

**GUILFORD COUNTY
BOARD OF ADJUSTMENT
MARCH 4, 2014**

The Guilford County Board of Adjustment met in regular session on March 4, 2014 in the Blue Room of the Old Guilford County Courthouse, Greensboro, North Carolina.

MEMBERS PRESENT: Ditra Miller, Chair; Robert Lawler, Jr.; Willie Johnson; Larry Standley; Frank Havens, alternate; and Randall Crum, alternate.

STAFF PRESENT: Tiffany Burch and Carrie Spencer, Planning Department. Also present was J. Leslie Bell, Guilford County Planning Director.

Roll Call of attendees was taken.

Chair Miller welcomed everyone to the meeting and explained the policies and procedures of the Guilford County Board of Adjustment.

Chair Miller assigned Mr. Havens to vote as an alternate.

HEARING OF THE CASE:

Tiffany Burch, Carrie Spencer, and J. Leslie Bell were sworn as to their testimony during the proceedings.

Case Number 14-02-GCPL-00613: Thomas and Cynthia Bumgarner are requesting a 4 ft. variance for an existing accessory building 16 ft. x 26 ft., 416 sq. ft. to remain at its current location. Reference the Guilford County Development Ordinance 4-5.1 Setback Requirements. The property is located at 4409 Brookhaven Drive, Greensboro, North Carolina, 27406. Tax parcel #0134268 in the Fentress Township and is zoned RD-40. **(DENIED)**

Swearing in of anyone speaking in favor of the request:

Thomas Bumgarner was sworn as to his testimony during the proceedings.

Swearing in of anyone speaking in opposition to the request:

Juhann Waller and Francesca Messina were sworn as to their testimony during the proceedings.

Thomas David Bumgarner, 4409 Brookhaven Drive, distributed supplemental pictures to Board members for their review. He stated that the metal accessory building was purchased to replace a 75 year-old shed that he tore down. The building was placed at the end of the driveway for easy accessibility. He said that a vehicle could be driven and parked inside the building if necessary because it is located at the end of the drive. He is retired and uses the building to build duck decoys and playthings for his grandchildren. The current site was chosen for the building because in addition to his home, it is the highest point that is not accessible to the pond located behind the property. The property is in a flood plain. The accessory building has never flooded but water occasionally comes down the driveway. There has been water up to the foundation of their house which has created problems in the past. The far side of the lot has also been flooded and therefore, he felt the only logical place to put the building was at the end of the driveway. The building does not meet code at this time because he thought the building was far enough away from the property line. The building is about 3 feet away from the property line on one end and 1 foot away on the other end.

Mr. Bumgarner answered questions from the Board and clarified details of his property.

Mr. Bumgarner stated that the accessory building is located on his property and does not encumber the adjacent property. The 75 year-old building that was torn down was also on his property located adjacent to the current building and next to his house. He clarified for Mr. Havens that if the new building was located where the shed had been, it would not encumber the setback. There was never a flooding problem with the shed. He noted that the shed was torn down because it was in disrepair. Mr. Bumgarner said that the new accessory building was installed on October 12, 2012 by a contractor who did not mention problems with setback or the need for a permit.

Mr. Havens noticed an offset in the concrete slab in the photographs. Mr. Bumgarner stated that the offset was not added but was present before the new accessory building was installed.

Responding to a question, Mr. Bumgarner stated that the subdivision was built around 1961. He was unaware of any restrictive covenants currently in place. Several neighbors have built similar garages.

Mr. Lawler asked the applicant to comment on the adjustment of the property line. Mr. Bumgarner said that after installation he learned that the building and the driveway were not on his property. An earlier owner of his property added the driveway that encroached on his neighbor's property. The previous neighbor, who lived at 4407 Brookhaven Drive, deeded a 4 ft. area of land to him so that the building would be on Mr. Bumgarner's property. He pointed out that a survey was done when the former neighbor deeded the land; however, the surveyor did not mention that the accessory building was in violation of the code.

Ms. Burch indicated that the initial notification was sent to the applicant on January 14, 2014. No official Notice of Violation has been made yet.

Ms. Miller asked if anyone was present to speak in opposition of the request.

Juhann Waller, 524 South Elm Street, is a civil engineer with J.C. Waller and Associates. He was in attendance to represent the adjoining property owner, Francesca Messina. He distributed informational materials to Board members for their review. They are not in favor of the request due to the close proximity of the accessory building to the property line. It would be difficult to maintain that side of the building. He noted there are some existing utilities that the applicant has constructed on that side of the building.

Ms. Messina plans on constructing a fence. Only 1 ft. of land would be left between the building and the fence to maintain the building façade and utilities. Mr. Waller referred to the handout and noted how close the building is to the property line. He said that his client is within her rights to add a fence which does not have any setback requirement. With the fence, a 1 ft. space would be left for the applicant to maintain the structure on his property and he felt it would be very difficult, if not impossible, to do so.

Mr. Waller pointed out that there is an electrical service line on the side adjacent to his client's property as well as an electrical line, a domestic water line, and a sanitary sewer line to the accessory building that would have to be maintained if the request is granted.

Referring to a map in the informational packet, Mr. Waller pointed out that both the accessory building and the residence are located in the flood plain area and will experience some type of

flooding event at some point in time while it is there. He pointed out that the accessory building has a slab foundation and is likely in violation of the Guilford County Flood Plain Development Ordinance as well.

Mr. Bell stated that only the property owner or a licensed attorney can speak on behalf of the owner. For the record, he asked Ms. Messina to state if she was in agreement with comments made by Mr. Waller.

Francesca Messina, 4407 Brookhaven Drive, stated that she agreed with all comments made by Mr. Waller. She recently moved here from Massachusetts and engaged the services of Mr. Waller to guide her through this process. She intends to build a fence and noted her initial concern for the placement of the fence in relation to the property line.

Staff clarified that the matters of electrical and sewer lines are not issues that should be addressed by the Board of Adjustment. These matters will be handled during the permitting process.

At Mr. Standley's request, staff clarified requirements of the Flood Plain Development Ordinance and explained exemption requirements for buildings in flood plains. An accessory structure with a footprint of less than 150 square feet does not require an elevation or flood proofing certificate. Elevation or flood proofing certification is required for all other structures in accordance with Section 3-84 in Section 7-5.9 of the Guilford County Ordinance. The subject accessory building is 416 square feet. Staff indicated that further investigation into the exemption would occur at the point of permitting.

Mr. Waller commented that if the building had been properly permitted this situation would not have occurred and there would be proper setback from the property line as required by the Ordinance.

Chair Miller asked if there was anyone present to speak in rebuttal.

Mr. Bumgarner informed members that there is no sewer line located around the accessory building. His intention is to have water service at the building in the future. The lines are present but they have not been hooked up yet. He also mentioned that he does have flood insurance on the property.

Chair Miller asked staff to clarify options available to the applicant if the request is denied.

Ms. Spencer said that the applicant would have to find an alternate location for the structure. The structure would need to be built to satisfy the Flood Prevention Ordinance. If the request is granted, it may be likely the applicant would have to raise the existing structure to retrofit it because it does not meet the exemptions and mitigation would be required.

At the request of Chair Miller, Mr. Waller referred to photographs in the informational packet and pointed out the location of the applicant's proposed fence. Ms. Messina was informed a permit would not be required for the fence. The fence would be a foot away from the property line. She wanted to address this matter with the Board to make sure she was doing everything correctly before she called the fence company for installation.

Ms. Messina has not moved into her house yet and is awaiting the issuance of a Certification of Occupancy later in the week.

In regard to case number 14-02-GCPL-00613, Mr. Havens moved denial of the request for a variance. While this is an unfortunate set of circumstances and the owners did not intend to do anything incorrectly, this is a clear violation of the Ordinance. There are no hardships that would

prevent building this structure elsewhere on the property. Consideration should have been given to the fact that the shed that was torn down was in a location where this building could be placed. The motion was seconded by Mr. Standley. The Board voted 5-0 in favor of the motion. (Ayes: Miller, Lawler, Havens, Standley, Johnson. Nays: None.)

SPEAKERS FROM THE FLOOR:

Richard Dunn, 4411 Indian Wells Drive, is a real estate agent. He noted a similar situation at a previous Guilford County Board of Adjustment meeting relative to an accessory building. He felt that something should be done to alert individuals to rules and regulations that need to be addressed when purchasing and installing accessory buildings.

APPROVAL OF MINUTES FROM THE FEBRUARY 4, 2014 MEETING:

Mr. Lawler moved approval of the February 4, 2014 meeting minutes as written, seconded by Mr. Standley. The Board voted 5-0 in favor of the motion. (Ayes: Miller, Lawler, Standley, Havens, Johnson. Nays: None.)

NEW BUSINESS:

- **Training session with guest speaker Thomas E. Terrell, Jr. of Smith Moore Leatherwood**

Chair Miller informed members that the training session will be rescheduled for another time.

Members discussed possible ways to educate and notify the public regarding permitting requirements for accessory buildings.

ADJOURNMENT:

There being no further business before the Board, the meeting adjourned at 6:57 p.m.

Respectfully submitted,

Ditra Miller, Chairman

Tiffany Burch, Board Secretary