

TOWN OF FUQUAY-VARINA
BOARD OF ADJUSTMENT REGULAR MEETING
July 13, 2021

CALL TO ORDER

Chair Michael Dorman called the Fuquay-Varina Board of Adjustment regular meeting to order on Monday, July 13, 2021, at 7:01 p.m. Attendees were participating both virtually and in person.

Board Members Present: Michael Dorman (Chair)
Jeff Jaeger (Vice-Chair)
Genel Webb
William Hartman
Dan Miller
Angela Parsons

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

Others Present Virtually: Assistant Town Manager Jim Seymour

Call to Order

Chair Michael Dorman called the meeting of the Board of Adjustment to order.

Approval of The Minutes

Agenda Item No. 2.A: – Approval of the minutes from the June 14, 2021, meeting.

The June 14, 2021, minutes of the regularly scheduled Board of Adjustment meeting were presented for approval.

Vice-Chair Jeff Jaeger requested one (1) correction be made to page 33, Finding of Fact #3, by correcting the result of the motion from six (6) in opposition and one (1) in favor to six (6) in favor and one (1) in opposition to the motion that the proposed use will substantially injure the value of adjoining property. Motion for Finding of fact #3 passed as being denied in the June 14, 2021, Board of Adjustment minutes.

No other corrections were stated or requested.

Motion – Approve the minutes from the June 14, 2021, meeting of the Board of Adjustment with corrections requested by *Vice-Chair Jeff Jaeger*.

MOTION: Jeff Jaeger
SECOND: William Hartman
MOTION RESULT: Passed Unanimously (6-0)

Chair Michael Dorman advised that anyone wanting to submit testimony to the Board must be sworn in.

Clerk to the Board of Adjustment Eva Mayfield swore in each expected speaker for the meeting.

- David Allgood – Petitioner (In Person)
- Don R. Wells – Petitioner’s Attorney (In Person)
- Linda Criscuolo – Petitioner (In Person)
- David Criscuolo – Petitioner (In Person)
- Pam Davison – Planning Director (In Person)

Public Hearings

Agenda Item No. 4.A: – Special Use Permit Petition - 6320 Whitted Road and 0 Whitted Road - PINs 0677195638 & 0677290623 - BOA-SUP-2021-05.

Purpose

The purpose of this agenda item is to consider a Special Use Permit, BOA-SUP-2021-05, at 6320 Whitted Road and 0 Whitted Road by petitioner David Allgood, on behalf of Fuquay-Varina Church of Christ.

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

Special Use Request – The petitioner is requesting a special use permit for the continued use and expansion of a place of worship within a residential zoning district as required by Section §9-1254 t. (1) A. iii. of the Land Development Ordinance (LDO). As shown on the submitted plan, the petitioner proposes a 2,400 square foot outdoor shelter to provide additional meeting space for the existing Fuquay-Varina Church of Christ. Supporting application documents show that an existing wooded area will be retained on site. Additionally, a 4-foot sidewalk is proposed to connect the shelter with the existing parking lot. The Planning Department has determined that existing parking spaces are sufficient for the existing place of worship and the proposed outdoor shelter. The property has not been the subject of previous cases seen by the Board of Adjustment.

Recommendation – Approve BOA-SUP-2021-05 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-2021-05 not inconsistent therewith OR Deny BOA-SUP-2021-05 as presented.

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

Don R. Wells, 201 Glen Road, Suite 2F, Garner, stated that he is the attorney representing the Petitioner on this item, Fuquay-Varina Church of Christ. He stated that with him was Mr. David Allgood who is an elder with Fuquay-Varina Church of Christ and who is also a licensed contractor and will oversee the construction of the shelter for the church. He then requested that Mr. Allgood present the evidence to the Board of Adjustment.

David Allgood, 5501 Erinvale Court, Holly Springs, provided responses to evidence to the Findings of Facts:

Finding of Fact #1: The proposed use will not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted. David Allgood explained that the property has been a church since 2007, they are wanting to add an outdoor space to be used as an additional meeting space. He explained that the proposed shelter will go in at the back right of the property behind the existing building.

Finding of Fact #2: The proposed use meets all required conditions and specifications. David Allgood explained that the existing vegetation will be kept in place, they are going to remove trees where the proposed shelter will be but keep the existing vegetation all the way around it.

Finding of Fact #3: The proposed use will not substantially injure the value of adjoining property or use as public use is a public necessity. David Allgood stated that there is not going to be any change in the use of the property. He explained that they needed additional space. They do not anticipate any extra traffic as a result of the proposed shelter. They are not adding days of worship.

Finding of Fact #4: The location and character 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. David Allgood stated that the proposed shelter will be located behind the existing building and will be barely visible from the street. He explained that the shingles and materials used on the gable ends will match the existing building.

David Allgood provided the responses for contributing factor descriptions.

1. Circulation – The access from the wooded road will remain the same with no changes made.
2. Parking & Loading Location Areas – No additional parking will be needed or added. A sidewalk from the proposed shelter to the existing building will be added. The sidewalk will go along the back side of the building, they will have handicap access for several of their handicap members of the church.
3. Service Entrance & Areas (locations of service areas and dumpsters) – There are no dumpsters. He explained that they have a regular trash can that is at the front of the building behind the shelter that is not visible.
4. Lighting – There are existing lights and they do not anticipate adding any additional lighting. He explained that one (1) light is in the back corner of the parking lot.
5. Utilities – The utilities will remain where they are currently.
6. Open Space & Landscaping – David Allgood explained that he also submitted photos to show the existing vegetation from where the proposed shelter will be and are not able to see houses in either direction.
7. Environmental Protection – David Allgood explained that they are not going to disturb the vegetation.

8. Effect on Adjacent Property - Surrounding houses cannot see the proposed shelter, and surrounding houses will not be visible from the proposed shelter. He explained that they will only disturb a little more than 92 feet from the Braxton property line and 86 feet from the Jones property line. He explained that the church is a non-instrumental church. They will not have bands playing in the proposed shelter so as not to disturb their neighbors. He stated that he hopes their singing will not disturb the surrounding neighbors.
9. Compatibility – The proposed shelter will be behind the existing building in the wooded area and will not change the view from the street substantially.

Chair Michael Dorman asked the board members if anyone had any questions for the petitioner?

Questions:

Board Member Dan Miller asked Mr. Allgood if there will be outdoor singing?

David Allgood responded by explaining if they were to have outdoor service, then they would have outdoor singing. Then explained during COVID they would meet on the front lawn of the church and he doesn't believe that they disturbed the surrounding neighbors with that activity.

Public Hearing was closed with no other questions and no other speakers in favor or in opposition.

Board Discussion on Finding of Fact #1

Chair Michael Dorman stated that since no one else wishes to speak the Board will go into discussion and stated that he felt there would not be much disruption to vegetation and felt there were no setback issues with the request.

There was no other discussion from the Board.

The Board voted on the Findings of Fact as follows:

Finding of Fact #1: *Board Member Jeff Jaeger* made a motion that the proposed use will not materially endanger the public health or safety if located were proposed and developed according to the plan, as submitted, because no additional access, or parking will be needed, and there will be no additional traffic, other than what is already there. Upon second by *Board Member Dan Miller*, Finding of Fact #1 was unanimously approved.

Board Discussion on Finding of Fact #2

Chair Michael Dorman stated that Finding of Fact #2 states the proposed use meets or does not meet all required conditions and specifications. He explained that the petitioners existing vegetation will be kept in place to provide a buffer.

No other discussion from the Board.

The Board voted on the Finding of Fact as follows:

Finding of Fact #2: Board Member William Hartman made a motion that the proposed use meets all required conditions and specifications, because of the retaining of the buffer and no additional outdoor electronic music will be played. Upon a second by Board Member Genel Webb, Finding of Fact #2 was unanimously approved.

Board Discussion on Finding of Fact #3

Chair Michael Dorman stated that Finding of Fact of #3 states the proposed use will or will not substantially injure the value of the adjoining property or the use is a public necessity. He stated that the Petitioner stated that there is not going to be any change to the use of the property. It is currently a church and will remain as a church when they are done. They just need additional space to get together.

No other discussion from the Board.

The Board voted on the Finding of Fact as follows:

Finding of Fact #3: Board Member Dan Miller made a motion that the proposed use will not substantially injure the value of adjoining property, or the use as a public necessity, because the land use is consistent with the proposed use and viewsheds from adjoining properties will be maintained. Upon a second by Board Member William Hartman, Finding of Fact #3 was unanimously approved.

Board Discussion on Finding of Fact #4

Chair Michael Dorman stated that Finding of Fact #4 states the location and character of the proposed use, if developed in accordance with the plan submitted will or will not be in harmony with the area in which it is to be located in a general conformity with the plan of development of the Town of Fuquay-Varina and its ordinances. The Petitioner's statement was that the shelter will be located in the wooded area with minimal changes proposed to the vegetation.

No other discussion from the Board.

The Board voted on the Finding of Fact as follows:

Finding of Fact #4: Board Member Genel Webb made a motion that 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 planned development of the Town of Fuquay-Varina and its ordinances because the shelter will be located in the wooded area, there is minimal change to the wooded area. Upon a second by Board Member Angela Parsons, Finding of Fact #4 was unanimously approved.

Motion – Approve BOA-SUP-2021-05 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-2021-05 not inconsistent therewith.

MOTION: Jeff Jaeger
SECOND: William Hartman
MOTION RESULT: Passed Unanimously (6-0)

Agenda Item No. 4.B: – Variance Petition - BOA-VAR-2021-02 - 4104 Ridgebrook Bluffs Drive - PIN 0689661172 - David & Linda Criscuolo

Purpose

The purpose of this agenda item is to consider a variance petition, BOA-VAR-2021-02, at 4104 Ridgebrook Bluffs Drive, Wake County PIN 0689661172, by petitioners David & Linda Criscuolo.

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

Variance Request – The petitioners, David & Linda Criscuolo request a variance to permit a reduction of the side setback by 5-feet from 15-feet to 10-feet. The Town's Land Development Ordinance, Article G Lot & Structure Provisions, Section §9-1300 requires principal structures in Residential Agricultural (RA) zoning district to meet a minimum setback of 15 feet. As shown on the submitted plan, the petitioners propose an attached garage 12.8 feet from the property line to accommodate handicap van parking and access. The request to place the attached garage in this location was originally made to Wake County, under the requirement that principal structures in the R-30 zoning district can be no closer than 10 feet from the property line. Please note that the submitted plan provided by petitioners David & Linda Criscuolo is a prepared recombination plat proposing a shift of the property line between neighboring property 4100 Ridgebrook Bluffs Drive to incorporate a portion of the driveway that is shown on neighboring property, 4100 Ridgebrook Bluffs Drive. All measurements of the proposed attached garage were dimensioned from this future property line as the permit for the attached garage addition with Wake County was contingent on the approval of the recombination plat. During the time petitioners were moving forward with the recombination plat, the ETJ expansion was approved and took effect on December 30, 2019. At this time the subject property was rezoned from Wake County R-30 to Town Residential Agricultural (RA) which in turn increased the side setback from 10-feet to 15-feet, resulting in the requested recombination plat and the subsequent proposed location for the attached garage to be noncompliant. Please note that accessory structures, when attached to a principal building, are to comply with the setback requirements of the principal building in the zoning district in which it is located, per the Town's Land Development Ordinance, Article G Lot & Structure Provisions, Section §9-1300 d. (4).

Recommendation – Approve BOA-VAR-2021-02, under the terms and conditions identified in the petitioner's application, testimony, and site exhibit based on the required Findings of Fact. OR Deny BOA-VAR-2021-02 based on failure to meet the required Findings of Fact OR Deny BOA-VAR-2021-02 as presented.

Chair Michael Dorman asked if any Board Members had any questions for the Town Staff?

Vice Chair Jeff Jaeger asked for clarification as the presentation listed the Variance as BOA-VAR-2021-03 however this is for BOA-VAR-2021-02, correct?

Planning Director Pam Davison stated that she believes that BOA-VAR-2021-02 is to be correct but would verify.

Board Member Angela Parsons asked *Planning Director Pam Davison* what would the setback be for a non-attached accessory building?

Planning Director Pam Davison responded that it can be no closer than eight (8) feet.

Chair Michael Dorman wanted to verify that he understood the Town's presentation. He wanted to clarify that he understood what was stated regarding the petition. *Chair Michael Dorman* explained that he understood that the Petitioner started the process with Wake County, which had a 10 foot setback during the process, but because of COVID and everything else, the extraterritorial jurisdiction (ETJ) took over that area. Now that they are in the ETJ, Fuquay-Varina has a larger setback than Wake County. When they started this process, they were working under the Wake County guidelines, and Fuquay-Varina's guidelines are more stringent than Wake County. The Petitioner is requesting an additional five (5) feet that the ETJ setback guidelines do not allow for, correct?

Planning Director Pam Davison confirmed that to be correct.

Board Member William Hartman asked if it was going to be 10 foot or 12.8 foot from the property line?

Planning Director Pam Davison explained that in Wake County, the side setback was 10 feet, Fuquay-Varina's setback is 15 feet. The way they are currently showing it is 12.8 feet. The Petitioner wanted a little extra, so are requesting the 10-foot setback to accommodate for eaves in case the surveyor was inaccurate. The Petitioner decided to proceed with a 10-foot setback versus a reduction to only 12.8 foot setback, as to be consistent with the previous setback.

Board Member Dan Miller asked if notifications to neighbors made of the public hearing?

Clerk Eva Mayfield confirmed that the Public Hearing notices were mailed to the surrounding neighbors.

Planning Director Pam Davison confirmed that the item is BOA-VAR-2021-02.

Chair Michael Dorman requested the Petitioner to come forward and present evidence.

Linda Criscuolo 4104 Ridgebrook Buffs Drive, Raleigh, provided responses to evidence to the Findings of Fact:

Finding of Fact #1: Unnecessary hardship (would/would not) result from the strict application of the Ordinance because they are unable to build the garage smaller. Linda Criscuolo stated that they need to accommodate her mother, who lives with them and is handicapped. Her mother needs van access with enough room for a wheelchair to get into the van. They also require at least a 10-foot clearance for the vehicle height.

Finding of Fact #2: The hardship results from conditions that are not particular to the property such as location, size topography because, they have invested time energy and design towards this project beginning in July of 2019. They hired Stokes Surveying in Raleigh to make measurements and provide them with a preliminary design, which was on November 4, 2019. The surveyor submitted this to Wake County and Wake County required the Petitioner to only take 664 square feet to satisfy their proposal, Stokes Surveying went back to Petitioner's property and remeasured for 662 square feet as of December 11, 2019.

Linda Criscuolo explained that time had gone by in order for Stokes Surveying to come out remeasure and design the new preliminary. They waited for that to be completed, however, they were not aware the ETJ took effect in December of 2019. Once Stokes Surveying finally resubmitted the new plan COVID-19 presented challenges. Linda Criscuolo explained that they called Wake County to check on what the delay was and was told that due to COVID-19 they were "freezing" the proposals for the time being.

Finding of Fact #3: The hardship did or did not result from actions taken by the applicant or property owner because this was not under their control anymore. Linda Criscuolo stated that they did everything correctly from the beginning in order to be compliant, but due to powers beyond their control it not only significantly delayed plans but now have completely different rules issued to them with Fuquay-Varina's planning and zoning.

Finding of Fact #4: The requested variance is or is not consistent with the spirit, purpose, and intent of ordinance such that public safety secured and substantial justice is achieved. Linda Criscuolo stated that they are only asking for a five (5) foot reduction in order to complete the intended project. It still meets the intent of ordinance, and this property extension will in no way negatively impact any of their surrounding neighbors. Ms. Criscuolo stated that before they began their planning of this project, they approached their neighbors the Solomons, whose home is more than 100 feet adjacent to them. She explained that the Solomons are in favor of their plans. The Solomons told the Petitioner they never understood why the property lines were originally drawn up so that a portion of the Petitioner's lower driveway and mailbox would be a part of their property and not that of the Petitioners. In addition to the building of the garage, the Petitioner stated that it would be nice to correct the issue of the property line to include the Petitioner's lower driveway and mailbox, which was an error made a long time ago, when the home and property lines were originally established. This needs to be done to process the recombination plat. For the variance to be granted, the Solomons will be in support of signing the extra land over to the Petitioner. In the end, all the lots will still be conforming.

Linda Criscuolo stated where it states that effect on the adjacent properties, as far as noise, odor, lighting, traffic, etc., surrounding neighbors are all in support of the proposal, it will not have impact on them. However, it will improve their property values. Most importantly it will establish the correct property lines and have their entire driveway and mailbox be on their property. She stated that as far as compatibility, they were appropriate when they were considered in the Wake County's jurisdiction and will continue to be appropriate now that they are in Fuquay-Varina's jurisdiction. This property will still be residential and compatible with their zoning district in the end.

Public Hearing was closed with no other questions and no other speakers in favor or in opposition.

Chair Michael Dorman stated that it appears that due to the change of jurisdiction the Petitioner was then faced with the property line issue at no fault of their own.

Board Discussion on Finding of Fact #1

Chair Michael Dorman stated that it appears that due to the change of jurisdiction the Petitioner was then faced with the property line issue at no fault of their own. Finding of Fact #1: the unnecessary hardship would or would not result from the strict application of the ordinance because the petitioner stated they would be unable to build the garage smaller because the Petitioner's mother who is handicapped needs van access with enough room for a wheelchair to get in and out of the van. Petitioner needs at least 10 feet of clearance for height.

No other discussion from the Board.

The Board voted on Finding of Fact #1 as follows:

Finding of Fact #1: *Board Member William Hartman* made a motion that an unnecessary hardship would result from the strict application of the ordinance because of the inability of the homeowners to complete the garage extension to handle the handicapped van of the resident. Upon second by *Board Member Jeff Jaeger*, Finding of Fact #1 was unanimously approved.

Board Discussion on Finding of Fact #2

Chair Michael Dorman stated that Finding of Fact #2 states this hardship results from conditions that are or are not particular to the property such as location, size, type of topography because as the Petitioner stated, they have invested time, energy, and design towards the project. They hired Stokes Surveying of Raleigh to make the measurements and give the Petitioner the preliminary design which was on November 11, 2019. The Petitioner submitted this to Wake County. Wake County would allow the Petitioner to take 664 square feet to satisfy their proposal, Stokes Surveying remeasured and got 662 square feet as of December 11, 2019. The Petitioner stated that during since this time, they were not aware that on December 30, 2019, the ETJ project took effect. Once Stokes Surveying finally resubmitted the new plan, COVID-19 was in North Carolina. The Petitioner called to check on the matter with Wake County, in order to find out what the delay was. The Petitioner was advised that due to COVID-19 they were freezing all proposals at that time. Shortly after that, the Petitioner found out the ETJ project had changed the side setback from Wake County's 10 feet to Fuquay-Varina's 15 feet.

There was no other discussion from the Board.

The Board voted on Finding of Fact #2 as follows:

Finding of Fact #2: *Board Member Jeff Jaeger* made a motion that the hardship results from conditions that are peculiar to the property, such as location, size, or topography, because the location of the property was under a different set of rules when this started. The hardship was placed upon the homeowners when the location of the property changed jurisdictionally. Upon second by *Board Member William Hartman*, Finding of Fact #2 was unanimously approved.

Board Discussion on Finding of Fact #3

Chair Michael Dorman stated that Finding of Fact #3 states that a hardship did or did not result from actions taken by the applicant or the property owners because the Petitioner stated that it was not under their control. Petitioner did everything correctly from the beginning. Due to powers beyond their control, not only did it significantly delay their plans, but now are facing a completely different set of rules issued to them by Fuquay-Varina's Planning Department.

There was no other discussion from the Board.

The Board voted on Finding of Fact #3 as follows:

Finding of Fact #3: *Board Member Genel Webb* made a motion that the hardship did not result from actions taken by the applicant or the property owner because their zoning changed. In the end, it was beyond their control. Upon second by *Board Member Angela Parsons*, Finding of Fact #3 was unanimously approved.

Board Discussion on Finding of Fact #4

Chair Michael Dorman read the Petitioner's statement for Finding of Fact #4, the requested variance is or is not inconsistent with the spirit, purpose, and intent of the ordinance such that public safety is secure and substantial justice is achieved because the petitioner statement indicates they only asking for five (5) foot reduction to complete their intended project. This still meets the intent of the ordinance. This property extension will in no way negatively impact any of their surrounding neighbors. Before the Petitioner began their planning of this project, they approached their neighbors the Solomons, whose home is more than 100 feet adjacent to the Petitioner. They are both in favor of the Petitioner's plans. The Solomons told the Petitioner they never understood why the property lines were originally drawn up so that a portion of the Petitioner's lower driveway and mailbox would be a part of their property and not that of the Petitioners.

In addition to the building of the garage, the Petitioner stated that it would be nice to correct the issue of the property line to include the Petitioner's lower driveway and mailbox, which was an error made a long time ago, when the home and property lines were originally established. This needs to be done to process the recombination plat. For the variance to be granted, the Solomon's will be in support of signing the extra land over to the Petitioner. In the end, all the lots will still be conforming.

There was no other discussion from the Board.

The Board voted on Finding of Fact #4 as follows:

Finding of Fact #4: *Board Member Jeff Jaeger* made a motion that the requested variance is consistent with the spirit, purpose, and intent of the ordinance such that public safety is secured and substantial justice is achieved. Because the hardships incurred on the family were not their fault due to the jurisdiction change and justice will be secured based on the original intent of the project when it was under the old jurisdiction. Upon second by *Board Member William Hartman*, Finding of Fact #4 was unanimously approved.


Motion – Approve BOA-VAR-2021-02, under the terms and conditions identified in the petitioner's application, testimony, and site exhibit based on the required findings of fact.

MOTION: William Hartman
SECOND: Genel Webb
MOTION RESULT: Passed Unanimously (6-0)

ADJOURN – 7:44 p.m.

MOTION: William Hartman
SECOND: Dan Miller

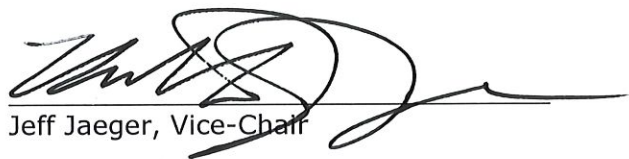
MOTION RESULT: Passed unanimously (6-0)



Eva Mayfield, Clerk to the Board

12/20/21

Date



Jeff Jaeger, Vice-Chair

December 20, 2021

Date