



AGENDA
Regular Board of Adjustment Meeting
September 14, 2021 - 6:30 PM
Meeting Location:
Town Hall
101 Huntersville-Concord Road
Huntersville NC 28078

1. Roll Call, Determination of Quorum

Quorum was determined, and Chairman Cecil called the meeting to order.

Regular Members in attendance: Chairman E. Cecil, Vice-Chairman P. Jacobson, S. Genenbacher, J. Bradshaw, J. Loucks, and M. Bennett.

Regular Member Absent: K. Burton

Alternate Members present: K. Bray, J. Carbonell, and J. Passarelli serving as a voting member.

Chairman Cecil read the conflict of interest disclosure statement and asked all Board members if there was any conflict. There was no conflict stated.

Prior to testimony, a group attestation was completed for all new parties involved or giving testimony to the case. This included: Chris Stanley, 3715 Northside Parkway Atlanta, GA and Chris Tinklenberg 200 South Tryon, #200 Charlotte NC.

2. Approval of Minutes

2.A. Consider approval of the August 10, 2021 Regular Meeting Minutes

J. Bradshaw made a Motion to Approve the August 10, 2021, minutes. J. Passarelli seconded the motion. The motion passed (7-0).

3. Hearing of Cases

3.A. Variance 21-05, 12802 Jamesburg Drive

Chairman Cecil explained that the Board would like to reopen questions.

Lauren Speight, Planner I (also referred to herein as "staff") presented, and entered the Staff Report into the record through verbal testimony as indicated below, and written documentation, which is attached hereto as Exhibit A1, and incorporated herein by reference.

L. Speight explained that the mitigation plan presented by the applicant has been approved by all parties. She then identified on the site plan the area being mitigated and the area that will be

specified for tree save.

Chairman Cecil asked how the mitigation compensates for the two auxiliary creeks. Staff responded that the mitigated area was previously identified for specimen tree save but will now be completely undisturbed for perpetuity.

Chairman Cecil asked how the two streams got onto the CAD drawing during the later cycle but not from the beginning. Austin Watts 200 S Tryon Street, #200 Charlotte NC responded that they were imported from the beginning however the layer which caused those streams to be visible was not turned on until later.

Chairman Cecil asked Chris Tinklenberg 200 South Tryon, #200 Charlotte NC if he walked the site and observed the streams and if he informed them of the streams. He stated that he did observe the streams and the information is uploaded digitally from his findings into CAD.

Chairman Cecil asked if it was human error, how does this type of human error occur and was it intentional. A. Watts responded there are thousands of options, and it was human error that had it inadvertently turned off.

J. Passarelli asked if the omitted information was present at the time that the land was presented to the Town, if the outcome would have been any different from what is being considered today. A. Watts responded it would not, the request would have been the same, but it would have been made before the start of the construction. Staff responded that variance and mitigation options would have been the same.

Chairman Cecil asked if there was anything that could have been done differently with the building to avoid the streams. A. Watts responded that the approximately 30' vertical aspect of the topography and the streams would have forced the building to be approximately half of its total size.

S. Genenbacher asked if any part of the streams still remain since the site plan appears to have only affected about one-third of the area and if any study has been done to identify if the water that was there which will now flow to the catch pond, be cleaned and filtered and then continue on in the same stream has caused damage or improvement. A. Watts responded that the streams are completely removed and that due to Huntersville Ordinances which require water quality measures all of the water must now flow through the two parallel sand filters before going into the same stream.

A. Watts commented that the mitigation plan is a 2 to 1 so there is approximately double the square footage being preserved and that effectively makes the corner lot unbuildable.

The property owner, Chris Stanley, 3715 Northside Parkway Atlanta, GA commented that the process was not intentional or to cut corners. The mistake was human error and as soon as it was identified, all of the correct parties including Army Corp of Engineers and NCDEQ permits have been obtained for the impact.

P. Jacobson commented that the failure may not have been on purpose but there was in addition to a human error, an oversight error and a duty and responsibility that being the agent in charge of this involves.

C. Tinklenberg submitted photos of the streams in question from his initial survey of the land. J. Bradshaw made a Motion to Admit the evidence as Exhibit A without objection. In response to the statement on the oversight duties, as soon as the error was identified the owner was notified, the Army Corp of Engineers, NC Water Resources and the Town of Huntersville to determine a path forward. While this does address the buffer impact, the Army Corp of Engineers deemed it a minimal impact.

S. Genenbacher asked Staff if Mecklenburg County has accepted the mitigation and asked what the options are for the applicant if the Board does not grant the variance. Would they have to remove the

parking lot and would we then lose the tree save? Staff responded that they would be required to remove the parking lot and the tree save mitigation would likely still be required as the streams were already impacted.

Chairman Cecil closed the public discussion and asked the Board if they had any comments.

J. Passarelli commented that the result appears to be the same that would have been achieved if there had been no error and the applicant had come to the Board prior to construction.

Chairman Cecil commented that the third requirement has not been met because it specifically states that the hardship did not result from actions taken by the applicant. The actions were not taken by their applicant, but they were taken by their agent. Agency law states that the principle is responsible for the actions of the agent. Therefore, it is his position that item 3 has not been met.

J. Passarelli disagreed with Chairman Cecil and stated that the negligence is being judged versus the circumstances that would have existed without the negligence which to his understanding it is not the role of the Board to judge on the applicant's actual conduct. The situation is that if this were presented at the outset of construction it would be no significant difference from what is being considered at the moment. The only intervening factor is the negligence. If you view the situation from the initial construction that the issue of agency responsibility would not exist because it would have been an early detection which would have resulted in an application that would have been virtually identical to what is being considered now.

Chairman Cecil stated he agrees with the statement, however, that is not what is being presented now. It is being presented after the negligence. The situation as it stands now is hardship number 3 has not been met because they were caused by the agent representing the applicant.

P. Jacobson seconded Chairman Cecil's point and from a technical point item 3 has not been met. He continued that this does not mean that the variance should not be granted. It means that that point was not met. Personally, he agrees we would likely have ended up at this same point and while it bothers him that it is out of order there is a need to be pragmatic.

Chairman Cecil commented that he is not here to change any possible outcome but rather as a Chair and an attorney he is looking at what agency law is and whether it affects the voting, it may not but to him and to others we would not be here on this issue, we would have four clear hardships had this been brought up prior.

Jacob Glass, Staff Attorney requested to make a point of clarification. Chairman Cecil acknowledged. J. Glass stated that all hard hardship items must be met for the granting of a variance. Chairman Cecil stated that the Board is not bound to that requirement, they are quasijudicial. J. Glass restated that all hard hardship items must be met for the granting of a variance. Chairman Cecil commented that the Board has granted variances when all four hardships have not been met previously. J. Glass stated that the Board has not been correct in that.

J. Passarelli objected to the intervention of outside individuals that are not the Boards attorney. Chairman Cecil followed up with the statement that the Board is an equitable Board and can make equitable decisions. The meeting of all four hardships is the technical requirement however, the Board is quasijudicial and acts as judge, if a determination that three of the four hardships have been met the Board may then vote on the item as they deem equitable.

J. Passarelli made a Motion to Approve V21-05, the Board of Adjustment finds that the request meets four of the four criteria for granting a variance. The Board grants Variance 21-05 and incorporates by reference all of the findings of fact and testimony that have been presented by staff and the applicant.

Chairman Cecil commented that even though hardship three was not technically met the Boards motion

finds all four have been met.

J. Bradshaw seconded the motion. The motion passed unanimously (7-0).

4. Other Business

Chairman Cecil commented that he has not been able to meet with the three alternates regarding the corrections to the Rules of Procedure. He then reviewed the potential scheduling for October and asked the Board if they would have any objection to a Special Meeting being called after the Rules of Procedure have been updated by himself and P. Jacobson. There was no objection.

5. Adjourn

J. Passarelli made a Motion to Adjourn. M. Bennett seconded the motion. The motion passed unanimously (7-0).