



**TOWN OF OAK RIDGE BOARD OF ADJUSTMENT
OCTOBER 10, 2019 – 7:00 P.M.
OAK RIDGE TOWN HALL**

MINUTES

Members Present

Nancy Stoudemire, Chair
Jay Cumbus
Bill Barbour
Beth Walker, Alternate (Sitting)

Staff Present

Sandra Smith, Town Clerk
Sean Taylor, Town Planner

Members Absent

Gray Cassell

1. CALL MEETING TO ORDER

Chair Nancy Stoudemire called the meeting to order at 7:27 p.m.

2. ROLL CALL

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

3. APPROVE AGENDA

Beth Walker made a motion to approve the meeting agenda. Bill Barbour seconded the motion, and it was passed unanimously (4-0).

4. APPROVE MINUTES OF JULY 14, 2016, MEETING

Jay Cumbus made a motion to approve the minutes. Bill Barbour seconded the motion, and it was passed unanimously (4-0).

5. NEW BUSINESS

Election of chair and vice chair.

Beth Walker nominated Jay Cumbus for chair. With no other nominations, the vote for Jay Cumbus for chair was unanimous (4-0).

Bill Barbour nominated Nancy Stoudemire for vice chair. With no other nominations, the vote for Nancy Stoudemire for vice chair was unanimous (4-0).

6. PUBLIC HEARING

Case No. BOA-19-01: Henry & Susan Flynt request a variance to Section 30-381(A) of the Oak Ridge Code of Ordinances, to allow an accessory structure (swimming pool) in front of the front building line of the principal structure. The property is located at north side of County Line Rd, approximately 530 feet west of the intersection of County Line Road and Beeson Road, being Tax Parcel 0168283 in Oak Ridge Township.

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 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, other involved parties or anyone else about the case; if there was a close familial or other relationship with the applicant; or if they had any financial interest in the outcome of the case. No conflicts were disclosed.

Planning Director Sean Taylor and Henry Flynt, the co-applicant, were sworn in by Town Clerk Sandra Smith.

Taylor 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(A) of the Oak Ridge Code of Ordinances to allow an accessory structure in front of the front of the front building line of the principal structure. He read the property description into the record. He said the applicant proposed building a swimming pool on his property. Taylor said the packet, which is also incorporated by reference and made a part of the minutes, included several documents for review, including the location of the site, the application, the relevant permit ordinances and a plot plan that the applicant submitted showing the proposed location of the swimming pool.

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

Proponents:

- Henry Clay Flynt, III, 9009 County Line Road, said that he and his wife have lived at that address for 32 years. He stated that he was present to ask for a variance to build a swimming pool in his front yard. Flynt said that his mother lived in Kernersville and has had a pool for 41 years but was in failing health. He said that he and his wife had recently retired and decided it was the right time to build a pool. He stated that most people would put a pool behind their homes, but their home is located at the very back of the property along with huge trees and a septic field. He said that several pool contractors said that they could not get behind his house to work in the back yard. Flynt stated that his property

rolls downward from County Line Road. He then shared with Board members a picture of his property showing the top of his barn and that his home is obscured by a group of trees. Flynt said that he had considered several possible locations for a pool and, in order to maintain privacy and to protect his trees, he felt putting the inground pool with a fence in his front yard was the best option. He said that the size of the pool would be 16-feet-by-40-feet. He said it would be fenced and for use by his grandchildren, so it was not a huge, commercial-type pool.

No one else spoke in favor of or in opposition to the case, and the public hearing was closed.

Board Comments/Questions:

Stoudemire said that 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.

Cumbus asked the applicant if the septic field was the primary field, and Flynt replied that he was not sure. Cumbus asked if the applicant had a septic repair field so if the primary septic field failed, he would have a repair field. Flynt responded that he did not know the answer to that question, but stated that he originally wanted to build the house in the area of the barn and that the land there would not perk. Flynt said that he had never had any septic problems.

Walker asked Flynt to indicate on the map where his well was located, and Flynt told Taylor where the well was so that he could point it out to Board members on the large video screens in the meeting room.

Flynt said that if he had problems in the back with the septic field that he was not sure if the front would be an option.

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

Taylor said that the Board could adopt the applicants' responses on their application as the findings of fact.

Stoudemire proposed that the Board begin their discussions of the factors relevant to the issue of the variance beginning with Section 30-195(f)(1), which states that 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. She stated that the ordinance states that you are not allowed to have accessory structures in the front of the house.

Barbour asked Taylor what the purpose of the ordinance was, and Taylor replied that the setback requirement is primarily intended for community cohesiveness. Taylor stated that in many instances, the setbacks do not necessarily fit our rural settings, especially in agricultural zoned property with a primary use of residential. He said that on a 5-acre property, the setbacks are to maintain the minimum

distances to the street in order to maintain the viewsheds and to maintain a community feel along streets so that there some houses 10 feet from the street and others 40 feet back. Taylor said that the harmony that the ordinance intends does not necessarily work, and that is why we have a variance application procedure for situations like this.

Stoudemire said that the application states that the proposed pool would not be visible from the street. Flynt shared pictures with the Board that confirmed that the proposed pool site is not visible. Taylor shared with Board members a picture that he took standing from the applicant's driveway to also confirm that the proposed pool site cannot be seen from the street.

Barbour asked if the pool would be on the other side of the rise, and Taylor replied yes.

Walker asked if there were two other houses in front of the applicant's house, and Flynt replied that he had purchased both of them. He stated that he leveled one house and that the other one is used as rental property.

Stoudemire said to clarify the applicants' property is 5½ acres and that they also own one parcel at the road, and Flynt replied yes.

Walker asked if Flynt was planning on building a house on the land where the one house was demolished, and Flynt replied no.

Flynt stated that he was going to landscape the area where the house was leveled by adding a line of Gingko trees and Yoshino cherry trees. He said that power lines run along County Line Road so he cannot plant anything really tall there. He stated that he was not trying to hide anything but was trying to provide privacy that adds to the community value.

Walker said that the application said that pool contractors had advised Flynt to not install the pool behind your house. Walker asked what their reasons were for making this recommendation, and Flynt replied that the reasons included the location of the septic fields, the way the property drains, and the location of trees that cannot be easily removed.

Stoudemire asked Board members if they had enough information to make a decision as to whether there was unnecessary hardship as it relates to this application.

Taylor added that an unnecessary hardship may be considered since the Town ordinance promotes tree preservation. He stated that Board members should consider that the ordinance requires a 20 percent tree preservation area in new developments.

Cumbus asked what the topography was like behind the barn, and Flynt replied that he thought there was a picture that Board members could view. Taylor referred Board members to a picture in their packets that showed the area behind the barn.

Flynt said that the area behind the barn is higher than the septic field, higher than his neighbor behind him as well as another neighbor's pool. He said that if he cleared the trees, there would be no privacy.

Barbour said that the hardship of clearing trees would not be in keeping with the goal for tree preservation, and Stoudemire agreed.

Taylor said that another hardship would be if the pool was built in a traditional location that the septic field would need to be relocated, and Walker agreed. Walker stated that additional room would also need to be left in case the repair field was needed.

Cumbus asked if the septic field was located on the left side of the home, and Walker replied yes, which would be behind the barn.

Walker stated that in terms of this request, use can be made of the property but that the Board had to decide if a pool is a reasonable request. She said if the Board were to decide that it was a reasonable request, there is no reasonable place for it to be built except for in the front of the house. She said that she guessed the real question is whether having a pool is a reasonable use for the property. She stated that she saw no reason, on 5½ acres that is not directly on the road, that a pool is a reasonable request to enjoy this property.

Cumbus replied that he concurred with Walker's thoughts.

Walker asked if all Board members agreed, and Barbour replied yes.

Stoudemire read Section 30-195(f)(2), which states that the hardship results from conditions that are peculiar to the property, such as location, size, or topography. She stated that this property rolls away from County Line Road and that there is no reasonable place to put the pool behind the barn or the house based on topography of the property.

Walker stated that while there is no grandfather clause for having something already in the front of a house, nonetheless there is something already there and it is not seen from the road and is not an issue. She said that she agreed that the hardship results from conditions that are peculiar to the property.

Stoudemire read Section 30-195(f)(3) which states the hardship did not result from actions taken by the applicant or the property owner. She stated that the hardship of clearing the trees and relocating the septic was not created by the property owner.

Walker stated that the house was not built with the expectation that a pool would be built later. She said that she agreed that the applicant had not done anything that would make this particular request look as if it is due to an action taken by the applicant. Walker said that the Flynts intentionally put their house back there, and that the house had been there for 32 years.

Stoudemire asked the applicant if he built the house, and Flynt replied yes.

Stoudemire read Section 30-195(f)(4) which states 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.

Stoudemire stated that this goes back to Barbour's question regarding the purpose of the ordinance. She said that she believed that the variance request is consistent being that the proposed pool will not be visible from the road and due to tree preservation.

Walker agreed that no one wanted to see trees cut down. She stated that this Board tries to balance the ordinance with the reasonable use of the land. She said that in her opinion this request is a reasonable use of this land.

Stoudemire said that the Board would discuss the case and their findings of fact.

Walker stated that she felt like she had asked all of her questions and all issues had been discussed to her satisfaction.

Cumbus stated that he had reviewed the unnecessary hardships that the applicant had listed and was not sure about moving farm equipment but that he thought the other three items listed were certainly hardships. He said that he understood the applicants' request to be able to see the pool from their house.

Walker agreed with Cumbus. She said that she originally thought the request was for pool security but agreed that sight lines for the applicants' grandchildren made a lot of sense. She said that there were no objections from neighbors regarding this request and that it does not detract from the character and dignity of the community.

Stoudemire stated that she originally was going to ask if the pool was going to be inground or above ground, but since it will not be visible from the road it did not matter.

Walker said that the lack of visibility from the road is an important factor.

A woman in the audience asked if she could ask a question, and Stoudemire responded that she could not because she had not been sworn in.

Bill Barbour made a motion to approve this variance request based on the following findings of fact:

- 1. There is unnecessary hardship that would result in the relocation of the septic tank and the removal of trees, and the presence of trees will block the view from the house. The installation of the proposed pool in front of the house will not be visible from the street and will protect nearby neighbors' privacy.*
- 2. There is hardship created that is particular to the property due to its topography.*
- 3. The hardship did not result from actions taken by the applicant or the property owner who built the house 32 years ago.*
- 4. The approval of the variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.*

Cumbus seconded, and the motion to approve the request was passed unanimously (4-0).

7. ADJOURNMENT

Beth Walker made a motion to adjourn the meeting at 8:08 p.m. Bill Barbour seconded the motion, and it was passed unanimously (4-0).

Respectfully Submitted:

Sandra B. Smith, CMC, NCCMC
Town Clerk

Nancy Stoudemire
Vice Chair