



**TOWN OF OAK RIDGE BOARD OF ADJUSTMENT  
AUGUST 14, 2014 - 7:00 P.M.  
OAK RIDGE TOWN HALL**

**MINUTES**

**Members Present**

Beth Walker, Chair  
Nancy Stoudemire, Vice Chair  
Jay Cumbus  
Bill Barbour  
Gray Cassell

**Staff Present**

Sandra Smith, Town Clerk  
Bill Bruce, Planning Director

**Members Absent**

Dede Cunningham, Alternate

**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 Jay Cumbus, Bill Barbour, Beth Walker, Nancy Stoudemire and Gray Cassell were present. Alternate Dede Cunningham was not in attendance.

**3. APPROVE AGENDA OF THE AUGUST 14, 2014, MEETING**

**Bill Barbour** made a **motion** to approve the meeting agenda. **Nancy Stoudemire** seconded the motion, and it was passed unanimously (5-0).

**4. APPROVE MINUTES OF MARCH 13, 2014, MEETING**

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

**5. NEW BUSINESS**

- A. Case No. BOA-14-01:** Oscar Able requests a variance to Section 30-382(a) of the Oak Ridge Code of Ordinances to allow an addition to an accessory structure in front of the front building line of the principal structure. The property is located at 8322 Haw River Road, Tax Parcel 0166363, Oak Ridge Township, Oak Ridge ETJ (Extra-Territorial Jurisdiction), and is zoned AG (Agricultural).

Oscar Able, the applicant, and Bill Bruce, Town of Oak Ridge planning director, were sworn in.

Bruce summarized the facts of the case, saying about six weeks ago, Oscar Able approached the Town for a Development Clearance Certificate in order to build an addition to an existing garage. The applicant had received a variance from Guilford County when the garage was originally constructed, and Bruce said he determined the proposed addition would require an additional variance from the Town. Included in the Board's packet, which is hereby incorporated by reference and made part of the minutes, was the variance application; plot plan showing the proposed building addition; sketch of the proposed structure; photos of the property; the recorded plat of the property; an aerial photo of the property; Section 30-382 of the Oak Ridge Code of Ordinances which refers to the location of accessory structures and buildings; Section 30-195 of the Oak Ridge Code of Ordinances which refers to variances; and a 2007 letter from the Guilford County Board of Adjustment granting a variance for the existing accessory structure.

Bruce read from the Town ordinance, which says, "All accessory structures and buildings must be located behind the front building line of the principal structure, except that in the AG, RS-40, and RS-30 zoning districts, existing accessory structures and buildings with any horizontal dimension greater than 12 feet may be located in front of the front building line of the principal structure." He explained that the provision was designed to allow a property owner to preserve an existing barn or other structure close to the road and build a home behind it. Bruce said that portion of the ordinance does not apply in this case because the home has already been constructed.

Bruce also referred to the section of the Town ordinance that refers to the granting of variances. The state legislature had amended the language to ease the requirements somewhat, and the Town of Oak Ridge had changed its ordinance to reflect that legislation. It now reads: "Unnecessary hardship would result from the strict application of the ordinance. Provided, it shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property."

Gray Cassell asked if the house was existing when the garage was built in 2007. Able said the house and garage were built simultaneously. A house had previously been located there, but it had burned prior to Able purchasing the property.

Walker asked if the Town had a recommendation, and Bruce said no.

Able presented his case, saying that the lot odd because it is triangle-shaped, and that there were several large trees on the property that he wanted to preserve when he built the house, which utilized the existing driveway. The front yard is used for the septic field and the existing well is also in that area, and the back yard is the septic repair area. The house that burned was located much closer to Haw River Road, but because of traffic, he had his house built far enough back on the lot so they would not hear noise from the road. Because of the shape of the lot and factors just presented, Able said there was no real alternative than to put the garage in front of the house, and Guilford County issued a variance for it. Able said no houses could be built along the back of his house because that area is the septic field for the Pearman Estates subdivision, and there are also trees planted along his rear property line.

Walker asked the approximate size of the property, and Able said it was about 2 acres.

*Board questions:*

Cassell asked if Able planned to add an additional driveway to the new portion of the garage, and Able said yes. He added that the additional driveway would join the existing driveway to form a horseshoe shape. That addition to the driveway would make the property safer than backing out onto Haw River Road.

Stoudemire asked if the garage would be for personal or business use. Able said it would be used for his hobby, which is collecting and restoring old cars. Walker asked if that was the same use as when the garage was originally constructed, and Able said yes. He said he would essentially be adding a three-car garage onto the existing garage, which would provide a clean area to park finished cars while he worked on others. Walker asked if Able's intention was to keep the cars he restored, and he said he would keep them for as long as he could. Walker asked if Able would knock out the wall between the existing and new portions of the garage to be able to walk between the two, and Able said there would be an internal connection between the two sections. He said the two sections of the garage would have the same exterior finishes and design, and they would look like they were built at the same time.

Bill Barbour asked about the rear of the existing garage, and Able said it had a lean-to shed on the back where he stores mowers and other equipment. Barbour said it looked as if there was room in the rear to construct the garage addition; Able said he had looked at that option, but the new portion of the garage would have then been too close to his well. Stoudemire asked what the distance requirement from the well was, and Able said he did not remember.

Stoudemire asked why Able had been constrained to a particular size building by the County when the first variance was granted. Bruce said that is standard practice for the County, who does not say a property owner can build any size structure, but places limits based on the size building requested. Stoudemire said she wanted to be sure there was no physical constraint regarding the property that would have limited the building to that size, and Bruce said no.

Barbour asked about the size of the lean-to on the back of the garage, and Able said it was approximately 12 feet long. Barbour asked if that portion of the garage should have received approval and gone through the building permit process. Bruce said anything over 12 feet does require a building permit, but that he did not know if one had been issued in this instance. Able said he had submitted the complete building plan, which included the shed on the back, to the County for approval. Walker asked if the shed was built at the same time as the rest of the garage, and Able said yes, and that it was constructed of the same materials.

Cassell asked if the area on the northeast corner of Able's property had changed any since the house and garage were constructed in 2007. Able said no, and added that the area was covered with trees and grass. Cassell asked Bruce if that area was a suitable location for a septic repair field; Bruce said he assumed so because it had

been approved by the County. Walker asked if Bruce knew the size required for a septic repair field, and Bruce said it varies, depending on several factors such as the quality of the soil and the number of rooms in the structure.

Barbour asked if Able's house was part of the Pearman Estates subdivision, and Able said no. Barbour asked if the garage could be constructed behind the house, and Able said he had been told no when he originally built the garage because of the minimum setback requirement. Barbour asked what the minimum setback requirement was, and Bruce said because of the way the property is shaped, the side minimum setback would likely apply here, which would be 15 feet. Bruce pointed out that even if the garage addition were put on the back side of the garage, it would still be in front of the front building line of the house and would still have to go through the variance process.

Walker said she would be interested to know about the required size of the septic repair field. She asked how many bathrooms the Ables have; Able said there are three bathrooms in the house and one in the garage/shop. Bruce said he thought the County uses the number of bedrooms to determine the amount of septic area needed; Able said the house has four bedrooms and an office that could also be used as a bedroom.

Stoudemire noted the proposed new section of the building, which is 24 x 36 feet, and the existing garage, which is 30 x 60 feet; if they are both three-car garages, she asked about the difference in size. Able responded that the existing portion of the garage has three garage doors, but it also includes a 30 x 30-foot room. Stoudemire asked how many cars could be kept in the proposed garage, and Able said six at the most, but most likely five.

Barbour asked if the turnaround area at the end of Able's driveway closest to the house did not provide enough room to accommodate a garage. Able said that area included some very large oak trees that he did not want to cut because he had tried very hard to preserve as much of the natural beauty of the property as possible.

Stoudemire asked Bruce about the section of the ordinance that says accessory structures must be behind the front building line of the house except for areas zoned AG, RS-30 or RS-40 – which makes it sound as if structures in front of the primary structure are OK in those areas. Bruce explained that the ordinance was designed to accommodate an existing tobacco barn or other structure close to the road that a property owner wants to keep and build a house behind it.

In response to a question from Walker, Bruce said that if granted, a variance runs with the land and would also apply if the property owner sold the land.

Able said he thought it was important to note that the garage sits back from the road further than the required setback, and that it is also further back than many of the houses on that road. Stoudemire said the house and structure were very attractive and the addition likely would be too, but that she was struggling with the first ground for a variance, which said not granting it would result in "unnecessary hardship." Walker then asked Able what would happen if the variance were not granted; Able said he did not know. He said he could put the cars in the yard beside

his garage, he could possibly put up some kind of temporary structure, or he may have to buy or rent a place to keep his cars. He said those were the three scenarios that he could think of at the time, but he did not like any of those options.

*Board deliberations:*

Walker said she understood Stoudemire's concerns about granting a variance to add on to a building that had already been given a variance, and whether not granting another variance would result in a hardship. Although the wording of the ordinance had been changed as a result of the action by the legislature, she believed that reasonable use of the property could be made. Walker said that then led to the question of whether "unnecessary hardship" would result. Stoudemire read from the ordinance, which says, "The board of adjustment shall grant only the minimum variance that will make possible the reasonable use of the land, building or structure," something she felt was already being done.

Walker said she had no question about the original variance that was granted, and said she thought the County Board of Adjustment made a fair decision based on the specifics of the property. She said the question before this board is whether another addition to the structure was a reasonable request. Barbour added that the ordinance says that the personal circumstances of the applicant are not a basis for granting a variance.

Walker said the board is tasked with determining findings of fact, one of which – whether the applicant can make reasonable use of the property – was just discussed. She added that the board can grant a variance based on peculiar conditions related to the property, which in this case is the desire to add on to the structure, provided that hardships resulting from personal circumstances may not be the basis for granting a variance. In interpreting the variance ordinance, the Board will discuss the request and how to apply the ordinance to it, Walker said.

Regarding the hardship, Walker said she thought the Board would agree that the hardship did not result from actions taken by the applicant. Barbour responded that the property owner built the driveway to the residence in a location that he chose, he landscaped as he chose to, and he put the well where he chose to, but Able said both the driveway and the well were pre-existing on the property. Barbour said the Town has at times been proud of its record of keeping trees intact, and while he could appreciate that, he stated that some large trees were in the way of Able locating a garage somewhere else on the property.

Walker said she found it interesting that along with the addition to the garage, Able planned to create a horseshoe-shaped driveway leading to the structure. She said she thought that would make it safer, because she imagined some vehicles might be brought in on trailers. Able agreed that

would make it safer, saying that it is currently very dangerous, especially when backing a trailer in.

Cassell said he was struggling with the original variance, and said he thought possibly there was a way to have done things differently, but a path had been taken that was now difficult to deal with. He said he was also struggling with the criterion that says "the hardship did not result from actions taken by the applicant or the property owner." Cassell said he believed it might be possible to add on to the rear of the garage if the lean-to portion on the back were removed.

Walker pointed out that the Board would still be dealing with the same issue because the proposed addition would still in front of the building line of the primary structure. Barbour asked if considering that would lead the Board to make a micromanagement decision on where the building might be located as opposed to where it was proposed, even though either case would require a variance to be granted. Barbour said he was not satisfied that the addition could not be added to the back of the garage and still be far enough away from the well, and that in that location it would not be seen by the public. He asked if it was appropriate to state what comments he had heard by other residents; Walker said since those people were not present at the meeting to present any evidence they might have, those comments would need to be considered as hearsay and were not appropriate to share.

Walker said she had tried to look up if a variance could be granted for an addition to a structure that had required a variance to be constructed in the first place, and she had not been able to find anything. She said the Board also had not seen a case similar to this since she had been serving.

Cassell said Bruce had told the Board that the general reason the ordinance was written as it was would be to allow older buildings to remain in place. Walker said since the initial variance was granted at the same time the house was built, and because of the issues of distance from the well and septic, the County had made the decision to grant the original variance.

Cassell said he didn't see that there had been any real change in the use of the property since the initial variance was granted, and he was having a difficult time applying the ordinance.

Walker suggested the Board look at the different criteria required and discuss each one, and said that the Board did need to consider whether an unnecessary hardship would result. Cassell said he thought if the applicant were required to construct a freestanding structure, the infrastructure that he could have used – such as the plumbing and electrical from the existing garage – would have to be installed again.

Cumbus said he thought hardship had been shown under the first criterion (that hardship would result from the strict application of the ordinance), and perhaps under the second criterion as well (that hardship results from conditions that are peculiar to the property, such as location, size, or topography). He said he could understand the applicant's need to not place a structure in the septic repair area, since that is his safeguard should his septic system fail. He said his concern would be how far the well is from the rear of the existing structure and what the distance requirements are. Walker said the Board did not have that information, and Cumbus said if the distance was too close, he could see the location of the well as a hardship.

Cumbus asked if the original variance that was granted for the existing garage specified what distance the building had to be from the well, and Walker said the Board was not privy to that information. Stoudemire asked if that information could be obtained if the meeting were continued, and Bruce said yes. Stoudemire said she would like to know the required distance from the well, and Walker said she would like to know the requirements for the septic repair field. Bruce said he was unsure how much detail he could get about how the health department determines the septic repair area. He added that he was assuming that if a garage were constructed behind the house, not just the building itself, but also a driveway and possibly a turnaround area to access the building would need to be considered.

Cassell said he believed an unnecessary hardship would result from the strict application of the ordinance because placing the accessory structure elsewhere on the lot could potentially cause the applicant to lose some of the septic repair field, and because the applicant would also incur additional expense for electrical, plumbing, etc.

Walker pointed out that the Board should not consider financial hardships in its decision, but said she agreed about the potential impact to the septic field area. If the Board denies the request, Walker said it appeared that the only recourse would be for the applicant to place the garage behind the house, which would potentially lose the septic repair area. Walker asked if it would create a hardship if the Board did not allow an addition to the building. She said the property was obviously able to be used, and she thought the key question was whether there was a hardship related to the use of the land. Cumbus said he thought the hardship was present based on where the well and septic field areas are located, and that those issues are peculiar to this property.

Stoudemire questioned the third criterion (that hardship did not result from actions taken by the applicant or property owner), since his actions had resulted in where elements on the property were located. She said she could see that there was a hardship associated with the land, but that the applicant had already applied for and received a variance with the County.

Walker said she thought the core question for the Board to decide is how necessary it was to build an addition to an existing building that was already granted a variance; Cumbus said he was unsure if that was something the Board needed to decide.

Walker said if the Board is considering granting the variance because of hardship, does that hardship exist simply because someone wants to add on to the building? She added that perhaps she was referring to personal circumstances, and the desire for more space is a personal circumstance. She said that a larger garage would be nice, but could it be located somewhere else. She said the fact that a variance is needed because of a previously existing condition was the key issue for her. Walker said she had no problem with the fourth criterion – that “the requested variance is consistent with the spirit, purpose and intent of the ordinance, and that public safety is secured and substantial justice is achieved.” She said she felt the spirit of the ordinance is evidenced by the fact that a variance had already been granted for the structure.

Stoudemire asked if there is a provision in the ordinance to allow cars to be parked in the front yard; Bruce said yes, as long as the vehicles do not meet the definition of a junked vehicle, and that as many running, licensed vehicles as the owner wants can be kept in front of a house. He said an unlicensed vehicle cannot be stored in front of a house, and that various criteria apply to the definition of junked vehicle.

Cumbus said it appeared that Guilford County saw a hardship when it granted the first variance, which he assumed had to do with the well and septic area. Cassell said because the property owner used an existing well and septic area, he didn't really have a choice on where those elements were located. Cassell said he thought the property owner likely did have a choice on where the repair field would be located, but he was not sure that Able still had that choice. Cumbus said that assumption was made based on what was determined by the health department, and that the area between the well and the street may not have been suitable for a repair field.

Barbour said the County must have found undue hardship when it allowed the original variance, but that he was not convinced that the Board was confined to allowing an addition to the building. Cassell asked Barbour to look at the third criterion (that the hardship did not result from actions taken by the applicant or property owner), and pointed out that the ordinance also says that the conforming or nonconforming use of lands, buildings or structures shall be considered grounds for a variance. He added that the ordinance also says mere financial hardship does not constitute grounds for a variance.

Walker asked whether knowing any additional information about the repair field would make a difference in the Board's decision. If the Board denies the request for variance, she asked where Able would locate a garage. Barbour said he was concerned with the location of the well and the distance requirements the County might impose as well as the 15-foot setback if the addition were proposed on the back of the existing structure. He said it appeared the addition could fit on the rear of the existing garage and that it would not be as visible to the public. Barbour said he did not think the Board should grant the variance based on the fact that the County had already issued a variance for this structure. He added that if there was not enough room on the back of the structure for the proposed addition, Able could build something smaller.

Walker said building the addition onto the back of the existing structure would still require the Board to issue a variance because it would still be in front of the front building line of the house. She said she thought the Board should only consider what has been presented, and that it was not for Board members to say they would approve a variance if the structure were located elsewhere on the property. Cassell agreed that placing the addition on the back of the existing garage would still require a variance.

Walker asked if the Board felt that competent, material and substantial evidence had been presented and whether the Board could say that unnecessary hardship would result if it strictly applies the ordinance. Cumbus and Cassell said yes, and Stoudemire and Barbour said they were still not convinced that unnecessary hardship would be created. Walker also said she was not sure she could agree about the hardship being unnecessary.

Walker asked the Board to consider whether a hardship – unnecessary or not – results from conditions peculiar to the property. Cassell said if the Board could not determine whether the hardship was unnecessary, he did not feel it the other criteria had to be discussed. Walker said she had no problem saying there was a hardship, but the issue for her was whether it was necessary or unnecessary.

Barbour asked if any other Board members had a concern about the second sentence in the second criterion, which says "Provided, that hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance." Walker asked if Barbour was asking whether personal circumstances would refer to the desire of the applicant to add on to the garage, and Barbour said yes. Walker agreed that she was struggling with that point, but said she had an even harder time with the third criterion, which says the hardship did not result from actions taken by the property owner.

Stoudemire said this was an example of when the Board's job was very difficult. Although she said she did not want to tell someone what they can do with their property, the Board is required to determine how to apply the ordinance. Able said he purchased the property specifically because it is not located in a subdivision, was zoned AG, and was not in the town limits of Oak Ridge, and for those reasons he could indulge his hobby. He said it took Guilford County less than 10 minutes to deliberate before granting the original variance. Able said he simply wanted to add on to his garage, and that he did not have any additional land.

Cumbus asked what the Town means by the term "personal circumstances." Walker said the Board had looked at various reasons. She added that she thought that was why towns have boards of adjustment - to humanely apply the ordinance, because "one size does not fit all." She added that she had never heard of a second variance to expand a building that was allowed by variance.

Cassell told Able that sometimes boards can make decisions quickly, but this board, as well as others in Oak Ridge, are sometimes required to make decisions that don't go as the applicants want them to. He added that he thought all the Board of Adjustment members wanted to do what was right for the Town, and said that he also lives in and represents the ETJ area outside the Town. Able said he didn't even know his property was in the ETJ area until this issue came up.

Barbour asked if enough discussion of the third criterion, which says the hardship did not result from the property owner's actions, had taken place. Walker said she thought of the garage as a pre-existing building and that she could not agree that the hardship resulted from actions taken by the applicant. The property was not purchased recently, and these types of issues had been dealt with initially when the property was purchased.

**Jay Cumbus** made a **motion** to approve the variance based on: 1) that unnecessary hardship results from strict application of the ordinance; 2) that the hardship results from conditions that are peculiar to the property such as location, size or topography, and that hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance; 3) that the hardship did not result from actions taken by the applicant or property owner; 4) that the requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

**Beth Walker** requested a friendly amendment to the motion to add to the second criterion that the hardship results from conditions that are peculiar to the property, specifically the well and septic area, and Cumbus agreed to the amendment. **Gray Cassell** seconded the motion, and the vote in favor was 3-2 (Cumbus, Walker and

Cassell voting aye, and Stoudemire and Barbour voting no). However, because a 4-1 vote was required, the motion failed.

**B. Land Use Plan update discussion**

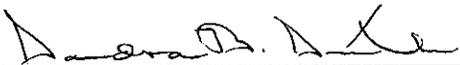
Bruce presented a timeline for the update of the Land Use Plan, and said the Town Council would like to appoint members to the committee at its September meeting. The committee would be comprised of members of various Town boards as well as representatives of the business community, building/real estate industry, farming/agricultural community and three citizens at large. Bruce said the original Land Use Plan was approved in 2002, and that minor edits had been made since that time.

After additional discussion, Cumbus volunteered to serve on the Land Use Plan committee as the Board of Adjustment representative. The Board's vote to recommend the appointment of Cumbus was unanimous (5-0).

**6. ADJOURNMENT**

The meeting was adjourned at 8:37 p.m.

Respectfully Submitted:

  
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Sandra B. Smith, Town Clerk

  
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Beth Walker, Chair