

Town of Holly Springs
BOARD OF ADJUSTMENT SPECIAL MEETING MINUTES
Monday, October 18, 2021 – 6:30 p.m.

Agenda Item #1, 2, 3 & 4:

The Board of Adjustment of the Town of Holly Springs met for a special meeting on Monday, October 18, 2021 in the Council Chambers, 128 South Main Street. At 6:30p after determining a quorum was present, Chairman Marinko called the meeting to order.

Staff Members Present: Chris Hills, Development Services Director
 Bronwyn Bishop, Planner I
 John Schifano, Town Attorney
 Brett Gosney, Board of Adjustment Clerk

The Board completed roll call.

Members Present: Tim Forrest, Chair
 Morgan Wiley, Vice Chair
 Alicia Andrews
 Jayson Green
 Cody Loughridge

Members Absent: Jay Marinko
 Jeff Jones
 Elaine Crigger

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. August 2, 2021 Minutes

Motion:
Motion to approve the August 2, 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. 213 Chieftan Dr (21-VAR-04)

Ms. Bishop reviewed the staff report with the Board.

Variance 21-VAR-04 to allow for a Variance from the Unified Development Ordinance Section 2.05 B. 5. c. Minimum Yards and Minimum Building Setbacks to allow for a reduction in the minimum primary building rear setback from 20' to 6' to apply to an attached deck at 213 Chieftain Drive, PIN 0669422466 in Holly Springs, NC 27540.

Swearing-In
Bronwyn Bishop, Planner I

Darlene Wilson
213 Chieftain Dr
Holly Springs, NC 27540

David Wilson
213 Chieftain Dr
Holly Springs, NC 27540

Mahloy Tucker Daniels
216 Chieftain Dr
Holly Springs, NC 27540

Chair Forrest opened the Public Hearing.

Testimony:

Mrs. Wilson explained the hardships that would result from the strict application of the ordinance. She explained that every house in the neighborhood has a deck or screened in porch, while theirs does not. Wooded wet lands are directly to the rear of the property. The value of the home is also being impacted because of the higher use of outdoor spaces due to the pandemic. The property is now turning to more of a wetland because of beavers that have moved into the creek area running behind the home. Most other properties in cul-de-sacs have majority of their property on the rear while theirs has most of theirs in the front. Mrs. Wilson was told by the builders prior to purchase that they would be allowed to build a deck at a later date when purchasing the home in 2011. The deck would not encroach or be in the sight of any other property. Mr. Wilson states that the homeowner's association has approved the request to build the deck before they knew they were in violation of any setback requirements. Mrs. Wilson reiterated the unique topography of the property. Mr. Wilson stated the survey shown had just been completed 30 days prior to the variance application being submitted. Mrs. Wilson Stated that the unified development ordinance was confusing as well as they received information from their builder that it had passed the reviews. Due to the high price in building materials, they were purchased after hearing of this approval although they soon relegalized that they had not passed all of the reviews. Mr. Wilson stated that their one neighbor next to them that would be most impacted are here tonight in support of them being granted the variance.

Mr. Forrest asked if there were any questions from the board.

Mr. Loughridge asked if they were the only owners of the home and asked if the home was constructed within the required setbacks when built.

Mrs. Wilson stated they are the only owners of the home. The home was built one foot away from the rear setback.

Mr. Loughridge asked about what changes have happened to the property between when the home was built and now.

Mrs. Wilson Stated that the property has more wetlands on it now than before. Areas of the property where they used to be able to walk in currently are unable to be used do to the properties wetlands. Builders have suggested using materials that would not decay quickly because of the moisture problem.

Mr. Wilson stated that the beaver problem is not made up and they have been in contact with the town although there is not much the town can do about them.

Mrs. Wilson stated that they are concerned about their home being in more of a flood zone because the beavers have blocked the river even more causing water to rise higher. The purpose of the deck is to allow them to enjoy outside space without having to be on damp ground.

Mr. Forrest asked about the beavers being a concern with regards to the water rise.

Mrs. Wilson stated yes, the beavers seem to be the cause of the water rise.

Mr. Forrest asked when the setbacks were changed in the UDO and making the primary building.

Mrs. Bishop stated she is unsure but can look up the information.

Mr. Schifano stated that the setbacks had to be in place when the home was built otherwise they would have vested rights.

Mr. Greene had a concern about the greenway.

Mrs. Wilson stated that there is no greenway in the rear of the property.

Mrs. Andrews asked if to their knowledge if any of the neighbors are encroaching onto the setbacks.

Mrs. Wilson stated that she does not know for sure that they are but when looking at the properties it is tough to say that it is a 20' setback.

Mr. Daniels stated that they would be the only neighbors with visibility to the deck and that he is full support of the project.

Mr. Forrest thanked him for coming out and stated it is important to support your neighbors.

Chair Forrest closed the Public Hearing.

Board Deliberation:

Mr. Forrest proposed each of the board members view the finding of facts independently.

Mr. Loughridge stated that this is a different case from past ones in that they are normally trying to replace structure that are not in compliance but with this one they are trying to extend into the setback.

Mrs. Wiley stated the statement about the homes resale value should be removed.

Mr. Loughridge wanted to remove the part speaking of the unattached deck. As well as remove that all homes were built with a deck.

Mr. Forrest asked if wetlands were not allowed to be changed by the home owners.

Mr. Schifano stated that it is generally correct.

Mr. Loughridge asked if the area was a defined wetland.

Bronwyn stated that it is certainly floodplain and it touches the property on the eastern side.

The board stated that the statement about it being perfect for a deck is not necessarily true as well as the resale value cannot be proven because they did not have expert testimony.

Mrs. Wiley stated she is okay with leaving the part about the builder purchase but would like to add the part about the beaver for hardship three.

Mr. Loughridge stated it is hearsay about the builder and will need to be removed but the beaver should be added.

Mr. Loughridge stated they cannot define the purpose of the setback ordinance.

Mrs. Wiley stated that they can because it is in the spirit.

The board agrees that the home will be in the sight line of other homes because a neighbor testified that they will be able to see it.

Mr. Loughridge would like to talk more about the unnecessary hardship because they are asking to move into the setback rather than rebuild in the setback. This particular finding he struggles with.

Mrs. Wiley states that the spirit of the UDO is to not encroach on your neighbors or create an eye soar for your neighbor. With this property they do not have anyone behind them so they may not have this problem.

Mr. Loughridge is wonder what the hardship with the property is.

Mrs. Wiley states the hardship is them not being able to enjoy the property the way that they would like.

Mr. Forrest states this is a unique situation with the wetlands having such a big factor in this property that they cannot control. The wetlands have to be something they consider.

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:

213 Chieftain Drive was last property built in the Carrington Estates Subdivision in 2011 and is 5-7 years newer than the other homes in the neighborhood. The Property sits on a cul-de-sac at the end of 213 Chieftain Drive. Much of the property's yardage sits to the right of the property and is wooded wetlands, a community greenway divides the property here, and runoff drains run under this part of the lot and empty into the Middle Creek wet land basin; this part of the property is unusable.

The location of the residence in relation to the rear property lines creates a condition that is unique to this lot as the rear yard is significantly narrower than other lots in the community. The maximum depth off the back of the home to the rear property line is 24 feet, and the narrowest depth from the further most jetting of kitchen wall to property line is even less- 20 feet. The unique topography of the property limits the applicant to an exceedingly small and narrow back yard space whose use is further diminished by the ordinance.

Ordinance 2.05.B 5c. requires a "minimum 20 feet of yard" beyond the back of an attached deck; per the above the applicant has no allowable yardage to "attach a deck".

- 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:

The location of the property on a cul-de-sac required that the home be placed to match the curvature of the road and in a smaller area on the lot due to the wetlands to the right and rear of the lot. The changes in the natural habitat adjacent to the property have caused the property to become increasingly saturated. The location of the residence on this lot creates a hardship condition that is unique to this lot which is the fact that the rear yard is significantly narrower, the maximum depth off the back of the home to the rear property line is 24 feet and the narrowest depth from the further most jetting of kitchen wall to property line is 20 feet.

Under strict adherence to the building ordinance the property has diminished usage of the rear yard and cannot currently be enhanced with a deck which impacts the applicant's usage of the space.

- 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 applicant purchased the property in 2011 in large part to enjoy the outside of the residence which sat at the back of the cul-de-sac with mostly woods surrounding. The changes in the natural habitat adjacent to the property have caused the property to become increasingly saturated.

- 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 setback ordinance is designed so that new structures are not built that encroach on other properties and to provide for the safety and security of the residences. The deck the applicant is requesting to build would not encroach on any other neighbors' property, be in the line of site from the street as the house backs up to wooded, unused, and undevelopable land. The deck the applicant is requesting to build would not infringe or encroach on any other neighbors' property, be in the line of site from the street or pose a safety concern.

Motion (Findings of Fact)

Motion to accept and adopt the findings of fact for Variance Petition # 21-VAR-04 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. Andrews

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-04 to allow for a Variance from the Unified Development Ordinance Section 2.05 B. 5. c. Minimum Yards and Minimum Building Setbacks to allow for a reduction in the minimum primary building rear setback from 20' to 6' to apply to an attached deck at 213 Chieftain Drive, PIN 0669422466 in Holly Springs, NC 27540.

Motion by: Ms. Wiley

Second by: Ms. Andrews

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

Agenda Item #8: Other Business

Mr. Forrest asked if the training for February new members training had been schedule.

Mrs. Bishop thanked Mr. Forrest for the reminder and that they would look into getting that training scheduled.

Agenda Item #9: Adjournment

Motion:

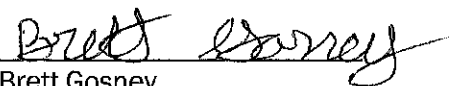
Motion to adjourn.

Motion by: Ms. Wiley

Second by: Mr. Green

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

Time: 7:44



Brett Gosney

Board of Adjustment Clerk