



**TOWN OF OAK RIDGE BOARD OF ADJUSTMENT MEETING
MAY 9, 2013 - 7:00 P.M.
OAK RIDGE TOWN HALL**

MINUTES

Members Present

Beth Walker, Vice Chair
Nancy Stoudemire
Wendell Ott
Jay Cumbus, Alternate (Sitting)
Dede Cunningham, Alternate (Sitting)

Staff Present

Sandra Smith, Town Clerk
Bruce Oakley, Town Manager
Bill Bruce, Town Planner

Members Absent

Jim Kinneman, Chair
Alex Papp

1. CALL MEETING TO ORDER

Beth Walker called the meeting to order at 7:00 p.m.

2. ROLL CALL

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

3. APPROVE AGENDA OF MAY 9, 2013, MEETING

Nancy Stoudemire made a motion to approve the May 9, 2013, meeting agenda after removing the approval of the March 14, 2013, meeting minutes. Jay Cumbus seconded the motion, and it was passed unanimously (5-0).

4. PUBLIC HEARING

- **Case No. 13-04-ORPL-01502:** William Queen requests a variance to Section 30-382(a) of the Oak Ridge Code of Ordinances, to allow an accessory structure in front of the front building line of the principal structure. The property is located at 8103 Hunting Cog Rd, Tax Parcel 0162982, Oak Ridge Township, and is zoned RS-40, Scenic Corridor Overlay Zone, Greensboro (WS-III) Watershed.

Bill Bruce, Bruce Oakley, William Queen and Mike Stone were sworn in.

Town Manager Bruce Oakley said the Town did not intend to oppose the variance. Town Planner Bill Bruce summarized the case by reading Section 30-382(a) into the record, which says that in single-family developments all accessory structures must be located behind the front building line of the principal structure except in AG, RS-30 and RS-40 zoning districts,

where existing structures with any horizontal dimension greater than 12 feet may be located in front of the front building line of the principal structure. Bruce said the latter part of what he had just read was designed in order to be able to preserve older structures, such as tobacco barns, that may be on the property. New accessory structures are required to be behind the front building line, Bruce explained. He said Mr. Queen had submitted his application along with rationale of why the ordinance could not be followed.

Ott asked if the application included where the proposed garage would be located on the property, and Bruce said the packet included a hand-drawn plot plan submitted by Queen that showed the dimensions and distance to property lines. Oakley said a Development Clearance Certificate had been issued by the Town, but Town staff missed the fact that the garage would be built in front of the house – something that was caught by the County. Bruce said Queen then took the Development Clearance Certificate to the County, where the permit technician noticed that the garage was going to be built in front of the house. Ott asked if it was known where the garage would be located and the size, and Bruce said yes.

Queen was asked to explain the situation, and said he hoped the Board also had the photos he had submitted. He approached the Board and pointed out on the photos where his house is located and where he would like to build the garage on the right side of the driveway in a wooded area. He said the front part of the garage is only 13 feet in front of his house and that the trees would block the view of the garage from the road. He explained that other photos were made from his house and showed where he wanted to locate the garage.

Queen also showed the Board a photo of the flood-zone area behind his house. He said his house sits only 44 feet from the lake behind his house; he also said that, depending on where you are on the property, there is only 22-28 feet from his house to the flood zone, and that when it rains hard, the water comes up into the flood zone. To locate the garage even with the front of the house would put it into the flood-prone area, Queen said. He added that even though he owns about 2 acres of property, because the house is so close to the water it would prohibit putting nearly any kind of structure back there. He said he would be glad to answer any questions from the Board.

Dede Cunningham asked if the garage needed to be located on that side of the house because of the septic system or the well; Queen said no, but it was more suited there because that was the side of the house where the driveway was located. Putting it on the left side of the house would create a hardship because it would mean putting in another driveway and taking down a lot of trees. Cunningham then asked if there was a Homeowners Association for the development that would also have a say in the matter; Queen said his plan had been submitted to the HOA and approved.

Mike Stone, president of the HOA, said the HOA Board had looked at the plan several months before and unanimously voted in favor because it met all the restrictive covenants and bylaws of the association. Stone said if the garage were located on the left side of the house, it would not abide by the bylaws because they do not allow a homeowner to have two driveways. He said that the house is located below the level of the road and is not seen from the road. Stone said Queen and the neighbors on either side had the same type of situation because their homes were all built on the lake.

Ott asked Stone if he knew of any neighbors who were opposed to Queen's request, and Stone said he had contacted all the neighbors and the only response he had received was

from an adjoining property owner who seemed concerned about the distance the garage would be built from their property. Once those questions were answered, they seemed fine, Stone said.

Stoudemire asked if there was a garage on the property now, and Queen said there was an attached two-car garage located underneath the house.

Cunningham asked Stone if he had said there was another property with a similar situation or if this would be the first; Stone said the same situation existed next door, where the house was built first and a garage constructed later. Stone said he assumed those property owners had gone through the same approval process. Cunningham asked if the properties on either side of Queen's property had detached garages, and Stone said yes.

Ott asked if Queen built his house, and he said no, that he had purchased it.

Stoudemire asked that it be noted that no one was at the meeting to speak in opposition; Walker then closed the public hearing.

Board discussion/questions:

Walker said the Board needed to make findings of fact that no other reasonable use could be made of the property in siting the garage, that a hardship exists as discussed by the applicant as a result of the unique circumstances related to the property, the hardship comes as a result of the ordinance being applied to the property, and that the hardship was not created as a result of the applicant's actions. She said those were the items that needed to be discussed in determining whether or not to grant the variance.

Ott said he thought granting the variance in full compliance with all the requirements was all but impossible. He said as a practical matter, if the Town, neighbors and HOA do not object and the houses on both sides have similar situations, it doesn't make sense not to grant the variance, but findings of fact are still required in order to make it comply with the ordinance and are also required by state law.

Walker said she thought a major thing to take into consideration is that the Town and the neighbors do not object. She said she had no problems in looking at the unique circumstances of the property in siting the garage.

Stoudemire asked Bruce what other options were discussed with the applicant when the two met. Bruce responded that there were two options he recalled: The first was the application for the variance; the second was that the ordinance that applies to the unincorporated area of the county has a provision for lots greater than 3 acres to approve structures administratively that are in front of the front building line. The enforcement officer could make certain determinations, such as that the structure is in harmony with neighboring properties, it will not be visible from the road or be intrusive, etc. Bruce said he believed a similar ordinance had been discussed by the Town but it never materialized. He said he had suggested to Queen the possibility of approaching the Town to request that it mirror the County's ordinance. He said Queen decided to apply for the variance. He added that the reason the County had changed its ordinance is because it had received so many variance requests regarding this section of the ordinance, and the County Board of Adjustment felt it was suitable to address it in such a manner. Oakley said this was the

second such case brought before the Town recently, so the Town would likely look into addressing the issue in the similar manner.

Stoudemire said her only other problem with the request was that Queen purchased the house and that it already had a two-car garage. She asked why another garage was needed. Queen responded that the current two-car garage is very small and it is located under the house. Once he puts his lawn mower and tractor inside, he can only get one car inside. Although two cars will fit, Queen said with the addition of shelves and a work bench, he was out of room. He said he would like to have the additional space.

Walker asked if it would be feasible to add on to the existing garage, and Queen said no because it was subterranean.

Cumbus asked if the Board could discuss the requirements, and Ott said the Board needed to approve findings of fact that address each of the requirements. He said if the general will of the group is to approve the variance, the Board can go over the requirements and determine findings of fact as best it could.

Dede Cunningham made a **motion** to approve the application with the following findings of fact:

- 1) That the hardship is not a result of the actions of the applicant, and
- 2) That the application of the ordinance, based on the circumstances of this property, does create a hardship.

Beth Walker requested a friendly amendment to the motion that if the variance were granted, that it would be in harmony with the surrounding neighborhood. Ott said specific findings of fact need to be noted and, in theory, the Board needs to go through each of the conclusions and state a finding of fact as to why that requirement was met.

Dede Cunningham volunteered to restate her **motion**, moving that the variance be approved with the following findings of fact:

- 1) If the applicant complies with the provisions of the ordinance, it creates a hardship due to the fact that the home is located so far from the front property line, and to place the proposed building behind the front line of the house would place that building in the floodplain. In order to not have issues concerning the floodplain, the building has to be moved up on the property, which forces it to be in front of the primary structure.
- 2) The hardship results from the unique circumstances related to the property, due to the size of the property, the location of the dwelling being located so far back on the property, and the added condition of the floodplain, which limits the use of the property behind the primary dwelling.

Walker added a friendly amendment that the homeowners association would not allow the garage on the left side of the house because their restrictions do not allow the addition of another driveway on the property.

- 3) Cunningham said that circumstance also restricts the structure to the right side of the primary structure.
- 4) The applicant had not only come to the Board prior to construction, but had spoken with neighbors and gotten approval from the homeowners association, so the result of the hardship was not the result of something the applicant had done and was a result of the application of the ordinance to that particular property.

5) Allowing the variance for construction of the garage would not create something that was not in harmony or in the spirit of the ordinance in the neighborhood. **Jay Cumbus** seconded the motion, and it was passed unanimously (5-0).

5. ADJOURNMENT

Jay Cumbus made a **motion** to adjourn the meeting at 7:30 p.m. **Dede Cunningham** seconded the motion, and it was passed unanimously (5-0).

Respectfully Submitted:


Sandra B. Smith, Town Clerk


Beth Walker, Vice Chair