

Board of Adjustment Meeting
April 7, 2015
Minutes

In Attendance: Julian Council, Lucius S. Jones, Mike Harrison, Art Whittington, Gayanell Gull

Staff in Attendance: David Bergmark, Allison Rice

Others Present: Jeff Guernier, Operations Partner with True Homes; Jeff Rifkin, Project Manager with True Homes; Commissioner Gina Gray, Esmir Batista.

Mike Harrison opened the meeting at 6 pm.

Lucius Jones made a motion to accept the minutes from the prior Board of Adjustment meeting. Gayanell Gull seconded the motion. The motion passed 5-0.

Mike Harrison opened the public hearing and swore in everyone wishing to speak during the hearing.

Public Hearing for Variance Case ZA15-01

David Bergmark said this site was originally developed as Brighton Subdivision by Bella Development Group Inc. He said the preliminary plat was approved in September 2004 and infrastructure work has been performed, including the water and sewer installation, upgrading of the Green Willow Circle pump station and paving of the streets. Mr. Bergmark stated the final plat had been approved and recorded.

Mr. Bergmark said Brighton was developed as a Planned Unit Development (PUD) under the old zoning code. He said a PUD allowed for flexibility in design with the layout of a subdivision. It can best be utilized on property where environmental features, such as ponds and streams were prominent. He said in this case R10 zoning was the underlying zoning at the time of approval, and the number of permitted lots for the entire site was 94 lots. Mr. Bergmark said Sixty-four lots were proposed on the southern half of the property, leaving the northern portion of the property undeveloped. He said seven of the 64 approved lots had been developed to date with single family homes.

Mr. Bergmark said the applicant was asking for a front setback of 15 feet, with a 20 foot front setback for the garage. He said the applicant excluded those properties owned by parties other than NC WEH Associates and TrueHomes LLC (which included seven existing developed lots, an open space parcel, and a bank owned property). He said the applicant also excluded those lots on the south side of Stratford road, which had a sufficient depth and did not require a variance.

Mr. Bergmark said in order to comply with the ordinance, homes in this PUD must have at least a 25 foot front setback using current standards.

Mr. Bergmark said in 2007, the original developer of the property submitted a request to reduce both the front and the rear setbacks for the Brighton Subdivision. He said the request was made prior to the construction of infrastructure. He said the Board of Adjustment denied the applicant's request, citing such reasons as the hardship was self-created.

Mr. Bergmark said the petitioner submitted the following list of mitigating conditions:

“The combination of the setbacks in conjunction with [the] buffer requirements make several lots challenging to design a home, especially one that is complementary to surrounding existing homes. Some lots are outright unbuildable without a variance.”

Mr. Bergmark said the conditions attached to the approval of this subdivision included that homes must have 1600 square feet of heated space, must have a two car garage, and could not be built on slab.

Mr. Bergmark said there was no Town precedent for this type of variance request. He said variances for setbacks have been given in the past, but never for a collection of lots.

Mr. Bergmark said other options available to the applicant were to:

- Recombine certain lots in order to obtain a sufficient building envelope.
 - Since the roads were already constructed, existing roads and the riparian buffer surrounding the pond would prohibit some lots from gaining additional lot depth through recombination.
- Select house plans that would not encroach into the setbacks.
 - Any plan chosen would need to meet the minimum square footage required as part of the zoning approval.
- Rezone the property.
 - The only zoning classification which would grant the desired front setback would also grant much smaller side setbacks and minimum lot size requirements that would not be appropriate for the surrounding area and that were not being requested by the applicant.

Mr. Bergmark said Lucius Jones had come by the office the day before to ask some questions, one of which Mr. Bergmark thought was pertinent to the case at hand. He said Mr. Jones had asked if they bought these at a lower rate and were aware of existing limitations, would that preclude the applicant from being able to ask for a variance. Mr. Bergmark said that the legislature had made some changes to how variance cases could be judged in 2013, and this would no longer be considered a self-created hardship.

Mr. Bergmark said that if any Board members went out to visit the site, please share their thoughts with the group since judgements were supposed to be made on what was shared in the public hearing.

Art Whittington asked by having a 15' setback, would there be an issue with meeting the front setback and the 5' garage requirement. Mr. Bergmark said that if the garage setback requirement wasn't met, then the whole house would have to be pushed back.

Mr. Harrison asked if there was anyone who wanted to speak in favor of the applicant's request.

Mr. Rifkin made a presentation on behalf of True Homes and NC WEH Associates. Mr. Rifkin said that this request was different from the last developer's variance request. He said this was not a self-created hardship like it was for the last developer. He said that the last developer had made the request prior to obtaining plat approval from staff. He said that also, True Homes was not asking for a change in the rear setback. Mr. Rifkin said he wanted to build new homes that conformed to the already existing homes in the neighborhood. Mr. Rifkin said to answer Mr. Whittington's question, if there was a problem meeting the garage setback, they would move the house back or alter the plans so that it would conform.

Ms. Gull asked what the applicant meant by his point about plat approval and recombining lots. Mr. Rifkin said that the previous developer had submitted the variance request before the plats were recorded. He said the developer could have shifted a few lines and laid the utilities down differently at that point. Mr. Rifkin said the roads and utilities were laid already so there wasn't a lot of ways to change the situation.

Ms. Gull asked if True Homes had any plans with 3 stories to get the required square footage with a smaller footprint. Jeff Guernier said that the 1600 square feet requirement was a zoning condition, but there were also neighborhood covenants. He said he wasn't sure about this particular case, but neighborhood covenants would often restrict where you could count the square footage. He said that True Homes didn't have any plans that had 3 stories. Mr. Bergmark said the HOA covenants were not regulated by the Town, so they didn't keep copies of them.

Mr. Jones asked if True Homes knew the zoning restrictions on these lots when they bought the properties. Mr. Guernier said they knew the general zoning of the lots, but hadn't looked at the specifics of each lot.

Ms. Gull asked which lots in the petition were unbuildable without a variance. Mr. Guernier said there were two corner lots which definitely were not buildable with the current setback requirements. He said even if they were granted a variance, there would still have to be custom plans on those lots.

Mr. Jones asked if True Homes would be able to come up with plans that would meet these lot requirements. Mr. Geurnier said they did not currently have plans that would meet these requirements, and it would be difficult to find plans that would.

Mr. Harrison asked if there was anyone present who wanted to speak in opposition to the request. Mr. Esmir Batista was sworn in. He said he lived in the neighborhood in question and wanted to know how this would affect the houses that currently exist. Mr. Bergmark said the only difference between the houses that were already built and any new houses was that the new houses might be 5-10' closer to the road. Mr. Batista had no further questions.

Mr. Harrison asked if there was a rebuttal to any of the information that was presented. There was none.

Mr. Harrison brought the Board of Adjustment into deliberation at 6:29.

Mr. Jones said the Board of Adjustment needed to look at the facts as they were presented. He said the first issue was how they judged hardship. He said the Board would have to consider whether it was a hardship considering these lots were bought when they were already developed and True Homes knew what they were getting in to. He said most of these lots were not unbuildable, even if they had to find special plans. Mr. Jones said he would have a difficulty defining that as a hardship without additional circumstances.

Ms. Gull said that she agreed that a variance may not be necessary for all of the vacant lots in the subdivision. She said she had a problem granting a variance for all of the lots. She said she drove through there and saw that a lot of people parked on the road. She said she had concerns about public safety, since it would already be tight with people parking in the street.

Mr. Whittington said that whether there was a 15' or a 25' setback, people will still park in the street. He said that parking on the street would be a problem, but that didn't have anything to do with the setbacks. He said that he did believe that there would be a hardship if the variance wasn't granted. He said the question was the degree of hardship and what would be the value to Wendell by not granting the variance.

Ms. Gull said that she didn't believe that was for the Board to decide. She said that if the subdivision was built with 25' frontage, then what the Board was trying to decide was, with the existing conditions, was that a mistake.

Mr. Bergmark said that Mr. Whittington was hitting on the intent of the Ordinance and whether this reduction would still allow the Town to achieve that intent. He said that the key question, however, was whether there was a hardship or not.

Mr. Whittington asked if True Homes would be able to build houses on all of the lots except for those 2 on the corner. Ms. Gull said the applicant had written that building on the lots would be challenging, but *some* lots would be outright unbuildable. Mr. Bergmark said the difficult lots would be the lots that back up to the lake and the lots between Blakeford and Stratford.

Mr. Jones asked if a variance could be granted for individual lots. Mr. Bergmark said yes. He said that if that was a concern, the Board could leave the hearing open and the applicant could come back with more information to make their decision. He said that the Board could also grant all or part of the petition as they saw fit.

Mr. Harrison said he hadn't driven through the properties in question, but his concern was similar.

Mr. Council said he was looking at how this petition would affect the public safety and welfare of the development, for example children playing in the yard. He also questioned whether changing the setbacks would affect the harmony with the rest of the houses in the development.

Mr. Jones suggested that the developer combine lots, giving up one of their taps. Ms. Gull pointed out that combining lots wouldn't help the developer meet the front and back setbacks. Mr. Bergmark said one reason the applicant petitioned to have all the lots be granted a variance was for simplicity for them as well as for Town staff, so that staff wouldn't have to keep track of which lots had different setback requirements. Mr. Whittington said that front setbacks that change from house to house would also be much less attractive in the neighborhood. He said that the applicant had a much stronger case for hardship for the lots along the lake.

Mr. Harrison asked if the Board was ready to go through the findings of fact. Mr. Whittington asked if the Board could find a partial solution.

Mr. Jones suggested that the Board of Adjustment allow the applicant to come back with some examples of updated housing plans and to ask for variances on lots that actually needed the variance. He said he didn't believe the Board should grant a variance wholesale.

Mr. Harrison said that there might have been some justification for asking for a variance for all of the lots, when you consider how the aesthetics of the neighborhood will be affected by having varying front setbacks. He said he had no problem granting a variance only for the lots with a real problem if that was the wish of the board.

Mr. Jones asked if a request was denied, would the applicant have to wait any length of time to resubmit. Mr. Bergmark said that the applicant would be able to submit a different request at any time, but would have to wait a year to submit the same request. Mr. Bergmark suggested that the Board leave the Public Hearing open so that the applicant wouldn't have to reapply.

Mr. Whittington made a motion to leave the public hearing open and have the applicant come back with specific lots in mind for a variance. Mr. Council seconded the motion. The motion passed 5-0.

Mr. Council made a motion to adjourn. Mr. Jones seconded the motion. The motion passed 5-0.

The meeting adjourned at 7:04.