

Amy H. Cannon
County Manager

Tracy Jackson
Assistant County Manager



CUMBERLAND COUNTY

NORTH CAROLINA

Board of Adjustment

Rawls Howard
Director

David Moon
Deputy Director

MINUTES
July 15, 2021
6:00 PM

Members Present

George Turner
Robert Davis
Marva Lucas-Moore
Linda Amos – Alternate
Vickie Mullins-Alternate

Absent Members

Gregory Parks
Stacy Michael Long

Staff/Others Present

David Moon
Nikia Charles
Rob Hasty
(Asst. County Attorney)

Alternate Members in Attendance

Chair Turner called the meeting to order at 6:05 p.m. in Public Hearing Room #3 of the Historic Courthouse.

Chair Turner 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.

1. INVOCATION

Chair Turner

PLEDGE OF ALLEGIANCE

Recited by all.

2. ROLL CALL

Mr. Moon called the roll. Mr. Moon stated we have a quorum.

3. SWEAR IN STAFF

Chairman Turner swore in staff.

4. SELECTION OF CHAIRMAN AND VICE-CHAIRMAN

Mr. Moon gave the details on the process for selection. He said based on the rules and procedures established for the Board of Adjustments this states that the chairman shall be elected by majority vote of the Members of the Board from among its regular members. The Chairman's term of office shall be for one calendar year beginning on July 1st and ending on June 30th, and until the successor is qualified. That last clause of the sentence "and until the successor is qualified", I interpret that to mean, if a new Chairman is not selected tonight, the existing Chairman would preside until a qualified candidate was accepted by the Board. That same terminology language applies to the Vice-Chairman.

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What this means if you choose not to make a determination this evening and continue this item to a future Board of Adjustment meeting, that Mr. Turner would remain as Chairman, and Greg Parks would remain as the Vice-Chairman. So it's the decision of the Board if you want to make the selection tonight or delay it to another meeting.

CHAIR TURNER: What is the recommendation of the attorney?

MR. HASTY: There is an August meeting scheduled isn't there?

MR. MOON: Yes, there is an August meeting.

Mr. Davis made a motion to post-poner the selection until the August meeting. Ms. Lucas-Moore seconded the motion. The motion passed unanimously.

	IN FAVOR
TURNER	YES
DAVIS	YES
AMOS	YES
MULLINS	YES
LUCAS-MOORE	YES

5. ADJUSTMENTS TO THE AGENDA

There were none.

6. APPROVAL OF THE JUNE 17, 2021 MINUTES

Mr. Davis made a motion to approve the minutes from the June 17, 2021, meeting with any corrections that are needed. Ms. Lucas-Moore seconded the motion. The motion passed unanimously.

	IN FAVOR
TURNER	YES
DAVIS	YES
AMOS	YES
MULLINS	YES
LUCAS-MOORE	YES

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

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CHAIR TURNER: This is relating to the 3618 Gabe Smith Road, Louretha Mckethan. Anybody have any issue with hearing that?

8. PUBLIC HEARING DEFERRALS/WITHDRAWALS

There were none.

9. POLICY STATEMENT REGARDING APPEAL PROCESS

Mr. Moon stated that he would like to point out there was no one in the audience. He read the policy statement.

10. PUBLIC HEARING(S)

Chairman Turner read the case heading for Case No. P21-06-C.

P21-06-C CONSIDERATION OF A VARIANCE FROM SECTION 1104 OF THE COUNTY ZONING ORDINANCE TO ALLOW A REDUCTION OF 2,800 SQ. FT. FROM THE MINIMUM LOT SIZE STANDARD FOR PROPERTY ZONED R30 RESIDENTIAL DISTRICT, LOCATED AT 3618 GABE SMITH ROAD, SUBMITTED BY LOURETHA MCKETHAN (OWNER).

Mr. Moon stated the case before you involves an existing lot that is located at 3618 Gabe Smith Road. The property owner has requested a variance from section 1104 of the County Zoning Ordinance to allow a reduction of 2,800 sq. ft. from the minimum lot size standard for the R30 Residential Zoning District. The R30 Residential Zoning District requires a minimum lot size of 30,000 sq. ft. Mr. Moon displayed a slide on the projector and said it shows the location of the property there on Gabe Smith Road. It was parceled out from a larger parcel at some point. That parcel being to the east, running to the east. General character of the area is single family residential on larger lots or agriculture vacant land in character. Primarily surrounding the property, the zoning is either A1 Agriculture or near the property Rural Residential R40A Residential. Sales on the property are generally acceptable for residential development and the site is located in the rural residential land use designation which has a basically minimum lot size of 30,000 sq. ft. or one unit per 30,000 sq. ft. Regarding the site, (Mr. Moon pointing and showing slides) this is the location of the property from the front. This is the south view on Gabe Smith Road. The west view along Gabe Smith Road. This is view to the north, rather the south going to the north. The applicant has submitted an application with an explanation for their hardship. They would like to plot the property to confirm its boundaries and the process of the plat a surveyor prepared a more recent legal description and boundaries survey of the property indicating that the parcel is smaller than what was previously indicated. It was zoned at R30 several months ago. With the most recent information, that was available to staff and the belief was that, to the property owner as well, the property was just over 30,000 sq. ft. Property owners indicated verbally to staff that they may wish to sell the property in the future and want to confirm they will be able to so without delay if the buyer may request a variance that indicate that there are no hurdles for them to use or develop the property. So based on the existing lot size and boundaries, staff did not find any objections to their case and their request for the variance. The Board of Adjustments is asked to make their decision and their decision is final on the variance request based on four criteria.

1) Unnecessary hardship would result from the strict application of the ordinance. 2) There are conditions peculiar to the property, such as location, size, or topography. 3) The special circumstances are not the result

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of the action of the applicant. 4) The requested variance will be consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. Based on the R30 zoning district assigned to the property, the property owner has one single family home on the lot now. They would not be able to have another home on that lot or subdivide it. That concludes staff's presentation and I'll address any questions that the Board may have. Thank you.

CHAIR TURNER: It does appear that this is the only R30 out there and you say it was recently done. How did that come to past and why did they not rezone it to something else?

MR. MOON: A review of the case was that the previous zoning was larger than, required a lot size that was larger than R30. I believe it was A1. So they would've had to have one acre to use the property. So they requested R30 to be consistent with the existing parcel size. So they applied for a rezoning. Based on the request, staff supported that rezoning request. We did not find out until later that based on a survey that the size of the property was actually less than what was on the current record. However, they still would not have met code under the previous zoning of A1.

CHAIR TURNER: So basically, they thought they were fixing it when they rezoned it to R30. They had an issue when they rezoned it to R30 thinking they had fixed it and then it looks to me like because the highway came along and took a little land from them, they were less than they thought they were. Your photo shows the property line kinda going out in the road. The County's GIS shows the property line literally at their front door. I mean they have no front yard. There's no front yard, which I think would be an issue. You said it wasn't. As part of the record, we'll just say it's certainly non-conforming cause their right on the line. Anybody have any questions?

MR. MOON: Exhibit H would include the applicant's response to those four criteria.

MR. DAVIS: When you do the adjustment are you going to say that you're going to change it by 2,800?

MR. MOON: No. What we're saying is the current parcel size is 2,800 sq. ft. lower than the zoning district requires.

MR. DAVIS: Your numbers are not adding up.

MR. MOON: Yes, you'll see we provided a rounded number.

MR. DAVIS: Is the rounded number going to... its beneath

MR. MOON: In case they were off a few feet, we just rounded it down to 2,800.

MR. DAVIS: But now if you rounded it down to 2,800 and its only 27 and you add 2,800 to it, you're still beneath 30,000.

CHAIR TURNER: The purpose of the variance is to allow them to be less than 30,000 sq. ft. based on the fact that basically it's an error. It's 2,800 sq. ft. too small.

MR. DAVIS: I'm looking at 28 and 27 makes...27,000. If you take 27,000, you need 3,000 more to make 30.

CHAIR TURNER: They rounded the numbers, that's what he was saying. It says the existing parcel has an area of 27,204 sq. ft. So, they are about 2,800 sq. ft. too low. That's a round number. He's rounded that.

MR. DAVIS: I was wondering if you rounded it, why would you round it that way instead of saying 29 or 30, 3,000?

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MS. LUCAS-MOORE: Because it's short.

CHAIR TURNER: It really wouldn't matter.

MR. DAVIS: That's what I'm saying, that's what I'm asking, does the numbers you're giving matter, if someone else is looking at it, you still didn't give me enough to make it 30,000.

CHAIR TURNER: Well, they don't have to make 30,000 because the variance allows them to be less than. We're saying that if we grant this, we're saying that based on what's happened here they can be less than 30,000.

MR. MOON: There appears to be a typo on front cover but the parcel size now 27,204, so the 2,800 would be accurate.

CHAIR TURNER: Exhibit H included in the

MR. MOON: Previously exhibit I but in this case, there was an exhibit that was not necessary, so it's referenced as exhibit H.

CHAIR TURNER: Exhibit H is a blank page.

MR. MOON: It should be the application behind that. And in the application is the applicant's response.

CHAIR TURNER: I don't seem to have any of that but it's not an issue.

MR. MOON: Exhibit H is the applicant, and in the application, it states the nature of the hardship is the land was surveyed incorrectly years ago. DOT took right-of-way.

CHAIR TURNER: If we put item H as part of the understanding, item H is blank. We have nothing on item H.

MR. HASTY: Yes, I think it's all the pages that follow.

CHAIR TURNER: That's how its considered, the entire application is item H? Is that how that's done?

MR. MOON: Yes.

MR. HASTY: You can use page 3 as the hardship. The applicant's position on the property.

CHAIR TURNER: Any discussion on this?

MR. DAVIS: I'm good with that.

CHAIR TURNER: You want to make a motion? You need to address all four of the hardships. You need to discuss all of those. Page 2 of 6. Anybody have a problem with this, any questions?

MS. AMOS: I'm just trying to understand what it is that they're asking for, they're asking for the 3 that they need to meet the 30 in variance?

MR. HASTY: They're asking not to have to have 30,000 sq. ft.

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MS. AMOS: And have whatever they have?

MR. HASTY: Yes, this 27,204.

CHAIR TURNER: The purpose of this variance is to allow them to not have to follow the ordinance of having 30,000 sq. ft. They can have less. If we approve it, we have to approve it based on the four criteria.

MS. AMOS: Let me ask you a question, who came in and took some of the land?

CHAIR TURNER: DOT.

MS. AMOS: So the land that they took you can't consider that as not being their fault?

CHAIR TURNER: They probably use it as their front yard and don't think much difference of it. But if you look at the, and this isn't part of the county's agenda, I just brought this. But if you look at the GIS and see the property lines, their whole front yard belongs to the department of transportation. So DOT has a right to, if the road ever expanded they could just expand on. You'd have a road as close to you. That's kind of messed up. At this point we're just trying to help them, that this doesn't appear to be something that they've done, and they haven't made any messes. So if you wanted to make a motion based on those four. Did you want to make a motion?

MR. DAVIS: I make motion that their request be granted.

CHAIR TURNER: Based on the four criteria? Go through that and explain why.

MR. MOON: I've got the official application in the folder.

MR. DAVIS: The one that says A, B, C, and D? Unnecessary hardship

CHAIR TURNER: Unnecessary hardship. In other words, if you consider this based on what you've heard, these people would suffer an unnecessary hardship if we strictly applied the ordinance.

MR. DAVIS: So I would just make a motion that this variance be granted based on the four criteria listed on page 2 of 6 in section H?

CHAIR TURNER: And you would need to go through those four criteria and explain why you decided that.

MR. HASTY: The applicant has to show why, how they qualify, how they are met. For instance, the first one unnecessary hardship as a result of the application of ordinance could be because the land was surveyed incorrectly.

CHAIR TURNER: So we'd make a motion that would be something like we'd like to make a motion to grant the variance based on the fact that the unnecessary hardship would result in strict application of the ordinance. R30 requires 30,000 sq. ft. and they only have 27,204 and it's not through their own fault. DOT has come in and taken part of their property. That there are conditions peculiar to this property, the location, the size, and the topography. The size particularly is what's been reduced from originally based on DOT and what they're claiming is a faulty survey. And that the special circumstances are not the result of the actions of the applicant. The applicant didn't do this, DOT came in and the survey they say is incorrect. So they really didn't do anything to create their own problem. And that

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this requested variance will be consistent with the spirit, purpose, and intent of the ordinance, and that public safety is secured, and justice is achieved. So that is the motion.

Chair Turner made a motion to grant the variance based on the fact that the unnecessary hardship would result in strict application of the ordinance. R30 requires 30,000 sq. ft. and they only have 27,204 and it's not through their own fault. DOT has come in and taken part of their property. That there are conditions peculiar to this property, the location, the size, and the topography. The size particularly is what's been reduced from originally based on DOT and what they're claiming is a faulty survey. And that the special circumstances are not the result of the actions of the applicant. The applicant didn't do this, DOT came in and the survey they say is incorrect. So they really didn't do anything to create their own problem. And that this requested variance will be consistent with the spirit, purpose, and intent of the ordinance, and that public safety is secured, and justice is achieved. Ms. Lucas-Moore seconded the motion. The motion passed unanimously.

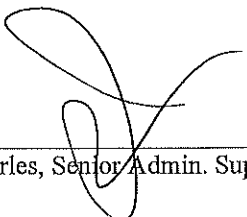
	IN FAVOR
TURNER	YES
DAVIS	YES
AMOS	YES
MULLINS	YES
LUCAS-MOORE	YES

11. DISCUSSION/UPDATE(S)
There were none.

Mr. Davis made a motion to adjourn. Ms. Lucas-Moore seconded the motion. The motion passed unanimously.

	IN FAVOR
TURNER	YES
DAVIS	YES
AMOS	YES
MULLINS	YES
LUCAS-MOORE	YES

Meeting adjourned at 6:33 pm.



Nikia Charles, Senior Admin. Support Spec.



George Turner, Chairman