

Town of Holly Springs
BOARD OF ADJUSTMENT MEETING MINUTES
Monday, August 2, 2021 – 6:30 p.m.

Agenda Item #1, 2, 3 & 4:

The Board of Adjustment of the Town of Holly Springs met for their regularly scheduled meeting on August 2, 2021 in the Council Chambers, 128 South Main Street. At 6:30p after determining a quorum was present, Chair Forrest called the meeting to order.

Staff Members Present: Chris Hills, Development Services Director
 Melissa Sigmund, Current Planning Manager
 Bronwyn Bishop, Planner I
 John Schifano, Town Attorney
 Beth Sarkisian Trautz, Board of Adjustment Clerk

The Board completed roll call.

Members Present: Tim Forrest, Chair
 Morgan Wiley, Vice Chair
 Alicia Andrews
 Cody Loughridge
 Elaine Crigger

Members Absent: Jeff Jones
 Jay Marinko
 Jayson Greene

The Board recited the pledge of Allegiance and held a moment of silence.

Agenda Item #5: Agenda Adjustment

There was no agenda adjustment.

Agenda Item #6: Minutes

- a. April 5, 2021 Minutes

Motion:

Motion to approve the April 5, 2021 Minutes.

Motion by: Mr. Loughridge

Second by: Ms. Wiley

Action: The Board of Adjustment voted in favor of the Motion. (5-0)

Agenda Item #7: Variance

- a. Addison Pond (21-VAR-03)

Ms. Bishop reviewed the staff report with the Board and entered the report as evidence.

Variance 21-VAR-03 to allow for a Variance from the Unified Development Ordinance Section 7.01 L. 3. c. Location of Fence or Wall Within Perimeter Yard/Bufferyard Landscaping to allow a minimum of 15% of the required PUV to be located between the fence line and the property line in the Addison Pond Subdivision, PINs 0639647236, 0639538830, 0639439289 in Holly Springs, NC 27540.

Ms. Wiley wanted to know if this buffer was a requirement all over town or simply where it is located along the thoroughfare. Ms. Bishop explained it was a requirement all over.

Mr. Loughridge asked who owned the property and Ms. Wiley asked about the lanes on the road.

Mr. Loughridge asked if the fence was shown on the original plans. Ms. Bishop explained that if the variance was approved, the applicant would need to complete a plan amendment.

Swearing-In

Bronwyn Bishop, Planner I

Garrett Baker, TMTLA Associates

Carmen Madrigal-Jackson, 109 Grey Heron Lane Holly Springs, NC

Testimony:

Garrett Baker from TMTLA addressed the Board.

The Development Plan was approved with standard typical thoroughfare buffer. When the plans were drawn, the buffer was predominately meant to be kept as undisturbed. Since plan approval, road widening, a sidewalk and other improvement have resulted in a need for an amendment to the buffer. TMTLA is currently going through the amendment process; and, it was suggested that they proceed with a variance. The fence is already installed and they were able to keep existing vegetation behind the fence line.

Mr. Baker explained the site conditions with the Board. He showed the existing vegetation, slope, and overhead power lines. It was his opinion that the fence could not be placed in the existing vegetation, the overhead power line restricts planting of larger trees due to the DUKE Power easement; and, planting 50% of the buffer in front of the fence would cause overcrowding and plant growth over the sidewalk.

Mr. Baker reviewed the buffer plant unit value (PUV) requirements with the board. While fences have a PUV, they are not asking for it to be included in the buffer, nor are they asking in a reduction of the buffers PUV.

Ms. Wiley questioned if they are leaving the existing buffer behind the fence. Mr. Baker shared the amendment first draft that shows what is planted and the proposed plantings. If the variance is not granted the amendment would continue, the only difference would be to remove the fence.

Ms. Andrews asked what the length of the fence is. The fence will be located throughout the length of the buffer approximately 3,000 linear feet.

Chairman Forrest opened the Public Hearing.

Mr. Carmen Madrigal- Jackson 109 Grey Heron Ln, Holly Springs, NC addressed the Board. His property is adjacent to the buffer and fence. His concern about the buffer is that it will not provide adequate sound reduction. Mr. Jackson stated that there is no opacity and it is quite noisy. Phase 2 has less landscaping in the buffer. He does not feel that existing landscaping is not achieving the intent of the buffer. Ms. Sigmund addressed the Board, stating that while Mr. Jackson question isn't related directly to the variance she would like to explain the buffer and process to the Board and to Mr. Jackson. She explained that not all plants are currently planted in the buffer and the Town has going compliance requirements for said buffer.

Mr. Forrest asked if the HOA has taken over enforcement.

Ms. Sigmund clarified that the fence is not required and that the amendment is required due to the change in the site conditions as noted prior (road widening, overhead lines, etc.). A recounting of the existing plants is necessary as part of the amendment; the plant unit value was required.

Ms. Wiley made a motion to close the public hearing, Chair Forrest closed the Public Hearing.

Board Deliberation:

The Board deliberated on the findings of facts as they pertain to the variance being requested.

Ms. Wiley felt that this was not a hardship. Mr. Loughridge stated he was struggling if this was reasonable use. He felt that the fence was installed and they are now asking for forgiveness. Overall the Board felt that the fence as added as an aesthetic feature.

The Board deliberated over the percent difference, some felt 15% was not enough and they discussed increasing to 25%; they further discussed if they were coming up with an arbitrary number.

Ms. Wiley inquired about the effect on the landscape buffer if the fence is removed. Ms. Sigmund explained they would still need to meet the buffer PUV of 225. Ms. Andrews asked if the fence placement is OK in relation to setbacks. Ms. Bishop explained it is dependent on the PUV not on location.

The Board asked if 50% of the landscaping was placed in front of the fence would it be overcrowded and unhealthy for the plants. Ms. Sigmund indicated that staff are not professional landscape architects and rely on the expertise of registered landscape architects. It was noted the testimony of Mr. Baker indicated that the buffer would be overcrowded.

The Board agreed that the topography weighs into the placement.

Mr. Schifano clarified for the Board that Applicant is stating the hardship is that 50% of the landscaping cannot be placed in front of the fence and that is why they are requesting the reduction of required landscaping to 15%.

The Board deliberated about what should be required in front of the fence. Mr. Loughridge believes that the situation was created by the applicant and is not in favor of modifying the request from 15%.

Findings of Fact:

A *variance* may be granted by the Board if competent and substantial evidence is presented by the applicant which persuades the Board to either reach each of the following conclusions independently or be reasonably able to meet these conclusions upon implementation of conditions by the Board:

- 1) Unnecessary hardship would 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.

The board has found as a fact that that verbal testimony provided supports the Petitioner's written response as follows:

- The hardship results from the builder's election to install this fence for aesthetic purposes, and not from a plan requirement. At a 225 PUV required for the buffer, there is not enough planting space to meet the 50% PUV requirement in front of the existing decorative fence. Without this variance, approximately 3,000 linear feet of fence will have to be removed. The Developer installed the fence approximately 8' behind the sidewalk/ROW which is optimal given topography, tree save, road section, and overhead power. The conflict arises when calculating the PUV for the tree save, existing and additional plantings.

- 2) The hardship results 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.

The board has found as a fact that that verbal testimony provided supports the Petitioner's written response as follows:

- This hardship is peculiar to the property given the location, tree save areas, topography, and overhead power. Designing a landscape buffer to conform to the UDO and still address the conditions of tree save, topography, utilities, and aesthetics can be challenging. The existing location of the fence is optimal when considering all the factors. Relocating the fence further into the buffer creates topographic challenges and conflicts with the tree save area.

- 3) The hardship did 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.

The board has found as a fact that that verbal testimony provided supports the Petitioner's written response as follows:

- The Addison Pond Community Association (HOA) and Owners purchased homes with the decorative fence already installed on the property. The hardship did not result from actions taken by the new property Owners.

- 4) 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.

The board has found as a fact that that verbal testimony provided supports the Petitioner's written response as follows:

- The request is consistent with the spirit and intent of the ordinance to allow a decorative fence within a landscape buffer.

Motion (Findings of Fact)

Motion to accept and adopt the findings of fact for Variance Petition #21-VAR-03 as determined based upon competent, material, and substantial evidence presented and entered into the record and reduced to writing.

Motion by: Ms. Wiley

Second by: Ms. Crigger

Action: The Board of Adjustment voted in favor of the Motion. (5-0)

Motion (Conclusion of Law on Variance Petition)

Based upon the Board's Findings of Fact, motion to approve Variance 21-VAR-03 requested by Garret Baker with TMTLA Associates to allow for a Variance from the Unified Development Ordinance Section 7.01 L. 3. c. Location of Fence or Wall Within Perimeter Yard/Bufferyard Landscaping to allow for a minimum of 15% of the required PUV to be located between the fence line and the property line in the Addison Pond Subdivision, PINS 0639647236, 0639538830, 0639439289 in Holly Springs, NC 27540.

Motion by: Ms. Wiley

Second by: Ms. Crigger

*Action: The Board of Adjustment voted in favor of the Motion. (4-1)
Mr. Loughridge denied.*

Agenda Item #8: Other Business

BOA Update – Updates are being posted on the web and the goal is to present the UDO for adoption to Town Council in the fall. Please reach out to staff if you would like to bring any topics to the attention to staff.

Potential September 8, 2021 hearing, shifted to Wednesday due to Labor Day holiday on September 6, 2021.

Introduction of Chris Hills, Development Services Director.

Agenda Item #9: Adjournment

Motion:

Motion to adjourn.

Motion by: Ms. Wiley

Second by: Ms. Crigger

Action: The Board of Adjustment voted in favor of the Motion. (5-0)

Time: 8:10 pm



Brett Gosney for Beth Sarkisian Trautz
Board of Adjustment Clerk