

Town of Holly Springs
BOARD OF ADJUSTMENT MEETING MINUTES
Monday, March 7, 2022 - 6:30 p.m.

Agenda Item #1, 2, 3, 4 & 5:

The Board of Adjustment of the Town of Holly Springs met for their regularly scheduled meeting on March 7, 2022 in the Council Chambers, 128 South Main Street. At 6:30p after determining a quorum was present, Bronwyn Bishop called the meeting to order. The Town Clerk administer Oaths for all Board members.

Staff Members Present: Elizabeth Goodson, Land Development Manager
Sean Ryan, Planning Manager
Cheryl Caines, Senior Planner
Bronwyn Bishop, Planner II
Brett Gosney, Planner I/Board Clerk
Linda McKinney, Town Clerk
John Schifano, Town Attorney

The Board completed roll call.

Members Present: Cody Loughridge, Chair
Jayson Greene, Vice Chair
Ben Copeland
Danielle Hewetson

Alternate Members Present: (Non-Voting)
Joe Cimino
Elaine Crigger
Chanel Wilkins

Members Absent: Jeff Jones

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

Agenda Item #6: Agenda Adjustment

There was no agenda adjustment.

Agenda Item #7: Appointment of Chair and Vice Chair

The Board selected Cody Loughridge to serve as Chair.

Motion by: Mr. Greene
Second by: Ms. Hewetson
Action: The Board of Adjustment voted in favor of the Motion. (5-0)

The Board selected Jayson Greene to serve as Vice Chair.

Motion by: Mr. Loughridge
Second by: Ms. Hewetson
Action: The Board of Adjustment voted in favor of the Motion. (5-0)

Agenda Item #8: Minutes

a. February 7, 2022 Minutes

Motion:

Motion to approve the February 7, 2022 Minutes.

Motion by: Ms. Crigger

Second by: Mr. Copeland

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

b. January 25, 2022 Training Minutes

Motion:

Motion to approve the February 7, 2022 Minutes.

Motion by: Ms. Crigger

Second by: Mr. Copeland

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

Agenda Item #9: Variance

a. 116 Tiverton Woods Dr (21-VAR-05) (tabled from 2-7-2022)

Ms. Bishop reviewed the staff report with the Board.

Variance 21-VAR-05 to allow for a Variance from the Unified Development Ordinance Section 2.08. H.1. & 2.08.H.2 Maintenance of Buffer Areas to allow for a reduction in the undisturbed buffer area as approved on the Ballenridge PUD from 30' to 15', limited only to the area of the existing multi-use concrete pad at 116 Tiverton Woods Drive, PIN 0649617824 in Holly Springs, NC 27540.

Swearing-In

Bronwyn Bishop, Planner II

Sydney Evans

116 Tiverton Woods Dr.

Holly Springs, NC 27540

Chair Loughridge opened the Public Hearing.

Testimony:

Mrs. Evans began by stating she has cleaned up her presentations and limited the scope of the presentation for the new board. Mrs. Evans showed the pictures of the backyard prior to the purchase of the home and the yard a few days ago. Mrs. Evans stated the reasons for having the backyard turned into what it is today with the concerns of tree rot and the drainage of the property. Mrs. Evans stated that the drainage is running from two or three properties over and drains directly through her yard to the other side. Mrs. Evans stated that the trees were over crowding the yard and did not allow for healthy growth. Mrs. Evans also reiterated that she did contact the Town to ask if they were allowed to remove trees and was told that they could as long as they did not remove the roots of the trees. A topographical map was

shown to show the elevation differences on the lot and demonstrate the drainage problems that can occur. Mrs. Evans stated the concrete placement was done with the consideration of the surrounding properties because they deal with similar drainage issues. Mrs. Evans discussed the proposed alterations to the board with the original intention of the buffer in mind. Mrs. Evans stated that there were two proponents that were present last time. Mrs. Evans discussed the goal of the variance to the board.

Chair Loughridge closed the Public Hearing.

Board Deliberation:

Mr. Copeland stated that he rented 112 Tiverton Woods from 2014-2016 and has seen the running of the water from that property to others.

Mrs. Hewetson stated that the fence being behind the 30' buffer would create a difficult situation of where the buffer begins and ends.

Mr. Copeland stated that if they did not elect to approve the variance then would they be required to replace the buffer and remove the concrete. Would this be the hardship since it has been created?

Mr. Loughridge state that he struggled with the permission/forgiveness aspect of this variance because the work had already been done.

Mr. Greene stated that he is struggling with this point as well.

The Board began discussing the findings of facts.

Mr. Loughridge reopened the public Hearing.

Mrs. Evans stated that the prior board member stated that a board member previously stated that was a right to level the yard. Mrs. Evans stated that there is not a common area in the neighborhood such as a pool or clubhouse so they had to create one in their yard. Mrs. Evans reiterated that there is not a level area on her property.

Mr. Loughridge reclosed the public hearing.

The board continued deliberation on the finding of facts.

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 natural topography of the property restricts where the multiuse concrete pad could be placed. A notarized Affidavit of Testimony from the concrete professionals confirms that the current location of the concrete pad in question was the only viable location.

- 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 natural topography of the property and the proximity to the drainage easement on the east side of the property drastically minimized the viable locations for the multiuse concrete pad. Moving the pad further south to avoid the buffer would have impeded the natural water drainage to the easement for 116 Tiverton Woods as well as neighboring properties to the west.

- 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 natural topography of the property (as shown above in photos 1a & 1b) has been consistent in the fact that the property does create a downward slope from east to west. That has been documented clearly on Wake County IMAPS topography imaging.

- 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:

This variance request is filed with the understanding that the original buffer was intended to provide privacy and protection of the home from the main road located on the north side of the property. In the spirit of that purpose, we would like to propose that (within a reasonable time frame) we, the owners, plant large (Emerald Green) arborvitae trees along the interior of the fence on the north bank of the property.

Motion (Findings of Fact)

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

Motion by: Jayson Greene

Second by: Elaine 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 deny Variance 21-VAR-05 to allow for a Variance from the Unified Development Ordinance Section 2.08. H.1. & 2.08.H.2 Maintenance of Buffer Areas to allow for a reduction in the undisturbed buffer area as approved on the Ballenridge PUD from 30' to 15', limited only to the area of the existing multiuse concrete pad at 116 Tiverton Woods Drive, PIN 0649617824 in Holly Springs, NC 27540.

Motion by: Cody Loughridge

Action: The Board of Adjustment voted in favor of the Motion. (3-2)

Mrs. Hewetson and Mrs. Crigger vote for the approval of the variance.

b. CS Tree Service (22-VAR-01)

Ms. Caines reviewed the staff report with the Board.

Variance 22-VAR-01 requested by Will Altman with Timmons Group to allow for a Variance from the Unified Development Ordinance Section 4.03 B.2 Industry & Technology District Side & Rear Bufferyard to reduce the bufferyard along the side and rear yards from 150 to 50 feet. The property is located at 8420 & 8424 James Rest Home Road and is further described with the following Wake County PINs: 0619956580, 0619956311, and 0619949910. The purpose of the variance request is to allow construction of gravel storage yards and other improvements associated with a proposed contractor's office.

Mrs. Crigger asked a question about the map.

Mrs. Caines stated the site itself includes all of the purple area and all of those are owned by CS Tree Service. The development is only occurring on the three larger parcels and not on the three smaller ones to the south.

Mr. Copeland asked about timelines for other areas to be rezoned.

Mrs. Caines stated there is not a master plan for the area and is being rezoned as development occurs through rezoning requests.

Swearing-In
Cheryl Caines, Senior Planner

Will Altman, Timmons Group
1617 Crafton Way
Raleigh, NC 27607

Steven Kurtz, CS Tree Services
2820 White Rail Dr.
Fuquay Varina, NC 27526

Christopher Baley, CS Tree Services
1612 Burgess Hill Ct.
Apex, NC 27539

Jacqueline James-Brown
8416 James Rest Home Rd.
Holly Springs, NC 27540

Hazel J. Lee
520 Bayoak Dr.
Cary, NC 27513

Chair Loughridge opened the Public Hearing.

Testimony:

Mr. Altman began by going over what was being requested in the variance. Mr. Altman showed a map that demonstrated the area that is a controlled easement by Duke that is taking a large section of the area. The sections that are taken limit the use of the land and the intent that was to be allowed by the rezoning to a new district. The buffer to

Mr. Loughridge asked about the portion that is intersecting with the buffer and the usable land.

Mr. Altman stated that this is the right of way that runs into the property. The fencing will be used around all storage and all other intents of the UDO are being used.

Mr. Copeland asked if the setback is being used.

Mr. Altman stated that it is just a graphic to show the developable land and land will not be disturbed in this area except a culvert pipe to maintain the current drainage.

Mr. Copeland asked about the removal of the septic to allow for the planting of the trees.

Mr. Altman stated this would take extensive work and the house will be remain but turned into an office.

Mr. Kurtz stated that if they adhere to the current buffer yard it would limit the amount of useable area and they have spoken with the surrounding property owners about this request. They feel they are remaining within the intent of the UDO.

Mr. Baley stated these areas will be used for storage and would be used mostly to store trucks that would leave the property in the morning and then be stored overnight. He believes it is a very low use area that is being proposed in this area.

Mr. Loughridge asked why it is going from 150' to 50'

Mr. Baley stated that with the irregular shape of the property it creates a lot of pinch points that create further awkward area. It is a condition of the previous approval that once utilities are available they will be required to connect to them.

Mr. Copeland asked about the large gravel yard for turn around.

Mr. Baley stated it is for turnaround for trucks with large trailers. There are not many materials that they store but it is rather for their trucks to be stored. Operations would not be conducted there during business hours. The maintenance shop is on the southern part to provide a gap away from the residential properties. There is already a dense tree line and they would be adding to that to prevent dust and noise.

Mr. Copeland asked about audible signals of the truck.

Mr. Baley stated they do have this.

Mr. Kurtz stated they will be utilizing turn around areas to limit backing up.

Mrs. Lee stated that she would like to welcome the CS Trees to the neighborhood but she does have a few concerns. She would like to preserve the properties in case she wishes to return to the property. The Town has created the 150' buffer to protect the residential area but will the 50' buffer do the same thing. Will the 50' buffer effect the selling options of the property if they wish to sell in the future. Mrs. Lee stated that she wishes to protect the area.

Mr. Loughridge asked which property was hers.

Mrs. Lee show the board which property was hers and that she is an adjacent property owner.

Chair Loughridge closed the Public Hearing.

Board Deliberation:

The board stated they will go through the findings of facts one by one like they did previously.

The board deliberated on the findings of facts.

Mr. Copeland asked about proceeding with the old UDO versus the new UDO and what changes are happening with the new UDO.

Mrs. Caines stated that the codes are different as well as the zoning. The code was adopted in November but was not effective until March 1. This is just to let the board know that they are moving with the old UDO.

Mr. Copeland asked if any changes happen with the district to affect the buffer yard or if the information is the same.

Mrs. Caines stated that the zoning was changed to the most equivalent zoning and was more for information. The applicants did not choose to go with the New Code and it does not affect how they are moving forward. The buffer area is staying the same between industrial and residential.

Mrs. Hewetson asked about the buffer yard being around vacant land and if this applies to vacant land.

Mrs. Caines stated that even though the property is vacant, it will still have a zoning which is residential.

Mr. Copeland asked if the areas were owned by Duke.

Mrs. Caines stated that the vacant land is owned by Duke and the green line is an easement for Harris Lake.

Mrs. Hewetson asked what the purpose of the 150' buffer is.

Mrs. Caines stated that the intent of the buffer is to provide a shield from adverse effects that could be created between two differing zonings.

The board began discussing the finding of facts again.

Mr. Loughridge reopened the public com

Mr. Kurtz stated that the reason for going for the zoning change was for the storage of the vehicles but they are not with the intent of the rest of the industrial zoning. They have trapped themselves in the zoning district and the rules that do not really apply to there business since it is not industrial.

Mr. Baley stated that the buffer yard is for the heavy industrial and the are not heavy industrial.

Mr. Copeland asked why they went for heavy industrial.

Mr. Baley stated it allowed them to use more of the space for outdoor storage versus some of the other zonings.

Mrs. James stated that they have lived in the area for a long time and have been very happy with them owning the property. Mrs. James stated that she is in support of the 50' buffer over the 150' because she would like for them to remain on the property. Mrs. James sold them this property to allow for them to have their property.

Mr. Loughridge asked if they own the property next to them and if she had concerns.

Mrs. James stated that she does own the property and she has no concerns about the 50' buffer yard.

Mr. Loughridge reclosed the public comment period.

The board continued deliberation on the findings of facts.

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:

- 5) 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 current requirements specify a 150-foot buffer around the entire property which would reduce the space available to approximately 28% of the total area.

- 6) 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 area is subject to a condition with Duke energy that any land with an elevation below 265 feet will be reserved for the expansion of the Shearon Harris reservoir. This accounts for approximately 35% of the property, which are practically unusable. The property is made up of multiple parcels that are being merged into one parcel. This offers a non-uniform shape, which causes the buffers to create pinch points.

- 7) 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 proposed 150-foot bufferyard requirement with a 30 foot buffer from the right of way reduces the usable space to approximately 28% of the total area. This decreases the total 13.9 acres to less than 4 acres of usable space. The applicant has not changed the property in a way to decrease the usable space of the site.

- 8) 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:

Per the land development use ordinances, the future zoning of the surrounding properties are to be high density industrial. With this in mind, the buffer requirements between industrial properties is B-75 versus that of C-225 between industrial and residential properties. The decrease in the bufferyard follows suit with the future plans for this property and the neighboring areas.

Motion (Findings of Fact)

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

Motion by: Mr. Copeland

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-01 requested by Will Altman to allow for a Variance from the Unified Development Ordinance Section 4.03 B.2 (b & c) Industry & Technology District Yard to reduce the side and rear buffer yard 150 to 50 feet. The property is located at 8420 & 8424 James Rest Home Rd. and is further described with the following Wake County PINs: 0619956580, 0619956311, and 0619949910.

Motion by: Mr. Greene

Second by: Ms. Crigger

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

Agenda Item #10: Other Business

The Board did not have any other business to discuss.

Agenda Item #11: Training

Mr. Ryan provided a brief training to the board on Special Use Permits.

Agenda Item #12: Adjournment

Motion:

Motion to adjourn.

Motion by: Ms. Crigger

Second by: Mr. Copeland

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

Time: 8:38

Minutes were approved by the Board on April 4, 2022.

Brett Gosney
Board of Adjustment Clerk