

**GUILFORD COUNTY
BOARD OF ADJUSTMENT
MAY 1, 2018**

The Guilford County Board of Adjustment met in regular session on May 1, 2018 in the Horseshoe Room, Fourth Floor, Old Guilford County Courthouse, 301 West Market Street, North Carolina, 27401, commencing at 6:00 p.m.

MEMBERS PRESENT: Robert Lawler, Chairman; Ditra Miller; Willie Johnson; Frank Havens; and Larry Standley.

MEMBERS ABSENT: Patrick Woods, Carey Campbell and Randall Crum.

STAFF PRESENT: Matt Talbott, Deborah Sandlin, and Rhonitta Hayes - Planning Department. Also present was Leslie Bell, Guilford County Planning Director.

Roll Call of attendees was taken.

AMENDMENTS TO AGENDA:

None.

APPROVAL OF MINUTES:

- **April 3, 2018 Minutes:**

Mr. Johnson moved approval of the April 3, 2018 minutes as written, seconded by Mr. Standley. The Board voted unanimously 4-0 in favor of the motion. (Ayes: Lawler, Havens, Standley, Johnson. Nays: None.)

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

OLD BUSINESS:

None.

NEW BUSINESS:

Public Hearing Items

Chair Lawler explained that it takes four members to approve a variance and since only four members are present, the applicants have the option to request that this matter be moved to next month.

Steve Callaghan, applicant, declined the option to move this matter to next month's hearing.

CASE #18-04-GCPL-02054:

Steve and Amy Callaghan are requesting a variance from the Guilford County Development Ordinance 4-4.1, side yard setback, to reduce the minimum setback to 5.8 feet instead of 10 feet per 4-4.1. There is a single-family home and a pool house on the property. The applicant is requesting an enclosed walkway connecting the main house to the pool house which then

requires the pool house to meet the 10 feet side yard setback per 4-4.1. The property is located at 3418 Alamance Road, Greensboro, North Carolina 27407, being tax parcel #0155829. The parcel is located in the Jamestown Township.
(APPROVED)

Swearing-in of staff:

Matt Talbott, Planning Department, was sworn as to his testimony in the following matters.

Mr. Talbott read the case into the record. The applicants, Steve and Amy Callaghan, are requesting a variance from the Guilford County Development Ordinance 4-4.1, side yard setback, to reduce the minimum setback to 5.8 feet instead of 10 feet per 4-4.1. There is a single-family home and a pool house on the property. The applicant is requesting to construct an enclosed walkway connecting the main house to the pool house which then requires the pool house to meet the 10 feet side yard setback. The property is located at 3418 Alamance Road, Greensboro, North Carolina 27407, being tax parcel #0155829. The parcel is zoned RS-20 (Single-family Residential) and is located approximately 230 feet from the intersection of Dover Park Road and Alamance Road. The existing land use on the property is single-family dwelling and surrounding uses include a golf course to the north, low-density residential to the south, vacant low-density to the east, and vacant low-density to the west. Surrounding uses are single-family stick-built homes with varied setbacks. The applicant is requesting an enclosed walkway. The pool house is currently an accessory structure which would only have to meet a 5 feet setback. Once the pool house is connected to the primary house with a covered walkway, it becomes part of the primary house and it must meet the 10 feet setback. The walkway will be totally enclosed with heating and air conditioning. The applicant has removed a portion of the pool house already because there was a variance in 1977 that granted the pool house to be up to the property line. The applicant got rid of a portion of the pool house but it is still not meeting the 10 feet setback. It is currently 5.8 feet from the property line. The date of the application was April 4, 2018; the adjacent property owners were notified April 20, 2018; the notice was posted at the courthouse on April 19, 2018; the sign was posted on the property on April 19, 2018; and the notice was posted in the newspaper on April 20, 2018.

Members are in receipt of street views of the property from the west, east and from across the street. Also included in the packets are pictures of the primary house, the pool house, and maps showing the topography. The applicant has submitted a plot plan showing the section of the pool house that was removed.

Ms. Miller joined the meeting at 6:10 p.m.

Responding to a question from Chair Lawler, Mr. Talbott said that the variance that was granted in 1977 was for the pool house. The variance allowed the pool house to be built to the property line in front of the house because typically an accessory structure cannot be in the front of the house. He clarified that somehow the pool house was built one foot over the property line. The 1977 variance will no longer apply here once the home is connected to the pool house.

Swearing-in of speakers:

Steve Callaghan, 708 Northern Shores Lane, was sworn as to his testimony in this matter.

Mr. Callaghan said that he purchased this house within the last year and they are doing a lot of renovation. They were not aware of the encroachment when they bought the home. He heard from Mrs. Starr, former owner, that when the encroachment happened they were best friends with their neighbors and there was a mutual agreement allowing the encroachment. The Callaghans want a walkway between the house and the pool house so that activity of the children and pets will not be seen or heard from the golf course side of the property.

Mr. Standley asked the applicant to comment on communication with the neighbors about this request. Mr. Callaghan said that his builder, Dwight Stone, is related to the neighbor next door. Mr. Stone received a verbal affirmation from the neighbor about the request.

Mr. Talbott informed Board members that an email was received from the adjacent property owner who lives on the side where the pool house is located. The neighbor stated he was in favor of this request. Mr. Talbott entered the email into the evidence for this case.

Amy Callaghan, 708 Northern Shores Lane, was sworn as to her testimony in this matter. She stated that the surveyor who was hired by their builder prepared the drawing distributed to members. A survey was done several times and apparently there were two plot plans. When the title company did what they were supposed to do, they pulled up the wrong plot plan.

Responding to questions, Mrs. Callaghan said that the walkway will fit in nicely and will be aesthetically pleasing. She explained that they have already taken off six feet at the corner of the pool house. They plan to tear up the pool and the nearby cement so they will be able to use the correct plot plan to connect to the pool house.

During discussion it was confirmed that this variance must be approved before a building permit can be issued for the walkway. The requested setback from the property line will be 5.8 feet.

There being no other speakers, Mr. Havens moved to close the public hearing, seconded by Ms. Miller. The Board voted 5-0 in favor of the motion. (Ayes: Lawler, Miller, Standley, Havens, Johnson. Nays: None.)

Mr. Havens moved that the Guilford County Board of Adjustment, having held a hearing on **May 1, 2018** to consider Case Number **18-04-GCPL-02054**, submitted by **Steve and Amy Callaghan**, a request for a variance to use the property located at **3418 Alamance Road, Greensboro, North Carolina 27407**, being Tax Parcel **#0155829**, in a manner not permissible under the literal terms of the ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACTS and draws the following CONCLUSIONS:

1. It is the Board's CONCLUSION that, unnecessary hardship **will** result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. This conclusion is based on the following FINDINGS OF FACT:

The pool house has existed in this situation although it has not been attached directly by a walkway to the house. It has existed in this particular location for a long time and the Callaghans have made adjustments to try to improve the situation. The neighbors have not shown opposition to it; therefore, it would seem that unnecessary hardship would be suffered by making them go through further alterations.

2. It is the Board's CONCLUSION that the hardship **does** result from conditions that are peculiar to the property, such as location, size or topography. 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. This conclusion is based on the following FINDINGS OF FACT:

This situation has existed not as a result of the Callaghans and changing it would not be in the best interest of the use of the property or the new owners.

3. It is the Board's **CONCLUSION** that the hardship **does not** result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. This conclusion is based on the following **FINDINGS OF FACT**:

The Callaghans did not realize that this condition existed when they purchased the property. It was not their intent to purchase a property knowing the situation existed and then ask for a variance on it. It came up in the process of permitting a change that was a desirable change. They had taken actions to improve the situation.

4. It is the Board's **CONCLUSION** 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. This conclusion is based on the following **FINDINGS OF FACT**:

The Callaghans purchased the property with an existing situation that was not of their making and they have taken actions to improve the situation that existed. They removed the corner of the pool house to improve the existing situation which reduced the encroachment upon the setback. They will continue to pursue methods that improve it in general with the characteristics of the adjacent property.

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE be **GRANTED** subject to the following:

1. Compliance with all local, state, and federal laws.

The motion was seconded by Ms. Miller. The board voted unanimously 5-0 in favor of the motion. (Ayes: Lawler, Miller, Havens, Standley, Johnson. Nays: None.)

REVIEW OF POLICY AND PROCEDURES FOR (BOARD) APOINTMENTS—ADOPTED 4/5/18:

Referring to information distributed to members, Mr. Bell reviewed policies and procedures for boards that are appointed by the Board of County Commissioners. The Board has been working with policy that is at least 30 years old and as part of the Board's ongoing action to change the way some of the boards and commissions operate, they have adopted this policy. All boards and commissions that existed as of April 5, 2018, along with any appointees, will be under this new policy.

Mr. Bell gave an overview of some of the changes in the policies and procedures adopted on April 5, 2018 as follows:

(Page 2) – The policy still indicates that no member may serve more than two consecutive full terms. However, if a member is appointed to fulfill an unexpired term of another member, the new policy indicates how that is to be counted based on how much term is left by the predecessor. In addition, Mr. Bell explained that under Section 2.5, it indicates that someone may serve more than two consecutive terms as approved by the Board of County Commissioners. The difference in the new policy is that it must now be approved by the Board of County Commissioners by a super-majority which is a 2/3 majority vote. It is possible to serve more than two terms should the Board of County Commissioners deem it necessary for the continuation of duties to be effective or for whatever reason is deemed appropriate.

(Page 3) – Under Section 3.1, in the beginning of each calendar quarter the Clerk will send the Board of County Commissioners a list of vacancies and the County will provide a list of all vacancies on its website.

On some boards, based on the number of members, the County Commissioners will try to insure there is representation from each district.

(Page 4) – Under Section 4.3, 45 days prior to the date of a vacancy occurring, all applications for a particular position will be checked for eligibility by the Clerk to the Board.

(Page 5) – Under Notification, should there be a reappointment or appointment the Clerk to the Board will notify the person. As part of protocol within the department, Mr. Bell sends a letter to the new member welcoming them to the board. The new appointee will receive a list of current board members and a packet will be sent containing a copy of the Ordinance, a copy of the Rules of Procedure for the particular board, a copy of Policy and Procedures for Board Appointments, along with a copy of the Land Use Plan so they can get brought up to speed. A meeting with the new appointee will be held with staff and training for quasi-judicial proceedings will be provided at an appropriate time. Staff will orient the appointee into the department and the workings of the board.

Mr. Bell discussed the advantage of having active alternates so that when a board member comes off, they are replaced by an alternate. The leap into serving full time is not large because they have already been involved and observing as an alternate.

(Page 6) – Under Section 8.4, if an appointee has unexcused absences that constitute more than 25 percent of the meetings in any year, or misses three consecutive meetings with the exception of something that is excused such as illness, they will automatically be removed from the board. The Chair of the Citizen Advisory Council will notify the appointing authority if a member is absent for 25 percent of the meetings and appointment will be made by the appointing authority to fill that vacancy.

Responding to a question, Mr. Bell explained that after a term expires, the member still serves until he or she is reappointed. There is no action necessary to go beyond the termination date. What removes a member from a board is when there is action by the Board of Commissioners to either reappoint or replace that member. The member can still serve as an active member despite the fact the termination date has already occurred.

(Page 8) – Under Section 9.4, each Citizen Advisory Council shall submit an annual report to the Board of Commissioners outlining activities for the year. Mr. Bell explained that staff prepares this report with a recap of decisions made by the board during the year along with any issues that might have arisen. A copy of the report will be provided to members in their packets after it has been prepared.

Under Section 10.2, it is the goal of the Clerk to the Board of County Commissioners to make training available for all board members who rotate on and off or need a refresher course. The Board of Adjustment operates as a quasi-judicial board operating legislatively and therefore, training about public meetings law will be provided.

Mr. Bell plans to work with the Clerk to provide an updated list of all Board of Adjustment members and their terms. The Board of Adjustment has a separate Rules of Procedure as well. Staff will be reviewing these rules with members at a future meeting.

ADDITIONAL BUSINESS:

Mr. Talbott indicated that an email was sent to members about a refresher training session with Mr. Bell. Any interested members should contact Mr. Talbott who will schedule the session.

Mr. Bell advised members that staff is in the process of getting ready to redo the Development Ordinance. Some statues and best practices have changed and numerous amendments have been made to the ordinances. Staff is working with the Stewart Group to enhance the continuity and clarity of the

Development Ordinance. He noted that the Board of Adjustment will be involved in the rewrite at some point during the process.

ADJOURNMENT:

There being no further business, the meeting adjourned at 7:15 p.m.

Respectfully submitted,

Robert Lawler, Chairman

Matthew Talbott, Board Secretary

RL:jd/sm