

TOWN OF FUQUAY-VARINA  
BOARD OF ADJUSTMENT REGULAR MEETING  
April 12, 2021

CALL TO ORDER

*Vice-Chair Jeff Jaeger* called the Fuquay-Varina Board of Adjustment regular meeting to order on Monday, April 12, 2021, at 7:00 p.m.

Board Members Present:     Jeff Jaeger (Vice-Chair)  
                                      Genel Webb  
                                      William Hartman  
                                      Michelle Braxton  
                                      Qisoundra Flowers

Board Member(s) Absent:   Mike Dorman (Chair)  
                                      Dan Miller

Others Present:                Planning Director Pam Davison  
                                      Clerk Eva Mayfield  
                                      IT Director Scott Clark  
                                      Assistant Town Manager Jim Seymour  
                                      Town Attorney James Adcock

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Town Attorney James Adcock swore in the witnesses for the meeting.

- Christopher Simmons – Petitioner (virtual)
- Tanya Simmons – Witness (virtual)
- Pamela Davison – Planning Director (In Person)

Call to Order

*Vice Chair Jeff Jaeger* called the meeting of the Board of Adjustment to order, providing the declaration of Quorum.

Virtual Meeting Instructions

*Planning Director Pam Davison* read aloud the virtual meeting protocol and instructions for public participation. She announced that anyone wishing to participate in the meeting would need to either join using the Zoom media application or call into the Zoom meeting with the provided list of phone numbers on the Town’s website.

Approval of The Minutes

**Agenda Item No. 2.A:** – Approval of the Minutes from the January 11, 2021 Meeting.

The January 11, 2021 minutes of the regularly scheduled Board of Adjustment meeting were presented for approval.

*Vice-Chair Jeff Jaeger* requested one (1) correction be made of adding IT Director Scott Clark to the others present section on the January 11, 2021 minutes.

Motion – Approve the minutes from the January 11, 2021 meeting of the Board of Adjustment with corrections requested by *Vice-Chair Jeff Jaeger*.

MOTION: William Hartman  
SECOND: Genel Webb  
MOTION RESULT: Passed Unanimously (5-0)

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Public Hearings

**Agenda Item No. 4.A:** – Special Use Permit Petition - 5728 Hilltop Road - PIN 0687196431 - BOA-SUP-2021-02.

Purpose - The purpose of this agenda item is to consider a Special Use Permit, BOA-SUP-2021-02, at 5728 Hilltop Road by petitioner Christopher Simmons.

Staff Comments – Planning Director Pam Davison entered the agenda abstract and supporting documents for this agenda item into the official record of the Town.

Finding of facts to be considered –

1. Unnecessary hardship [would/would not] result from the strict application of the Ordinance because...
2. The hardship results from conditions that [are/are not] peculiar to the property, such as location, size, or topography because...
3. The hardship [did/did not] result from actions taken by the applicant or the property owner because...
4. The requested variance [is/is not] consistent with the spirit, purpose and intent of the Ordinance, such that public safety is secured, and substantial justice is achieved because...

Special Use Permit Request – The petitioner is requesting a special use permit for the use of a group home within a residential zoning district as required by Section §9-1255 k. (4) of the Land Development Ordinance (LDO). This use will be in addition to the current and continued use as a residential home. As shown on the submitted plan, the petitioner is not proposing any changes to the existing structure, parking, or access to the site which complies with the Town's current standards. The property has not been the subject of previous cases seen by the Board of Adjustment.

Recommendation – Approve BOA-SUP-2021-02 as presented, under the terms and conditions identified in the applicant's application, testimony, site layout exhibit, and preserving all conditions of the special use permit BOA-SUP-2021-02 not inconsistent therewith. OR Deny BOA-SUP-2021-02 as presented.

Public Hearing – The public hearing was opened for speakers in favor of the petition.

Petitioner Christopher Simmons, 9609 Kennebec Road, Fuquay-Varina, NC 27592 provided responses to the finding of facts.

1. The proposed use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted because the group home is nationally accredited by the Commission on

Accreditation of Rehabilitation Facilities. This accreditation ensures the most stringent safety protocols. The group home is currently located at 7086 Kennebec Road and is being transferred to 5728 Hilltop Road. This group home has been in operation since 2005. Petitioner Christopher Simmons has been operating group homes since 2003 and is known within the industry to provide the most structured, supervised, and safe treatment in the industry. The group home is monitored by multiple local, state, and federal entities multiple times yearly that ensures the safety of the residents and community. The staff at the group home have rigorous trainings to ensure their professionalism and ability to ensure safety and effective treatment.

2. The proposed use meets all required conditions and specifications because the proposed use as a group home meets all required conditions and specifications. There will be four (4) residents in the residence. There are no other group homes within a mile.
3. The proposed use will not substantially injure the value of adjoining property or the use is a public necessity because the proposed group home will not substantially injure the value of the adjoining property. The home will be maintained as a residential family dwelling and will continue to be maintained and improved yearly.
4. The location and character of the proposed use, if developed according to the plan submitted, will be in harmony with the area in which it is to be located and in general conformity with the plan of development of the Town of Fuquay-Varina and its ordinances because the location and character of the group home will be in harmony with the area which it is located. It is also in conformity with the plan of development of the Town of Fuquay-Varina and its ordinances. The home will maintain residential appearance and as such will maintain harmony with the area it is located in.

Petitioner Christopher Simmons also wanted to make a statement that he has been in the profession for over 17 years and is a good quality provider and stated that they do a very good job of serving the community. He also stated that he is the owner of Simmons Boxing located in Angier. Mr. Simmons stated that children are able to do their schooling, therapy, and activities while spending majority of their time there. He stated that he has talked with his neighbors and has more than satisfied any concerns that they may have had. He stated that the founding principal for his organization is safety and security and as a result is able to provide some of the best treatment in the state.

Public Hearing – The public hearing was opened for speakers in opposition to the petition. The Board went into discussion with no speakers in opposition of the petition.

Questions:

*Board Member Michelle Braxton* asked what the ages of the residents in the group home are?

Petitioner Christopher Simmons responded that they work with youth that are between the ages of eight (8) years old to approximately fourteen years old. They work with that age group particularly because they feel once they reach the age of sixteen years old it become difficult to make solid changes. They work hard at cognitive restructuring, explaining that the younger children can grasp the concepts and make those changes.

*Board Member Michelle Braxton* asked Petitioner Christopher Simmons if he is helping the youth with primarily substance abuse or primarily behavioral issues?

Petitioner Christopher Simmons stated that they work primarily with behavioral issues, although they have worked with an individual with substance abuse issues in the past.

*Board Member Genel Webb* clarified with Petitioner Christopher Simmons that his company is licensed to treat four (4) residents and asked if he has a high turnover or discharge rate for residents?

Petitioner Christopher Simmons stated yes, he is licensed to treat four (4) residents. He further stated that a lot of people cannot justify medical necessity to continue care but explained that he does all the clinical operations himself, and his average stay for patients in the group home is anywhere from a year and a half to two (2) years, which allows for the youth to make positive changes. Petitioner Christopher Simmons stated that a study was done, where over the past five (5) years all youth that have graduated his program have not committed any crimes, been hospitalized, or been removed from their home. A total of 40 former patients are on their own with jobs and with the exception of three (3) who are living at home with their parents. This study also included going back 10-15 years. That study showed the vast majority of the youth that graduated his program have not been convicted of additional charges and are all successfully employed. He explained that this study shows the positive and successful results that his program has on the youth.

*Vice-Chair Jeff Jaeger* closed the public hearing.

The Board voted on the Findings of Fact as follows:

**Findings of Fact #1**

*Board Member William Hartman* made a motion that the proposed use will not materially endanger the public health or safety if located where proposed and developed according to the plan submitted, because the structure will be remaining the same and providing adequate facilities for the inhabitants. Upon second by *Board Member Michelle Braxton*, the board voted unanimously in favor of the motion.

**Findings of Fact #2**

*Board Member Genel Webb* made the motion that the proposed use does meet all required conditions and specifications because there will be four (4) residents in the home, and there are no other group homes within a mile as it relates to the specifications. Upon second by *Board Member William Hartman*, the board voted unanimously in favor of the motion.

**Findings of Fact #3**

*Board Member William Hartman* made the motion that the proposed use will not substantially injure the value of adjacent property or the use as a public necessity because the exterior character of the property is being maintained as a residence, as it currently exists. Upon second by *Board Member Michelle Braxton*, the board voted unanimously in favor of the motion.

**Findings of Fact #4**

*Board Member Michelle Braxton* made a motion that proposed use will be in harmony with the area which it is to be located and in general conformity with the plan and development of the Town and its ordinances because the petitioner has contacted his neighbors to no opposition, and the proposed development is in compliance with Town plans.

Upon second by *Board Member William Hartman*, the board voted unanimously in favor of the motion.

Motion – Approve BOA-SUP-2021-02 as presented, under the terms and conditions identified in the applicant's application, testimony, site layout exhibit, and preserving all conditions of the special use permit BOA-SUP-2021-02 not inconsistent therewith.

MOTION: Jeff Jaeger  
SECOND: William Hartman  
MOTION RESULT: Passed Unanimously (5-0)

New Business

**Agenda Item No. 5.A:** – Fuquay-Varina Board of Adjustment By-Laws Amendment

Purpose

The purpose of this agenda item is to receive information related to a proposed amendment of the Board of Adjustment By-Laws to reflect recent statutory updates per the North Carolina General Statutes Chapter 160D.

Staff Comments – Planning Director Pam Davison entered the agenda abstract and supporting documents for this agenda item into the official record of the Town.

Recommendation - No Action Required - Receive as Information.

*Vice Chair Jeff Jaeger* confirmed that the Board of Adjustment is not voting on the agenda item but only receiving as information.

*Planning Director Pam Davison* explained that the regulation states that the Board of Adjustment has to hear it once and then approve it at a subsequent meeting. Once the amendment is approved the oaths can be administered at the subsequent meeting.

*Vice Chair Jeff Jaeger* asked if the amendments are based off of North Carolina General Assembly Session Laws 2019-111, -2023 and 2020-25.

*Planning Director Pam Davison* confirmed that to be correct.

*Vice Chair Jeff Jaeger* stated that they were provided a marked-up copy of the by-laws and asked if anyone had any questions or comments on any of the by-laws.

*Board Member William Hartman* stated that it references at the very top that it was amended May 10<sup>th</sup>, which is a future date. Asked if this was to be heard at the next meeting?

*Planning Director Pam Davison* stated she is not sure why that date was noted.

*Vice Chair Jeff Jaeger* stated since we are just hearing this item at this meeting then

our next meeting date is May 10<sup>th</sup>?

*Planning Director Pam Davison* stated that May 10<sup>th</sup> is the proposed approval date.

*Board Member Genel Webb* asked *Planning Director Pam Davison* if there are no other agenda items for the May 10<sup>th</sup> Board of Adjustment date, would the Board still meet just to hear the by-laws?

*Planning Director Pam Davison* that the goal is to get all the Chapter 160D updates approved prior to the July 1st, 2021 deadline. Staff may proceed with having a meeting specifically to hear the by-laws. *Planning Director Pam Davison* asked *Town Attorney James Adcock* if that meeting could be a virtual meeting?

*Town Attorney James Adcock* confirm that the meeting could be virtual.

*Planning Director Pam Davison* stated that at this time there does not seem to be any applications submitted for the May Board of Adjustment meeting, but staff may propose a May meeting just to approve the by-laws, however, the oaths would not be administered until an in-person meeting occurs.

*Town Attorney James Adcock* confirmed that the oaths will be administered in person.

*Vice Chair Jeff Jaeger* asked if staff knew what the oaths state?

*Town Attorney James Adcock* stated that it is a statutory oath, and that it would be sent out to everyone with the agenda for the appropriate meeting.

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*Vice Chair Jeff Jaeger* stated that he believed there will be a May 10<sup>th</sup> Board of Adjustment meeting even if they meet virtually in order to vote on the bylaws. *Vice Chair Jeff Jaeger* asked once the Board of Adjustment votes then it will go to the Planning Board or Board of Commissioners meeting?

*Town Attorney James Adcock* stated that it will then go to the Town Board.

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ADJOURN – 7:43 p.m.

Motion: William Hartman  
Second: Genel Webb  
Motion Results: Passed unanimously (5-0)

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Eva Mayfield, Clerk to the Board

  
\_\_\_\_\_  
Jeff Jaeger, Vice - Chair

6-14-21

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date