



**TOWN OF OAK RIDGE BOARD OF ADJUSTMENT  
JULY 14, 2016 – 7:00 P.M.  
OAK RIDGE TOWN HALL**

**MINUTES**

**Members Present**

Nancy Stoudemire, Chair  
Dede Cunningham, Vice Chair  
Jay Cumbus  
Bill Barbour  
Beth Walker, Alternate (sitting)

**Staff Present**

Sandra Smith, Town Clerk  
Bruce Oakley, Town Manager

**Members Absent**

Gray Cassell

**1. CALL MEETING TO ORDER**

Chair Nancy Stoudemire called the meeting to order at 7:00 p.m.

**2. ROLL CALL**

The roll was called and Bill Barbour, Dede Cunningham, Jay Cumbus, Nancy Stoudemire and Beth Walker were present.

**3. APPROVE AGENDA**

**Dede Cunningham** made a **motion** to approve the meeting agenda. **Beth Walker** seconded the motion, and it was passed unanimously (5-0).

**4. APPROVE MINUTES OF SEPTEMBER 10, 2015, MEETING**

**Bill Barbour** made a **motion** to approve the minutes. **Jay Cumbus** seconded the motion, and it was passed unanimously (5-0).

**5. NEW BUSINESS**

**Election of chair and vice chair**

**Bill Barbour** nominated Nancy Stoudemire for chair, and **Jay Cumbus** seconded. With no other nominations, the vote for Nancy Stoudemire for chair was unanimous (5-0).

**Nancy Stoudemire** nominated Dede Cunningham for vice chair, and **Jay Cumbus** seconded. With no other nominations, the vote for Dede Cunningham for vice chair was unanimous (5-0).

**6. PUBLIC HEARING**

**Case No. BOA-16-02:** Sagar Cherukuri requests a variance to Section 30-381 of the Oak Ridge Code of Ordinances, to allow an accessory structure within the side street setback. The property is located at 600 Blenheim Court, Tax Parcel 0170058, Oak Ridge Township, and is zoned RS-40 (Residential Single-Family).

Stoudemire read a statement explaining that the Board would be conducting a quasi-judicial hearing and each member would act as both an independent judge and a member of the Board. She explained that Board members were tasked with being impartial and were not to express individual opinions on the matter or take the opinions of others into consideration; the Board was to take the evidence presented, apply the standards in the Development Ordinance, make findings of fact, and render a decision. Those wishing to speak must be sworn in. Stoudemire asked Board members to disclose any potential conflicts of interest in the case, which includes any discussion with anyone about the application. She asked them to disclose if they had a fixed opinion that is not likely to change; if they had communications with the applicant or other involved parties; if they had any discussions with anyone about the case; if there was a close family or other relationship with the applicant; or if they had any financial interest in the outcome of the case. No conflicts were disclosed.

Town Manager Bruce Oakley and Sagar Cherukuri, the applicant, were sworn in by Town Clerk Sandra Smith.

Oakley presented the staff report, which is hereby incorporated by reference and made a part of the minutes, saying that the applicant was requesting a variance to Section 30-381 of the Oak Ridge Code of Ordinances to allow an accessory structure within the side street setback. He read the property description into the record. He said the applicant proposed building an approximately 1,000-square-foot detached garage with carport on his property. He said Section 30-381 of the of the Development Ordinance states that any accessory structure greater than 600 square feet must meet principal building setbacks. Oakley said Cherukuri's house was located on a corner, and the side street setback for a minor thoroughfare, which Stafford Mill Road is considered, is 45 feet from the right of way. He said the applicant was proposing placing the structure roughly 17 feet from the right of way. Oakley said the packet, which is hereby incorporated by reference and made a part of the minutes, included several documents for review, including the plat book page which showed where the septic lines are located on the property. He said there was some confusion on the right of way that is marked, but after discussing the issue with Town Planner Bill Bruce, he understood that it was 17 feet to the right of way. Oakley said he was available to answer technical questions having to do with the ordinance.

Cunningham asked if the setback requires 45 feet from the right of way and the applicant is asking for 17 feet from the right of way, which means they are asking for a 28-foot encroachment. Oakley said yes, adding that if the proposed garage were less than 600 square feet, it could be placed 5 feet from the property line.

Barbour asked why there was a 45-foot setback requirement. Oakley said it was for continuity along the road and so some houses don't jut forward closer to the road than others. He said it was to try to provide some order, and the reason it was

greater along a minor thoroughfare is to accommodate possible widening. Oakley said DOT has classified the road as minor thoroughfare, and although it would not likely be widened to four lanes, the larger right of way provides room for shoulder widening.

Cumbus asked if a detached carport located next to a garage that was less than 600 square feet in size would be allowed. Oakley said yes. Stoudemire asked if Cumbus meant if the carport was detached from the garage, and Cumbus said yes. Cunningham said if either the carport or the garage were a separate structure, either would be allowed if they were less than 600 square feet. Oakley reiterated that if the two were separate structures, they could be located within 5 feet of the property line.

Stoudemire asked if the property line was the line of trees shown on the photo. Oakley said he believed the property line was just inside the tree line and the trees likely belonged to the homeowners association. Sagar Cherukuri said the trees were located on an easement. He said he had learned after he purchased the property that the property line runs parallel to the corner of the driveway.

Walker asked if the trees were located between the applicant's property line and Stafford Mill Road, and Cherukuri said yes. He said they were about 30 feet from Stafford Mill Road. Stoudemire asked if the fence was located on Cherukuri's property, and he said it was located in the easement. He said when he went to the homeowner's association to find out about installing a fence to help with noise reduction, they suggested he put it there.

Cumbus asked if the measurements shown are for the total footprint of the structure and not just the walls. Oakley said yes, adding that a patio would not be included in calculations, but most of what is shown would be included because it includes a roof structure.

Stoudemire opened the public hearing, saying that both proponents and opponents would be allowed to speak, followed by a period of rebuttal. She said that only factual evidence could be presented and considered.

*Public hearing:*

Sagar Cherukuri spoke in favor of the variance, saying the main reason for the request was to allow he and his wife to construct a garage. He said the house was originally a model for the subdivision, and the original garage space had been converted into a showroom with a handicap entry, something that had never been changed. He said now they realized they were going to need a garage, and added that when they purchased the property, it was devalued by \$40,000 because it did not have one. He said the building he proposed would include a garage on one side and a carport, which he called an open patio, on the other side. He said the idea was to perhaps use the patio area for a boat if the homeowner's association approves. He said that was the reason for the request.

No one else spoke in favor of or in opposition to the case, and the public hearing was closed. Stoudemire said the Board would now discuss the case with respect to its congruity to the ordinance and applicable laws. She said only competent, substantial

and material evidence could be considered and other evidence should be rejected. She said the Board could question the applicant.

Cunningham called Cherukuri back to the podium; she asked if his home was part of the New Chartwell development and if it had a homeowner's association, and Cherukuri said yes. She asked if the plans had been submitted to the HOA, and Cherukuri said he had not done so yet. She asked why he had come to the Board first, and Cherukuri said he had mentioned the issue before but had not wanted to go through the HOA's formal process until he knew whether the Town would allow the garage to be built. He said his next step would be to go to the HOA after he received the Board's approval, since the HOA would need to also approve the materials for the structure. Cunningham asked if the Board of Adjustment gives approval, does he know if the HOA would approve the garage, and Cherukuri said that was correct.

Cunningham asked if New Chartwell had a community well, which is maintained by Aqua; Cherukuri said yes. She asked if he had an individual well on his property, and he said no. Cunningham asked if Cherukuri had investigated with Guilford County whether it was possible to relocate or shorten the septic area to allow the structure to be built on another area of the lot. She said not having an individual well would allow the applicant more flexibility. Cherukuri said he had not discussed moving the septic area with Guilford County, but that cost would likely prohibit him from relocating the entire septic system. He said if that was the case, he would probably sell the house before he tried to build a garage because it would not be worth changing the septic and putting it in front of the house. He said there is a sprinkler system in the front yard and there was no way he would consider relocating the septic there.

Cunningham asked about the size of the proposed garage and why it was necessary to have a structure of this size when it would be allowed if it were under 600 square feet without coming to the Board for approval. She asked him to explain in detail why it was necessary to have a 1,000-square-foot garage and carport and why anything less would be a hardship. Cherukuri said he did not know if the structure would end up being 1,000 square feet and he did not know there were separate rules for a two- or a three-car garage. He said he was unsure of the size the garage with carport would be. Cunningham asked if the hardship for Cherukuri was in not having a garage at all, and Cherukuri said that was correct.

Cunningham asked if Cherukuri was the owner of the property when a car ran across the road and into the back yard of his property. Cherukuri said he was not, but he had heard about the incident after he purchased the property. Cunningham said she was aware of the incident because a resident of her neighborhood was driving the car, which came up Bunker Hill Road, failed to make a right turn, and ended up in the back yard of Cherukuri's property. Cherukuri corrected her, saying the car ended up in the front yard. Cunningham said her concern from the Board's standpoint was when they were considering whether this case was a matter of public safety. She said one of the things she would be considering was whether putting the building closer to the right of way would jeopardize public safety with regard to traffic on the road, speed and the possibility of accidents. Cherukuri said if someone lost control of their vehicle coming up Bunker Hill Road, they would hit a tree, shrubbery and then the part of his house that was originally intended to be a

garage. He said traffic was fast on the road, but it would likely end up hitting his house, not where the proposed garage would be located on the side of the house. He said the million-dollar brick house located down the street was closer to the road than his proposed garage. He said Bunker Hill Road is directly across from the front corner of his house, and the garage was proposed for the back corner. Cunningham said she just wanted to make a statement for Cherukuri and other members of the Board that she thought they needed to consider jeopardizing public safety and whether this building and being in the setback would contribute to that.

Walker asked if a two-car garage without a carport could be built closer to the house and away from the easement. She asked if Cherukuri had considered changing his plan. Cherukuri said he had not considered that, and that his wife wants a boat. He said if what he has proposed is a problem, he would have to consider his options at that time. He said he was trying to keep his options open for the next year or two in case he gets a boat so he will have an easy place to park it. He said the caveat is assuming the HOA will allow it.

Stoudemire asked if Cherukuri had said the current office space in his house was supposed to be a garage. Cherukuri said his house was originally the model home for the development and they typically convert the garage to a showroom with a handicap access restroom. He said that space has a separate heating and air conditioning unit, but he does not use it as an office. He said he uses it for storage or for a bedroom when his in-laws, who are in their 70s, come to visit. He said they might possibly need that in the future and could turn it into a downstairs bedroom. Stoudemire said she was curious to know if that space might be turned into a garage. Cherukuri said if that was done, it would not be possible to turn a car into it because of the way the driveway was built. He said he would have to make his driveway larger, which would put him outside the property line. Stoudemire asked if there was any space behind the house, and Cherukuri said septic lines were located there and run across his entire back yard. Stoudemire said she noticed Cherukuri's next-door neighbor's house is set back further than his, so he would not be able to build a garage on that side of the house; Cherukuri agreed, saying water, furnace and other types of lines are located on that side of the house. Stoudemire said it was not feasible to put the garage in front of the house, so unless Cherukuri moved his septic lines, there was no other place for the garage, and Cherukuri agreed.

Stoudemire reminded the Board that there were grounds for variances. She read the grounds for variance from Sec. 30-195(f) from the ordinance.

Cunningham said she was struggling with the fact that a smaller building was not being considered and a smaller building would meet the intent of the ordinance and the Board would not be there discussing the case. It would also pretty much eliminate the need for a hardship. She said despite the fact that moving the septic had not been investigated, she thought at least a conversation with the HOA would have been in order. She said in a recent case, the HOA had appeared with the applicant and supported the request. She said a more reasonably sized building that would meet the intent of the ordinance would not create a hardship on the applicant, and she said had concerns that it was not in the public's best interest or creates a safety issue being close to a road that very well might be widened at some point.

Barbour agreed and stated that the first use of the carport might be a patio. Barbour added that there is nothing to say that a boat could not be housed in a separate structure. He added that it seems logical that building a 600-square-foot garage would prevent the case from coming before the Board. Barbour also stated that the patio could be located closer to the house.

Oakley reminded the Board that if the two structures were separate, they could be located within 5 feet of the property line.

Walker asked if the patio could be on the rear of a two-car garage and still be within the setback. Oakley responded that it would only have to be 5 feet away; he encouraged the Board to think about when the ordinance was written, the fact that it more specifically applies to principal dwellings, and that the ordinance helps to create continuity along the road.

Walker replied that when the ordinance was written, that there was no way to anticipate what all the issues would be in the future, but that is why the Board of Adjustment exists. She added that the Board makes decisions based on a lot of factors. Walker said she was concerned about how close to Stafford Mill Road the proposed building would be, and added that she thought it was quite amusing that Stafford Mill Road is designated a minor thoroughfare. Walker said although the closeness concerned her, she also noted Oakley said that if the applicant were proposing separate structures, they could be even closer without having to come to Board. She said that was concerning to her as well.

Barbour said that he thinks that negates a safety issue.

Walker added that she is also concerned that usually the HOA has input before an issue like this is brought before the Board. She said she would like to hear from neighbors on how they feel about this issue. Walker said that dealing with the setbacks before the HOA approves the garage feels like they are dealing with the cart before the horse.

**Cunningham** made a **motion** to deny this variance request based on the following findings of fact:

1. There is no unnecessary hardship. The applicant has the possibility to build a smaller accessory structure that would be allowed by the ordinance that would still allow reasonable use of the property and permit the garage to be built.
2. Although the applicant purchased the property and was aware that Stafford Mill Road was there, the act of purchasing the property does not justify a self-created hardship.
3. The variance would not be in the best interest of public safety as it would allow an accessory structure to be built within the right of way of a minor thoroughfare.
4. There is no hardship created that is particular to the property such as location, size or topography. There are other opportunities that the applicant did not investigate prior to appearing before the Board of Adjustment to request the variance.

**Barbour** seconded the **motion**, and Stoudemire asked the board if there was any discussion before a vote was taken.

Walker replied that she thought if the Board votes on this motion and agrees to deny the request, that it is encouraging the applicant to consider other alternatives. She added that it is not the intent of the Board to deny reasonable use of personal

property, but she wanted to go on record as saying that this request is a concern to the Board for the reasons stated before. She also felt like the Board recognizes that there are other alternatives that would not shut down the process for the applicant.

Cunningham added that it is a difficult job being on the Board of Adjustment, which cannot look at personal opinions, but encourage the applicant to look at alternatives.

Cherukuri said if he withdrew the carport request, it would become a 24-foot-by-24-foot two-car garage. He asked if that would require him to come before the Board. Oakley replied that it would not and encouraged Cherukuri to come talk with him or Bill Bruce about his new plan. Cherukuri replied that he would and thanked the Board members for their time.

Barbour asked if the new plan would involve the HOA and its restrictive covenants. Cherukuri said he would meet with his HOA to get feedback on his new plan and how the garage would look.

The **motion** to deny the request passed unanimously (5-0).

Stoudemire ended the public hearing by saying that she thought it sounded like the applicant's plan would work out although it would not be exactly what was originally requested.

## 7. **ADJOURNMENT**

**Bill Barbour** made a **motion** to adjourn the meeting at 7:42 p.m. **Beth Walker** seconded the motion, and it was passed unanimously (5-0).

Respectfully Submitted:

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Sandra B. Smith, CMC, NCCMC  
Town Clerk

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Nancy Stoudemire  
Chair