

VANCE COUNTY BOARD OF ADJUSTMENTS

The Vance County Board of Adjustments met at a regular and duly advertised meeting on December 20, 2011 at 4:00 p.m. in the Commissioners Meeting Room of the Vance County Administrative Building at 122 Young Street in Henderson, NC.

MEMBERS PRESENT

Agnes Harvin – Chairperson
Ruth Brummitt – Vice Chairperson
Phyllis Stainback
Rev. Roosevelt Alston
Alvin Johnson, Jr.
Thomas Shaw

STAFF PRESENT

Jordan McMillen
Jonathan Care, County Attorney

MEMBERS ABSENT

Blake Haley

Chairperson Harvin called the 1st meeting of the Board of Adjustment to Order and asked for the county attorney to make some remarks.

County Attorney Jonathan Care gave the Board an overview of the process and standards that should be followed by the Board in making quasi-judicial decisions. Mr. Care explained the role of the county staff as an additional resource to gain facts and evidence in making a decision and he also explained his legal role as the attorney for the Board. Mr. Care also explained the importance of recognizing and acknowledging conflicts of interest as board members.

Chairperson Harvin declared the public hearing open.

BOA CASE NO. 20111220-1; Luther Scott (owner), Cornerstone General Contracting (applicant) – Variance

Chairperson Harvin asked Mr. McMillen to present the staff report. Mr. McMillen presented the Staff Report:

The applicant is requesting a variance from the maximum height allowance of 35 feet as per section 3.2.1 of the zoning ordinance to allow a single family residence roof to extend to a height of 40.4 feet.

Exhibits as follows:

- Exhibit 1.** Application
- Exhibit 2.** Recorded Survey (PB Y-56)
- Exhibit 3.** Site Plan and House Plan
- Exhibit 4.** Adjoining Owners Map and 2010 Aerial
- Exhibit 5.** Variance check sheet

Findings

1. The property is owned by Luther Scott.
2. The request is for a variance from the maximum height allowance of 35 feet as per section 3.2.1 of the zoning ordinance to allow a single family residence roof to extend to a height of 40.4 feet.
3. The property is located at 250 Waterstone Lane, Henderson, NC; more specifically identified as a portion of the parent tract 0312-01005 following the creation of the Peninsula at Kerr Lake Subdivision.
4. The lot is currently vacant and consists of 26.871 acres (Tract 2) as shown in the recorded survey in Plat Book Y-56 (attached).
5. The lot is currently zoned A-R (Agricultural Residential), which is established for primarily rural, agricultural and sparsely spaced residential development.
6. The lot is directly adjacent to the Peninsula at Kerr Lake Subdivision and access to the lot is through the gated access road of Waterstone Lane.

7. There are no wetlands, floodplains, or streams that interfere with the property.
8. A Zoning permit was issued on 11-09-2011 to allow the work to begin with a maximum height of 35 feet.
9. The application requesting a variance to 40.4 feet in height was filed on November 14, 2011.
10. The adjoining property owners were notified on December 10, 2011.
11. The property was posted on December 8, 2011.
12. The legal notice was run on December 7th and 11th, 2011.

Staff Comments

The applicant is proposing to build a 2 story single family dwelling consisting of 5 bedrooms, a guesthouse and a barn. The Vance County Zoning Ordinance allows this type of use within the A-R zoning as long as all requirements of section 3.2.1 are met. However this property and the proposed dwelling would extend beyond the 35 feet height requirement for this zone. Therefore, before the applicant can construct the dwelling above 35 feet, a variance is required.

Due to the A-R zoning, the lot size requirements, and the open space adjacent to the lot, there should be less chance that other dwellings would be located in close proximity and therefore the height should have minimal negative impacts. Within the gated access area of the Peninsula at Kerr Lake subdivision, this tract is unique in that it is much larger and zoned differently than the main subdivision area. Additionally, the variance appears to assure the public safety, would not be injurious to the neighborhood and has the potential to benefit the neighboring subdivision.

Mr. McMillen further explained that the property has a grade change of roughly 6 feet from front to back which is greater than the variance request.

THOSE SPEAKING FOR THE REQUEST

Bryan Paynter with Cornerstone Development addressed the board. Chair Harvin asked whether the guesthouse was within or connected to the main home. Mr. Paynter responded that they are connected and within the same quarters. Chair Harvin questioned whether additional lots would be developed to the north of the property. The applicant explained that regulations are in place restricting the density of additional development outside of Phase 1 of the Peninsula at Kerr Lake subdivision.

Mr. Paynter made the board aware that 35 feet for a height of a home may cause additional variance request in the future and should be considered for being made higher within the zoning ordinance.

THOSE SPEAKING AGAINST THE REQUEST

None

The Board reviewed the facts presented and the variance check sheet as follows:

1. If the applicant complies with the provisions of the Ordinance, he or she can make no reasonable use of their property.
2. The hardship of which the applicant complains results from unique circumstances related to the applicant's property.
3. The hardship is not the result of the applicant's own actions.
4. The variance will be in harmony with the general purpose and intent of the Ordinance and preserves the spirit of the Ordinance.
5. The granting of the variance assures the public safety and welfare and will not be injurious to the property or improvements in the neighborhood.

DECISION:

Mr. Shaw made a motion to approve the variance request based upon the evidence provided and to adopt the findings of fact as presented. Ms. Brummitt seconded said motion and all present were in favor.

VOTES: 6-0. *Chairperson Harvin declared the public hearing closed.*

Chairperson Harvin declared the public hearing open.

BOA CASE NO. 20111220-2; Charles Thompson (owner and applicant) – Conditional Use Permit

Chairperson Havin asked Mr. McMillen to present the staff report. Mr. McMillen presented the Staff Report:

The applicant is requesting a conditional use permit to allow a Home Occupation Surveying Business to be located within the R-30 Zoning District.

Exhibits as follows:

- Exhibit 1.** Application
- Exhibit 2.** Survey and Site Plan
- Exhibit 3.** Adjoining Owners, Zoning and 2010 Aerial Map
- Exhibit 4.** Conditional Use Permit check sheet

Findings

1. Kay and Charles Thompson are the property owners.
2. The request is for a conditional use permit to allow a home occupation surveying business to be allowed on a parcel zoned (R-30) Residential Low Density.
3. The property is located at 405 Raintree Lane, Kittrell, NC; more specifically identified as tax parcel no. 0463-01028.
4. The lot consists of 1.44 acres and includes an existing single family dwelling.
5. The lot is currently zoned (R-30) Residential Low Density.
6. There are no wetlands, floodplains, or streams that interfere with the property.
7. The application requesting a conditional use permit was filed on 11/29/2011.
8. The adjoining property owners were notified on December 10th and 12th, 2011.
9. The property was posted on December 8, 2011.
10. The legal notice was run on December 7th and 11th, 2011.

Staff Comments

The applicant is proposing to build a 24' x 66' 1 story modular addition to an existing single family dwelling to be used for living space with a small section to be used as an office for land surveying. The use would be considered a home occupation by definition, will have little traffic and will have very little impact on the surrounding area. The property is surrounded on two sides by A-R zoning where similar uses would be permitted by right. This proposed use is in harmony with the area and meets all the requirements set forth in the Ordinance as a home occupation. The proposed use should enhance the value of adjoining property and should not pose any significant issues with public safety.

Chair Harvin asked Mr. McMillen what portion of the addition would be used for the business. Mr. McMillen explained that the office should not encompass more than 25% of the total building area including the existing area and the proposed addition.

THOSE SPEAKING FOR THE REQUEST

Charles Thompson addressed the board. He explained that the existing structure is roughly 1438 sq. ft. and the proposed addition is roughly 1584 sq. ft. The proposal would only include using a 20x24 area for the office and would be well under the 25% requirement.

He explained that he currently operates a land surveying business and would be moving it to be included within the addition on his home. He further mentioned that there would not be a sign advertising the business any greater than the 3 sq. ft. requirement.

THOSE SPEAKING AGAINST THE REQUEST

None

The Board reviewed the conditional use permit check sheet as follows:

1. The use requested is among those listed as an eligible conditional use in the district in which the subject property is located.
2. The use or development is located, designed and proposed to be operated so as to maintain or promote the public health or safety.
3. The use or development complies with all required regulations of the Zoning Ordinance and all applicable specific conditions and specifications.
4. The use or development is located, designed and proposed to be operated so as to maintain or enhance the value of adjoining or abutting property, or that the use is a public necessity;
5. The use or development will be in harmony with the area in which it is to be located and will be in general conformity with the plan of development of the County.

DECISION:

Ms. Stainback made a motion to approve the conditional use permit to allow the home occupation business based upon the evidence provided and to adopt the findings of fact as presented. Additionally the approval would be conditioned upon the business occupying no greater than 25% of the total floor area. Rev. Alston seconded said motion and all present were in favor. VOTES: 6-0.

Chairperson Harvin declared the public hearing closed.

Chairperson Harvin declared the public hearing open. Mr. Care (County Attorney) informed the board that he has represented Mr. Greenway on other personal dealings.

BOA CASE NO. 20111220-3; Larry Greenway (owner), James L. Fields (applicant) – Conditional Use Permit

Chairperson Havin asked Mr. McMillen to present the staff report. Mr. McMillen presented the Staff Report:

The applicant is requesting a conditional use permit to allow a Welding and Auto Repair Business to be located within the G-C-1 Zoning District.

Exhibits as follows:

- Exhibit 1.** Application
- Exhibit 2.** Adjoining Owners, Zoning and 2010 Aerial Map
- Exhibit 3.** Conditional Use Permit check sheet

Findings

1. Larry and Gloria Greenway are the property owners.
2. The request is for a conditional use permit to allow a welding and auto repair business to be allowed on a parcel zoned (G-C-1) General Commercial.
3. The property is located at 2817 US 158 Bypass, Henderson, NC; more specifically identified as tax parcel # 0410 04005.
4. The lot consists of 1 acre and includes an existing storage/warehousing structure.
5. The lot is currently zoned (G-C-1) General Commercial.
6. There is a stream located directly adjacent to the property on the west side; an existing 100' buffer (50 foot each side) exists surrounding the stream.
7. The application requesting a conditional use permit was filed on 11/30/2011.
8. The adjoining property owners were notified on December 10th and 12th, 2011.
9. The property was posted on December 8th, 2011.
10. The legal notice was run on December 7th and 11th, 2011.

Staff Comments

The applicant is proposing to use the existing structure for a welding and auto repair business. The structure has previously been used for storage of autos. Because the property is zoned General Commercial and the proposed use is Industrial in nature, the applicant would require a conditional use

permit. As per Section 6.10 F of the zoning ordinance, Industrial Uses in Non-Industrial Zones must meet the dimensional requirements and must provide screening and buffering items in accordance with sections 4.15 and 4.16 of the zoning ordinance. The property is currently surrounded by wooded areas; in order to meet the buffering requirements the property owner should plant some additional evergreen trees on rear and west side of property. An existing stream is located adjacent to the property on the west side; Section 4.16 A requires a 100' buffer (50' on each side); This buffer is already in place. The property owner and applicant should commit to keeping this in place and not storing materials or disturbing within 50 feet of the creek.

The use meets requirements for lot width, street frontage, setbacks, and maximum lot coverage as per section 3.2.1 pertaining to Industrial uses. The property does not meet the minimum lot size requirements of 80,000 sq. feet for industrial uses. The property owner should recombine land on the south side in order to meet the lot size. NC DOT will not require a driveway permit as this is a similar use to its previous use.

The property is located at a crossroads area and various land uses are present in the general vicinity including Light Industrial. The use of the property for Industrial use is listed as an eligible conditional use and is in harmony with the general surrounding area and plan for development in the county.

Mr. Johnson asked whether planting trees on the south side would be necessary following the recombination being that the area to the south is currently wooded. Mr. McMillen mentioned that the ordinance does state and the board may allow the existing vegetation to satisfy the buffer requirements.

The board discussed the tree type that would be suitable as a buffer. Mr. McMillen mentioned that the ordinance talks about evergreen type trees.

THOSE SPEAKING FOR THE REQUEST

James Fields (applicant) and Larry Greenway (property owner) addressed the board. Mr. Greenway presented photographs of the property and explained that the building is completely surrounded by wooded areas. Ms. Brummitt asked the age of the timber surrounding the property. Mr. Greenway explained that it is over 30 years old.

Mr. Fields explained that this is the ideal facility for his business which involves welding of electrical fixtures and light mechanics. He mentioned that there would not be many people or vehicles there and equipment would be minimal.

Mr. Johnson questioned how much land was needed to meet the 80,000 sq. foot minimum and whether the entire lot was needed on the south side to meet that requirement. Mr. McMillen mentioned that the existing lot is 1 acre and the lot to the south is approximately an additional 1.8 acres. The entire area of the lot to the south would not be necessary to meet the minimum size for the subject lot.

THOSE SPEAKING AGAINST THE REQUEST

None

The Board reviewed the conditional use permit check sheet as follows:

1. The use requested is among those listed as an eligible conditional use in the district in which the subject property is located.
2. The use or development is located, designed and proposed to be operated so as to maintain or promote the public health or safety.
3. The use or development complies with all required regulations of the Zoning Ordinance and all applicable specific conditions and specifications.
4. The use or development is located, designed and proposed to be operated so as to maintain or enhance the value of adjoining or abutting property, or that the use is a public necessity;

5. The use or development will be in harmony with the area in which it is to be located and will be in general conformity with the plan of development of the County.

DECISION:

Ms. Brummitt made a motion to approve the welding and auto repair business subject to having evergreen trees planted on the south and the west side to act as a buffer and subject to recombining the lot to bring its size to the necessary minimum size of 80,000 sq. feet. Additionally the motion was to adopt the findings of fact as presented. Mr. Johnson seconded said motion and all present were in favor.

VOTES: 6-0. *Chairperson Harvin declared the public hearing closed.*

Chairperson Harvin declared the public hearing open.

BOA CASE NO. 20111220-4; Eastern Minerals, Inc (owner and applicant) - Variance

Chairperson Havin asked Mr. McMillen to present the staff report. Mr. McMillen presented the Staff Report:

The applicant is requesting a variance from the minimum setback requirements as per section 3.2.11 of the zoning ordinance to allow an industrial structure to be located within 2.5 feet of the property line.

Exhibits as follows:

- Exhibit 1.** Application
- Exhibit 2.** Site Plan
- Exhibit 3.** Adjoining Owners, zoning map and 2010 Aerial
- Exhibit 4.** Variance check sheet

Findings

1. The property is owned by Eastern Minerals, Inc.
2. The request is for a variance from the minimum setback requirements as per section 3.2.11 of the zoning ordinance to allow an industrial structure to be located within 2.5 feet of the property line.
3. The property is located along US 1 Bypass and is accessed off of Eastern Minerals Road; more specifically identified as tax parcel 0453 05020.
4. The lot is currently zoned L-I (Light Industrial), which is established and designed to promote sound, permanent, light industrial development and to protect abutting or surrounding residential areas from any undesirable aspect of such use.
5. The lot is directly adjacent to the Henderson-Vance Industrial Park and is surrounded by land zoned General Commercial and Light Industrial. There is no residential property adjacent to the property.
6. The proposed structure will not require fire rating in the walls due to the great distance between the proposed structure and the center line of the US 1 Bypass.
7. There are no floodplains or streams that interfere with the property or proposed structure.
8. The application requesting a variance was filed on December 2, 2011.
9. The adjoining property owners were notified on December 12, 2011.
10. The property was posted on December 8th, 2011.
11. The legal notice was run on December 7th and 11th, 2011.

Staff Comments

The applicant is proposing to build a 21' x 110' one story pre-engineered metal building that will include two loading silos (each 9' diameter by 35' tall) and slots for two additional silos in the future. The location of this structure would be 2.9' from the property line at one end and 4.3 feet from the property line at the other end. The exact location of the structure is critical to the activities of the business as a railroad spur is currently built at this location and is necessary as a part of this production flow.

It appears that the proposed structure does meet the requirements of a hardship; without the variance the business cannot operate this aspect of the business in light of the fact that the railroad spur is so critical to their operations. The unique circumstance is directly related to the size, shape and orientation of the

property along with the critical location of the railroad spur. The structure will not fit in any other location on the lot that would fit into the production flow of the industry. Additionally, the hardship is not the result of the applicant's own actions; the building was present in 1985 and in 1989 NC DOT took the necessary land with the construction of US 1 Bypass. Therefore, the hardship is not a result of the applicant's own actions.

The variance would be in harmony with the purpose of the ordinance, particularly being that setbacks are established for safety reasons such as fire separation. Because of the great distance between the proposed structure and the US 1 Highway (greater than 80 feet) the building code will not even require fire rating in the structure. The structure would meet the intention of the Light Industrial Zoning category in that any abutting or surrounding residential property would have adequate separation and thus protection.

Chairperson Harvin questioned whether this was an addition to an existing building. Mr. McMillen responded that the proposed building would be connected to an existing structure and would be integral in the operation of that existing structure.

THOSE SPEAKING FOR THE REQUEST

Charles Gordon (Plant Manager) addressed the board and mentioned that they were chosen by their company for this site and that this would be the beginning of even greater expansion in the future. Mr. Gordon mentioned that they currently have 31 employees. He mentioned that further development should be concentrated away from the property line.

THOSE SPEAKING AGAINST THE REQUEST

None

The Board reviewed the variance check sheet as follows:

1. If the applicant complies with the provisions of the Ordinance, he or she can make no reasonable use of their property.
2. The hardship of which the applicant complains results from unique circumstances related to the applicant's property.
3. The hardship is not the result of the applicant's own actions.
4. The variance will be in harmony with the general purpose and intent of the Ordinance and preserves the spirit of the Ordinance.
5. The granting of the variance assures the public safety and welfare and will not be injurious to the property or improvements in the neighborhood.

DECISION:

Rev. Alston made a motion to approve the variance request based upon the evidence provided and to adopt the findings of fact as presented. Ms. Stainback seconded said motion and all present were in favor. VOTES: 6-0. *Chairperson Harvin declared the public hearing closed.*

OTHER BUSINESS: The Board discussed the meeting schedule for 2012 and adopted the schedule. The schedule includes having a meeting on the 2nd Thursday of each month at 4 p.m. Attached to the meeting minutes is the official meeting schedule for 2012. Motion by Ms. Brummit; Seconded by Rev. Alston; Approved 6-0.

ADJOURNMENT: There being no further business, Chairperson Harvin declared the meeting adjourned.