

BOARD OF ADJUSTMENT MINUTES  
Regular Meeting  
Stanly County Commons Meeting Room  
May 11, 2010

**Call to Order**

Chairman Steve Watson called the Board meeting to order at 7:30 p.m. on Tuesday, May 11, 2010, at Stanly County Commons.

**Roll Call**

***Board Members Presiding***

Steve Watson, Chairman  
Grover Stewart, Vice Chairman  
Cathy Bennett, Secretary  
Benton Payne  
Andrew Eades  
Dr. John Eckman  
Richard Cosgrove, Alternate

***Absent***

Kevin Brickman, Alternate  
Todd Swaringen

**Staff Attending**

Linda Evans, CZO, Planner II, Clerk to the Board  
Tim Swaringen, Zoning Enforcement Officer

**Others Present:** List filed with May 11, 2010 minutes.

**Approval of Minutes**

Chairman Watson asked if there were any corrections to the minutes of March 9, 2010. Hearing none, Chairman Watson asked for a motion to approve the minutes of March 9, 2010.

**Motion:** Grover Stewart made a Motion to approve the minutes of March 9, 2010.

**Second:** Richard Cosgrove seconded the motion.

**Action:** The Board voted unanimously to approve the minutes of March 9, 2010.

Chairman Watson announced that it is required by law that each person speaking at this public hearing be sworn in and requested that everyone who intends to speak stand and be sworn in. Jerry Caudle, David Dulin, William Lentz, Judy Bowers Lentz, Pam Eudy, Tim Swaringen, and Linda Evans were sworn in by Chairman Watson.

Chairman Watson called the first case, ZV 10-02, and asked the Clerk to present the case.

Applicant is requesting a variance to construct an attached garage that extends to seven and one half (7.5) feet from his east side property line. The property is approximately 0.659 acre and is zoned RA – Residential Agricultural. Section 701 of the ordinance specifies that primary structures are required to be fifteen (15) feet from side property lines.

The home was placed on the property by a previous owner. Applicant acquired the property and desires a garage for a vehicle and other storage items. He cannot place the garage at the

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rear of the home because of the septic system (see attached drawing from Environmental Health). Also, a garage on the west side of the home would be impractical because there is no door to provide entrance into the home from the garage. In addition, if it were placed on the west side of the home, applicant would have to drive over the septic system to reach the garage which is against Environmental Health regulations.

Chairman Watson called on the applicant to come forward and present her case to the Board.

Pam Eudy, property owner's daughter and occupant of the home, came forward. She stated that she wants to construct a garage that extends to 7.5 feet from the side property line. She stated that the home was not placed in the center of the property by the previous owner which created a narrow side yard on the side of the house where the entrance door is. The septic system in the rear and the well on the other side of the home prohibits her from placing the garage anywhere else on the property.

Chairman Watson called on anyone else who would like to speak for or against this case to come forward.

No one came forward.

Chairman Watson stated that, if there were no other questions or comments, the Board would review the findings of fact. The Board found each fact as follows:

***That applicant cannot secure a reasonable return from this property without the variance.***

**Motion:** Grover Stewart made a motion to find this fact true based on the fact that applicant wishes to construct a garage for a vehicle and storage. Applicant's situation is unique in that the home was placed approximately 24 feet from the east property line by the previous owner. This variance will represent the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land.

**Second:** Andrew Eades seconded the motion.

**Action:** The Board voted unanimously to approve the motion.

***That a hardship exists resulting from unique circumstances related to applicant's land.***

**Motion:** Richard Cosgrove made a motion to find this fact true based on the fact that the home is located approximately 24 feet from the east property line. Further, the septic system prohibits applicant from locating the structure in the rear yard or the west side yard.

**Second:** Dr. John Eckman seconded the motion.

**Action:** The Board voted unanimously to approve the motion.

***That the existing hardship is not the result of applicant's own actions.***

**Motion:** Richard Cosgrove made a motion to find this fact true based on the fact that applicant did not place the home on the property. Also, the septic system was already in place when he purchased the property.

**Second:** Grover Stewart seconded the motion.

**Action:** The Board voted unanimously to approve the motion.

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*That, if granted, the variance will be in harmony with the general purpose and intent of the ordinance and will preserve its spirit.*

**Motion:** Steve Watson made a motion to find this fact true based on the fact that the garage will not cause a negative visual impact on neighboring property or to motorists on Cypress Crossing and it will not substantially detract from the character of the neighborhood.

**Second:** Andrew Eades seconded the motion.

**Action:** The Board voted unanimously to approve the motion.

*That, if granted, the variance will secure the public safety and welfare and will do substantial justice.*

**Motion:** Richard Cosgrove made a motion to find this fact true based on the fact that the garage will not influence public safety and welfare and will do substantial justice in that the benefit to the applicant will substantially outweigh the harm to neighboring property.

**Second:** Dr. John Eckman seconded the motion.

**Action:** The Board voted unanimously to approve the motion.

Chairman Stephen Watson called for a motion to either grant or deny the Zoning Variance ZV 10-02.

**Motion:** Andrew Eades made a motion to grant the Zoning Variance ZV 10-02.

**Second:** Grover Stewart seconded the motion.

**Action:** The Board voted to unanimously approve the motion.

Chairman Watson called the next case, ZV 10-03, and asked the Clerk to present the case.

Applicant is requesting a variance to allow a privacy fence that exceeds the height requirement in the front yard area. The property is approximately 1.021 acres and is zoned R-20. Section 413 of the ordinance specifies that *fences and hedges shall not exceed 4 feet in height in the front yard*. This section also states that *the front yard is defined as the portion of the lot between the street right-of-way or easement, extending back to the front yard setback*, which in this case is fifty (50) feet. The existing fence is six (6) feet high, twenty one (21) feet from the ROW of Old Salisbury Road, one hundred forty seven (147) feet from the Mann Road Intersection, and one (1) foot off the side property line.

Chairman Watson called on the applicant to come forward and present her case to the Board.

William Lentz came forward and stated that he admits his fence is in violation of the Stanly County Zoning Ordinance. He stated that his wife has owned the property for about 18 years. He stated that they are retired and reside here for about 9 months out of the year. He stated that the fence is necessary because of verbal confrontations between his wife and Mr. Caudle and that his wife is afraid of Mr. Caudle. He stated he would never have spent so much on a fence had it not been necessary to make his wife feel safe. He stated his grandchildren come over and they have family dinners in the back yard and he wants the view of his yard to be concealed from the Caudle's yard. He also stated that the fence company representative did not mention any zoning regulations for the fence, even though he had asked the representative about regulations.

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Chairman Watson stated that he wanted to make it clear in the beginning of this case that the reason for installing the fence was not relevant to what the Board is doing here. The Board is here to determine whether or not a variance should be granted for the violation. Whatever differences neighbors may have cannot be solved by this Board and should not be presented as evidence at this public hearing.

Grover Stewart asked Mr. Lentz who installed the fence. Mr. Lentz stated that DE Fence Company put the fence up.

Andrew Eades asked when the fence was installed and Mr. Lentz answered July, 2009.

Chairman Watson called on anyone else who would like to speak for or against this case to come forward.

Jerry Caudle came forward and stated that he is concerned about the visibility issue. He stated that anyone pulling out of his driveway onto Old Salisbury Road has less visibility because of the fence. He stated that some of his family and friends have trouble exiting his driveway because of the fence and have to go through his yard to get onto Old Salisbury Road.

Chairman Watson asked if anyone else wanted to speak for or against this case.

David Dulin came forward and stated that he is the neighbor on the opposite side of the Lentz property from Mr. Caudle. He stated that he is a police officer and he has, in his years of service, seen many accidents that have occurred because of a lack of visibility. He gave some facts and figures concerning visibility issues and stated that the fence in question reduced the site distance when entering Old Salisbury Road from his driveway.

Several items of a personal nature were discussed and Chairman Watson reminded the Board and the audience that, while sometimes difficult, personal feelings have to be set aside during these hearings and the facts of the case have to be adhered to. Personal opinions of persons testifying at this hearing are not to be considered; only factual evidence presented can be a determining factor in granting or denying the variance.

Richard Cosgrove stated that he would like to ask Mr. Lentz a question. Mr. Lentz came forward and Mr. Cosgrove asked him why he did not continue the fence all the way to the right-of-way, approximately 21 more feet. Mr. Lentz stated that he wanted to be considerate of his neighbors and not block their view, and for safety issues.

Mr. Lentz asked the Board if he would be allowed to extend a 4 foot high fence all the way to the Old Salisbury road right-of-way and Mr. Lentz was informed that a 4 foot high fence would be allowed to extend to the right-of-way of Old Salisbury Road.

Chairman Watson stated that, if there were no other questions or comments, the Board would review the findings of fact. The Board found each fact as follows:

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*That applicant cannot secure a reasonable return from this property without the variance.*

**Motion:** Grover Stewart made a motion to find this fact false based on the fact that reducing the height of the fence by 2 feet will have no bearing on the return the applicant will receive from the property.

**Second:** Andrew Eades seconded the motion.

**Action:** Six Board members voted to approve the motion; Richard Cosgrove opposed the motion. Motion passed.

*That a hardship exists resulting from unique circumstances related to applicant's land.*

**Motion:** Andrew Eades made a motion to find this fact false based on the fact that the hardship of which applicant complains is of a personal nature and is not related to applicant's land.

**Second:** Cathy Bennett seconded the motion.

**Action:** The Board voted unanimously to approve the motion.

*That the existing hardship is not the result of applicant's own actions.*

**Motion:** Steve Watson made a motion to find this fact false based on the fact that applicant contracted to have a fence installed without checking with the zoning department regarding requirements for a fence. He relied solely on the fence contractor, who gave him incorrect information.

**Second:** Benton Payne seconded the motion.

**Action:** The Board voted unanimously to approve the motion.

*That, if granted, the variance will be in harmony with the general purpose and intent of the ordinance and will preserve its spirit.*

**Motion:** Grover Stewart made a motion to find this fact true based on the fact that the fence will not cause a negative visual impact on neighboring property or to motorists on Old Salisbury Road and it will not substantially detract from the character of the neighborhood.

Benton Payne stated that there are many rules and regulations in land development in place these days, and the purpose of these rules and regulations is to give people security in knowing what they can expect to happen in the future. He stated that if the ordinance says the maximum height of the fence is 4 feet in the front yard then that's what it should be. Mr. Payne believes that the harmony is disrupted if the extra 2 feet that is in violation is creating a disturbance for the neighbors. Mr. Payne added that he hates to disagree with the police officer who testified regarding visibility, but he doesn't believe there is a visibility or safety issue here. He stated that the NCDOT would only require a 10 foot by 70 foot site triangle from the intersection of Mann Road and this fence more than meets those requirements.

Chairman Watson stated asked if there is a second to the original motion made by Mr. Stewart.

**Second:** Dr. John Eckman seconded Grover Stewart's motion.

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**Action:** Six Board members voted to approve the motion; Benton Payne opposed. Motion passed.

*That, if granted, the variance will secure the public safety and welfare and will do substantial justice.*

**Motion:** Benton Payne made a motion to find this fact true based on the fact that the fence will not influence public safety and welfare and will do substantial justice in that the benefit to the applicant will substantially outweigh the harm to neighboring property.

**Second:** Richard Cosgrove seconded the motion.

**Action:** The Board voted unanimously to approve the motion.

Chairman Stephen Watson called for a motion to either grant or deny the Zoning Variance ZV 10-03.

**Motion:** Grover Stewart made a motion to deny Zoning Variance ZV 10-03.

**Second:** Andrew Eades seconded the motion.

**Action:** Six members voted to approve the Motion to deny ZV 10-03. Richard Cosgrove opposed the Motion. Motion passed.

Chairman Watson advised Mr. Lentz that he will be required to remedy the violation that the fence height has created. For clarification, Chairman Watson asked the Zoning Enforcement Officer, Tim Swaringen, to explain how the fence would be measured. Mr. Swaringen stated that the fence will be measured from the average grade directly under the fence to its highest vertical member.

Chairman Watson asked for a Motion for a time limit to bring the fence discussed in ZV 10-03 into compliance with the ordinance.

**Motion:** Andrew Eades moved that the Mr. Lentz be allowed one hundred twenty (120) days to bring the fence discussed in ZV 10-03 into compliance, and that 120 days shall begin on May 12, 2010.

**Second:** Benton Payne seconded the Motion.

**Action:** The Board voted unanimously to approve the Motion.

Chairman Watson called for a motion to adjourn. Benton Payne made a motion to adjourn. Andrew Eades seconded the motion and Chairman Watson declared the meeting adjourned at 8:50 P.M.

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Date

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E. Stephen Watson, Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
Clerk to the Board