

BOARD OF ADJUSTMENT MINUTES  
Regular Meeting  
Commons Meeting Room  
November 8, 2011

**Call to Order**

Chairman Andrew Eades called the Board meeting to order at 7:30 p.m. on Tuesday, November, 8, 2011, in the Commons Meeting Room.

**Roll Call**

***Board Members Presiding***

Andrew Eades, Chairman  
Richard Cosgrove  
Dr. John Eckman  
Benton Payne  
Grover Stewart  
Kevin Brickman, Alternate

***Absent***

Todd Swaringen, Vice-Chairman  
Cathy Bennett, Secretary  
Rebecca Carter

**Staff Attending**

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

**Approval of June 14, 2011, Regular Meeting Minutes**

Chairman Eades asked if there were any corrections to the regular minutes of June 14, 2011. Hearing no objections or corrections, Chairman Eades asked for a motion.

**Motion:** Richard Cosgrove made a Motion to approve the regular minutes of June 14, 2011, as written.

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

**Action:** The Board voted unanimously to approve the minutes of the June 14, 2011, regular meeting as written.

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.

Chairman Eades asked the Board members if any one of them had a conflict with the first case. No one responded.

Chairman Eades asked the Clerk to present the first case, AR 02-01.

Mr. Evans stated that the property owner, Joseph Ingram, was granted a temporary zoning compliance to place a singlewide manufactured home on this property on October 1, 2001, to be occupied by his mother-in-law, Donna H. Earnhardt. The Board of Adjustment has extended Mr. Ingram's time to allow the second home as follows:

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One (1) year extension in 2002, to expire in 2003.  
Three (3) year extension in 2003, to expire in 2006.  
Three (3) year extension in 2006, to expire in 2009.  
Two (2) year extension in 2009, to expire in 2011.

The property is zoned R-A and is approximately ten (10) acres in size. The size of the property would permit two homes, but the right-of-way of twenty (20) feet allows only one home. Mr. Ingram has tried to acquire additional right-of-way to his property but was unsuccessful.

The manufactured home was allowed on this property under a medical/financial hardship. At the time the temporary zoning compliance was issued, Mrs. Earnhardt's only income was from Social Security. Mr. Ingram stated that this amount did not allow his mother-in-law to support herself and buy needed medication. Staff found that Mr. Ingram was eligible for relief under section 407.2 of the zoning ordinance.

Mr. Ingram, within the proper time limit, has filed an application for another extension of time to leave the manufactured home on the property due to Mrs. Earnhardt's continuing medical/financial condition.

Chairman Eades asked that everyone who intends to speak on the first case, AR 02-01, come forward and be sworn in. Joseph Ingram and Linda Evans were sworn in by Chairman Eades.

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

Joseph Ingram came forward and stated that his mother-in-law, Donna Earnhardt, still resides in the manufactured home and that her medical and financial situation has not changed since the last time he was here. Mr. Ingram asked the Board for an extension of time for the manufactured home to remain on the property.

Board member Richard Cosgrove stated, for the record, that he had visited the property and Mr. Ingram's house is located a very long way off the main road and the right-of-way is well maintained.

Chairman Eades asked Mr. Ingram if he had tried to obtain property from neighbors to get additional right-of-way and Mr. Ingram answered that he had contacted neighbors but was denied any other access to his property.

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

Chairman Eades stated that, if there were no other questions or comments, the Board would review the finding of fact. The Clerk read, and the Board found as follows:

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That the urgent hardship situation as established by the Zoning Administrator shall be upheld and the home shall be allowed to remain on subject property due to the fact that the hardship continues to exist.

**Motion:** Grover Stewart made a motion to find this true based on the fact that it has been established, from staffs report and from testimony given, that the hardship still exists.

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

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

Chairman Eades stated that he would entertain a motion to affirm, deny, or modify the zoning administrator's decision to temporarily permit the manufactured home on the property as set out in Case File Number AR 02-01.

**Motion:** Grover Stewart made a motion to affirm the zoning administrator's decision and to extend the time for the manufactured home to remain on the property for a period of two (2) years, until November 30, 2013, for the use of Donna Earnhardt.

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

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

Chairman Eades asked the Board members if any one of them had a conflict with the next case. No one responded.

Chairman Eades asked the Clerk to present case file SUP 11-01.

Mrs. Evans stated that the property owner is requesting a Special Use Permit, under section 601.2, to operate a Recreational and Entertainment Activity for private and public events on the above-referenced property. In addition to the main residence, presently under construction, there is a small single family residence/guest house which the property owner uses when she visits the property. Also located on the property is a 1,248 square foot picnic shelter equipped with commercial refrigeration and cooking units and a bathroom, a skeet shooting range, a trap range, , and a 990 square foot greenhouse. Applicant has recently applied for additional permits to construct another structure which applicant states will be used as a place for employees of the property owner to wash up, relax, eat meals, etc. The proposed approximately 4,600 square foot structure will contain a kitchen and 4 bathrooms.

At the onset of development of this property the permitting office was under the impression that the development was for the sole and private use, recreation and entertainment of the property owner. It is now evident that the existing structures and the proposed structure have the potential of entertaining a large number of people; therefore, a special use permit is required. The property is zoned RA- Residential Agricultural.

Chairman Eades asked that everyone who intends to speak on the first case, SUP 11-01, come forward and be sworn in. Larry Todd, Linda Evans, and Tim Swaringen were sworn in by Chairman Eades.

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Chairman Eades called on a representative of Lucky Clays Farm, LLC to present the case to the Board.

Larry Todd came forward and stated that he is on the Board of Lucky Clays Farm, LLC, and he is also a building contractor and an employee of Judith Carpenter. He stated that Ms. Carpenter wants to construct a structure to entertain friends, employees and possibly host charitable events. He stated she does a lot of work with the Boy Scouts. Grover Stewart asked what sort of charitable events Ms. Carpenter hosts. Mr. Todd stated that she hosts mostly school events and boy scouts and maybe some others. He stated that she donates to a lot of charities. He stated it was his understanding that the events will be small.

Chairman Eades asked Mr. Todd to define small and Mr. Todd said 20 to 25 people.

Grover Stewart asked Mr. Todd if the main house is complete and Mr. Todd answered that it is not finished.

Benton Payne asked if the new facility will be leased for events and Mr. Todd answered that it will not be leased out for events.

Grover Stewart asked Mr. Todd if Lucky Clays Farm is planning on doing any farming on the property and Mr. Todd answered that they have a greenhouse in place and are planning on putting in several more.

Grover Stewart noted, for the record, that he had visited the property and it is a beautiful, immaculate property with first class facilities. He stated that the proposed site for the new structure is very secluded and won't be visible from the main road.

Andrew Eades asked Mr. Todd if the proposed events will take place during the week or on weekends. Mr. Todd answered that he isn't sure, possibly both because the owner hosts a lot of school events.

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

Joe Mabry came forward and stated that he is a brother to Mack Mabry, whose property adjoins Lucky Clays Farm. He asked the Board Members if they had received a letter from his brother, Mack Mabry, and the Board Members stated that they each had a copy of his two letters. Joe Mabry stated that he has been in contact with his brother and that that Mack Mabry is opposed to the holding of public events on the Lucky Clays property. He stated that it is his understanding that Mack Mabry feels that Larry Todd had misrepresented to him what the Special Use Permit will allow on the property and therefore Mack Mabry is opposed to the Board granting the Special Use Permit for public events.

Grover Stewart asked Joe Mabry for the location of Mack Mabry's property. Joe Mabry stated that Mack Mabry's property is at the end of Kimberly Lane.

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Chairman Eades reminded the Board that only sworn testimony is allowed and that any statements made by Mack Mabry and relayed to the Board by Joe Mabry are considered hearsay. He asked Joe Mabry if he personally had any comments and Joe Mabry concurred with Mack Mabry regarding the holding of public events on the property. He stated that he too is concerned that the term "Entertainment Activity" is too broad and will allow more events than should be allowed on residential/agricultural property.

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

That the use shall not adversely affect the health or safety of persons residing or working in the neighborhood.

**Motion:** Richard Cosgrove made a motion to find this true based on the fact that, evidenced from the pictures and testimony, the events held will meet all requirements and will be an asset to the community.

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

**Action:** The Board unanimously voted 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:** Grover Stewart made a motion to find this true based on the fact that during his visit to the property he did not see anything that would be detrimental to the public or injurious to property and the site where the structure is proposed is very secluded and not visible from the road.

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

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

Chairman Eades stated that he would entertain a motion to grant, deny, or modify the petitioner's request for a Special Use Permit.

**Motion:** Grover Stewart made a motion to grant the Special Use Permit with the following conditions:

1. That no fairs or carnivals will be permitted on the property.
2. That the property meets any and all applicable requirements of the North Carolina Building Code, Environmental Health Statutes, and Department of Transportation Regulations.
3. That the number of guests at any one event is limited to 300.

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

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

Chairman Eades asked the Board members if any one of them had a conflict with the next case. No one responded.

Chairman Eades asked the Clerk to present case file ZV 11-03.

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Mrs. Evans stated that applicant is requesting a variance to permit a residence that extends to nine (9) feet from the northern side property line. This site built home will replace a manufactured home that applicant is currently living in; the manufactured home will be removed when applicant can occupy the site built home. The property is approximately 4.5 acres and is zoned RA Residential Agricultural. Section 701 of the ordinance specifies that primary structures are required to be fifteen (15) feet from any side property line.

Applicant obtained the proper permits in 2005, before beginning construction of the residence. The footing inspection was approved on 12-2-05 by the Building Inspections Department; the foundation inspection was approved on 1-25-06 by the BI Dept; the framing-floor inspection was approved on 10-24-06 by the BI Dept. There is nothing in the file to indicate that a zoning inspection of the footing or foundation was ever called for or done. Because he failed to call for further inspections after the 10-24-06 inspection, his original permits expired and he was recently advised that he would need to update his permits and have inspections before he would be allowed to complete and occupy the residence. Applicant has purchased new permits and is ready to move forward to complete his residence if he is granted a Variance for his side setback.

In order to grant this variance the Board must make the findings of fact listed below. From investigation, pending further testimony and evidence presented at the public hearing, the zoning staff offers the following observations regarding these findings:

Chairman Eades asked that everyone who intends to speak on the first case, ZV 11-03, come forward and be sworn in. Robbie Nance, Linda Evans, and Tim Swaringen were sworn in by Chairman Eades.

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

Mr. Nance came forward and stated that he had started construction of his home in 2005 and had called for inspections until he ran out of money and had to stop building. He stated that he is building the house as he can pay for it. He stated he learned earlier this year that his permits had expired and he came in to get new ones so he could finish the house. He stated he did not learn that he did not meet setback regulations until he tried to obtain new permits and by that time, the house was almost finished.

Richard Cosgrove asked Mr. Nance if he would describe his property as being long and narrow and Mr. Nance answered yes. Mr. Cosgrove asked Mr. Nance if he knew how much road frontage he has and Mr. Nance answered that he does not know exactly but the property is narrower at the front. Mr. Nance stated that his septic system is also in the front yard and he had to avoid being too close to it.

Grover Stewart asked Mr. Nance if he complied with the setback regulations on the other side and Mr. Nance answered that he does comply on the other side. He stated that his brother owns the property on the side where he does not meet the setback and his brother is present at the hearing and does not have objection to the Variance.

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Grover Stewart asked what the consequences would be if Mr. Nance's brother sells his property. Chairman Eades stated that the Variance on Mr. Nance's property will run with the property and will remain in effect if either property is sold. Mrs. Evans stated that it is the prospective buyer's responsibility to find out about these things before purchasing property; if the prospective buyer does his homework, he will find that a Variance has been issued.

Chairman Eades stated that, if there were no other questions or comments, the Board would review the findings of fact. The Clerk read, and the Board found 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 evidence submitted that the applicant cannot receive any return from his effort to construct his residence if he is not allowed to complete and occupy the residence.

**Second:** Grover Stewart 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 property is long and narrow, the septic system is in the front yard, and the manufactured home is located in the narrow area of the property. Noting also that manufactured will be removed when the house is finished.

**Second:** Dr. 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:** Andrew Eades made a motion to find this fact true based on the fact that several inspections had been performed on the property without anyone acknowledging that there was a setback violation; that there was nothing in the file to indicate that the Zoning Department had been requested to do an inspection or that one had been done. Applicant was not notified that the structure does not meet setbacks until September, 2011, when construction of the structure was almost complete.

**Second:** Dr. Eckman 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 residence in its current location will not cause a negative visual impact on neighboring property and it will not substantially detract from the character of the neighborhood.

**Second:** Grover Stewart 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.

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**Motion:** Andrew Eades made a motion to find this fact true based on the fact that the residence 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. Also, the influenced adjoining property owner is the applicant's brother, is present at the hearing, and is in agreement with the Variance.

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

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

Chairman Eades stated that he would entertain a motion to grant, deny, or modify the petitioner's request for a Variance.

**Motion:** Grover Stewart made a motion to grant the Variance.

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

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

Election of Officers as follows:

Chairman Eades opened the floor for nominations for Chairman of the Board. Grover Stewart nominated Andrew Eades as Chairman; Dr. Eckman seconded the nomination. Benton Payne closed the nominations for Chairman. The Board voted unanimously to elect Andrew Eades as Chairman.

Chairman Eades opened the floor for nominations for Vice-Chairman. Grover Stewart nominated Todd Swaringen as Vice-Chairman; Andrew Eades seconded the nomination. Benton Payne closed the nominations for Vice-Chairman. The Board voted unanimously to elect Todd Swaringen as Vice-Chairman.

Chairman Eades appointed Linda Evans as the Clerk/Secretary to the Board. Linda Evans accepted the appointment as Clerk/Secretary.

Chairman Eades asked for a motion to adjourn. Dr. Eckman made a motion to adjourn, seconded by Grover Stewart. The meeting was adjourned at 8:50 p.m.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Andrew Eades, Chairman

\_\_\_\_\_  
Date

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