chairman Eades.

Chairman Eades called on the applicant to present her case to the Board.

Mr. Oliver came forward and stated that he wants to build a 30 by 50 storage building for his personal use. He stated that he does not have room on the sides or in the rear because of the septic system and the slope of the property. He stated that he plans to build a new home in the future and, when he does, the storage building will be located in the rear of the new home.

Chairman Eades stated that, if there were no other questions or comments, the Board would review the findings of fact. Ms. Bennett read, and the Board found as follows:

That applicant cannot secure a reasonable return from this property without the Variance.

Motion: Grover Stewart made a motion to find this fact true based on the evidence submitted and the fact that Mr. Oliver would like to have the benefit of a storage building to store equipment and personal items.

Second: Andrew Eades seconded the motion.

Action: The Board voted unanimously to approve the motion.

That a hardship exists resulting from unique circumstances related to applicant's land.

Motion: Richard Cosgrove made a motion to find this fact true based on the fact that the topography of the land on one side and rear is sloped and not suitable for placing a structure and the septic system is on the other side

BOARD OF ADJUSTMENT MINUTES
Regular Meeting
Commons Meeting Room
March 13, 2012

Second: Cathy Bennett seconded the motion.

Action: The Board voted unanimously to approve the motion.

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

Motion: Andrew Eades made a motion to find this fact true based on the fact that the location of applicant's home near the rear of the property and the location of the septic system does not allow him sufficient room to place an accessory structure in the side or rear.

Second: Grover Stewart seconded the motion.

Action: The Board voted unanimously to approve the motion.

That, if granted, the Variance will be in harmony with the general purpose and intent of the ordinance and will preserve its spirit.

Motion: Dr. Eckman made a motion to find this fact true based on the fact that the storage building in the front yard will not cause a negative visual impact on neighboring property and it will not substantially detract from the character of the neighborhood.

Second: Kevin Brickman seconded the motion.

Action: The Board voted unanimously to approve the motion.

That, if granted, the Variance will secure the public safety and welfare and will do substantial justice.

Motion: Benton Payne made a motion to find this fact true based on the fact that the storage building in the front yard will not influence public safety and welfare and will do substantial justice in that the benefit to the applicant will substantially outweigh the harm to neighboring property. There was no opposition at the hearing.

Second: Dr. Eckman seconded the motion.

Action: The Board voted unanimously to approve the motion.

Chairman Eades stated that he would entertain a motion to grant, deny, or modify the petitioner's request for a Variance.

Motion: Grover Stewart made a motion to grant the Variance.

Second: Richard Cosgrove seconded the motion.

Action: The Board voted unanimously to approve the motion.

Chairman Eades asked the Clerk to present the next case, ZV 12-02.

Mrs. Evans stated that applicant, Terry Crowell, requests a Variance to permit a residence that extends to ten (10) feet from his southeast side property line. The property is approximately .492 acre and is zoned RA Residential Agricultural. Section 701 of the ordinance specifies that primary structures are required to be fifteen (15) feet from any side property line. Mr. Crowell states that the addition will meet the fifteen (15) foot setback in the front because of the slant of the property line. The garage will allow him to park his car in shelter and enter into his home from the garage, and he will also have the added storage space. Applicant's home is parallel with his front property line while his side property line runs at an angle toward the rear of the property line. He is able to meet the fifteen (15) foot setback in the front but not the rear. The property is small and does not meet today's

BOARD OF ADJUSTMENT MINUTES
Regular Meeting
Commons Meeting Room
March 13, 2012

minimum lot size, but was created prior to the adoption of the zoning ordinance; therefore, is considered a legal non-conforming lot.

Chairman Eades asked that everyone who intends to speak on the second case, ZV 12-02, come forward and be sworn in. Terry Crowell and Linda Evans were sworn in by Chairman Eades.

Chairman Eades called on the applicant to present his case to the Board.

Mr. Crowell came forward and stated that he wants to add a garage to his home that will allow him to park his car and enter into his home from the garage. He stated that he also needs additional storage space. He stated that his home sits parallel with the road and his property line is slanted toward the rear. He stated that he can meet the 15 foot setback at the front of his property but cannot meet it as the property line slants toward the rear.

Chairman Eades stated that, if there were no other questions or comments, the Board would review the findings of fact. Ms. Bennett read, and the Board found as follows:

That applicant cannot secure a reasonable return from this property without the Variance.

There was some discussion among Board members whether or not this fact should be found true or false.

Mr. Cosgrove stated that, if the Board was only considering whether or not Mr. Crowell could receive a "reasonable return" from the property, he personally would consider it false; therefore, Mr. Cosgrove made a Motion to find this fact false.

Grove Stewart pointed out that the rule is whether the property owner can secure a "reasonable return" or make "reasonable use" of the property. He believes that if the Board considers whether or not Mr. Crowell can make "reasonable use" of the property then the finding should be true.

At this point, Mr. Cosgrove agreed with Mr. Stewart and withdrew his Motion to find the fact false.

Motion: Andrew Eades made a motion to find this fact true based on the evidence submitted and the fact applicant wishes to have a garage/storage area that will meet his needs and allow him to store automobiles and other personal items in an enclosed area away from the public eye. If granted, this variance will represent the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land.

Second: Richard Cosgrove seconded the motion.

Action: The Board voted unanimously to approve the motion.

That a hardship exists resulting from unique circumstances related to applicant's land.

Motion: Andrew Eades made a motion to find this fact true based on the fact

BOARD OF ADJUSTMENT MINUTES
Regular Meeting
Commons Meeting Room
March 13, 2012

that applicant's home is parallel with his front property line while his side property line runs at an angle toward the rear of the property line. He is able to meet the fifteen (15) foot setback in the front but not the rear. The property is small and does not meet today's minimum lot size, but was created prior to the adoption of the zoning ordinance therefore is considered a legal non-conforming lot.

Second: Dr. Eckman seconded the motion.

Action: The Board voted unanimously to approve the motion.

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

Motion: Grover Stewart made a motion to find this fact true based on the fact that the lot was created and the home was placed on the property prior to having to meet any zoning regulations.

Second: Richard Cosgrove seconded the motion.

Action: The Board voted unanimously to approve the motion.

That, if granted, the Variance will be in harmony with the general purpose and intent of the ordinance and will preserve its spirit.

Motion: Grover Stewart made a motion to find this fact true based on the fact that the addition to the residence will not cause a negative visual impact on neighboring property and it will not substantially detract from the character of the neighborhood.

Second: Benton Payne seconded the motion.

Action: The Board voted unanimously to approve the motion.

That, if granted, the Variance will secure the public safety and welfare and will do substantial justice.

Motion: Andrew Eades made a motion to find this fact true based on the fact that the addition to the residence will not influence public safety and welfare and will do substantial justice in that the benefit to the applicant will substantially outweigh the harm to neighboring property.

Second: Dr. Eckman seconded the motion.

Action: The Board voted unanimously to approve the motion.

Chairman Eades stated that he would entertain a motion to grant, deny, or modify the petitioner's request for a Variance.

Motion: Dr. Eckman made a motion to grant the Variance.

Second: Grover Stewart seconded the motion.

Action: The Board voted unanimously to approve the motion.

Chairman Eades asked if anyone had further business to discuss.

Mrs. Evans stated that, if it would benefit the Board in making its decision, she could add the words "reasonable use" in Finding of Fact number one to read as follows: *That applicant cannot secure a reasonable return from or make reasonable use of this property without the Variance.*

BOARD OF ADJUSTMENT MINUTES

Regular Meeting

Commons Meeting Room

March 13, 2012

The Board members unanimously agreed that it would be considerably easier for the Board to make a determination of true or false if the Finding of Fact included the words “reasonable use.” Chairman Eades asked Mrs. Evans to make this change on all future correspondence.

Mrs. Evans asked the Board members if they would like to recommend amending the zoning ordinance to allow accessory structures in the front yard on certain specific cases where there is a large property involved or when the residence is located a great distance from the road.

After some discussion, the Board unanimously decided that, due to the small number of these cases that come before the board, they should continue to be dealt with on a case by case basis by the Board of Adjustment.

Chairman Eades asked for a motion to adjourn. Grover Stewart made a motion to adjourn, seconded by Kevin Brickman. The meeting was adjourned at 8:00 p.m.

Date

Andrew Eades, Chairman

Date

Clerk to the Board