

BOARD OF ADJUSTMENT MINUTES  
Regular Meeting  
Stanly County Commons Meeting Room  
October 12, 2010

**Call to Order:**

In the absence of a Chairman and Vice-Chairman, Clerk Linda Evans opened the meeting and announced that the first item of business is to elect officers for the coming year. Ms. Evans opened the floor for nominations for Chairman.

Todd Swaringen nominated Andrew Eades for Chairman. Dr. Eckman seconded the nomination. Andrew Eades was unanimously elected as Chairman.

Chairman Eades took over the meeting and opened the floor for nominations for Vice-Chairman.

Dr. Eckman nominated Todd Swaringen for Vice-Chairman. The Chairman asked for other nominations. Hearing none, he closed the floor for nominations and asked all in favor to so indicate. Todd Swaringen was unanimously elected as Vice-Chairman.

Chairman Eades appointed Cathy Bennett as Secretary and she accepted.

Chairman Eades appointed Linda Evans as Clerk and she accepted.

Chairman Eades proceeded with the regular meeting and called on Clerk, Linda Evans, to call the roll. Grover Stewart was absent; all other Board members were present.

**Staff Attending**

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

**Others Present:** List filed with October 12, 2010 minutes.

**Approval of Minutes**

Chairman Eades asked if there were any corrections to the minutes of May 11, 2010. Hearing none, Chairman Eades asked for a motion to approve the minutes of May 11, 2010.

**Motion:** Richard Cosgrove made a Motion to approve the minutes of May 11, 2010.

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

**Action:** The Board voted unanimously to approve the minutes of May 11, 2010.

Chairman Eades addressed the audience and stated that the Stanly County Board of Adjustment is a quasi-judicial Board; therefore, the North Carolina State Supreme Court, under NCGS 153A-345, requires that the Board base its decisions only on testimony given under oath. He informed the audience that any person, who, while under oath during this proceeding, willfully swears falsely, is guilty of a Class 1 misdemeanor.

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Chairman Eades asked that everyone who intends to speak on the first case, SUP 10-01, come forward and be sworn in. James Glover, Tim Swaringen, and Linda Evans were sworn in by Chairman Eades.

Chairman Eades stated that, before opening the hearing on SUP 10-01, he would like to give Board members a chance to reveal any possible conflicts and to withdraw from these proceedings if necessary.

There was no comment from the Board.

Chairman Eades called the first case, SUP 10-01, and asked the Clerk to present the case.

Linda Evans stated that the applicant is requesting a Special Use Permit to operate a Rural Based Business, specifically an automobile repair shop, on his property. The property is zoned RA- Residential Agricultural.

If granted, the Special Use Permit will run with the property and each successive property owner will be allowed to operate the Rural Based Business provided the required regulations are met. At any time the regulations are not continually met the Board of Adjustment may revoke the Special Use Permit. In addition, applicant has been informed that he is required to meet certain state building and environmental health codes and he has agreed to comply with these if the Special Use Permit is granted.

Chairman Eades called on the applicant to come forward and present his case to the Board.

James Glover came forward and stated that a lot of the automobile dealerships are closing down in Albemarle and that he had been laid off from his job with a local dealership. He stated that he did not like drawing unemployment and would like to open his own business and support himself and his family.

Todd Swaringen asked Mr. Glover how many vehicles he expected to have at any given time on his property. Mr. Glover answered that he presently had 8 but expected to have no more than 3 or 4 at a time in the future. He stated that he is in the process of putting up a covered area to keep the cars in. He stated that his property was not easily visible from NC 138 Highway and that he is planning to install a buffer as required by the zoning ordinance.

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

No one came forward.

Benton Payne asked the Clerk for clarification on requirement number 6 of the zoning ordinance dealing with outside storage of motor vehicles or parts. The Clerk stated that the interpretation of "outside" storage is vehicles or parts not under a roof. Mr. Payne also asked if Mr. Glover is able to meet requirement number 4 dealing with gross floor area of 3,000 square feet and the Clerk answered that he is able to meet that requirement.

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Chairman Eades 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 the use shall not adversely affect the health or safety of persons residing or working the neighborhood.

**Motion:** Richard Cosgrove made a motion to find this fact true based on the fact that applicant is able to meet the seven regulations required by the zoning ordinance to operate a Rural Based Business on his property. These regulations were designed to limit the adverse affect on adjoining property and the business.

**Second:** Todd Swaringen seconded the motion.

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

That the use shall not be detrimental to public welfare or be injurious to property or public improvements in the neighborhood.

**Motion:** Todd Swaringen made a motion to find this fact true based on the fact that the regulations of the zoning ordinance will be met for this use.

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

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

Chairman Eades called for a motion to either grant or deny the Special Use Permit for SUP 10-01.

**Motion:** Benton Payne made a motion to grant the Special Use Permit SUP 10-01 with no additional conditions:

**Second:** Kevin Brickman seconded the motion.

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

Chairman Eades called the next case and asked that each person who intends to speak on ZV 10-04, stand and be sworn in. Scott Welker, Tim Swaringen, and Linda Evans were sworn in by Chairman Eades.

Chairman Eades stated that, before opening the hearing on ZV 10-04, he would like to give Board members a chance to reveal any possible conflicts and to withdraw from these proceedings if necessary.

There was no comment from the Board members.

Chairman Eades called the second case, ZV 10-04, and asked the Clerk to present the case.

Linda Evans stated that the applicant is requesting to reinstate a Variance granted by the Board on his property on September 9, 2008, (ZV 08-06). This Variance has expired due to Mr. Welker's failure to obtain zoning and building permits within the twelve (12) months allowed to obtain these permits. Mr. Welker states that he did not obtain the permits to begin

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construction within the time limitation because his other home did not sell as quickly as he had anticipated.

As in the previous Variance, the Board must make Findings of Fact in order to grant or deny a new Variance. Upon investigation, staff found no change in circumstances.

Chairman Eades called on the applicant to come forward and present his case to the Board.

Mr. Welker came forward and stated that he had received a Variance in 2008 but had failed to obtain his building permits in the 12 month time limit. He stated he has now sold his home near Raleigh and his family lives here permanently. He stated that he needs the extra room for his family and he cannot adequately enlarge his home without the setback variance.

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

No one came forward.

Chairman Eades 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:** Todd Swaringen made a motion to find this fact true based on the fact that applicant needs to increase the square footage of the existing home so that it will more adequately meet the needs of his family and it will enhance the neighborhood.

**Second:** Richard Cosgrove 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:** Andrew Eades made a motion to find this fact true based on the fact that the lot was created prior to the adoption of the zoning ordinance in 1973 and does not meet the minimum lot size requirement; therefore, it is difficult to have an adequately sized home without a setback variance.

**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:** Todd Swaringen made a motion to find this fact true based on the fact that the lot was created prior to the adoption of the zoning ordinance in 1973 and has not been reduced in size since that time.

**Second:** Cathy Bennett 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:** Dr. Eckman made a motion to find this fact true based on the fact that the variance

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will represent the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and the use of the property will not substantially detract from the character of the neighborhood.

**Second:** Todd Swaringen 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:** Todd Swaringen made a motion to find this fact true based on the fact that the use 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 Eades called for a motion to either grant or deny the Zoning Variance ZV 10-04.

**Motion:** Dr. Eckman made a motion to grant Zoning Variance ZV 10-04.

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

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

Chairman Eades called the next case and asked that each person who intends to speak on ZV 10-05, stand and be sworn in. Darrell Story, Tim Swaringen, and Linda Evans were sworn in by Chairman Eades.

Chairman Eades stated that, before opening the hearing on ZV 10-05, he would like to give Board members a chance to reveal any possible conflicts and to withdraw from these proceedings if necessary.

Mr. Cosgrove stated that he did not have a conflict with this case but he would like to state that he taught Mr. Story in school about one hundred years ago. There was no comment from other Board members.

Chairman Eades called case number ZV 10-05, and asked the Clerk to present the case.

Linda Evans stated that the applicant is requesting a variance to permit an existing storage building that extends to eight and one half (8.5) feet from his side property line. The structure was constructed approximately two years ago without the required permits. The property is approximately one acre and is zoned RA Residential Agricultural. Section 601.1 of the ordinance specifies that accessory structures are required to be ten (10) feet from side property lines.

Chairman Eades called on the applicant to come forward and present his case to the Board.

Mr. Story stated that he failed to obtain the required permits before constructing the building and that he was not aware that permits for storage buildings were required. He stated that, at

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the time he constructed the building, he and the adjoining property owner agreed that the property line was a retaining wall that the adjacent owner had constructed. Mr. Story stated placed the building over ten (10) feet from that wall. Sometime after he built the building, a large piece of shrubbery was removed and he realized where the actual property line is. Mr. Story stated that his neighbor is in the audience and is in agreement with his testimony. He stated that the building acts like a privacy fence between him and his neighbor.

Chairman Eades asked if anyone else wished to speak regarding the case. No one came forward.

Chairman Eades 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:** Richard Cosgrove made a motion to find this fact true based on the fact that if granted, this variance will represent the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land.

**Second:** Todd Swaringen 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:** Todd Swaringen made a motion to find this fact true based on the fact that the applicant and the adjacent property owner believed the property line was the retaining wall which the adjacent property owner had constructed. Removing the shrubbery revealed the true property line.

**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.***

Kevin Brickman stated that, if you look at the finding of fact simply in black and white, the fact should be false. But, the fact that Mr. Story thought he was meeting the setback requirement but was mistaken about the location of the property line demonstrates that the placing of the building less than ten feet from the property line was not intentional. Mr. Brickman asked the Clerk if a survey is required to obtain a building permit for a storage building and the Clerk answered no.

Benton Payne asked the Clerk if the Board is obligated to deny a variance if one finding of fact is negative. The Clerk answered that the School of Government teaches that the Board should deny the Variance if one finding of fact is negative; but, previous Boards have granted Variances in cases where not all findings of fact were positive; and, it is not against the law for the Board to grant a Variance when all the facts are not positive.

Chairman Eades stated that, if there was no more discussion, he would entertain a motion.

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**Motion:** Todd Swaringen made a motion to find this fact true based on the fact that the applicant was mistaken about the location of the property line and believed he was in compliance with the ten (10) foot zoning setback regulation when he constructed the building.

**Second:** Andrew Eades 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:** Dr. John Eckman made a motion to find this fact true based on the fact that the variance will represent the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and the use of the property will not substantially detract from the character of the neighborhood.

**Second:** Richard Cosgrove 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:** Todd Swaringen made a motion to find this fact true based on the fact that the use 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:** Cathy Bennett seconded the motion.

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

Chairman Eades called for a motion to either grant or deny the Zoning Variance ZV 10-05.

**Motion:** Kevin Brickman made a motion to grant Zoning Variance ZV 10-05.

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

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

Chairman Eades called for a motion to adjourn. Benton Payne made a motion to adjourn.

Cathy Bennett seconded the motion and Chairman Eades declared the meeting adjourned at 8:15 P.M.

\_\_\_\_\_  
Date

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Andrew Eades, Chairman

\_\_\_\_\_  
Date

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