

Members:
George Lott, Chair
George Turner, Vice-Chair
Alfonso Ferguson Sr.
Winton McHenry
Gregory Parks



Alternates:
Robert E Davis
Nathan Galbreath
Stacy Michael Long
Marva Lucas-Moore
Quinsentina James

CUMBERLAND COUNTY BOARD OF ADJUSTMENT

130 Gillespie Street
Fayetteville North Carolina 28301
(910) 678-7602

MINUTES
May 16, 2019
7:00 PM

Members Present

George Lott
George Turner
Gregory Parks
Alfonso Ferguson
Winton McHenry

Absent Members

Staff/Others Present

Hope Ward Page
Dena Barner
Robert Hasty
(Asst. County Attorney)

Chairman Lott called the meeting to order at 7:00 p.m. in Public Hearing Room #3 of the Historic Courthouse.

1. INVOCATION

Chairman Lott

PLEDGE OF ALLEGIANCE

Recited by all.

Chairman Lott stated the procedural matters are to turn off all cell phones and other electronic devices, other than the camera, are fine and if asked to speak at the podium to please speak clearly into the microphone as the meeting is being recorded. Although there are no set time limits for any speaker addressing the board, the board asks speakers to not repeat what has been previously stated. If there is no new evidence to offer please make the board aware of your agreement with the previous speakers. If any board member wishes to speak or ask any questions please ask to be recognized by the Chairman before speaking.

2. ROLL CALL

Mrs. Page called the roll and stated a quorum was present. For the audience Mrs. Page introduced Mr. Robert Hasty, Assistant County Attorney and Alternate non-voting members, Mr. Stacy Long.

3. SWEAR IN STAFF

Chair Lott swore in staff.

4. ADJUSTMENTS TO THE AGENDA

There were none from staff.

5. APPROVAL OF THE JANUARY 17, 2019 MINUTES

CHAIR LOTT: The motion has been made, motion of a second has been made, all those in favor of approval?

Mr. Ferguson made a motion to approve the minutes from the January 17, 2019 meeting with any necessary corrections, seconded by Mr. Turner. The motion passed unanimously.

	IN FAVOR
LOTT	YES
TURNER	YES
FERGUSON	YES
MCHENRY	YES
PARKS	YES

6. ABSTENTIONS BY BOARD MEMBERS/BOARD MEMBER DISCLOSURES (SITE VISITS AND/OR PERSONAL AFFILIATIONS)

There were none.

7. PUBLIC HEARING DEFERRALS/WITHDRAWALS

There were none.

8. POLICY STATEMENT REGARDING APPEAL PROCESS

Mrs. Page read the policy statement.

9. PUBLIC HEARING(S)

P19-02-C: CONSIDERATION OF A VARIANCE TO ALLOW A RIPARIAN BUFFER TO BE CREATED WITHOUT AN OWNERS' ASSOCIATION ALONG THE CAPE FEAR RIVER AS REQUIRED UNDER SECTION 1102.H, COUNTY ZONING ORDINANCE. PROPERTY ZONED A1 AGRICULTURAL & CD CONSERVANCY DISTRICT ON 11.06+/- ACRES, LOCATED AT 5352 & 7369 LIBBY LANE, SUBMITTED BY DORA J. WELKER (OWNER).

Chair Lott read the case heading for Case No. P19-02-C.

Mrs. Page reviewed the zoning, sketch map, and land use of the area surrounding subject property. She briefly reviewed board packet material. Mrs. Page asked if the section of the zoning ordinance reference Section 1102 subsection H on Riparian Buffer which are referencing on pages 124 - 125. Chair accepted that section into the ordinance. The purpose of protecting the aquatic and wildlife habitat and to ensure bank stabilization, the Cape Fear River, Little River, Lower Little River, Rockfish Creek, Little Rockfish Creek and South River shall be protected from development by means of riparian buffer. The application submitted by the owner is complete and the owner has agreed to all the ordinance related conditions that were included in your packet. Staff asked when making a motion if you could make the motion subject to the findings of facts located behind the special use tab in your binders.

MR. TURNER: So the existence, at this time there is no home owners association?

MRS. PAGE: No sir there isn't.

MR. TURNER: And the owner who owns all the property is going to subdivide it and they don't want to have to do a homeowners association to subdivide it? So the association is the only question?

MRS. PAGE: Yes.

MR. TURNER: Okay, thank you.

MR. FERGUSON: So in this is what you're asking us to do then, so the upkeep of it, what I'm reading is the owners association will do the upkeep, so the owner is saying they are going to do the upkeep without the homeowners association.

MRS. PAGE: The owner is here and if you would like to direct that question to the owner, I can defer that, if the board didn't have any further questions of me or staff.

CHAIR LOTT: Is the owner here? Please come up. Also if you would, put your hand on the bible, raise your right hand. Do you swear to tell the truth the whole truth and nothing but the truth so help you God?

MS. WELKER: Yes sir I do.

CHAIR LOTT: State your name and address for the record please.

MS. WELKER: Dora Welker, I live at 5352 Libby Lane, Wade, NC.

MR. TURNER: Is that mike on?

CHAIR LOTT: Ok if you would, explain to us why you want to do what you want to do.

MS. WELKER: Ok. I have lived on a portion of this land, it's been in my family for fifty years. My son lives on a piece of it for sixteen years, and I have lived there since 2012. This property is backed up to the Cape Fear River, and now it's come under ordinance to provide a riparian buffer and a homeowners association. I'm requesting this be maintained through easements, on the proposed river front lots rather than creating a separate common area. The lot between all lots including those that are non-adjacent to the river. Developing an HOA to maintain the riparian buffer would create financial hardship for an attorney, accounting and insurance fees necessary to setup and maintain the HOA. I'm asking for a variance as I am not a developer and I simply wish to divide out the two existing homes on the proposed river front lots from the existing parcel between myself and my children. I believe requesting a variance from the Homeowners Association requirement but not the riparian buffer would still be consistent with the purpose of the ordinance to protect the wildlife and insure the banks stabilization.

CHAIR LOTT: Ok. Thank you. Are we on the same page? I mean, you're saying she wants to avoid the association, she's saying she wants to avoid having to set aside the riparian buffer.

MS. WELKER: Well I think the riparian buffer can be done through an easement. We have no objection to protecting the bank.

CHAIR LOTT: Ok. Are we on the same page?

MRS. PAGE: She, if I may, she does not want to do the owners association. However, they are not against the riparian buffer. Basically, as I said again in the ordinance, when you're dividing the lots, being that these lots are along the Cape Fear River, it is required that they do the homeowners association so that it could be maintained and protected however, they're not wanting to do the owners association, they want to do the buffer without having to do the owners association.

CHAIR LOTT: That's not what she said though.

MS. WELKER: My understanding when I was reading it, is a separate lot, and that's what I've been told, a separate lot would have to be created for the riparian buffer. And that lot would have to be part of the homeowners association and we would all be responsible for it. I would like just the two lots that would be touching that portion be done by an easement back there to protect that area which we already do anyway. We understand how important it is to maintain that bank.

CHAIR LOTT: Normally a homeowners association is for the upkeep of a travel way

MRS. PAGE: If they're going to have the homeowners association it's just to ensure that the buffer is protected, the upkeep is done because this is non development in thinking of a future. In the event anyone were to move or anyone were to change.

CHAIR LOTT: A riparian buffer is an area that is not to be disturbed. So what upkeep would there be in not disturbing a piece of property?

MRS. PAGE: I just read in the ordinance right here that they are to, the common property line, with the river or creek, or at the top of the bank and where the top of the bank is not easily discernable Zone One shall begin at the root growth area closest to the surface water, and extend landward a distance of 30 feet on all sides of the surface water, measured horizontally on a line perpendicular to a vertical line marking the top of the bank or the root growth area closest to the surface water. Zone Two shall consist of a stable, vegetated area that is preferably left undisturbed; however, grading and re-vegetating in Zone Two is allowed provided that the health of the vegetation in Zone One is not compromised. It's in this section of the ordinance. And as they want to subdivide, that's one of the requirements, but pending the board's decision, if the board were to grant the variance, then they would be maintaining as Ms. Welker stated, however they just do not want to do the extra lot as a common area as it states over here on page 125 in the development section.

CHAIR LOTT: It appears to me we are still no on the same page because she's, if we create this riparian buffer without an owner's association and all of them are hers, then it would be her responsibility but there's nothing in the verbiage we just had that says an easement could be done in lieu of a lot. And that's what she said.

MRS. PAGE: What she has on her application, if the board were to grant that, they're willing to do the buffer with an easement as well as an easement can be granted for that.

CHAIR LOTT: That's not here. So what she's asking can be done according to the board rules?

MRS. PAGE: It can be done according to the board rules, the board would just state she does not need to create a homeowners association to move forward with the subdivision of her lots. That's why she's here.

MR. TURNER: Are the lots for public sale or are they going to the children?

MS. WELKER: Children.

CHAIR LOTT: Then there's two of you that have road frontage, one is a flag lot and the other one is on a class C street.

MR. TURNER: Then there's two houses, that one and the . . .

CHAIR LOTT: I don't think we're talking about the same thing here.

MS. WELKER: My daughter is, she is going to, I currently live on the left side there. My daughter will be taking that over once I get it cut out. I'm going to build a smaller home, I'm downsizing. Smaller home on lot 2A, and my son would be in the home back behind that one.

MR. PARKS: So you're going to move up to the front row?

MS. WELKER: Yes sir. Let the kids have the rest.

MR. PARKS: Good for you, let them play in the back.

CHAIR LOTT: Can you tell me what would be the disadvantage in having a fine surveyor go back there and carve that out and make that a separate lot, what is the disadvantage in that?

MS. WELKER: Well I think it would shorten these lots for one, I don't know if they would maintain the two acre lot, I would have to refigure everything to get the two acres in there because I don't exactly know how much of the land that would take and I believe it requires two acres.

MR. TURNER: How much of a buffer is required? Is there a size?

CHAIR LOTT: It would have to be two acres.

MR. TURNER: The buffer would have to be two acres?

MR. PARKS: I would think so since it requires two acres for a lot size.

MRS. PAGE: Yes because it's an A1 which a lot would be a two acre lot size.

MR. TURNER: So the buffer would have to be two acres also?

MRS. PAGE: Yes

MR. TURNER: I don't see how you could do that there.

MR. PARKS: No way you want to cut two acres back there.

CHAIR LOTT: You've got 3.35 on Lot 2C and you could cut some off of that but 2D is only 2.28 acres which would make it nonconforming if you did that.

MS. WELKER: HOA also requires an easement to get back there for the homeowners on the front which would be me and you would be taking away more land and I've got two septic tanks that run between those two lots.

CHAIR LOTT: Anymore questions? Let me ask you this, for staff, if this was approved as its written here it, doesn't look like it gives her the option of an easement in lieu of carving out a lot. Does that need to be added?

MRS. PAGE: It would be added in the order, once the variance, if the variance, is granted, that information would be added in the order.

CHAIR LOTT: By you or by us?

MRS. PAGE: If you put it in your motion, you can add that.

MR. PARKS: But y'all had planned to do that anyhow?

MRS. PAGE: I'm not sure. Is that what you planned?

MR. TURNER: I don't know that they can, that's what I'm saying. What they're asking for is two different things. That's the problem.

MR. FERGUSON: That's why I was asking about the buffer.

CHAIR LOTT: By creating the buffer, it would meet all the requirements. That was intended to be by the rules anyhow. So if we would require the buffer to be created at a normal size for these lots, that would have to show on a recorded plat, as a riparian buffer, the easement.

MRS. PAGE: The easement would need to show on the recorded plat. Without needing the creation of an additional lot to give the homeowners association

CHAIR LOTT: I can understand in this situation why they wouldn't want to create a homeowners association

MRS. PAGE: And see that's why we're here tonight because of that. The original reason is because as I said in February, they came to do a subdivision of those. And it's called a subdivision, as you know anytime you're breaking up property, and I explain that for the audience sake, because I learned at another meeting that they

didn't understand why I kept calling it a subdivision. So since they're breaking up the lots they're subdividing along here and that is what the flag was because the condition is according to the county ordinance if you are subdividing a long the riparian buffer or along one of those rivers, and a separate lot is necessary to maintain an owners association as it is written in the ordinance. Applicant is responsible for providing, maintaining and up keeping and that is the reason Ms. Welker asked for the variance to do the buffer, as they intend to, without doing a separate lot to do the owners association.

MR. FERGUSON: I still come back to my same question.

CHAIR LOTT: If we require her to create and maintain a riparian buffer without the homeowners association being created, then everybody's satisfied. There is a buffer for the riparian area.

MR. PARKS: So you're saying you are going to require her to do that which means she's got to cut two acres.

CHAIR LOTT: No. There would be a buffer designated on the recorded plat.

MR. PARKS: Gotcha. I don't want to require her to cut that off, Ok, if that's the wording that's proper than I'm game.

CHAIR LOTT: Normally a homeowners association is for the upkeep and maintenance and a riparian buffer certainly doesn't need any upkeep other than to be left alone. Yes sir.

MR. MCHENRY: I'm not clear as to what a riparian buffer is.

CHAIR LOTT: A protection of a waterway.

MR. MCHENRY: Protection means that nobody is to disturb it. So she wouldn't disturb it or no one's going to disturb what it is.

CHAIR LOTT: Right.

MR. MCHENRY: So if anyone disturbs it, they would be in violation.

CHAIR LOTT: Absolutely.

MR. MCHENRY: So I don't get the point of why going through all this stuff about a buffer and all that sort of thing if you just set off a riparian buffer everyone's got to leave it alone.

CHAIR LOTT: That's what I suggested. That we require them to show on their recorded plat that a buffer, a certain buffer, so far from the river that cannot be disturbed and stated so on the plat. And not require a homeowners association.

MR. FERGUSON: I agree with that on that part, but what I'm saying, keep my question and make sure I'm clear before our vote, is that we're saying that we're putting this buffer there but it keeps arguing in here about upkeep, so we're saying no one's disturbing it, so who's doing an easement what about the upkeep, so no upkeep going to be done, she's not going to do upkeep, so she's just going to put it there and leave it.

CHAIR LOTT: That's the whole purpose anyhow of it.

MR. FERGUSON: What about this upkeep that's mentioned in here.

CHAIR LOTT: What upkeep?

MR. FERGUSON: Could you tell me what upkeep you're looking for?

CHAIR LOTT: There is no upkeep on a riparian buffer.

MR. PARKS: If something needs to be done, they're going to do or otherwise they'll be flooded.

CHAIR LOTT: Absolutely. They're not relieved of any responsibility of the protection of the river area in question. We are just not requiring them to go to the expense of creating, with an attorney, a homeowners association, now if it was fifty lots out here with fifty different owners and nobody knew each other, that's what it was intended for but in this situation I can understand why they're doing what they're doing. I fully agree with it. I don't see any problem with it, requiring them to have the buffer put on their recorded plat.

MR. HASTY: I would like to say one thing. I spoke with Mr. Morefield, the County Attorney today because this is something new for us, and if that is the boards pleasure, which I anticipated it might be, we would ask that there probably needs to be something recorded that there be no further subdivisions of this property, because if it does get developed, then it's a whole new ballgame.

CHAIR LOTT: There has not been a plat recorded yet has there?

MRS. PAGE: No sir there has not and as I have stated . . .

CHAIR LOTT: Pending on the outcome of tonight.?

MRS. PAGE: Yes sir. That can be added as one of the conditions.

CHAIR LOTT: Should we turn them down, they will have to create that lot.

MRS. PAGE: Yes sir.

CHAIR LOTT: But if we go along and grant their request, they do not have to create that lot.

MRS. PAGE: Yes sir.

MR. PARKS: Ms. Welker you do understand that the county attorney here said in the future you cannot take those four lots and make them into eight lots and try to do a little subdivision?

MS. WELKER: Yes I do understand that.

MR. PARKS: And do your children understand that? Ok.

CHAIR LOTT: And that would require rezoning.

MR. PARKS: Okay. Just want to be sure.

MS. WELKER: Yes

CHAIR LOTT: It's the verbiage here that's so confusing. What they really want is not written. And if this is an unrecorded plat, not trying to mess this up but if this is not recorded, these lines could be adjusted somewhat and the size of these lots could bring this down to give room for an additional.

MR. TURNER: You could do this without an association and have an additional lot back there. These lots would have to be reduced and everything moved down, but it's not an issue. The problem is what they're asking for in reality is not what they're asking for here, so we have to be careful with what we grant because what we are granting is not only what they're legally asking for here but they want above and beyond.

CHAIR LOTT: Our responsibility would be met if we required them to have a riparian area, designated line so to speak, so far from the river that would justify or satisfy the requirements of the riparian buffer without the homeowners association.

MRS. PAGE: If I may in the ordinance where it states at letter H that a riparian buffer shall consist of two zones, a combined width of 50 feet, as follows: The location of Zone One shall begin at the common property line with the river or creek, or at the top of the bank and where the top of the bank is not easily discernable Zone

One shall begin at the root growth area closest to the surface water, and extend landward a distance of 30 feet on all sides of the surface water, measured horizontally on a line perpendicular to a vertical line marking the top of the bank or the root growth area closest to the surface water. Then it proceeds to go into a zone 2 which states that a Zone Two shall begin at the outer edge of Zone One and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. So the buffer is 50 feet if you broke it down into two different zones. But the buffer mainly is 50 feet.

CHAIR LOTT: The simplest terminology for us would be in lieu of it being a separate recorded plat / tract on that plat that the riparian buffer we allow by easement must meet the standards of the plat.

MR. FERGUSON: I think what the district attorney is telling us is that we won't be able to subdivision once we add that in there. It will be covered by the easement that you're saying do.

CHAIR LOTT: There's a two acre minimum on this property. So they cannot go any further until its rezoned of course the board has control over that, the Planning Board. We can require them to have the buffer, a certain size or a certain elevation, that would have to be shown on the recorded plat or the proposed plat by the surveyor. He could determine a ridge, top of the bank, so to speak, or either we could come so far from the edge of the river, whatever would be easiest.

MR. FERGUSON: I see this right here, because I feel this if we did the easement then the subdivision, I think it would work perfectly, than not do the homeowners association and show hardship over that.

CHAIR LOTT: It would be so simple to require them to stay 50, 75 ft, 100 ft whatever we come up with on that piece of property rather than go to the expense of surveyor actually surveying the top of the bank which would get expensive. I'd say 50 to 75 ft buffer from the river put that on there as a requirement. And then that would be very easily met and be able to be checked by the board, Planning staff not the board, planning staff. That's just one scenario.

MRS. PAGE: If I may, if you would close the public comment.

MR. FERGUSON: She said close the public comment.

CHAIR LOTT: She might want to add something else. You want to add anything else, Ms. Welker?

MS. WELKER: I'm fine. Thank you.

CHAIR LOTT: I think we know what you want. Thank you.

MR. HASTY: Is the public hearing closed now?

CHAIR LOTT: Yes the public hearing is closed. Recommendations?

MRS. PAGE: If the board would please make the recommendations subject to the four findings of facts located behind the variance tab in your binder.

CHAIR LOTT: Let me start it and we'll talk about it and make adjustments along the way, how about that? The Board of Adjustment for the county of Cumberland having held a public hearing, what is today, on May 16th, 2019, requested by Dora Welker for a variance for property located at 5352 & 7369 Libby Lane in Wade in a manner not permissible under the literal terms of the Cumberland County zoning ordinance having heard all the evidence and findings of facts presented at the hearing make the following finding of fact and draw the following conclusions: It's the boards conclusion that unnecessary hardship would result in the strict

application of the ordinance, this finding is based on the following: the plat that is proposed here in the testimony that has been given with a two acre requirement on this site there is no way to create a two acre buffer, riparian buffer, at the river so it would be our proposal that be done by a 75 ft easement to take place of what would be a platted lot, it would not be a platted lot, it would just be an easement. It's the Boards conclusion that a hardship from condition that are particular to the property, such as location, size or topography this is based on the following conditions. The site that they've got here, the eleven acres there is really no way to divide this up to where everybody would have a conforming lot and still have the lot for the riparian buffer at the back because of the size. If they had more acreage it would be different. The boards conclusion that the requested variance is consistent with the spirit, purpose and intent of the ordinance such that public safety is secured, substantial justice is achieved, this finding is based on conditions listed above as well as the following, these four lots will not be subdivided any further in the future, they will always remain this size, that the buffer will be a riparian buffer based on an easement, that will be left natural as it fronts the Cape Fear river, and there was something else, what was the other one?

MR. FERGUSON: The four items that she said that we had.

MR. TURNER: I believe that's it.

CHAIR LOTT: That's it? Okay.

MR. FERGUSON: The four items.

CHAIR LOTT: I met the four items.

MR. FERGUSON: The four things that she said to the board. You know what she mentioned earlier. The things you were talking about?

CHAIR LOTT: Have I missed one?

MRS. PAGE: Yes. Your last one.

CHAIR LOTT: I'm sorry?

MR. PARKS: No you just combined two and three together.

MRS. PAGE: Oh you combined two, oh okay.

CHAIR LOTT: I did.

MR. PARKS: And it was done very well.

CHAIR LOTT: Fooled you. Didn't I?

MRS. PAGE: Fooled me, I lost count.

CHAIR LOTT: Therefore, on the basis of these foregoing it's ordered that the application for the variance be granted, subject to those following conditions. Information contained in the application, all development shall be in accordance with the site plan submitted, unless otherwise specified. All other provisions of the county's zoning ordinance will be complied with, relevant federal, state, local regulations are complied with and the applicant is responsible for obtaining all permits prior to proceeding with any development. That is my motion, want to modify it?

Mr. Ferguson made a motion to approve Case P19-02-C Consideration of a variance to allow a riparian buffer to be created without an owners' association along the Cape Fear River as required under Section 1102.H Count zoning ordinance, subject to the finding of facts and ordinance related conditions, Mr. Parks seconded. The motion passed unanimously.

	IN FAVOR
LOTT	YES
TURNER	YES
FERGUSON	YES
MCHENRY	YES
PARKS	YES

CHAIR LOTT: Thank you ma'am. You're good to go. Thank you, gentlemen. Based on the verbiage as it was written, though I did not say it, by granting the variance, we have granted the ability not to create the owners association. And I did not bring that up.

MRS. PAGE: Yes, and I will add that into the variance order. Chair if you like, you can dismiss the audience.

CHAIR LOTT: I'm sorry, y'all are dismissed. You can escape.

10. DISCUSSION/UPDATES

MRS. PAGE: No cases were received by the May deadline, for the June Board of Adjustment, so there will not be a meeting in June.


CHAIR LOTT: So what about our Christmas party?

11. ADJOURNMENT

Mr. Turner made a motion to adjourn, seconded by Mr. Ferguson. The motion passed unanimously. Meeting adjourned at 7:38pm.

	IN FAVOR
LOTT	YES
TURNER	YES
FERGUSON	YES
MCHENRY	YES
PARKS	YES


Dena L Barner, Clerk to the Board


George Lott, Chairman