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Camden County Board of Adjustment
Minutes

Record of Proceedings

July 24, 2006

7:00 PM

Camden County Historic Courthouse
Courthouse Complex

Chairman Roger Lambertson called to order a meeting of the Camden County Board of Adjustment with the following members present:

Chairman Roger Lambertson
Vice Chairman Morris Kight
Members Emory Upton, Patrick Duckwall,
William McPherson, and Alternate Douglas Lane

The following members were absent: None

Also present were Dan Porter, Director of Planning/ Flood Administer, Dave Parks, Permit Officer/ Flood Administrator, and Lori Tuss, Clerk to the Board of Adjustment.

Chairman Lambertson called for consideration of the agenda. Hearing no comments, Chairman Lambertson proceeded with the meeting.

Consideration of the Minutes for January 9, 2006

Chairman Lambertson called for consideration of the January 9, 2006 minutes. The Chairman directed the members to disregard the minutes that were in their initial board packets and noted that the amended minutes, coded in yellow and handed out prior to the meeting, are the minutes to consider. Minor changes to the wording were amended at the pleasure of the Board. One major correction was amended from the initial minutes on line 28 of page 1 which stated that Douglas Lane was voted by the Commissioners as a regular voting member. Let the record show that on January 3, 2006 the Camden County Board of Commissioners voted Patrick Duckwall as a regular voting member and Douglas Lane as the Alternate member to the Board of Adjustment.

Hearing no further comments, Patrick Duckwall made a motion to approve the amended minutes. Member William McPherson seconded the motion. The motion passed with Chairman Roger Lambertson, Vice Chairman Morris Kight, Members Emory Upton, Patrick Duckwall, and William McPherson voting aye; none voting no; none absent; none not voting.

The following minutes are the January 9, 2006 Record of Proceedings that were amended and approved by the Board of Adjustment at the July 24, 2006 Meeting:

**Camden County Board of Adjustment
Minutes**

**Record of Proceedings
January 9, 2006
7:00 PM
Camden County Courthouse
Courthouse Complex**

Chairman Roger Lambertson called to order a meeting of the Camden County Board of Adjustment with the following members present:

Chairman Roger Lambertson
Vice Chairman Morris Kight
Members Emory Upton, Patrick Duckwall and Douglas Lane

The following members were absent: William McPherson

Also present were Dan Porter, Director of Planning, Dave Parks, Permit Officer, and Lori Tuss, Clerk to the Board of Adjustments.

Chairman Lambertson called for consideration of the agenda. Chairman Lambertson announced that the Camden County Commissioners unanimously voted in favor of Patrick Duckwall as a regular voting member of the Camden County Board of Adjustments.

Chairman Lambertson called for consideration of the November 15, 2006 minutes. Patrick Duckwall made a motion to approve the minutes as amended. Emory Upton seconded the motion. The motion passed 5-0: none opposed.

Chairman Lambertson called for comments from the public. Hearing none, he continued with the agenda.

New Business

Item #1 Variance Application (UDO 2005-11-44) from G Matt Wood to Article 151.060 of the Camden County Code (Minimum Lot Sizes) in Highway Commercial (HC) zone located at 131 Gumberry Road, Courthouse Township

Permit Officer Dave Parks was sworn in and stated that the staff recommends granting the applicant, G. Matt Wood, a variance based on the fact that under the provisions of the current ordinance, the applicant can make no reasonable use of his property. Dave Parks stated that Mr. Harrell is available for questioning.

Chairman Lambertson addressed the staff in order to clarify the variance and finding of facts for this property.

The Board made note to question the finding of facts question # 21. Mr. Parks acknowledged the corrections. The corrections were made.

Matt Harrell, acting as a representative for G. Matt Wood, was sworn in and Chairman Lambertson asked Mr. Harrell if he understood the restrictions that will apply to this variance. Mr. Harrell acknowledges that he understands the conditions of the variance and what it entails.

Tracy Cartwright was sworn in and Chairman Lambertson asked her about her business on the

property in question and how long the business has been in operation.

Having heard all sworn testimony and verifying the finding of facts which included question about the water, sewage, and intensions for the use of this property at 131 Gumberry Road, Chairman Lambertson asked the Board to vote on all six questions. The results are as follows:

1. If the applicant complies strictly with provisions of the Ordinance, he can make no reasonable use of his property. Applicant's response: Property cannot be transferred to the current tenant thus no improvements can be made by tenant.

Staff response: If applicant complies with the provisions of the Ordinance and with the location and size of this particular piece of the parcel, it cannot be utilized for farming as the rest of the parcel thus restricting reasonable use. Nor can the property be used for any residential or commercial use due to the minimum lot size requirements.

Chairman Lambertson made a motion that if the applicant complies with the current ordinance, he cannot transfer the property to the current tenant or make proper use of the property. Patrick Duckwall seconded the motion. The motion passed 5-0: none opposed.

2. The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public. Applicant's response: The hardship is suffered by the property owner as this portion is bound on all sides by public right of ways (NCDOT/ Railroad).

Staff response: The hardship is suffered by the applicant as this portion that is bound by right of ways and thus cannot be farmed. Under current zoning, the property is too small to subdivide. Applicant has made an offer for the sale of this portion to be utilized as a commercial business (already existing).

Patrick Duckwall made a motion to accept the staffs finding of facts. Vice Chairman Morris Kight seconded the motion. The motion passed 5-0; none opposed.

3. Does the hardship relate to the applicant's land, rather than personal circumstances? Applicant's response: The hardship relates to the land and its location.

Staff response: The hardship relates to the land and the way it is separated from the bona fide farm that sits across the railroad right of way.

Emory Upton made a motion to accept the staffs finding of facts. Douglas Lane seconded the motion. The motion passed 5-0; none opposed.

4. The hardship is unique, or nearly so, rather than one shared by many surrounding properties. Applicant's response: Yes

Staff response: What is unique about this portion is that the land is separated by the Norfolk Southern Railroad from the larger tract. This portion is approximately 13,000 sq ft and is large enough to support the existing business, but not large enough to subdivide under current zoning, and the applicant does not desire to cut into his farm to create a lot. The portion across the railroad track would not be utilized by the business.

Vice Chairman Morris Kight made a motion to support the approval of the staff findings. Douglas Lane seconded the motion. The motion passed 5-0; none opposed.

5. The hardship is not the result of the applicant's own actions. Applicant's response: The hardship is not the result of my actions as the land has been in my family prior to the railroad right of way.

Staff response: The hardship is not the result of the applicant's actions.

Chairman Lambertson made a motion to accept the applicants request based on the finding of facts. Douglas Lane seconded the motion. The motion passed 5-0; none opposed.

6. The Variance will neither result in the extension of a nonconforming situation in violation of Articles 151.360-368 nor authorize the initiation of a non conforming use of land.

Staff response: If variance is approved, this will result in a nonconforming lot in respect to current density requirements.

The current use as a beauty salon is non-conforming. A variance will create a non conforming lot.

Douglas Lane made a motion to accept staff recommendation. Vice Chairman Morris Kight seconded the motion. The motion passed 5-0; none opposed.

Chairman Lambertson asked the applicant and the board members if they have read the following conditions to the Variance. All present have read and understand the following conditions:

- A. The applicant must strictly abide by all requirements of the Unified Development Ordinance of Camden County, North Carolina, and must also strictly comply with all other local, state, and federal ordinances, laws, rules and regulations as one or more ordinances, laws, rules and regulations may apply to this development.
- B. Applicant shall subdivide out and record this portion within six months from date of approval of variance.
- C. The applicant must sign before a notary public the Variance agreeing to the conditions by February 10, 2006 of the Variance shall become null and void.
- D. Any violation of this Variance and its conditions will result in revocation.

Chairman Lambertson asks the Board to approve or deny the Variance with conditions (A-D). Douglas Lane made a motion to approve the Variance with conditions (A-D). Patrick Duckwall seconded the motion. The motion passed 5-0; none opposed.

The Variance is granted.

Items for Board members and staff

The staff and Board discussed future meetings.

The Chairman, Roger Lambertson, took the opportunity to remind everyone present that all testimony and or statements by the general public, applicants, staff, and attorneys must follow the rules for the Board of Adjustment; all testimony and statements must be sworn in under oath for the record of the Board of Adjustment.

Consideration for date of next meeting – February 13, 2006

Chairman Lambertson cannot be present according to the current schedule.

Adjournment

Emory Upton made a motion to adjourn. Chairman Lambertson seconded the motion. The motion passed 5-0; none opposed.

Approved: _____
Date

Chairman Roger Lambertson

ATTEST:

Lori Tuss
Clerk to the Board

Comments from the Public-

Chairman Lambertson invited anyone from the public to come forward at this time to discuss any items other than what is on the agenda. Hearing none and seeing none, Chairman Lambertson proceeded with the meeting.

Old Business:

Chairman Lambertson asked the Board if there was any old business to consider. Hearing none and seeing none Chairman Lambertson moved on to New Business.

New Business

Item #1 Variance Application UDO # 2006-07-06 – Melissa & Richard Travena

Flood Administrator Dave Parks was sworn in under oath by the Clerk. Mr. Parks stated that Richard and Melissa Travena have applied for a Variance under article 151.334 Flood Plain Management. Mr. and Mrs. Travena applied for the Variance requesting that the duct work on their newly constructed home be permitted to fall below the base flood elevation.

Mr. Parks stated that in November of 2004 the applicant's builder, Bob Burns Construction, applied for a building permit (M- 4168) listed as UDO # 2004-11-12. The property in question at 128 Swinson Road located in South Mills Township is in the Flood Zone marked AE with a Base Flood Elevation (BFE) of 6.7ft.

Mr. Parks noted that three elevation certificates are required in flood zones; however, the applicant was only required to present two elevation certificates based on the professional survey prepared by Hyman & Robey Surveying which listed the lowest adjacent elevation for the house site at 8.00ft (Survey dated 10-05-2004 under C3 –f – Lowest adjacent (finished) grade). Mr. Parks further stated that under standard office policy- if the lowest adjacent grade is recorded at or above the base flood elevation (6.7ft) the applicant is not required to construct flood vents or construct drawings showing proper elevation for the house. Furthermore, the applicant would only need to obtain a final elevation for the purpose of submitting a Letter of Map Amendment to FEMA in order to remove their property from the flood zone for insurance purposes. Based on all the requirements for this application, only two elevation certificates were officially required.

When Mr. Parks added that when he received the final elevation certificate, he noticed that the survey listing the lowest adjacent grade had dropped from 8.00ft as noted in the initial elevation certificate to 3.88 ft. Mr. Parks then contacted the surveyor and the builder. The surveyor told Mr. Parks that the builder did not stake out the property but rather built the house on the site drawing for the septic permit issued by the Health

Department. Mr. Parks stated that the builder and surveyor have issues with who is at fault.

Mr. Parks further stated that he examined the site and deemed that the corrections were done that could be done and due to the size of the house and difficulties involved, the duct work can not be lifted.

Staff recommends that the application be approved based on the finding of facts consistent with the Camden County Codes and on the fact that the applicants were not personally at fault for the errors made.

At the pleasure of the Board, Mr. Parks read the following conditions applicable to the granting of approval of the application if approved by the Board of Adjustment.

1. The applicant must strictly abide by all other requirements of the Unified Development Ordinance of Camden County, North Carolina, and must also strictly comply with all other local, state, and federal ordinances, laws, rules and regulations as one or more ordinances, laws, rules and regulations may apply to this development.
2. The Variance shall only apply to the duct work under the house and nothing else.
3. The applicant shall amend deed to the property to state "Variance granted by Camden County Board of Adjustments to floodplain requirements as recorded in Book____ Page_____."
4. The granting of the Variance shall not create liability on the part of Camden County from any flood damages that may occur.
5. The applicant must sign before a notary public the Variance agreeing to the conditions by August 14, 2006 or the Variance shall become null and void.

The staff informed the Board that the property owners were present for questioning. Chairman Lambertson acknowledged staff, but wished to first question the staff.

Staff stated that the procedure under Variance rules have all been followed.

Chairman Lambertson asked the staff about how this situation with the Travena's happened, why it happened, and if this situation can be avoided in the future.

Staff noted that policies will be stricter in the future. All three elevation certificates will be required. However, staff stated that surveyors are licensed to give a professional analysis which is the documentation required by the Camden County Flood Plain Administrator.

Board asked if an additional elevation certificate would have prevented the situation the applicant is in now.

Parks stated that the issue could have been avoided; however, it was not necessary under current policy.

The Board asked if the only issue was the duct work under the house.

Staff stated that the duct work is the only issue at this time.

Board asked the staff what work is normally done at the time that a second elevation certificate would be required for property in a flood zone meeting stricter requirements.

Staff stated that the second elevation is needed when the Box inspection (floor framing) is complete. Again Mr. Parks stated that since the initial elevation certificate listed the lowest adjacent flood at 8.00 ft, the second elevation certificate was not required. However, it will be required for everyone from this point on regardless of the lowest adjacent grade on the survey.

Chairman Lambertson asked that the Clerk swear in the applicant under oath so that the board could question them.

Mr. Richard Travena, living currently at 905 Gould Ave. in Chesapeake, Virginia was sworn in under oath.

Mr. Travena stated that He and his wife thought they hired the right people to build their home. Mr. Travena has been living in his father-in- laws home for over two years while waiting for their home to be completed. Mr. Travena stated that he thought that hiring someone to build their home was a wise idea, but many delays and issues have delayed their being able to move into their new home.

Hearing no other questions for the applicant, the meeting proceeded.

Chairman Lambertson read the following items to consider for discussion.
ItemA – K

1. Items to consider:

- A. The danger that materials may be swept onto other lands to the injury of others:

Staff response: It is unlikely that the possibility of materials being swept onto other lands as if flooding occurs the area will most likely just have a rise and fall in flood waters due to the contour of the land in the county (flat).

At this time, Chairman Lambertson passed around five photos for the Board and applicant to view. Mr. Lambertson stated that the pictures have been provided in order to demonstrate the importance and purpose of having Flood Plain Ordinances. The Photos provided by staff are of flooded streets and properties in Camden County.

The meeting then proceeded with the following:

- B. The danger to life and property due to flooding or erosion damage:
Staff response: In general, any flooding may result in damage to property. The approval of the requested variance could result in additional damage to those portions of the house below the Base Flood Elevation (HVAC ductwork) However, there should not be additional danger to life.
- C. The susceptibility of the proposed facility and its contents to flood

damage and the effect of such damage on the individual owner:

Staff response: The only susceptibility to the house would be the utilities that are located below the BFE. The first floor is located 1 foot above the BFE which provides added protection to the contents of the house.

D. The importance of the services provided by the proposed facility to the community: N/A

E. The necessity to the facility of a waterfront location as a functionally dependant facility, where applicable: N/A

F. The availability of alternative locations, not subject to flooding or erosion damage, for the purposed use:

Staff response: There are no other locations under the house that would bring everything into compliance with flood zone requirements. The only alternative would be to lift the house off the foundation and raise it.

G. The compatibility of the proposed use with existing and anticipated development:

Staff response: The area surrounding the property is all zoned for residential development.

H. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area:

Staff response: The residential use, is consistent with the comprehensive plan and floodplain program, however the requested variance is from the floodplain regulations, which allow for minor variances if approved by the Board of Adjustment.

I. The safety of access to the property in times of flood for ordinary and emergency vehicles:

Staff response: It is hard to determine as the flood maps are based on the 1% chance that a 100 year storm will occur each year and this county has never experienced this type of event. If this event was to occur, Floodplain Administrator has determined that access to this property and others will be difficult as access is only off Bunker Hill Road which runs along Joyce Creek that will rise over the road. However, this variance will not increase the difficulty of access.

J. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site:

Staff response: Unable to determine the expected heights, however this is why the BFE's are established as these heights are determined to provide adequate safety to the dwelling and its contents during such a rain event.

K. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges:

Staff response: Again unable to determine, but the costs could be high depending on flood heights during the type of rain event.

Chairman Lambertson read the following Minimum Requirements #

21 – A, B, and C to be put to a vote by the Board.

Minimum requirements for approval:

- L. A showing of good and sufficient cause?
Staff response: During the time of construction, the owner had no idea what was taking place. The problem did not arise until the pre-final inspection of the house. The builder, home owner, surveyor and staff met on site and went over all floodplain and building issues. The builder has agreed to fix what could be done without burdening the home owner with additional costs (i.e. elevating some electrical components, heating and air conditioning units) to comply with floodplain requirements.
- M. A determination that failure to grant the variance would result in exceptional hardship?
Staff response: Staff has determined that failure to grant the variance would result in exceptional hardship to the owner. The hardship is based on the owner having no control during the construction in which she relied upon other people (builder and surveyor). The mortgage company has been in contact with the home owner stating that they are in jeopardy of losing their home loan.
- N. Determination that the granting of variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
Staff response: Staff determined that the granting of the variance will not result in increased flood heights, pose no threat to public safety, or extraordinary public expense, and create a nuisance, cause fraud on or victimization of the public.

Patrick Duckwall made a motion to approve the minimum Requirements as presented in the finding of facts. Vice Chairman Morris Kight seconded the motion. The motion passed 5-0 with Chairman Lambertson, Vice Chairman Morris Kight, members William McPherson, Emory Upton, and Patrick Duckwall voting aye; none voting no; none absent; none not voting.

Let the record show that the motion to approve the Minimum Requirements as recorded in the finding of facts is approved.

Chairman Lambertson asked the applicant if they are fully aware of the flood plain issues that they the homeowner may potentially face. The applicant, Mr. Travena, stated that he is aware of the risks and has prepared by purchasing proper flood insurance for the property at 128 Swinson Road. Chairman Lambertson asked the homeowner if the insurance specifically covers any damage to the Duct work as a result of a flood. The homeowner acknowledged that the insurance does cover damage to the duct work.

With no further items to consider, Chairman Lambertson made a motion to approve the Variance as requested with the five conditions as stated in the

finding of facts. Vice Chairman Morris Kight seconded the motion. The motion passed with Chairman Roger Lambertson, Vice Chairman Morris Kight, members Emory Upton, Patrick Duckwall, William McPherson voting aye; none voting no; none absent; none not voting.

Let the record show that the Variance is approved.

Items for Board members and staff

Staff and Board held a discussion concerning the Special Use Permit for Blackwater USA. Staff informed the Board about a recent request by Blackwater for an extension for the operation of hours for their facilities. Staff wished to elicit input from the Board. Staff stated that the Planning Board recently heard the request by Blackwater. The Board of Adjustment stated that Blackwater has a tremendous impact on Camden County and the Board recommend that elected officials (Board of Commissioners) make these decisions; however, the Board of Adjustments will consider these issues if their ruling is required.

Consideration for date of next meeting – August 16, 2006

Adjournment

A motion to adjourn was made by Emory Upton. Patrick Duckwall seconded the motion. The motion passed with Chairman Roger Lambertson, Vice Chairman Morris Kight, Members Emory Upton, Patrick Duckwall, and William McPherson voting aye; none voting no; none absent; none not voting.

Approved: _____
Date

Chairman Roger Lambertson

ATTEST:

Lori Tuss
Clerk to the Board