

1 **Camden County Board of Adjustments**

2 **Minutes**

3 **May 13, 2008, 7:00pm**

4 Historic Courtroom

5 Camden County Courthouse Complex

6  
7  
8 Members Present: Chairman Roger Lambertson, Absent: Bradley P. Smith,  
9 Vice Chairman John Sawyer,  
10 Regular Members William McPherson,  
11 Don Lee Keaton,  
12 Alternate Members Janice Hassell,  
13 Francis Mullen Eason, II  
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15 **Call to Order & Welcome**

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17 Chairman Roger Lambertson called to order the May 13, 2008 meeting at 7:00 PM.  
18 Chairman Lambertson noted that since regular member Bradley P. Smith was absent,  
19 alternate member Janice Hassell would be voting in his stead.  
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21 **Others Present at Meeting**

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23 Present were staff members Dan Porter, Director of Planning, Dave Parks, Zoning and Permit  
24 Officer, and Amy Barnett, Clerk to the Board. Present for purposes of presenting  
25 information relevant to her variance was April White.  
26

27 **Consideration of Agenda**

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29 Chairman Roger Lambertson called for the consideration of the agenda. Since there were no  
30 changes to the agenda, it was approved by the board without a vote.  
31

32 **Consideration of the Minutes- February 12, 2008**

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34 Chairman Roger Lambertson called for the consideration of the minutes from the February  
35 12, 2008 meeting. William McPherson made a motion to approve the minutes from the  
36 above mentioned meeting with corrections as indicated by the Board. Don Keaton seconded  
37 the motion. The motion was approved with Chairman Roger Lambertson, Vice Chairman  
38 John Sawyer, Regular Members William McPherson, Don Lee Keaton, and Alternate  
39 Member Janice Hassell, voting aye; none voting no; 1 regular member absent; 1 alternate  
40 member not voting.

41 **Comments from the Public.**

42  
43 None.

44  
45 **Old Business**

46  
47 None.

48  
49 **New Business**

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51 *Item #1 Board of Adjustment Rules of Procedure*

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53 A copy of the Board of Adjustment Rules of Procedure were provided for the Board  
54 Members in this months Board Packet. Chairman Roger Lambertson brought up the point  
55 that according to the Institute of Government, a Board may have alternate members, but  
56 those alternate members may not participate in a hearing unless they will be voting on the  
57 matter being heard (i.e. they are sitting in for a regular voting member who is absent).  
58 Chairman Lambertson said he did not know why this is so, but that he would check into it  
59 and notify the Board of his findings. He further stated that for the meeting this evening, this  
60 general rule would be followed. Chairman Roger Lambertson also noted that the Rules of  
61 Procedure for the Board of Adjustment need to be re-written. Dan Porter asked the Board to  
62 forward any comments and / or suggestions for the re-write to him so he could pursue the  
63 matter further.

64  
65 *Item #2 Variance (UDO 2008-04-28, April White, 267-A Ivy Neck Road)*

66  
67 Dan Porter was sworn in to supply testimony in this case. A legal question was raised by  
68 Dan Porter as to whether Boards of Adjustment have the legal authority to re-hear variances,  
69 that were previously approved, if there are no new facts or no changes to the facts in the case.  
70 Mr. Porter read to the Board an excerpt from the book "Land Use Law in North Carolina":

71  
72 From Chapter 15, page 119: "Res Judicata: Res judicata applies to quasi-  
73 judicial land use decisions. The court has long held that a board may not  
74 rehear a quasi-judicial matter previously decided. This is occasionally a  
75 source of confusion with zoning ordinances, as it is not altogether uncommon  
76 for an ordinance to confuse rehearing a quasi-judicial matter with rehearing a  
77 legislative matter. For example, the ordinance may include a provision that a  
78 special use permit application may be resubmitted for reconsideration after a  
79 one-year waiting period, much as a rezoning petition can be resubmitted.  
80 This, however, is not permissible, as res judicata applies to the original  
81 decision and the board has no jurisdiction to rehear the matter."

82  
83 From Chapter 17, page 135: "If an applicant accepts and acts on a variance  
84 with conditions, those conditions are binding and may not be subsequently  
85 challenged. In Franklin Road Properties v. City of Raleigh, the plaintiff filed  
86 a site plan and requested that it be approved with a variance to allow parking  
87 and driveways to be placed within the highway setback area.

88 The governing board approved the plan and the variance. The plaintiff  
89 subsequently brought a declaratory judgment action contesting the validity of  
90 an additional requirement to expand the adjacent roadway prior to building  
91 permit issuance. The court noted that the variance conditions could not be  
92 challenged in this fashion.

93 If amendment to variance conditions is sought, that application must  
94 generally be treated in much the same manner as the original variance request.  
95 It is subject to the same application, hearing, and board action requirements as  
96 the original application. Further, since res judicata applies to variance  
97 decisions, any request for modification of the variance or its conditions must  
98 be based on a modification to the proposed project, changed conditions, or  
99 changes in the ordinance.

100 Variances apply to the property, not the applicant. Like other zoning  
101 approvals, variances run with the land. Therefore any condition on a variance  
102 applies to subsequent owners as well. For this reason an increasing number of  
103 local governments require that variances be recorded in the chain of title for  
104 the property to ensure that future owners are aware of any conditions on the  
105 variance."

106

107 After reading the above excerpts to the Board, Mr. Porter stated that it is the opinion of staff  
108 that the Board does not have the authority to hear this case. Chairman Roger Lambertson  
109 asked Mr. Porter if the Board would be liable for a lawsuit from the County if they re-heard  
110 and granted the variance. Mr. Porter replied that there is a possibility of that occurring if it is  
111 found that procedure was not followed. The same thing would be true if it was re-heard and  
112 denied. Janice Hassell asked if the Board had the option to table the decision to re-hear the  
113 case. Dan Porter replied that the Board had 3 options: (a) hear the case, (b) not hear the  
114 case, (c) table the decision to hear the case. Janice Hassell added that if the decision to hear  
115 the case were tabled, the County Attorney could provide the Board with assistance in this  
116 matter so that a solid legal decision could be rendered.

117

118 At this time, Janice Hassell made a motion to table the decision to hear the case (not the case  
119 itself, just the decision whether or not to hear it). Don Keaton seconded the motion. A roll  
120 call vote was taken.

121

122 Chairman Roger Lambertson: Yes Vice Chairman John Sawyer: Yes  
123 William McPherson: Yes Don Keaton: Yes  
124 Janice Hassell (alternate voting in Bradley Smith's stead): Yes

125

126 By a vote of 5-0, the decision to hear the case has been tabled until the next meeting, pending  
127 the review and consultation of the County Attorney.

128

129 Ms. White asked the Board if her mother can act as her agent should she be unavailable for  
130 the next meeting (Ms. White lives in Florida and flew to NC for the meeting, among other  
131 reasons). The response was that this was a legal question that would be asked of the County  
132 Attorney and staff would let Ms. White know.

133 **Information from Board and Staff**

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135 Form I-9, Employment Eligibility and Verification forms were provided to the Board to be  
136 filled out and returned, per request of the County Finance Department.

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138

139 **Consider Date of Next Meeting – June 10, 2008**

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141

142 **Adjournment**

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144 At 7:35 PM, Vice Chairman John Sawyer made a motion to adjourn the meeting. Chairman  
145 Roger Lambertson seconded the motion. The motion was approved with Chairman Roger  
146 Lambertson, Vice Chairman John Sawyer, Regular Members William McPherson, Don Lee  
147 Keaton, and Alternate Member Janice Hassell, voting aye; none voting no; 1 regular member  
148 absent; 1 alternate member not voting.

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150

151 Date: \_\_\_\_\_

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153

154 Approved: \_\_\_\_\_

155 Chairman Roger Lambertson

156

157

158 Attested: \_\_\_\_\_

159 Amy Barnett, Clerk to the Board