

**Board of Adjustment Meeting
15 E. Fourth Street (Town Hall)
June 28, 2016
Minutes**

In Attendance: Julian Council, Mike Harrison, Gayenell Gull, Tona Whitley, Gail Royster

Staff in Attendance: David Bergmark, Allison Rice

Others Present: Lucius Jones, Sandy Jones, Danny Blackburn

Mike Harrison opened the meeting at 6 pm.

Gayenell Gull made a motion to accept the minutes from the April 7, 2015 Board of Adjustment meeting. Julian Council seconded the motion. The motion passed 5-0.

David Bergmark read the report (*shown in italics below*) to the Board of Adjustment.

REPORT TO THE BOARD OF ADJUSTMENT

Meeting Date: Tuesday, June 28, 2016

SUMMARY

Applicant: Lucius Jones

PETITION

Lucius Jones has submitted a variance request to section 6.2 of the Wendell Unified Development Ordinance as it relates to platting within land unsuitable for development.

PROJECT PROFILE

<i>PROPERTY LOCATION:</i>	<i>Groves of Deerfield Subdivision, Darecrest Lane</i>
<i>WAKE COUNTY PIN:</i>	<i>1783856054</i>
<i>ZONING DISTRICT:</i>	<i>R3</i>
<i>CROSS REFERENCES:</i>	
<i>PROPERTY OWNER:</i>	<i>Lucius Jones</i>

APPLICANT: *Lucius Jones*
PO Box 128
Wendell NC 27591

PROPERTY SIZE: *19.88 acres total (variance applies to portion)*

CURRENT LAND USE: *Vacant*

PROPOSED LAND USE: *Residential*

PROJECT SETTING – SURROUNDING ZONING DISTRICTS AND LANDUSES

<u>DIRECTION</u>	<u>LANDUSE</u>	<u>ZONING</u>
<i>North</i>	<i>Residential</i>	<i>R3</i>
<i>South</i>	<i>Residential/Vacant</i>	<i>RA</i>
<i>East</i>	<i>Vacant</i>	<i>RA</i>
<i>West</i>	<i>Residential</i>	<i>R3</i>

ZONING DISTRICT

This site is located in the R3 zoning district. The R3 zoning district requires a 10,000 square foot minimum lot size, with a 25 ft. front setback, 20 ft. rear setback, and a side setback equal to 10% of the lot width.

LOCATION AND HISTORY

The Groves of Deerfield subdivision was first planned out in the early 2000s as a new residential subdivision along S. Hollybrook road. The subdivision was broken into four phases. The first phase was approved in 2003 and consisted of 41 lots. A master plan for phases 2-4 was submitted in 2006. However, only phase 2 was advanced and approved prior to the vested rights expiring.

The applicant is now looking to develop the remaining phases (3 & 4). A site plan of phase 3 and 4 is included as Attachment C. Phases 3 and 4 connect to existing street stubs within Phases 1 and 2. However, code changes through the adoption of the UDO have created a conflict with following the phased plan originally adopted.

Under the old zoning, you could not build a home within a stream buffer, but you were allowed to include the buffer within your platted lot for a home. With the adoption of the UDO, any land considered unsuitable for development (such as floodplain or river buffers) is prohibited from being included within the property boundaries.

With this request, the applicant is seeking a variance to Section 6.2 of the UDO to allow 8 lots within Phase 4 of this development be permitted to have a portion of their rear yards platted within a Neuse River buffer.

The applicant's engineer has modified the original site plan to only include 20 feet or less of the rear lots for the 8 lots in question within the river buffer. The proposed single family homes (both due to required rear setbacks and Neuse River rules) would not be allowed to be within this 20 foot area within the river buffer. However, the applicant has stated that the engineer could not reduce the rear lots any further without violating the acreage requirements for the R3 zoning district. Furthermore, the applicant is required to connect to the existing street stubs for Darecrest Lane, limiting how the lots may be configured.

Neuse River buffers extend 50 feet from the top of bank from intermittent or perennial streams that feed into the Neuse River. They are subject to special protective regulations under state law. State law does not prohibit platting within the river buffer, so the applicants request would not be in violation of any state laws or regulations. The buffer is broken into two zones. Zone 1 consists of a 30 foot wide area closest to the stream that is to remain largely undisturbed. Zone 2 consists of the outer 20 feet of the 50 foot wide buffer. Zone 2 shall consist of a stable, vegetated area that is undisturbed except for specific activities and uses prescribed by the state (such as fences).

If the variance request is approved, the area platted within the river buffer would be located solely within Zone 2.

APPLICANTS JUSTIFICATION

The petitioner has submitted the following list of mitigating conditions:

“The Groves of Deerfield was originally planned in its entirety as a phased development. Existing road stub-outs must be connected to, limiting road alignment and causing a small number of lots to include river buffer.”

STAFF COMMENTS

This is the first variance request to address the Town's new platting requirements as they relate to floodplain or river buffers. The Board of Adjustment is asked to review the details of this case, and apply the findings of fact to determine if there are extenuating circumstances in the applicant's case which justify the granting of a variance request. A copy of the findings of fact which must be addressed is included as Attachment A.

Ms. Royster asked if the requested variance only affected the 8 lots. Ms. Whitley asked what this affected regarding the limitations on the builder versus the homeowner. She asked if the

homeowner would be allowed to build a fort in the back yard, for example. Mr. Bergmark said that anything that was large enough to require a permit would not be allowed.

Ms. Gull asked if there was any water in that area.

Ms. Whitley asked if there were other requirements such as greenways or sidewalk. She said this would be a great spot for public open space. Mr. Bergmark said that was all accounted for.

Ms. Gull said that she understood that BOA cases were brought forward when the Town had denied it. Mr. Lucius Jones said this had all been approved with the subdivision before the UDO was adopted. He said this was the test case for the UDO.

Mr. Bergmark said this was a special case because they had to connect to existing roads. Ms. Whitley asked if the developer could reconfigure the layout, even if it meant losing out on some lots. She asked if the infrastructure had been laid out yet. Ms. Gull agreed and asked the engineer what could be tweaked and what couldn't.

The engineer, Danny Blackburn, pointed out the existing road connections that they were working with. He said that they originally had 62 lots planned but had to reduce the number to make room for stormwater. He said there were lot size constraints from zoning – they had to be a minimum of 60' wide and 100' deep with a 20' setback. He said homes couldn't be built within the 20' rear setback or the 20' buffer. He said there was also a minimum lot square footage that had to be accommodated.

Deliberation of the Board of Adjustment

Mr. Mike Harrison went through each of the 3 Findings of Fact so that the board could discuss them in relation to this case.

Number 1: Hardship

Ms. Whitley said the engineer said they could have 6 lots and comply with the zoning requirements or be granted a variance and have 8 lots.

Mr. Harrison said the applicant was applying for a variance to bring him back to where he was before the UDO.

Ms. Gull said the UDO coming into effect was the reason for the hardship. She said this was not a self-created hardship.

Mr. Harrison asked if the intent of the UDO was different from what was proposed.

Ms. Gull asked about existing sewer lines in the development. Mr. Jones said infrastructure in Phase 1 had been laid out based on the approved plans at that time. He said utilities still needed to be built for this new phase.

Ms. Whitley asked if there were any further variances that would be asked for. She said she wanted to make sure no more adjustments would be made to the UDO.

Mr. Bergmark said the UDO wasn't the hardship. Ms. Gull said it was a hardship. Mr. Council and Ms. Whitley agreed.

Number 2: Impact to Public Safety

Mr. Harrison said there was no impact to public safety. Ms. Whitley said there needed to be an additional disclaimer to buyers and that the burden should be placed on the developer. Mr. Harrison said that was a policy and the Board of Adjustment didn't have any control over policy.

Number 3: Harmony with Intent

Ms. Royster said the variance would be in harmony with the intent and spirit. Ms. Gull said the developer had already made adjustments to meet UDO standards.

The Board voted 5-0 to approve a variance to allow the modifications listed above.

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