

BOARD OF ADJUSTMENT MINUTES
Regular Meeting
Stanly County Commons Meeting Room
January 11, 2011

Call to Order

Vice-Chairman Todd Swaringen called the Board meeting to order at 7:30 p.m. on Tuesday, January 11, 2011, at Stanly County Commons.

Roll Call

Board Members Presiding

Todd Swaringen, Vice Chairman
Cathy Bennett, Secretary
Richard Cosgrove
Dr. John Eckman
Benton Payne
Grover Stewart
Kevin Brickman

Absent

Andrew Eades
Rebecca Carter

Staff Attending

Linda Evans, CZO, Planner II, Clerk to the Board

Approval of Minutes

Vice-Chairman Swaringen asked if there were any corrections to the minutes of November 9, 2010.

Linda Evans stated that the following amendments have been made to the draft minutes of November 9, 2010:

- a) Page 3, Finding of Fact number 2, Beckman has been changed to Eckman.
- b) Page 4, Finding of Fact number 5, Special Use Permit has been changed to Variance.
- c) Page 3, paragraph 1, Presale's has been changed to Preslar's.

Motion: Grover Stewart made a Motion to approve the minutes of November 9, 2010, as amended.

Second: Richard Cosgrove seconded the motion.

Action: The Board voted unanimously to approve the minutes of November 9, 2010, as amended.

Vice-Chairman Swaringen 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.

Vice-Chairman Swaringen asked that everyone who intends to speak on the first case, ZV 11-01, come forward and be sworn in. Wayne Smith and Linda Evans were sworn in by Vice-Chairman Swaringen.

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Vice-Chairman Swaringen asked the Clerk to present the first case.

Linda Evans stated that applicant is requesting a variance to enlarge her home so that it extends to 7.6 feet from the southern side property line. The property is approximately 0.216 acre and is zoned R-20. Section 701 of the ordinance specifies that primary structures are required to be fifteen (15) feet from side property lines.

Applicant wishes to increase the existing structure so that it will be more livable. Applicant does not permanently live on the property but would like to have more room when she is here. Applicant has stated in her application that building vertically would cause excessive load on the existing footings, and would create a negative impact on the adjacent property owner to the north. No expansion room is available on the north side because of proximity of the property line and on the east side because of the existing septic system. Property becomes narrower to the west, prohibiting expansion in that area.

Vice-Chairman Swaringen called on the applicant to come forward and present his case to the Board.

Wayne Smith came forward and stated that they bought the property in July of 2009. He stated that he has talked with Environmental Health and Planning and Zoning about the desire to increase the size of the home. He stated that early on, when most of the houses were built on the lake they were built as fishing cabins and were not intended for full time residences. In recent years, activity on the lake has taken a turn to involve more family vacation homes and full time residences. He stated that he had originally planned to add a second story to the home but found that the existing footings would not support a second story without creating structural problems. Also, there are two large trees, one on subject property and one on the neighboring property that would be severely damaged if he added a second story. He also stated that a second story would severely limit the visibility of his neighbor on the north side.

Grover Stewart asked Mr. Smith if he had talked with both neighbors about the proposed addition. Mr. Smith stated that he had talked with Peter Gaucher but has not spoken with Elaine on the other side.

Todd Swaringen asked how many square feet would be in the home after the proposed addition. Mr. Smith stated a little over 1,300 square feet.

Benton Payne asked Mr. Smith if he was aware of setback requirements when he bought the home. Mr. Smith answered that he was aware of setback requirements.

Benton Payne asked Mr. Smith if an engineer had looked at the foundation and advised that it would not be feasible to add a second story. Mr. Smith replied that he had spoken with an engineer from Greensboro and, while anything is possible, the engineer had advised that a second story would not be practicable on the existing footings.

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Grover Stewart asked Mr. Smith if the house was on a slab or a footing. Mr. Smith replied that it is on a footing of about 3 or 4 inches in some places, which does not come near meeting today's standards.

Benton Payne asked Mr. Smith if he had an arborist look at the trees or if his statements regarding the damage to the trees were his own opinion. Mr. Smith stated that the statements regarding the trees were his own opinion.

Vice-Chairman Swaringen called on anyone else who would like to speak for or against this case to come forward.
No one came forward.

Vice-Chairman Swaringen stated that, if there were no other questions or comments, the Board would review the findings of fact. The Secretary read, and 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 applicant needs to increase the square footage of the existing home so that it will more adequately meet her needs. This variance will represent the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land.

Second: Kevin Brickman seconded the motion.

Action: Six Board members voted to approve the motion, Benton Payne voted against approval of the motion. Motion passed with four fifths vote in favor.

That a hardship exists resulting from unique circumstances related to applicants' land.

Motion: Grover Stewart 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: Richard Cosgrove 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: Grover Stewart 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 this variance will represent the least possible deviation from the letter of the ordinance that will

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allow a reasonable use of the land and the proposed use of the property will not substantially detract from the character of the neighborhood.

Second: Kevin Brickman 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: Grover Stewart made a motion to find this fact true based on the fact that the granting of this variance 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.

Vice-Chairman Swaringen called for a motion to either grant or deny the Variance ZV 11-01.

Motion: Richard Cosgrove made a motion to grant the Variance ZV 11-01.

Second: Dr. John Eckman seconded the motion.

Action: The Board voted to unanimously approve the motion.

Other Business:

Linda Evans discussed the desire of the County Commissioners to move forward with the text amendment to section 601.2 of the zoning ordinance, giving the BOA the responsibility of granting Special Use Permits for Agriculture Fairs, Carnivals, and Recreational and Entertainment Activities. This originally went before the Planning Board at its August 18, 2008, meeting. At that meeting, the Planning Board heard this request and appointed a committee consisting of three members of the Planning Board and three members of the BOA to study this matter. The committee met once after this but no decision was made for the Planning Board to make a recommendation to the Commissioners. Since that time, the text amendment has not been discussed. The case will go before the next regular Planning Board meeting for a recommendation to the Commissioners. If the amendment is approved by the Commissioners, the BOA will have the responsibility of granting Special Use Permits for Agriculture Fairs, Carnivals, and Recreational and Entertainment Activities.

Vice-Chairman Swaringen called for a motion to adjourn. Benton Payne made a motion to adjourn. Dr. John Eckman seconded the motion and Vice-Chairman Swaringen declared the meeting adjourned at 8:00 P.M.

Date

Todd Swaringen, Vice-Chairman

Date

Clerk to the Board