

TOWN OF SMITHFIELD BOARD OF ADJUSTMENT AGENDA PACKET



Chairman: Stephen Upton
Vice-Chairman: Mark Lane

Sarah Edwards
David Johnson

Stephen Wensman, AICP, RLA, Planning Director
Mark Helmer AICP, CZO, Senior Planner
Julie Edmonds, Administrative Assistant

Meeting Date: Thursday, January 30, 2020

Meeting Time: 6:00 p.m.

Meeting Place: Council Chambers, Smithfield Town Hall

AGENDA
BOARD OF ADJUSTMENT
REGULAR MEETING
JANUARY 30, 2020
MEETING TIME: 6:00 PM
TOWN HALL

Call to Order.

Approval of the minutes for October 30, 2020

Approval of the 2020 meeting schedule

Public Hearing

BA-20-01 Christopher White: The applicant is requesting a variance to the Town of Smithfield Unified Development Ordinance, Article 8, Section 8.21.1 to allow for a reduction to the minimum lot width for property located within an R-10 (Residential) zoning district. The property considered for a variance are located on the north side of Stancil Street approximately 100 feet west of its intersection with Coats Drive and further identified as Johnston County Tax ID# 15088023.

Old Business.

New Business.

Annual Board of Adjustment Training

Adjournment.

**Draft
Smithfield Board of Adjustment
Minutes
Thursday, October 30, 2019
6:00 P.M., Town Hall, Council Chambers**

Members Present:

Stephen Upton, Chairman
Mark Lane, Vice Chairman
David Johnson
Sarah Edwards

Members Absent:

Staff Present:

Stephen Wensman, Planning Director
Mark Helmer, Senior Planner
Julie Edmonds, Administrative Support Specialist

Staff Absent:

CALL TO ORDER

APPROVAL OF MINUTES FROM September 26, 2019

Mark Lane made a motion, seconded by Sarah Edwards to approve the minutes as written.
Unanimous

CHANGE IN AGENDA

David Johnson made a motion to remove swearing in of new member and add the voting of swearing in a vice-chair, seconded by Mark Lane. Unanimously approved

VOTING IN OF VICE-CHAIRMAN

Stephen Upton nominated Doris Wallace as vice-chairman, seconded by David Johnson.
Unanimously approved

SWEARING IN OF CHAIRMAN

Mark Lane swore in Stephen Upton as Chairman.

SWEARING IN OF VICE-CHAIRMAN

Stephen Upton swore in Mark Lane as Vice-Chairman.

PUBLIC HEARING

Mr. Upton stated that this board had meet before on this variance and they should've honored the request put before them at that time.

BA-19-02 Johnston County Board of Education:

The applicant is requesting a variance to the Town of Smithfield Unified Development Ordinance, Article 10, Section 10.23.2 to allow for an increase in the maximum sign height and one additional ground mounted sign on properties located within an OI (Office- Institutional) zoning district. The properties considered for a variance are located on the southeast side of the

intersection of Booker Dairy Road and Kellie Drive and further identified as Johnston County Tax ID#14075033 and 14075021A

Mr. Helmer stated that Smithfield – Selma High School is requesting a 2 foot variance from the 6 foot maximum height for the construction of a sign located within an OI (Office-Institutional) zoning district variance to allow for one additional monument sign.

Mr. Upton asked the two gentlemen in the audience to identify themselves. David Allen, Principal of Smithfield-Selma High School and Junior Creech, Vice-Principal both stated their names and affiliation.

David Allen of 6220 Old Davis Rd Sims, NC came forward to answer any questions.

Mr. Lane asked Mr. Allen when the old monument sign would be removed and relocated to its new location.

Mr. Allen said as part of the contract with Advance Signs, they will remove and relocate the old sign. He doesn't think it will be long before it is relocated. He recognizes the value of the existing sign and that is why they chose for it to be placed by the car pool lane and on the side of campus where there isn't much signage.

Sarah Edwards made a motion to approve BA-19-02 based on the finding of fact found in the staff report to allow for a two foot variance to the maximum sign height and to allow for 2 ground mounted signs, seconded by David Johnson. Unanimously Approved

OLD BUSINESS

NONE

NEW BUSINESS

NONE

David Johnson made a motion to adjourn, seconded by Sarah Edwards. Unanimously Approved



Julie Edmonds
Administrative Support Specialist
Town of Smithfield Planning Department



2020
Board of Adjustments Meeting Schedule

Thursday, January 30, 2020

Thursday, February 27, 2020

Thursday, March 26, 2020

Thursday, April 30, 2020

Thursday, May 28, 2020

Thursday, June 25, 2020

Thursday, July 30, 2020

Thursday, August 27, 2020

Thursday, September 24, 2020

Thursday, October 29, 2020

Thursday, November 19, 2020

Thursday, December 17, 2020

****All meetings begin at 6:00 pm and are held in the Town Council Chambers****



Request for Board of Adjustment Action

Agenda BA-20-
Item: 01
Date: 1/30/20

Subject: Variance
Department: Planning
Presented by: Mark Helmer
Presentation: Yes

Issue Statement

Christopher White is requesting a variance from Section 8.2.1 to allow for a 1.6 foot reduction to the minimum lot width for the creation of a new lot within an R-10 (Residential) zoning district.

Financial Impact

None

Action Needed

To review the variance application, conduct a public hearing and render a decision.

Recommendation

Planning Staff recommends approval of variance BA-20-01.

Approved: Town Manager Town Attorney

Attachments:

- Staff Report
- Finding of fact
- Draft BOA order
- Application
- Land records



Staff Report

Agenda Item: BA-20-01
Date: 1/30/20

Application Number: BA-20-01
Applicant/Owner: Christopher White
Agents: none
TAX ID number: 15088023
Town Limits/ETJ: City

PROJECT LOCATION: 300 Block of Stancil Street

REQUEST:

Christopher White is requesting a variance from Section 8.2.1 to allow for a 1.6 foot reduction to the minimum lot width for the creation of a new lot within an R-10 (residential) zoning district.

The variances are needed in order to divide an existing lot into two lots (one new lot) for the construction residential dwellings.

SITE DATA:

Acreage: .24 acres
Present Zoning: R-10 (Residential)
Proposed Zoning: N/A
Existing Use: Vacant
Proposed Use: Automotive Repair
Water Service: Town of Smithfield
Sewer Service: Town of Smithfield
Electrical Service: Town of Smithfield

ADJACENT ZONING AND LAND USES:

	Zoning	Existing Use
North:	R-10 Residential	Single Family Dwelling
South:	R-10 Residential	Single Family Dwelling
West:	R-10 Residential	Single Family Dwelling
East:	R-10 Residential	Single Family Dwelling

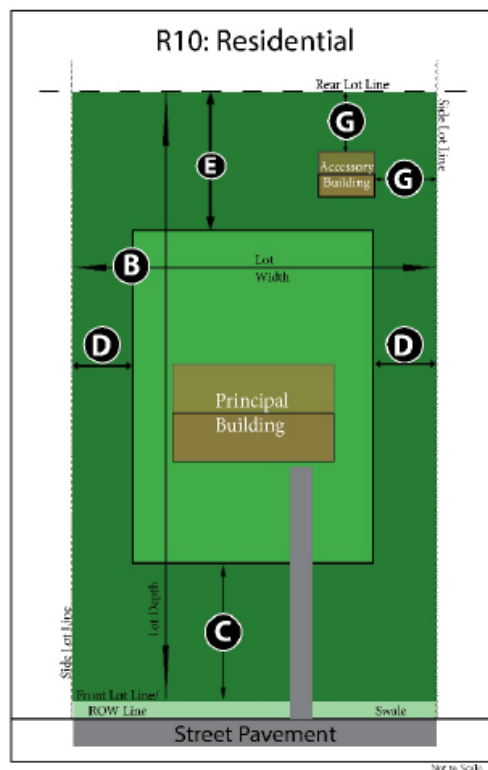
PETITION DESCRIPTION:

The applicant is seeking to divide a .52 acre tract of land into two separate parcels, as depicted on the map titled “Proposed Minor Subdivision Plat for Christopher E. White and Linda C. White”. The existing tract was believed to be a total of 150’ in width when originally plated on November 12, 1959. The most recent survey that was conducted on 11/1/2019 indicates that the property is actually only 148.4 feet in width when measured at the public right-of-way line.

The property considered for a variance is located within an R-10 (Residential) zoning district. In accordance with the Town of Smithfield Unified Development Ordinance, Article 8, Section 8.2, R-10 Single-Family Residential District. 8.2.1. Dimensional Requirements, all newly created lots require a minimum of 75 feet of lot frontage.

8.2.1. Dimensional Requirements

(A) Minimum Lot Area • Single-family dwelling • Other allowable building	10,000 sq ft 7,500 sq ft
(B) Minimum Lot Frontage • Single-family dwelling • Other allowable building	75 ft 70 ft
(C) Front Yard Setback • Single-family dwelling • Other allowable building	30 ft 25 ft
(D) Side Yard Width	10 ft
(E) Rear Yard Depth • Single-family dwelling • Other allowable building	25 ft 20 ft
(F) Maximum Building Height	35 ft
(G) Accessory Buildings	10 ft (see Note 8.13.2)



The applicant is proposing a .254 acre tract of land with approximately 73.40 linear feet of lot frontage along Stencil Street. Therefore, the applicant will require a 1.6 linear foot variance to the minimum lot width.

FINDINGS OF VARIANCE APPROVAL:

In order to approval a variance, the Board of Adjustments shall find all of the following provisions must be met (Staff's findings are in ***bold / italic***):

4.10.2.2.1. 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. ***Unnecessary hardship will result from the strict application of the Ordinance and the resulting lot created by the variance is generally consistent with other lots in the area in terms of lot width and lot area.***

4.10.2.2.2. 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 existing property is approximately 148 linear feet in width and is a peculiar size when compared to the majority of lots in the area. Granting the variance will produce a lot that is more in keeping with traditional lot size, width and density offered by the R-10 (Residential) zoning district.***

4.10.2.2.3. 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. ***Land records suggest that the hardship is most likely created by limitations and inaccuracies of past surveys and not the result of actions taken by the applicant.***

4.10.2.2.4. 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. ***Granting the variance will produce two (2) developable lots that are nearly consistent with the minimum lot standards of the R-10 (Residential) zoning district and will be in keeping with the spirit, purpose, and intent of the Ordinance. The variance will not impact public safety, and in is in the best interests of the public at large.***

RECOMMENDATION:

Planning Staff recommends the Board of Adjustment approve variance BA-20-01 based on the finding of fact:

RECOMMENDED MOTIONS:

Planning Staff recommends the Board of Adjustment approve the variance with the following motion:

FIRST MOTION.

“Board of Adjustment finds that unnecessary hardship will result from strict application of the Ordinance and the resulting lot created by the variance is generally consistent with other lots in the area in terms of lot width and lot area.”

And,

“The existing property is approximately 148 linear feet in width and is a peculiar size when compared to the majority of lots in the area. Granting the variance will produce a lot that is more in keeping with traditional lot size, width and density offered by the R-10 (Residential) zoning district.”

And,

“Land records suggest that the hardship is most likely created by limitations and inaccuracies of past surveys and not the result of actions taken by the applicant.”

And,

“Granting the variance will produce two (2) developable lots that are nearly consistent with the minimum lot standards of the R-10 (Residential) zoning district and will be in keeping with the spirit, purpose, and intent of the Ordinance. The variance will not impact public safety, and in is in the best interests of the public at large.”

SECOND MOTION.

*“**Motion to approve** BA-20-01, A 1.6 linear foot reduction to the required minimum lot width for property located within an R-10 zoning district.”*

NORTH CAROLINA
JOHNSTON COUNTY

) TOWN OF SMITHFIELD
) BOARD OF ADJUSTMENT
) CASE NO. BA-20-01

ORDER GRANTING A VARIANCE

The Board of Adjustment for the Town of Smithfield, having held a public hearing on January 30, 2019 to consider case No. BA-20-01, submitted by Christopher E. White, and owned by same and located on the north side of Stancil Street approximately 100 feet west of its intersection with Coats Drive and further identified as Johnston County Tax ID# 15088023.

FINDING OF FACT:

1. Mr. Christopher E. White appeared concerning property located in the 300 block of Stancil Street approximately 100 feet west of its intersection with Coats Street, and further identified as Johnston County Tax Parcel Number 15088023.
2. On January 30, 2020, a hearing was held before the Town of Smithfield Board of Adjustment in this matter seeking a variance from minimum lot width requirements of The Town of Smithfield Unified Development Ordinance, Article 8, Section 8.2.1
3. At the hearing evidence was presented by sworn witnesses to the effect that:
 - a. A two (2) lot minor subdivision is proposed and considered for approval.
 - b. A portion of the subject property identified as Tract 2 has approximately 73.40 feet of road frontage on Stancil Street, a publicly dedicated right-of-way.

- c. The proposed minor subdivision plat indicates that Tract 2 has approximately 1.6 linear feet less than the required 75 linear feet of road frontage as required by the R-10 (Residential) zoning district and the Town of Smithfield Unified Development Ordinance.
- d. The proposed minor subdivision plat indicates the proposed lot created by the 1.6 foot variance to the minimum lot width will have adequate lot width to serve the interior of the site and is generally consistent with other lots in the area in terms of lot width and lot area.
- e. The proposed minor subdivision plat indicates the subject property is adversely affected by limitations and inaccuracies of past surveys.

Conclusion:

1. The Board concludes that unnecessary hardship will result from strict application of the Ordinance and the resulting lot created by the variance is generally consistent with other lots in the area in terms of lot width and lot area.
2. The existing property is approximately 148 linear feet in width and is a peculiar size when compared to the majority of lots in the area. Granting the variance will produce a lot that is in keeping with traditional lot size, width and density offered by the R-10 (Residential) zoning district.
3. Land records suggest that the hardship is most likely created by limitations and inaccuracies of past surveys and not the result of actions taken by the applicant.
4. Granting the variance will produce two (2) developable lots that are consistent with the lot standards of the R-10(Residential) zoning district and will be in keeping with the spirit, purpose, and intent of the Ordinance. The variance will not impact public safety, and in is in the best interests of the public at large.

THEREFORE, based upon the forgoing, and unanimous vote of the Board, IT IS ORDERED that the application for a variance of 1.6 linear feet from the minimum lot width of Section 8.2.1 of the Town of Smithfield Unified Development Ordinance is hereby GRANTED.

Ordered this _____ day of _____, 2020

TOWN OF SMITHFIELD

BY: _____
Mr. Steve Upton
Board of Adjustment,
Vice Chairman

ATTEST:

Julie Edmonds, Secretary

**Town of Smithfield
Variance Application
Finding of Fact / Approval Criteria**

Application Number: BA-20-01 **Name:** Christopher E. White

Request: Applicant seeks to vary from Article 8, Section 8.2.1 to allow for a reduction to allow for a 1.60 linear foot reduction to the minimum lot width on property located within an R-10 (Residential) zoning district.

In accordance with **Article 4, Sections 4.10.2.2.1 - 4.10.2.2.4** of the Town of Smithfield Unified Development Ordinance (UDO), when unnecessary hardships would result from carrying out the strict letter of the UDO, the Board of Adjustment shall vary any of the provisions of the Ordinance upon a showing of having met all of Article 4, Sections 4.10.2.2.1 - 4.10.2.2.4. The Board of Adjustments may impose appropriate conditions and safeguards upon the approval as long as they are related to the variance. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Board of Adjustments. The Board of Adjustments shall include in its comments a statement as to the application having met all of Article 4, Sections 4.10.2.2.1 - 4.10.2.2.4. The applicant has the burden of producing competent, substantial evidence tending to establish the facts and conditions which the below requires.

The Board of Adjustment shall vary any of the provisions of the Ordinance as it pertains to this property upon a showing of having met all of Article 4, Sections 4.10.2.2.1 - 4.10.2.2.4 listed below through a quasi-judicial process:

4.10.2.2.1. 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.

4.10.2.2.2. 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.

4.10.2.2.3. 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.

4.10.2.2.4. 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

Once all findings have been decided one of the two following motions must be made:

Motion to Approve: *Based upon satisfactory compliance with the above stated findings and fully contingent upon acceptance and compliance with all conditions as previously noted herein and with full incorporation of all statements and agreements entered into the record by the testimony of the applicant and applicant's representative, I move to approve variance # **BA-20-01** with the following condition(s):*

Motion to Deny: *Based upon failure to meet all of the above stated findings and for reasons stated therein, I move to deny variance # **BA-20-01** for the following stated reason:*

Record of Decision:

Based on a motion and majority vote of the Town of Smithfield Board of Adjustments for the Variance Application Number BA-20-01 is hereby:

_____ **approved upon acceptance and conformity with the following conditions:**

_____ **denied for the noted reasons.**

Decision made this __ day of __, 2020 while in regular session.

Mr. Steve Upton
Chair of the Board of Adjustment

ATTEST:

Julie Edmonds, Administrative Support Specialist



Town of Smithfield
 Planning Department
 350 E. Market St. Smithfield, NC 27577
 P.O. Box 761, Smithfield, NC 27577
 Phone: 919-934-2116
 Fax: 919-934-1134

VARIANCE APPLICATION

Pursuant to Article 4, of the Town of Smithfield Unified Development Ordinance, an owner of land within the jurisdiction of the Town (or a duly authorized agent) may petition the Board of Adjustment for relief from a requirement of the Unified Development Ordinance and to permit construction in a manner otherwise prohibited by this Ordinance where specific enforcement would result in unnecessary hardship.

In granting variances, the Board of Adjustment may impose such reasonable conditions as will insure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.

Variance applications must be accompanied by nine (9) sets of the complete application, nine (9) sets of required plans, an Owner's Consent Form (attached) and the application fee.

SITE INFORMATION:

Name of Project: Christopher White Acreage of property: 0.513
 Parcel ID Number: 168408-98-6664 Tax ID: 15088023
 Deed Book: 5471 Deed Page(s): 905
 Address: Stancil Street
 Location: Stancil Street, Smithfield NC

Existing Use: Vacant Lot Proposed Use: 2 lot subdivision

Existing Zoning District: R-10

Requested Zoning District: R-10

Is project within a Planned Development: Yes No

Planned Development District (if applicable):

Variance Request (List Unified Development Code sections and paragraph numbers)

SECTION 8.2 R-10 SINGLE-FAMILY RESIDENTIAL DISTRICT. 8.2.1.

Minimum required lot width is 75'. We are seeking a variance for Trace 2 to be 73.4.

FOR OFFICE USE ONLY

File Number: _____ Date Received: _____ Amount Paid: _____

OWNER INFORMATION:

Name: Christopher White
Mailing Address: 3005 Lindsay Dr., Garner, NC 27529
Phone Number: _____ **Fax:** _____
Email Address: _____

APPLICANT INFORMATION:

Applicant: True Line Surveying
Mailing Address: 205, W. Main St., Clayton, NC 27520
Phone Number: 919-359-0427 **Fax:** 919-359-0428
Contact Person: Curk Lane
Email Address: curk@truelinesurveying.com

REQUIRED PLANS AND SUPPLEMENTAL INFORMATION

The following items must accompany a variance application. This information is required to be present on all plans, except where otherwise noted:

- All required plans (please see the plan requirements checklist).
- Owner Consent form
- A Statement of Justification.
- Required Finding of Fact.
- Other Applicable Documentation: _____

STATEMENT OF JUSTIFICATION

Please provide detailed information concerning all requests. Attach additional sheets if necessary.
Seeking a variance for Tract 2 for lot width of 73.4'. The recorded plat is showing the parent tract 150' wide and the owner is dividing the parent tract to 2 lots 75' each. After we survey the lot the width is 148.4'. We created one conforming lot at 75' and nonconforming lot 73.4'AS

REQUIRED FINDINGS OF FACT

Article 4, Section 4.10.2.2 of the Town of Smithfield Unified Development Ordinance requires applications for a variance to address the following findings. The burden of proof is on the applicant and failure to

adequately address the findings may result in denial of the application. Please attach additional pages if necessary.

4.10.2.2.1 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.

Strict application of the Ordinance will require 2 75' wide lots. The deed states the parent lot to be 150' wide but after surveying the property is 148.4'.

4.10.2.2.2. 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 property was originally designed to be 150' wide through time and previous error the lot is only 148.4' wide. The reduction in size of 1.6' will result in a undevelopable lot.

4.10.2.2.3. 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 hardship did not result in the actions taken by the applicant, in fact the applicant is purchasing the property assuming the deed distance to be correct.

4.10.2.2.4. 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 requested variance is consistent with the spirit, purpose, and intent of the Ordinance such that the original subdivision design and deed states the lot is 150' wide and can be subdivided into two 75' lots. The field survey resulted in the 148.4' wide lot that will allow us to create 2 lots one conforming and one nonconforming.



Town of Smithfield
 Planning Department
 350 E. Market St Smithfield, NC 27577
 P.O. Box 761, Smithfield, NC 27577
 Phone: 919-934-2116
 Fax: 919-934-1134

OWNER'S CONSENT FORM

Name of Project: Christopher White Submittal Date: _____

OWNERS AUTHORIZATION

I hereby give CONSENT to True Line Surveying (Curk Lane) (type, stamp or print clearly full name of agent) to act on my behalf, to submit or have submitted this application and all required material and documents, and to attend and represent me at all meetings and public hearings pertaining to the application(s) indicated above. Furthermore, I hereby give consent to the party designated above to agree to all terms and conditions which may arise as part of the approval of this application.

I hereby certify I have full knowledge the property I have an ownership interest in the subject of this application. I understand that any false, inaccurate or incomplete information provided by me or my agent will result in the denial, revocation or administrative withdrawal of this application, request, approval or permits. I acknowledge that additional information may be required to process this application. I further consent to the Town of Smithfield to publish, copy or reproduce any copyrighted document submitted as a part of this application for any third party. I further agree to all terms and conditions, which may be imposed as part of the approval of this application.

[Signature] Christopher White 12/6/2019
 Signature of Owner Print Name Date

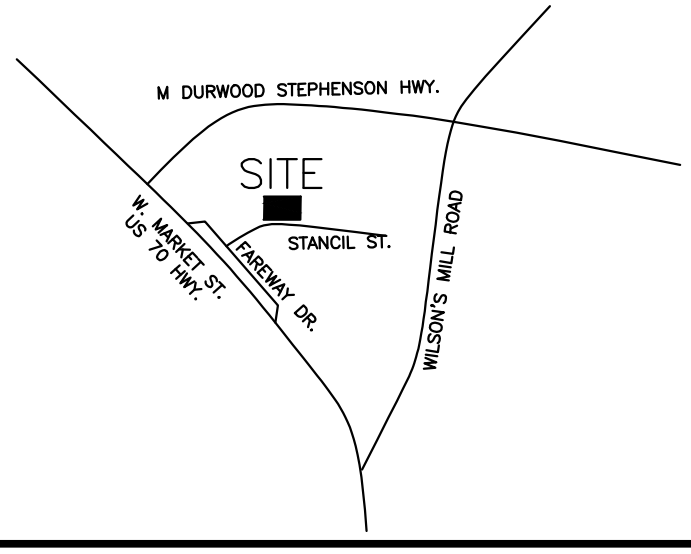
CERTIFICATION OF APPLICANT AND/OR PROPERTY OWNER

I hereby certify the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Planning Department of the Town of Smithfield, North Carolina, and will not be returned.

[Signature] Christopher White 12/6/2019
 Signature of Owner/Applicant Print Name Date

FOR OFFICE USE ONLY

File Number: _____ Date Received: _____ Parcel ID Number: _____



VICINITY MAP (NOT TO SCALE)

CERTIFICATE OF OWNERSHIP AND DEDICATION
 I HEREBY CERTIFY THAT I AM THE OWNER(S) OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND I ADOPT THIS PLAN OF RECOMBINATION PLAT WITH MY (OUR) FREE CONSENT.

DATE _____ OWNER _____
 DATE _____ OWNER _____

- THIS SURVEY:
- A. CREATES A SUBDIVISION OF LAND WITHIN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND.
 - B. IS LOCATED IN A PORTION OF A COUNTY OR MUNICIPALITY THAT IS UNREGULATED AS TO AN ORDINANCE THAT REGULATES PARCELS OF LAND.
 - C. IS ONE OF THE FOLLOWING:
 - 1) IS OF AN EXISTING PARCEL OR PARCELS OF LAND OR ONE OR MORE EXISTING EASEMENTS AND DOES NOT CREATE A NEW STREET OR CHANGE AN EXISTING STREET.
 - 2) IS OF AN EXISTING FEATURE, SUCH AS A BUILDING OR OTHER STRUCTURE, OR NATURAL FEATURE, SUCH SUCH AS A WATERCOURSE.
 - 3) IS A CONTROL SURVEY
 - 4) IS OF A PROPOSED EASEMENT FOR A PUBLIC UTILITY AS DEFINED IN G.S. 62-3.
 - D. IS OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT-ORDERED SURVEY, OR OTHER EXEMPTION OR EXCEPTION TO THE DEFINITION OF SUBDIVISION.
 - E. THE INFORMATION AVAILABLE TO THE SURVEYOR IS SUCH THAT THE SURVEYOR IS UNABLE TO MAKE A DETERMINATION TO THE BEST OF THE TO THE BEST OF THE SURVEYOR'S PROFESSIONAL ABILITY AS TO PROVISIONS CONTAINED IN (A) THROUGH (D) ABOVE.

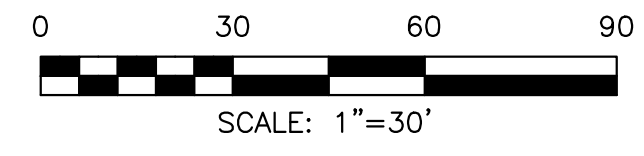
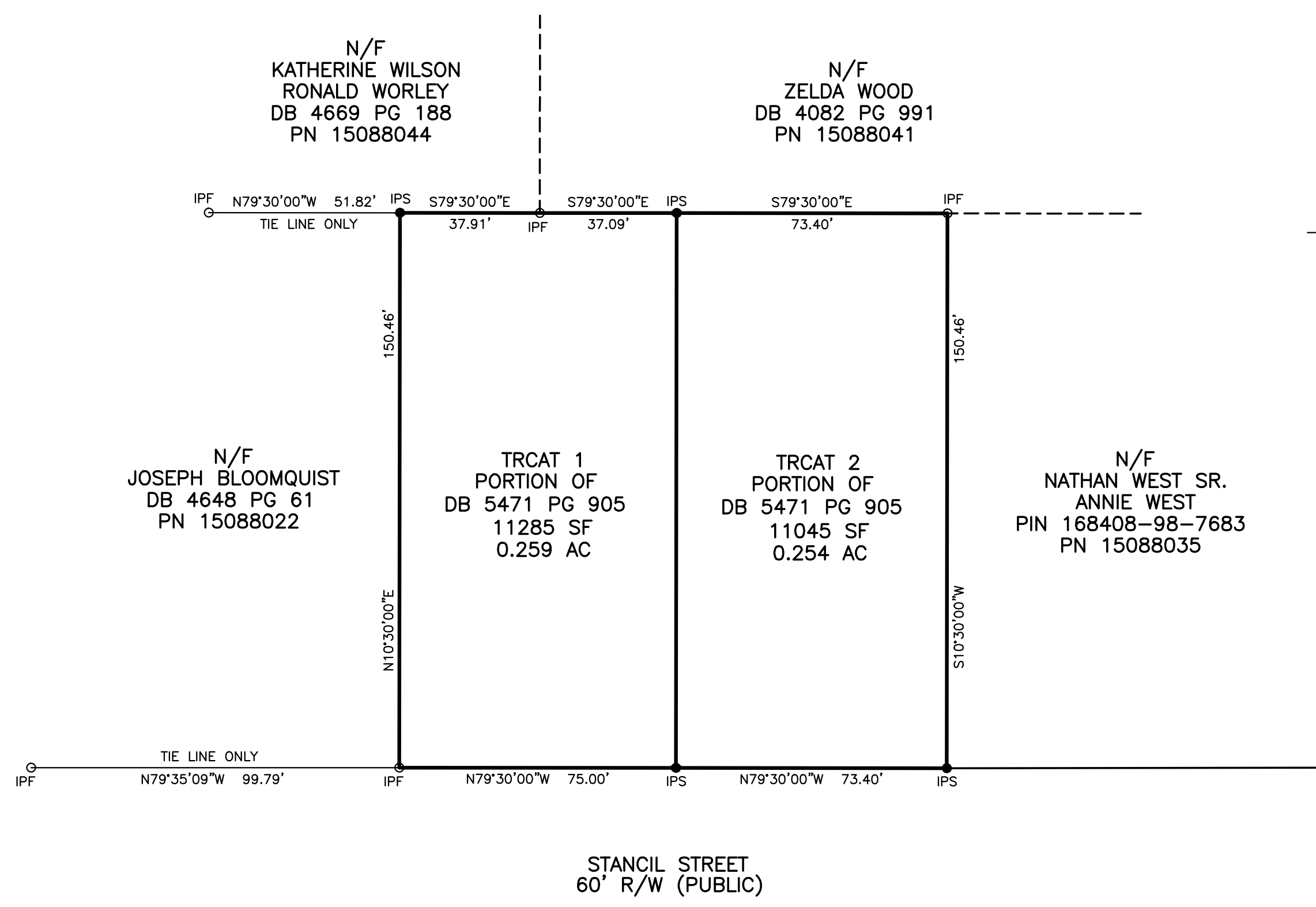
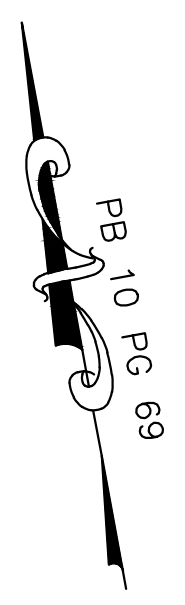
DATE _____ SURVEYOR _____

SURVEYOR'S DISCLAIMER: NO ATTEMPT WAS MADE TO LOCATE ANY CEMETERIES, WETLANDS, HAZARDOUS MATERIAL SITES, UNDERGROUND UTILITIES OR ANY OTHER FEATURES ABOVE OR BELOW GROUND OTHER THAN THOSE SHOWN.

DATE _____ SURVEYOR _____

STATE OF NORTH CAROLINA, JOHNSTON COUNTY
 I, CURK I. LANE, DO HEREBY CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN BOOK _____ PAGE _____ ETC.); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN BOOK _____, PAGE _____ THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000+; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS _____ DAY OF _____, A.D., 2019

 SURVEYOR
 L - 3990
 LICENSE NUMBER



PROPERTY SHOWN HEREON _____ IS _____ IS NOT LOCATED IN A FEMA DESIGNATED FLOOD ZONE. FEMA FLOOD HAZARD PANEL NO. 3720168400K EFFECTIVE DATE: JUNE 20, 2018

REVIEW OFFICER'S CERTIFICATE
 I, _____ REVIEW OFFICER OF JOHNSTON COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

DATE _____ REVIEW OFFICER _____

STATE OF NORTH CAROLINA, JOHNSTON COUNTY
 THIS INSTRUMENT WAS PRESENTED FOR REGISTRATION AND RECORDING THIS _____ DAY OF _____ 20____ AT _____.

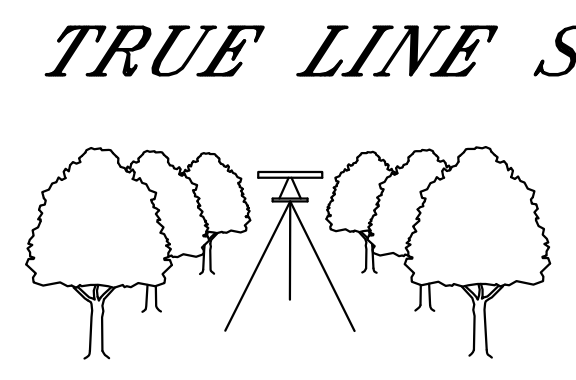
CRAIG OLIVE BY _____ ASST. REG. OF DEEDS
 REGISTER OF DEEDS
 RECORDED IN PB _____ PG _____

N/F KATHERINE WILSON RONALD WORLEY DB 4669 PG 188 PN 15088044
 N/F ZELDA WOOD DB 4082 PG 991 PN 15088041

OWNER: CECIL B. HEAVNER FOUR HEAVNERS LLC PO BOX 2346 SMITHFIELD, NC 27577

- LEGEND
- IPF IRON PIPE FOUND
 - IPS IRON PIPE SET
 - CMF CONCRETE MONUMENT FOUND
 - PKNF PARKER-KALON NAIL FOUND
 - PKNK PARKER-KALON NAIL SET
 - RRS RAILROAD SPIKE
 - CSF COTTON SPIKE FOUND
 - CSS COTTON SPIKE SET
 - CC CONTROL CORNER
 - CP COMPUTED POINT
 - △ P/P POWER POLE
 - OPW OVERHEAD POWER LINE
 - R/W RIGHT OF WAY
 - S.F. SQUARE FEET
 - AC ACRE
 - DB DEED BOOK
 - PB PLAT BOOK
 - BOM BOOK OF MAPS
 - PG PAGE
 - LF LINEAR FEET
 - 15S LOT HAS OFFSITE SEWER
 - 15SL OFFSITE SEWER LOT
 - 15R RECOMBINATION LOT
 - 100 STREET ADDRESS
 - LINES NOT SURVEYED

SURVEYED BY:	BRADLEY
DRAWN BY:	KAMAL
CHECKED BY:	CURK
DRAWING NAME:	SUBDIVISION.DWG
SURVEY DATE:	11/1/2019
JOB NO.	2372.006



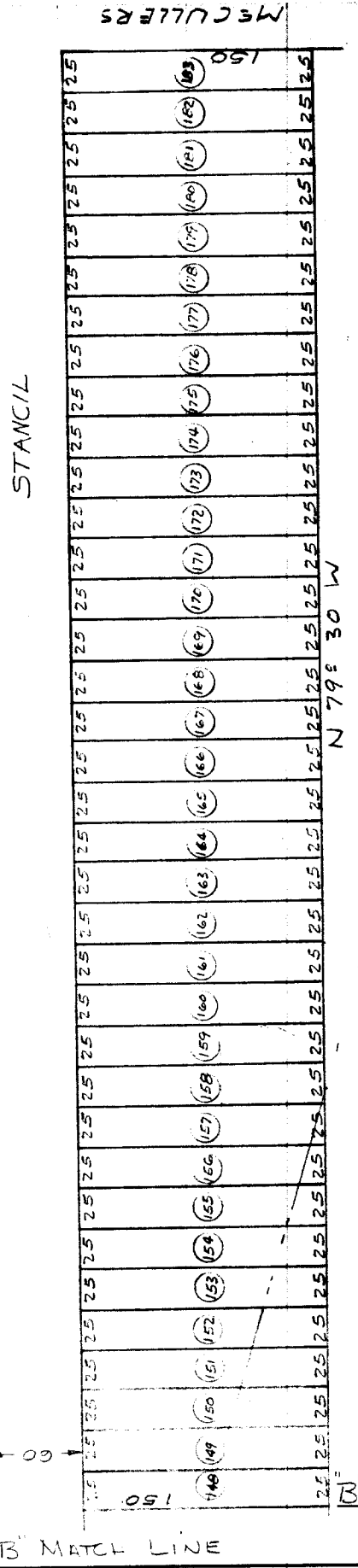
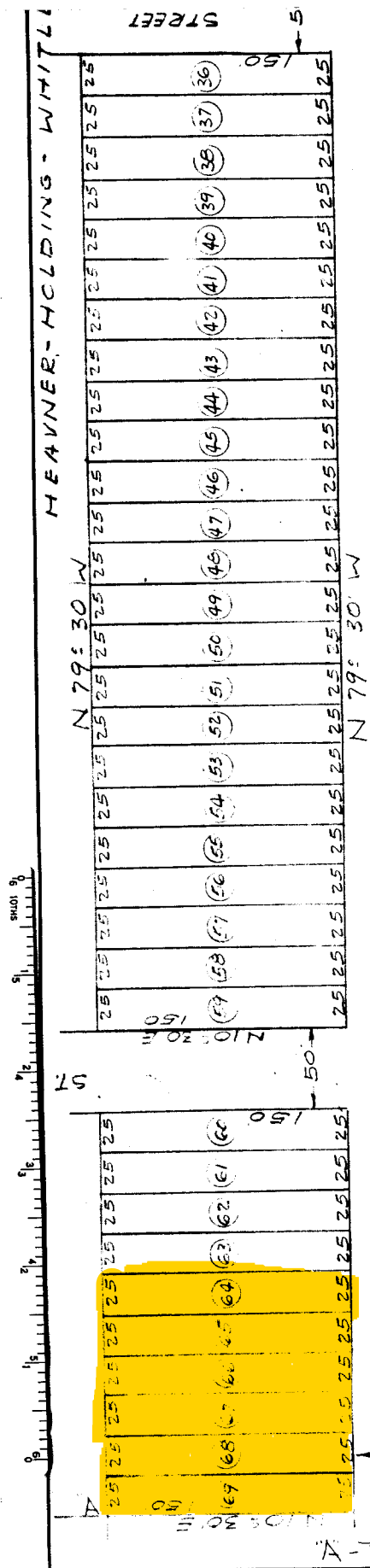
205 WEST MAIN STREET
 CLAYTON, N.C. 27520
 TELEPHONE: (919) 359-0427
 FAX: (919) 359-0428
 www.truelinesurveying.com

- NOTES:
- 1) ALL DISTANCES SHOWN ARE HORIZONTAL GROUND DISTANCES
 - 2) AREAS COMPUTED BY COORDINATE METHOD.
 - 3) PROPERTY SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD.
 - 4) NO. 5 REBAR IRON STAKES WITH CAPS SET AT ALL LOT CORNERS UNLESS OTHERWISE NOTED
 - 5) NO HORIZONTAL CONTROL WAS FOUND WITHIN 2000 FEET OF SURVEY.
 - 6) PARENT TRACT PIN 168408-98-6664
 - 7) PARENT TRACT DEED DB 5471 PG 905
 - 8) PARENT TRACT PN 15088023
 - 9) CITY LIMITS: SMITHFIELD
 - 10) ZONING: R-10

- REFERENCES:
- DB 5471 PG 905
 - DB 4966 PG 408
 - DB 4648 PG 61
 - DB 4669 PG 188
 - DB 4082 PG 991
 - PB 10 PG 69

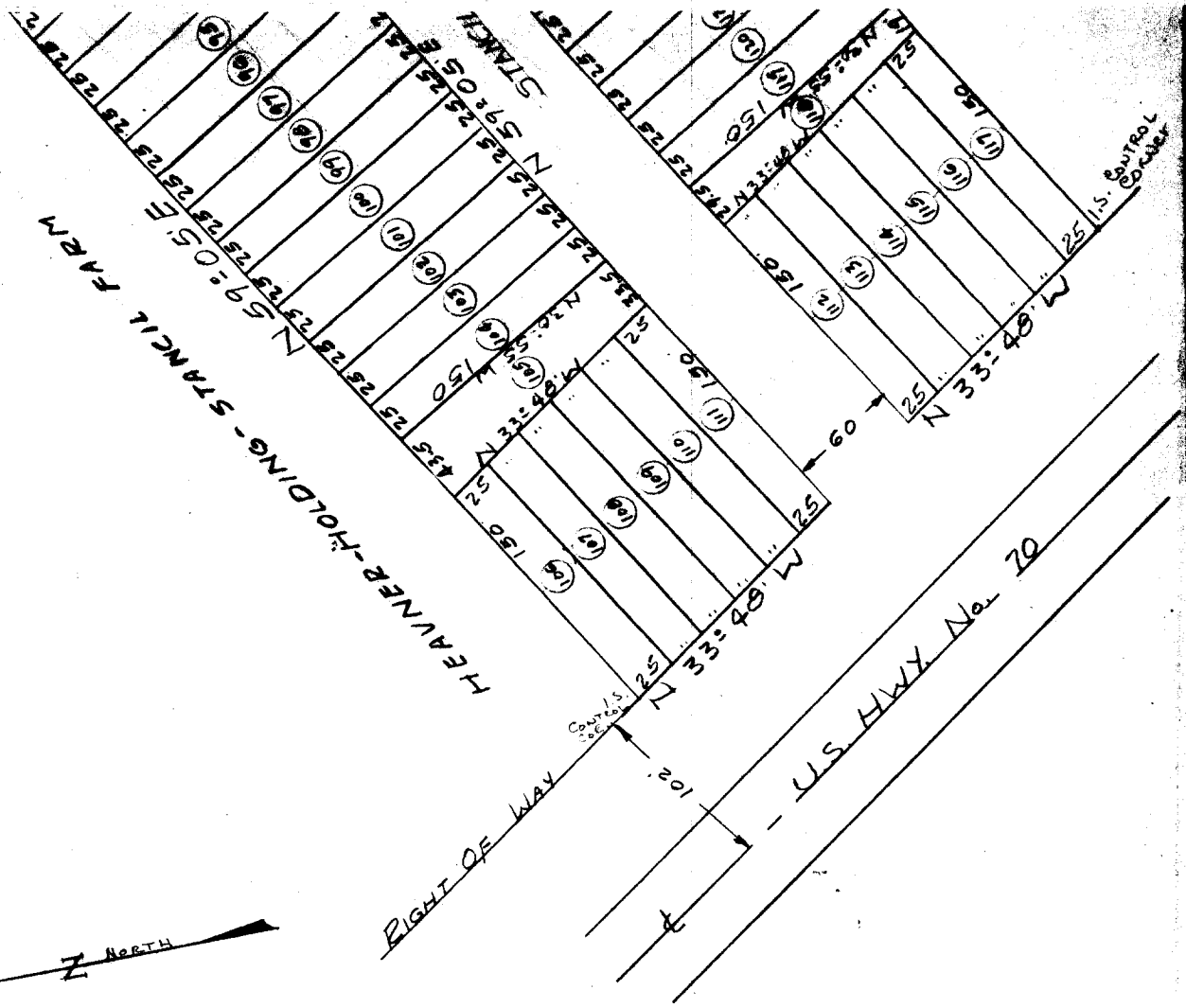
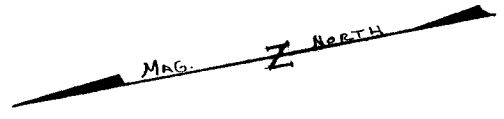
MINIMUM BUILDING SETBACKS
 ZONING: R-10
 FRONT.....30 FEET
 SIDE.....10 FEET
 REAR.....25 FEET

MINOR SUBDIVISION PLAT FOR
CHRISTOPHER E. WHITE
 AND
LINDA C. WHITE
 SMITHFIELD TOWNSHIP, JOHNSTON COUNTY
 NORTH CAROLINA
 DECEMBER 6, 2019



HEAVNER-HOLDING ADDITION No. 1
 PLAT BOOK 8 - PAGE 145

NOTE: IRON STAKES AT ALL CORNERS



I, WILLIAM RAGSDALE, JR. CERTIFY THAT THIS MAP WAS DRAWN FROM AN ACTUAL SURVEY MADE BY ME DEED DESCRIPTION RECORDED IN BOOK 54, PAGE 116, THAT THE ERROR OF CLOSURE AS CALCULATED BY LATITUDES AND DEPARTURES IS 1:10,000; THAT THE BOUNDRIES NOT SURVEYED ARE SHOWN AS BROKEN LINES PLOTTED FROM INFORMATION FOUND IN BOOK 54, PAGE 116, THAT THIS MAP WAS PREPARED IN ACCORDANCE WITH G.S. 87-30 AS AMENDED. WITNESS MY HAND AND SEAL THIS 23RD DAY OF AUGUST A.D., 1960

William Ragdale Jr.
 REG. CIVIL ENG.
 LIC. NO. 1010

PLAT BOOK 8 - PAGE 145
 This plat is a copy of the original plat of William Ragdale, Jr., Registered Engineer, Smithfield, N.C., and is subject to the provisions of the Act of August 14, 1960, which provides that any plat which is not registered within 90 days of its date of recording shall be null and void. This plat was registered on the 23rd day of August, 1960.
 George M. Miller, C.S.D.
 Clerk of Superior Court
 Smithfield, N.C.

I, WILLIAM RAGSDALE, JR., REGISTERED ENGINEER, CERTIFY THAT THIS MAP IS IN ALL RESPECTS CORRECT AND THAT IT WAS PREPARED BY ME FROM AN ACTUAL SURVEY MADE BY ME.
William Ragdale Jr.
 REGISTERED ENGINEER

ADDITION No. 2
 SUB-DIVISION
 HEAVNER-HOLDING
 SMITHFIELD, N.C.
 WILLIAM RAGSDALE, JR.
 REGISTERED ENGINEER
 SMITHFIELD, N.C.
 DATE: 11-12-59
 SCALE: 1" = 60'

Excise Tax: 100.00
Parcel Identification Number: 15088023
Mail after recording to:
Narron Wenzel, PA
Post Office Box 1567
Smithfield, North Carolina 27577

Recording Time, Book and Page

THIS INSTRUMENT WAS PREPARED BY: JASON W. WENZEL

BRIEF DESCRIPTION FOR THE INDEX: Lots 64-69

NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED IS MADE THIS THE 19th DAY OF NOVEMBER, 2019, BY AND AMONG THE FOLLOWING:

GRANTOR:

E&F PROPERTIES, INC., a North Carolina corporation;
FOUR HEAVNERS, LLC, a North Carolina limited liability company; and
CECIL B. HEAVNER (unmarried)
Post Office Box 1266
Smithfield, North Carolina 27577

GRANTEE:

CHRISTOPHER E. WHITE and wife, LINDA C. WHITE
3005 Lindsay Drive
Garner, North Carolina 27529

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantors, for a valuable consideration paid by the Grantees, the receipt of which is hereby acknowledged, have and by these presents do grant, bargain, sell and convey unto the Grantees in fee simple, all of Grantors' interest in that certain lot or parcel of land situated in Johnston County, North Carolina and more particularly described as follows:

BEING all of Lots 64, 65, 66, 67, 68 and 69 as platted of record in Plat Book 10, page 69, Sheets A and B, Johnston County Registry.

This is not the primary residence of Grantors.

TO HAVE AND TO HOLD all of Grantors' interest in the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantees in fee simple.

And the Grantors covenant with the Grantees, that Grantors are seized of the premises in fee simple, have the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantors will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated. Title to the property hereinabove described is subject to the following exceptions:

Ad valorem taxes for the current and subsequent years; and

IN WITNESS WHEREOF, the Grantors have duly executed the foregoing as of the day and year first above written.

E&F PROPERTIES, INC.

BY: Olivia B. Holding (SEAL)
Olivia B. Holding, President

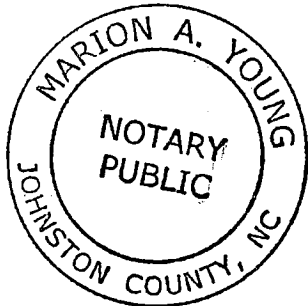
NORTH CAROLINA
Johnston COUNTY

I, Marion A Young, a Notary Public of the County and State aforesaid, certify that Olivia B. Holding, President of E&F Properties, Inc., a North Carolina corporation, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 19th day of November, 2019.

My commission expires: 9-6-24

Marion A Young
Notary Public



FOUR HEAVNERS, LLC

BY: *Daniel L. Heavner* (SEAL)
Daniel L. Heavner, Manager

NORTH CAROLINA
Johnston COUNTY

I, *Marion A. Young*, a Notary Public of the County and State aforesaid, certify that Daniel L. Heavner, manager of Four Heavners, LLC, a North Carolina limited liability company, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 19 day of November, 2019.

My commission expires: 9-6-24

Marion A. Young
Notary Public



Cecil B Heavner (SEAL)
Cecil B. Heavner

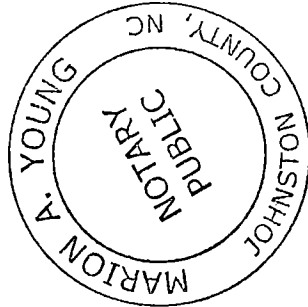
NORTH CAROLINA
Johnston COUNTY

I, Marion A Young, a Notary Public of the County and State aforesaid, certify that Cecil B. Heavner, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 20 day of November, 2019.

My commission expires: 9-6-24

Marion A Young
Notary Public



300 Block of Stancil Street

Project Name:
Christopher White
Variance

File Number:
BOA-20-01

Existing Zoning:
R-10 (Residential)

Property Owner:
Christopher White

Applicant:
Christopher White

Location: 300 Block
of Stancil Street

Tax ID# 15088023



1 in = 200 ft

Map created by the Mark E. Helmer, AICP
Senior Planner, GIS Specialist on 1/22/2020





PLANNING DEPARTMENT
Mark E. Helmer, AICP, Senior Planner

Notice Of Public Hearing

Notice is hereby given that a public hearing will be held before the Board of Adjustment of the Town of Smithfield, N.C., on Thursday, January 30, 2020 at 6:00 p.m. in the Town Hall Council Chambers located at 350 East Market Street to consider the following request:

BA-20-01 Christopher White: The applicant is requesting a variance to the Town of Smithfield Unified Development Ordinance, Article 8, Section 8.21.1 to allow for a reduction to the minimum lot width for property located within an R-10 (Residential) zoning district. The property considered for a variance are located on the north side of Stancil Street approximately 100 feet west of its intersection with Coats Drive and further identified as Johnston County Tax ID# 15088023.

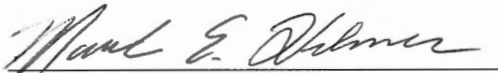
You have been identified as a property owner in the area specified above and are being advised of this meeting as you may have interest in this matter. You are welcome to attend; however, you are not required to in order for the Board to act on this request. Additional information may be obtained by contacting the Town of Smithfield Planning Department at 919-934-2116.



PLANNING DEPARTMENT
Mark E. Helmer, AICP, Senior Planner

ADJOINING PROPERTY OWNERS CERTIFICATION

I, **Mark E. Helmer**, hereby certify that the property owner and adjacent property owners of the following petition, **BOA-20-01**, were notified by First Class Mail on **1-15-20**.



Signature

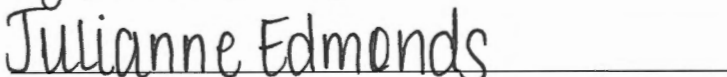
Johnston County, North Carolina

I, Julianne Edmonds, Notary Public for Johnston County and State of North Carolina do hereby certify that Mark E. Helmer personally appeared before me on this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal, this the

15th day of January, 2020



Notary Public Signature



Notary Public Name

My Commission expires on January 15, 2023
(Seal)



Adjacent Property Owners of
BOA-20-01

TAG	PIN	NAME1	ADDRESS1	CITY	STATE	ZIPCODE
15088023	168408-98-6664	HEAVNER, CECIL B.	PO BOX 2346	SMITHFIELD	NC	27577-2346
15088022	168408-98-5636	BLOOMQUIST, JOSEPH P	304 STANCIL ST	SMITHFIELD	NC	27577-3128
15088035	168408-98-7683	WEST, NATHAN CARLTON SR	300 STANCIL ST	SMITHFIELD	NC	27577-3128
15088041	168408-98-8825	WOOD, ZELDA B	503 POWELL STREET	SMITHFIELD	NC	27577-0000
15088044	168408-98-6709	WORLEY, RONALD EUGENE II	505 POWELL ST	SMITHFIELD	NC	27577-3115
		Christopher White	3005 Lindsay Dr.	Garner	NC	27529
		True Line Surveying	205 W. Main St.	Clayton	NC	27520

Coates' Canons Blog: Is the Mayor Doing Her Job or Improperly Receiving Evidence?

By David Owens

Article: <https://canons.sog.unc.edu/is-the-mayor-doing-her-job-or-improperly-receiving-evidence/>

This entry was posted on August 10, 2011 and is filed under Land Use & Code Enforcement

Mayor Juanita Beasley was stuck in the checkout lane at the supermarket. She was wondering why she always managed to pick the slowest line when she felt a tap on her shoulder.

She turned to find her old high school friend Clara Edwards smiling and leaning in. After a quick exchange of pleasantries, Clara says, "Juanita, you know that store they're talking about putting in across the street from me on Raleigh St.? The one that's up before the town council next week. A couple of folks from the neighborhood are getting together at my house Sunday afternoon to talk about it and it would be so nice if you could stop by and join us. We'd sure like to share our thoughts and see what you can do to help us."

"Well, Clara, I'd be delighted to stop by. You know I always have time for you. And what good's a mayor who doesn't take time to find out what on her constituents' minds? What time should I come by?"

Juanita knew exactly what project Clara was talking about. After a couple of quiet years, development was beginning to stir in Maycomb. The town had received a special use permit application for a new 24-hour drug store on Raleigh St. The hearing on the permit was coming before the town council next week. Juanita was more than a little familiar with the site proposed for the store. Although she now lived on the other side of town, she had grown up just a couple of blocks away from the proposed site and had seen firsthand how that neighborhood had changed over the years.

A couple of folks had already called Juanita to raise concerns about the traffic and noise the new store would bring to the old neighborhood. While Juanita was generally inclined to vote for a project that would bring jobs to town, she was concerned that this site might have some real problems. She had driven by the site just yesterday to take a look at how traffic moved during the evening rush and had made a mental note to drop by the planning office to chat with the staff about what conditions could be added to prevent this store from making things worse.

In all of this is Juanita being a good public servant, dutifully checking into the matter and meeting with folks to help get a good resolution of a community controversy? Or do we have a problem brewing?

While Mayor Beasley has been diligent and responsible so far, she may be about to cross the line between being a responsive and responsible official and violating the legal rights of a permit applicant.

Many critical land use regulatory decisions are made by citizen boards—city councils, county boards of commissioners, planning boards, and boards of adjustment. There are different legal rules for the process that must be followed that depend on the type of decision being made. For some decisions, such as the policy choice of whether or not to approve a requested rezoning, the process is designed to assure broad and open public discussion with the decision-making board. But for other types of decisions, those termed "quasi-judicial," the law's emphasis is on assuring a fair decision-making process for those most directly affected. Quasi-judicial decisions involve two critical elements—determining contested facts and applying standards that require application of some judgment. With quasi-judicial decisions—special and conditional use permits, variances, and appeals—there is not a policy choice being made. Rather these decisions must apply the policies already in the ordinance. The purpose of a public hearing for a quasi-judicial decision is not to gather public opinion about whether the proposal would be good for the community. The purpose of the hearing in a quasi-judicial matter is to gather quality evidence in a fair manner to determine the facts of the case. So what is lawful and perfectly appropriate in a rezoning hearing may be unlawful and inappropriate in a special use permit hearing.

And therein lies our potential problem. While some degree of informality is permissible even in a quasi-judicial matter,

applicants and those neighbors who may be substantially affected have a constitutionally protected right to a fair hearing. In a case involving a decision by the town council on a special use permit for a gas station in downtown Chapel Hill, Justice Susie Sharp set forth specific due process requirements for a quasi-judicial land use regulatory decisions. She noted, "Notwithstanding the latitude allowed municipal boards, . . . a zoning board of adjustment, or a board of aldermen conducting a quasi-judicial hearing, can dispense with no essential element of a fair trial." *Humble Oil & Refining Co. v. Board of Aldermen*, 284 N.C. 458, 470, 202 S.E.2d 129, 137 (1974).

The court held that one of the "essential elements" of a fair trial is that each party have an opportunity to review all of the evidence being considered and have the chance to rebut that evidence. All of the decision-makers must see the same evidence and have a chance to assess the credibility of the witnesses, as well as the opportunity to ask questions of the witnesses. Thus the courts have long concluded that board members must not gather evidence outside of the hearing, a limitation on what the courts refer to as "ex parte" contact. Undisclosed ex parte communications can evidence impermissible bias or rise to a level of unfairness that will lead to judicial invalidation of the decision. *Crump v. Board of Education*, 326 N.C. 603, 392 S.E.2d 579 (1990). In addition to constitutional due process considerations, the zoning statutes also provide that members of boards exercising quasi-judicial functions must not participate in or vote on any quasi-judicial matter if they have a fixed opinion prior to hearing the matter that is not susceptible to change or have undisclosed ex parte communications. G.S. 160A-388(e1) and 153A-345(e1). Many local land use ordinances also specifically prohibit ex parte communications with decision-makers on quasi-judicial matters.

Our situation poses at least four potential dimensions of ex parte evidence. Mayor Beasley may be establishing facts outside of the hearing through: (1) her prior personal knowledge of the site; (2) her site visit to inspect traffic conditions; (3) phone calls and a potential meeting with neighbors to discuss the case; and (4) a potential visit with staff prior to the hearing to discuss potential permit conditions. Which of these pose a problem with the limits on ex parte evidence? Let's take a quick look at each.

Prior personal knowledge

Board members hearing quasi-judicial matters are members of the community in which these land use cases arise. They may well have personal knowledge about the site or a personal acquaintance with the parties. The courts have applied a rule of reason to ex parte communication in quasi-judicial proceedings. If a board member has prior or specialized knowledge about a case, it is entirely proper to consider that knowledge. But it is essential that knowledge be disclosed to the rest of the board and the parties during the hearing. *Humble Oil & Refining Co. v. Board of Aldermen*, 284 N.C. 458, 468, 202 S.E.2d 129, 136 (1974).

So in our case it is entirely appropriate for Mayor Beasley to consider what she already knows about the history of the site and the neighborhood. But she should be careful to lay that out at the hearing for the benefit of other council members, the applicant, and the neighbors. That way if anyone disagrees with her views of the facts or wants to offer rebuttals, they can do so.

Site visit

As with personal knowledge of the facts, the courts have long held that site visits by board members are permissible. Photographs, surveys, and even video tapes of the site may be submitted as exhibits, but often there is often no substitute for getting a look at the site and the conditions that exist there.

If board members do make a site visit, they should during the course of the hearing note that they have done so and summarize any pertinent facts they discern from the visit. Again, this allows all parties to know the evidence being considered and gives them an opportunity to present rebuttal information. Members should refrain from discussing the facts of the case with the applicant, neighbors, or staff during a site visit. Those comments are best made at the hearing for the benefit of all involved.

Meetings with neighbors (or applicant)

It is not uncommon for a board member to have had casual conversations about the case prior to the hearing with staff, the applicant, or the neighbors. As long as those are relatively brief and are fully disclosed at the hearing, there is no legal problem.

That said, board members must avoid any extensive discussion about the facts of a case outside the hearing. The applicant has a legal right to know what the neighbors are saying about the case and have a chance to rebut factual assertions. Even if the conversations are innocent and well intentioned, the applicant has no way of knowing what is being said. Public confidence in the integrity of the decision depends on all of the evidence being presented openly and transparent to everyone affected. Evidence needs to be gathered at the hearing, not through the **grapevine**. So discussions with the neighbors (and with the applicant) outside the hearing must be minimized. Even disclosure may not cure extensive contact with a party about the case prior to the hearing.

So Mayor Beasley should politely tell folks who call her about the case that she appreciates their concerns, encourage them to come to the hearing and speak on the case, but let them know that she is not at liberty to hear about the case outside of the hearing. She could do the same at a brief drop-in with neighbors, but it would probably best to avoid attending meetings about the case with the neighbors or the applicant prior to the hearing.

Meetings with staff

The same rule applies, and for the same reasons, to a board member's discussions outside the hearing with the board's staff. Both the applicants and the neighbors have a right to see and hear all of the evidence being presented. It is acceptable to speak with staff about the ordinance and its requirements prior to a hearing, but those discussions should not include the facts of a pending case.

It would certainly be appropriate for Mayor Beasley to ask staff these questions at the hearing. It is acceptable for her to send staff a memo prior to the hearing alerting them to information she would like to see presented at the hearing. It is also appropriate for staff to prepare reports and recommendations to be presented to the board, provided that information is presented to all board members and to all parties (and the staff member should be available at the hearing to present the report and respond to queries). But a board member must be careful not to express an opinion about the ultimate outcome of the case or even the need for a particular condition prior to hearing the evidence at the hearing.

All of these rules may seem unduly formal and constraining. But the permit decision will have a significant impact on the applicant and the neighbors. Both have rights to a fair hearing. Board members making quasi-judicial decisions have a responsibility to observe and protect those rights. A fair hearing requires that all board members and the parties see the same evidence and have a fair chance to rebut and challenge that evidence. Avoiding undue receipt of information outside the hearing is therefore an essential duty for boards making quasi-judicial decisions.

Links

- www.youtube.com/watch?v=Y7dGdrP3pms

Coates' Canons Blog: Variance Standards: What is hardship? And when is it unnecessary?

By Adam Lovelady

Article: <https://canons.sog.unc.edu/variance-standards-what-is-hardship-and-when-is-it-unnecessary/>

This entry was posted on May 27, 2014 and is filed under Land Use & Code Enforcement, Quasi-Judicial Decisions, Zoning

Generally, development regulations like zoning and subdivision standards apply equally to all properties. But sometimes a particular property is unfairly burdened by the general rules, creating an unnecessary hardship for the owner. The general statutes authorize the local board of adjustment to grant a variance from the rules in those limited circumstances. But what is an unnecessary hardship? Recent amendments to the state statute clarify what can (and what can't) qualify as unnecessary hardship. This blog explores those new standards.

General Statute section 160A-388(d) sets forth the standards for granting a zoning variance (The standards also may be applied to subdivision and other development regulation). These mandatory standards apply to zoning variances for all counties and municipalities in the state, and the new standards override any contrary ordinance provisions that may have been in place prior to 2013. For a summary of the other changes to the board of adjustment statute, see this blog from my colleague David Owens.

Under the new statute a board of adjustment *shall* vary the provisions of the zoning ordinance if strict application of the ordinance would create unnecessary hardship. In order to obtain the variance, the applicant must show all of the following:

- Unnecessary hardship would result from the strict application of the ordinance
- The hardship results from conditions that are peculiar to the property
- The hardship is not a self-created hardship

Additionally, the applicant must show that the variance will

- Be consistent with the intent of the ordinance
- Secure public safety
- Achieve substantial justice

Finally, the statute prohibits any use variance.

To be sure, a variance is not a free pass from regulations or a tool to subvert the zoning ordinances. In order to obtain a variance, the applicant bears the burden of providing competent, substantial and relevant evidence to convince the decision-making board that the property meets all of the statutory standards for a variance. Merely showing some hardship is insufficient.

Let's consider each of the standards in more detail.

Unnecessary Hardship from Strict Application

Whenever there is regulation, there is some level of necessary hardship and inconvenience shared by all of the community. An applicant for a variance must show *unnecessary* hardship. What is enough hardship? Unfortunately, there is no simple formula. It is determined on a case-by-case basis. That is why the board of adjustment holds a quasi-judicial hearing and considers the evidence presented.

The hardship must be more than mere inconvenience or a preference for a more lenient standard. Cost of compliance may be a factor, but cost is not determinative. It is not enough for an applicant to say that development will cost more in order to comply. The applicant must show the substantial and undue nature of that additional cost as compared to others

subject to the same restriction.

Under the old statutes, many jurisdictions applied a standard that the applicant must show that there is no reasonable use of the property without a variance. Under current statutes, that stringent standard is no longer allowed. A property owner can prove unnecessary hardship, even if the owner has some reasonable use of the property without the variance.

Peculiar to the Property

The unnecessary hardship must be peculiar to the property, not general to the neighborhood or community. Such peculiar characteristics might arise, for example, from location of the property, size or shape of the lot, or topography or water features on the site.

Imagine a lot that narrows dramatically toward the front yard and where the side yard setbacks prohibit the property owner from building an addition. The hardship (not being allowed to build an addition) flows from the strict application of the ordinance (the setback) and is peculiar to the property (because of the shape of the lot). A variance may be appropriate if the owner presents evidence to show she meets all of the standards.

By contrast, a variance is not the appropriate remedy for a condition or hardship that is shared by the neighborhood or the community as a whole. Consider that same narrowing lot. If all of the houses on the street shared that hardship, a variance would not be appropriate. Such conditions should be addressed through an ordinance amendment.

Hardships that result from personal circumstances may not be the basis for granting a variance. The board is looking at the nature of the property and the land use ordinances, not the nature of the applicant and their circumstances. Bringing an elderly parent to live with the family, for example, is a change in personal circumstance, not a condition peculiar to the property.

The reverse is also true. An applicant's personal circumstances cannot be the basis for denying a variance. The board should consider the property, not the applicant's bank account and ability to cover the cost of the hardship. Moreover, the fact that the applicant owns property nearby is irrelevant to the consideration of whether this particular property deserves a variance (*Williams v. N.C. Dept. of Env. & Nat. Resources*, 144 N.C. App 479, 548 S.E. 2d 793 (2001))

Not Self-Created Hardship

You can't shoot yourself in the foot and then ask for a variance. The hardship must not result from actions taken by the applicant or property owner.

So what is self-created? Suppose a property owner sells part of a conforming lot and makes the remainder of the lot nonconforming. The hardship (limitations on the non-conforming lot) was self-created (by the owner selling the sliver off the parcel). The owner may not seek a variance for building on the substandard lot. Similarly, where an owner failed to seek zoning and building permits and then incorrectly placed foundation footings in the setback, the hardship is self-created. No variance is allowed. Ignorance of the law is no excuse.

What if the owner relied in good faith on seemingly valid surveys and obtained building permits? After construction began, a neighbor objected, citing a new survey and arguing that the foundation wall is within the setback. Is the owner's hardship self-imposed? Our North Carolina courts have held that hardships resulting from such good faith reliance on surveys and permits are eligible for a variance (*Turik v. Town of Surf City*, 182 N.C. App. 427, 642 S.E.2d 251 (2007)).

An important statutory provision applies here: "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." For example, if the original owner had a legitimate case for a variance, someone buying the lot from that owner would have the same legal position as the original owner. They could seek a variance. This rule aligns with the broader zoning concept that land-use permissions run with the land, and land-use decisions are based on the property and impacts of development, not based on the particular owner. Is this a loophole for an unscrupulous owner to overcome the limit on variances for self-created hardship by selling the property to a spouse or sham LLC? Maybe, but the requirement for substantial justice (discussed below) probably protects from someone gaming the system.

Restrictive covenants and other legal limitations *may* be a factor in determining hardship. Consider a property that has limited development ability due to a privately-imposed covenant for a street setback and a publicly-imposed stream setback. Can the owner seek a variance from the public stream setback? The NC Court of Appeals—interpreting a specific local ordinance—found that the board should consider physical *and* legal conditions of the property, including restrictive covenants (*Chapel Hill Title & Abstract Co., Inc. v. Town of Chapel Hill*, 362 N.C. 649, 669 S.E.2d 286 (2008)).

Let me emphasize that covenants and other legal limitations *may* be a factor. In that case, the decision was based on the local ordinance, and the decision pre-dated the statutory variance standards. A self-imposed legal limitation—like an easement across a property that limits buildable area—that was created after a zoning ordinance limitation became effective, could be viewed as a self-imposed hardship so that no variance should be granted.

Ordinance Purpose, Public Safety, and Substantial Justice

In addition to those standards for “unnecessary hardship,” the statutory standard for granting a variance requires the applicant to show that “[t]he requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.”

Where an ordinance expresses a clear intent, a variance cannot subvert that intent. But, alternatively, a variance may help to give effect to the ordinance intent. In one North Carolina case, an applicant was seeking a variance to allow an additional sign at a secondary entrance. Among other things, the ordinance purpose was to provide “adequate and effective signage,” “prevent driver confusion,” and “allow for flexibility to meet individual needs for business identification.” The purpose, the court found, called for the flexibility that the applicant sought, and the variance was allowed. (*Premier Plastic Surgery Ctr., PLLC v. Bd. of Adjustment for Town of Matthews*, 213 N.C. App. 364, 369, 713 S.E.2d 511, 515 (2011)).

The applicant also must show that the variance does not harm public safety. Even if an applicant met the standard for unnecessary hardship, a variance may be denied for public safety concerns. A property owner may prove an unnecessary hardship exists from limitations on on-site drives and parking for a commercial use. But, if neighbors presented expert evidence that the increased traffic and stormwater effects will harm public safety, the board may be justified in denying the variance.

Additionally, the statute requires the applicant to show that through the variance “substantial justice is achieved.” The concept of substantial justice raises issue of fairness for the community and neighbors. This concept echoes the requirement that hardship must be peculiar to the property—not shared by the community. If everyone bears this hardship, then one lucky person should not be relieved through a variance. Similarly, the justice standard draws upon a notion of precedence. Suppose Joe sought a variance last year and was denied. If Karl is seeking variance this year that is essentially the same request for a similar property, then the variance outcome should be the same.

The substantial justice standard also can play in favor of the applicant. If an applicant relies in good faith on a city permit, and that permit turned out to be wrongly issued, the applicant would have no vested rights in that mistakenly issued permit. Substantial justice might argue for allowing a variance for the applicant.

No Use Variance

North Carolina courts long ago established that use variances are not permitted, and that rule is now part of the statutory standards. If a land use is not permitted on the property, a variance cannot be used to, in effect, amend the ordinance and allow the use. If only single family residences are permitted in a district, a variance cannot permit a duplex (*Sherrill v. Town of Wrightsville Beach*, 76 N.C. App. 646, 334 S.E.2d 103 (1985)).

If the use is already permitted on the property, a variance to allow the expansion of the permitted use is permissible. So, for example, if a sign is permitted for a commercial property, a variance to permit an additional sign is allowable. It is an area variance, not a use variance. (*Premier Plastic Surgery Ctr., PLLC v. Bd. of Adjustment for Town of Matthews*, 213 N.C. App. 364, 713 S.E.2d 511 (2011)).



Conclusion

Making decisions about variances is a hard job. How much hardship is enough hardship? Is justice being served? Does the variance preserve the spirit of the ordinance? Rarely are there clear answers for these questions. Seeking those answers is the hard task of the board of adjustment. The applicant must present competent, material, and substantial evidence that they meet all of the standards. And the board must consider the issues on a case-by-case basis; they must weigh the evidence, apply the required statutory standards, and decide if a variance is warranted.

Links

- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-388
- canons.sog.unc.edu/?p=7155

Coates' Canons Blog: Can I Be Heard? Who Gets to Speak at a Hearing on a Quasi-judicial Matter?

By David Owens

Article: <https://canons.sog.unc.edu/can-i-be-heard-who-gets-to-speak-at-a-hearing-on-a-quasi-judicial-matter/>

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The town council makes decisions on special use permit applications under the Macomb zoning ordinance. The council is in the midst of a hearing on an application from Malcolm Tucker for a special use permit to build a new shopping center. The town planner has summarized the nature of the project and the applicable town standards. Tucker's project planner has testified about all the studies and reports they prepared to show compliance with the town standards. At this point Clara Edwards stands up and asks to be heard. Clara lives on the other side of town, but word is she plans to run for Mayor next time around. In any event, she has lately taken to showing up at most town council meetings and offering her views on whatever is before the council. Tucker, who has a long and acrimonious relationship with Edwards, objects to allowing her to speak. Addressing the council, Tucker says, "Madame Mayor, I submit that Mrs. Edwards has no right to testify about my project. She's not the applicant. She doesn't live or own property anywhere near the site. She is just a meddling busybody sticking her nose where it doesn't belong. You and I know she just wants to irritate me and bollix up this process. So, I respectfully request we move along and that you ask Ms. Edwards to take a seat."

Should the Mayor grant Malcolm's request or should she let Clara speak on the application?



Should Clara Edwards be allowed to testify?

The law on this point is not altogether clear. It is likely Mrs. Edwards should be allowed to speak, but the Mayor should limit her to relevant testimony about the application.

At the outset, it is important to note the nature of the proceeding before the town council. Here the council is making a quasi-judicial decision, not a legislative decision. The purpose of the hearing is not to seek citizen comments on the desirability of a policy choice. When the council is considering a special use permit application, the purpose of the hearing is to gather evidence as to whether or not this particular application is consistent with the standards set forth in the ordinance. If the applicant can produce competent, substantial evidence that the standards are met, the applicant is legally entitled to the permit. The council may deny the permit only if there is substantial evidence in the record that the standards would not be met.

If this were a *legislative* matter, such as a proposed rezoning or an amendment to the standards for approval of a special use permit, the council would have to hold a public hearing to solicit public comment on the wisdom of the matter. Any person could offer comments, send in written comments, or even chat with the council members about the matter prior to

the hearing. Our statutes have long emphasized the importance of seeking public comments prior to making these legislative decisions. The zoning statutes mandate two published notices of the hearing. If a rezoning is involved, the statutes require mailed notice of the hearing to neighbors and posting the site. The council is also required to submit all proposed zoning amendments to the planning board for review and comment. All of this is designed to solicit broad public input prior to making a legislative decision. Mrs. Edwards (and everybody else) is not only allowed to give the council a piece of her mind at a hearing on a legislative matter, it would be illegal for the council to act without offering her that opportunity. A council can certainly impose reasonable limits on public comments at legislative hearings, such as reasonable time limits or that comments be germane to the issues presented. But for the most part those presenting comments are free to express their views on the matter.

A hearing on a *quasi-judicial* matter is altogether different. With a special or conditional use permit, the purpose of the hearing is not to solicit public opinion and comment about proposed policies. The policies have already been set and are in the ordinance. Instead, the council holds an evidentiary hearing to gather facts regarding whether this application meets the standards. The applicant has a constitutional right to present evidence, to cross-examine witnesses, and to present rebuttal evidence. In addition, persons who would be directly and substantially affected by the decision have a right to participate in the hearing. These persons include immediate neighbors whose property values (or use and enjoyment of their property) would be adversely affected. These persons are effectively also “parties” and have the right to present testimony, cross-examine witnesses, and otherwise participate in the hearing. Persons who are not parties to the case do not have a constitutional or statutory right to present evidence to the council.

In fact, since parties to the case have a constitutional right to have the decision based only on properly received material evidence, receipt of irrelevant evidence is problematic unless it is clear that the council has not relied on it in making a decision. Often the presiding officer will give witnesses some latitude in their testimony as most witnesses are not experienced in these procedures and it would be improper to prevent someone from presenting relevant information. Still, it is appropriate to remind witnesses to stick to the relevant facts should they begin to stray too far afield. If irrelevant testimony is presented, the board should make it clear that such evidence was not considered when it makes its factual findings.

The complicating fact here is that local government hearings on quasi-judicial matters are not conducted with the formality of a court proceeding. Most often the staff simply presents a summary of the application and applicable standards, the applicant summarizes its case, and any neighbors present are recognized to make comments on the case. Most of the cross-examination is in the form of questions from council members. At this stage persons are not formally designated as “parties.” The legal standing to participate (establishing that they are in fact an “aggrieved” person who would suffer some special damages distinct from the community at large) is rarely raised at this point. Most of the time neither the applicant nor the neighbors are represented by attorneys. [For a detailed report from N.C. cities and counties on their experiences with special and conditional use permit hearings, click [here](#).] As a practical matter, the board hearing one of these quasi-judicial matters is more concerned with acquiring quality evidence than identifying “parties” and relying on only the parties to present that information. After all, Mrs. Edwards may be a witness who has highly relevant information to present even if she is not herself a “party” to the case or has been called as a witness by one of the parties

While some degree of informality is appropriate, it is important for all involved to remember the purpose of the hearing in a quasi-judicial matter – securing high quality, reliable facts. As Justice Susie Sharp noted in a landmark zoning case involving a city council’s consideration of a special use permit, “Notwithstanding the latitude allowed municipal boards, . . . [the board] can dispense with no essential element of a fair trial.” *Humble Oil & Refining Co. v. Board of Aldermen*, 284 N.C. 458, 470-71 (1974).

So, should the Mayor allow Mrs. Edwards to speak the hearing on Mr. Tucker’s special use permit application? Assuming Mrs. Edwards lives on the other side of town and has no nearby property that would be affected by this decision, she has no legal right to present evidence at the hearing. She is not a “party” in the case and is unlikely to have legal standing to challenge the decision in court. But given the informality of these proceedings and the legitimate need to get relevant information in the record, those citizens who wish to offer testimony are generally allowed to do so.

To protect the rights of the applicant and those who could be parties, however, it is incumbent on the town to impose some limits on Mrs. Edwards and others who testify at these hearings. They should be sworn in as witnesses. They should be limited to offering relevant testimony. It is important that the presiding officer remind persons testifying at these hearing that this is not the time or place to offer policy suggestions, opinions about the wisdom of the existing ordinance, or

anything else irrelevant to whether the project under consideration meets the standards in the ordinance. Unless they are formally qualified as expert witnesses, they should be limited to offering factual testimony, not offering opinions. These procedural safeguards protect and balance the interests of citizens in presenting information to the board and the constitutional rights of the parties.

These safeguards run counter to the expectations of many persons. Folks are used to being able to freely speak their minds at the comment period in governmental meetings. It is important then that those conducting quasi-judicial hearings clearly explain that the constitutional rights of the parties impose some constraints on the usual expectations of free expression. Some local governments have short pamphlets that explain this; others have the presiding officer explain it at the beginning of each hearing. It may even be appropriate for the presiding officer (or one of the parties) to ask a non-party witness asking to speak about the nature of their proposed testimony to determine whether it may be considered by the board. However it is done, it is important that the applicant, the neighbors, the board members, and the public have a common understanding of the rules governing these hearing and that everyone make a good faith effort to observe these basic rules of fairness.

Links

- canons.sog.unc.edu/can-i-be-heard-who-gets-to-speak-at-a-hearing-on-a-quasi-judicial-matter/clara_edwards_08/
- www.sog.unc.edu/sites/www.sog.unc.edu/files/SS_22_v4b.pdf