

**ROCKINGHAM COUNTY BOARD OF ADJUSTMENT
REGULAR MEETING – JUNE 14, 2021 at 7:00 P.M.
MEETING MINUTES**



The Rockingham County Planning Board & Board of Adjustment met in regular session on June 14, 2021, 7:00 PM, Governmental Center, Commissioner's Chambers, Wentworth, North Carolina.

1. Chairman Paul Ksieniewicz called the meeting to order at 7 00 pm.
2. Invocation was given by James Harris.
3. Adoption of the Agenda: The Agenda for the June 14, 2021 meeting was accepted unanimously by the Board members (6-0).
4. Attendance: Chairperson Paul Ksieniewicz, Vice-Chairperson Julie Talbert, James Harris, Cory Scott, Cyndy Hayworth (alternate) and Matt Cardwell.
5. Staff and others present:
 - Lynn Cochran, Planning Consultant,
 - John Morris, County Attorney,
 - Ben Curry, Code Enforcement
 - Roy Sawyers - A/V Technician
6. The minutes for the February 22nd, 2021 planning board work session were unanimously approved (6-0).

Chair Ksieniewicz welcomed Cyndy Hayworth as the newest Alternate member of the Board.

PROCEDURES

Chairman Paul Ksieniewicz reviewed the hearing procedures for the Planning Board and read them into the record.

PUBLIC HEARINGS BEFORE THE PLANNING BOARD

1. Variance Request #2021-12, Wendy Cheek: The Rockingham County Unified Development Ordinance (UDO) requires a 20-foot wide driveway for two-way traffic within a Travel Trailer Park approved by Special Use Permit. The applicant requests variance from this requirement to allow a 12-foot driveway for two-way traffic. Tax PINs: 793400385264 / 793400378210, 651 Lowe Rd – New Bethel Township

Lynn Cochran, presented the case. He explained that he had previously been employed with Rockingham County during 2017, '18 and '19. The regular staff has recently taken positions elsewhere and he was brought in as a consultant. He read the case into the record and presented to the Planning Board. All information was previously forwarded to the Board members in their packets.

Mr. Cochran stated that the request for a variance to the Unified Development Ordinance (UDO, Chapter 2, Article 1, Section 911x, specifically and on the one item, which is highlighted in your package. The request is for a variance from the required width of a two-way drive, which is 20-feet. The applicant has requested a reduction to 12-feet. The parcel included is approximately

27.81 acres and is 2 miles southeast of the Madison ETJ. Primarily, large residential lots and undeveloped farmland in this area. Slides of the proposed request were shown for the Board members' review.

In response to a question, Chair Ksieniewicz stated that according to the statute, 160D and the Board's By-Laws the Board would need 80% affirmative votes, which means that 5 members have to vote in the affirmative to approve the variance. To clarify the voting requirements, the Chair read the statute by-laws into the record: "Given that a quorum of members present, motions of the Board of Adjustment to grant a variance to the UDO shall require 4/5th vote of the members present for adoption."

Lynn Cochran thanked Chairperson Ksieniewicz for clarifying.

There were questions from Board members regarding traffic impact considerations, considerations regarding the new UDO versus the old UDO; and impacts on the adjoining property (owned by the Plotts) and what conditions necessitate the need for 20 feet width for the driveway versus 12 feet.

Lynn Cochran stated that he was not employed by the County when the ordinance was approved so he does not know what the intent of that stipulation is. He feels it would be for two-way traffic and possibly for use by emergency vehicles even though the applicant has shown pictures of pull-off areas. He pointed out that it is his understanding that no campers would be coming and going from the property but that cannot be considered when talking about this particular variance.

Ms. Hayworth asked if there is a mandate for requirements on emergency vehicles going into the property? Mr. Cochran responded that the requirement for emergency vehicles is for a 20-foot driveway. General requirements for any roads anywhere in the County whether private or public (state-maintained) do require some sort of emergency vehicle turn-around area. The 20-foot would meet that access requirement, but part of the road development would have to include a turn-around for emergency vehicles.

Chair Ksieniewicz asked that the applicant come forward and be sworn in.

Wendy Cheek, 651 Lowe Road, Madison, NC, the applicant, was sworn in and stated that she had more pictures to show of the driveway if the Board wished to see them. These are updated photos, specifically showing the driveway area, turn-around area and the recreational area. She pointed out that Mr. Plott has no rights to this driveway, it is only an easement that she allows him to use to get to his property. There are also other neighbors that have use of the driveway easement on the other side of her property. She reiterated that she has run a Rural Guest Establishment (Airbnb) for the past fifteen years from her home on this property. She now wishes to expand that use to the vintage campers that are part of the request and were explained at last month's meeting. When she obtained the Rural Guest Establishment the driveway was sufficient for the vehicle coming into the property and the driveway is over 12 to 14-foot wide and the bridge is probably a little bit smaller by a foot or so. The pictures showed where there are several pull-off areas to the side in case someone should meet another car, which would allow them to pass each other on this driveway. There may be six (6) cars on the property at one time

and there has never been a problem with people getting in and out on the driveway. These guests do not bring a camper with them, they are driving regular vehicles of different sizes. She does not plan on opening the property for use as a campground where people would bring their own campers. She would agree to a stipulation or condition on the variance that no campers would be brought onto the property by any of her clients. She has spent a lot of time and money grading the farm and creating this area with good water flow and she has put in new culverts to address the water flow issues. She has constructed a new bridge and graded ditches and the watershed is doing very good now and has no issues with water run-off. If she has to create a commercial-sized driveway for something so small, it would be detrimental to the small farm environment that she has previously created.

Chair Ksieniewicz stated that the ordinance expresses a clear intent and the variance cannot subvert that intent. They cannot use the variance to change the ordinance because it does not suit her needs. It has to serve the property as the variance goes with the property and runs with the land. If she should sell the property in the future, whatever the Board does here, goes with that land.

Ms. Cheek stated that she is trying to create something that would benefit the County and there is nowhere for her to create it in the ordinance. She does not know what steps she now needs to make to be able to move forward with her plans. She was following the advice of the Planning Department staff when she obtained the permit for a Rural Guest Establishment and now it seems that is not the correct designation. She was referred to Section 9.2.11.x in the ordinance. She would like some help from either the Board members or staff to make the best decision on how to proceed with this project.

Chair Ksieniewicz pointed out that the variance should have been obtained before the SUP was granted and he does not know how it got out of order for this particular case. He also pointed out that the Superior Court has remanded this back the Planning Board for any corrections need to be made. He stated that this Board has the responsibility to uphold the ordinance, and specifically, Article 9, Section 9 through 11, the acts of the ordinance is what they are bound to. He does not see any way that they can change the intent of the ordinance to be able to accommodate this request.

Ms. Cheek stated that she could widen the driveway to 20-feet, but it would be more expense and time spent to be able to obtain the variance and she is not asking the Board to consider any financial hardship, she was just pointing it out. She also clarified that this is not Mr. Plott's back yard, as he has indicated earlier. This is her property and there is a substantial buffer between her property and Mr. Plott's property.

Ms. Hayworth stated that this variance would change the look of her property and she asked how that would change? She has concerns about emergency vehicles be able to access the property and she has talked with the Fire Marshall today and he had stated that they really need 20 feet for the firetrucks to get up and down the driveway and the narrow part of the bridge really concerns her. Ms. Cheek responded that widening the driveway seem, to her, to commercialize the property and that is not what she wanted for this property. She feels the quiet farm stay atmosphere is more relevant to the surroundings of the farm. In regard to the bridge it is rated for

anything that can travel on any highway and it was engineered to meet all those requirements. She pointed out that Mr. Plott has had emergency vehicles go to his home and on his property and there were no problems associated with that. There is also a very large turn-around area on her property, as well as Mr. Plott's property.

Chair Ksieniewicz asked for those opposed to the request come forward and be sworn in.

Lawrence Plott, 230 Snoopy Drive, was sworn in and stated that he wished to clarify about the issue of how many people she would have on the property at one time, and on the original application submitted, Ms. Cheek had indicated that in the future she would like hold weddings and much larger gatherings and venues on the farm. They have enjoyed the quiet nature of their property and until recently has been protected from commercial activity on the property. He pointed out that allowing for a variance based on convenience is not necessarily a legitimate rationale. The requirements are what the public counts on for their protection so there would not be ever-changing rules and regulations on their property. He reiterated that having a travel trailer park would have a negative impact on the surrounding property values.

In response to a question, Mr. Plott stated that there have been firetrucks to visit their property and there were no issues with them getting there and turning around. They were able to get in and out, but they did not appreciate that it was very tight moving the trucks along the driveway—coming in and going out.

Patrick Haywood, attorney representing Mr. and Mrs. Plott, was sworn in and stated that the bridge pointed out does not go to Mr. Plott's property. He pointed out that the ordinance says what it says, which is black-letter law and there is a Special Use Permit (SUP) that was denied by a Superior Court judge. The law is that it is to be 20 feet and that is for a valid reason because it does run with the property, and what Ms. Cheek is allowed to do today may not be the use that it has in the future. The Board is to apply the ordinance to the best of their ability in a generic, vanilla way. As an example, if there is a wedding party and emergency vehicles are needed and cannot get there, there are a number of things that could occur, but following the guidelines for granting a variance, each of the four (4) reasons must be adhered to. They do not include hardships for personal circumstances that are of the applicant's own making. The only reason Ms. Cheek is not making the driveway to 20 feet is because of expenses and financial hardship is not a valid reason. He strongly feels that this request for a variance should be denied today.

Ms. Talbert asked Mr. Plott if the request is denied and Ms. Cheek actually puts in a 20-foot driveway, what does that do to the value of his personal property? Mr. Plott responded that from his perspective, he has never heard of property located next to a travel trailer park increasing their value. Constructing the 20-foot driveway would allow Ms. Cheek to put the travel trailer park in operation, which he feels is detrimental to his property values. He would like to see no commercialization on this property.

Discussion

Ms. Talbert posed the question that if the variance is denied today, Ms. Cheek could still do her proposed project, but she would have to make the driveway 20 feet wide or does this negate the

entire application? Is she back to square one? Lynn Cochran stated that according to the intent and rules of the SUP, if Ms. Cheek installed the 20-foot driveway she would meet those requirements and the project could move forward and she would be in compliance. She would have to submit a revised and amended site plan showing the 20-foot driveway improvements and the Board could consider granting the SUP. He does not think it would require another hearing and could be granted at the staff level.

Ms. Talbert stated that this does seem to come down to the ordinance not being worded in a way that it is fitting the needs of commercial and/or use needs on properties. The Board is caught in the middle and unable to make the request for the variance work. She stated that since the County is getting ready to have a new set of ordinances, would that help her to achieve her goal? Chair Ksieniewicz stated that he served on the sub-committee to approve all the revisions to the new UDO with other Commissioners, Kevin Berger, Charlie Hall, who is Chairman of the County Commission, Charles Rakestraw, a local developer and Gene Robertson, an engineer and surveyor for the County, he does not recall that this portion of the new UDO would change. The new UDO is up for adoption next week before the County Commissioners. He agrees that a lot of businesses have evolved to where the UDO makes no provision for establishing such a business and this may be one of them. He feels that there is a need for some new categories to be addressed in the new UDO.

There being no other speakers, and there was no further discussion from the Board, the Chair asked for a motion.

Ms. Talbert stated that based on the evidence presented she would move to grant the request and specifically find that a variance from the terms of the ordinance will not be contrary to the public interest because the proposed variance will not allow the establishment of a use otherwise permitted in the district by ordinance. The proposed variance will not extend in an area or expand a non-conforming use of land; the proposed variance will not change the district boundaries shown on the zoning map; the proposed variance will not impair any adequate supply of light and air to adjacent property; the proposed variance will not materially increase the public danger of fire; the proposed variance will not materially diminish or impair the established property values within the surrounding area; and the proposed variance will not in any other respect impair the public health, safety, morals and general welfare; the proposed variance will not create a nuisance or violate any laws; the harm to the neighbors from granting the variance will not outweigh the harm to the applicant from denying the variance. Special Use circumstances to the property that do not generally apply to a property use affected by the ordinance provision at issue. Due to these special circumstances the enforcement of the terms may result in undue hardship for the applicant and undue hardship will result because there can be no reasonable use of the property without the variance and the hardship is not self-created. In addition, Ms. Talbert recommends that the conditions recommended by the Planning staff be placed on the variance.

The motion died for lack of a second and the Chair asked for another motion.

Ms. Hayworth stated that based on the evidence presented, she moved to deny the request and specifically find that a variance from the terms of the ordinance will be contrary to the public

interest because the proposed variance will allow the establishment of a use not otherwise permitted in a district by the ordinance. The proposed variance will extend in an area or expand a non-conforming use of the land; the proposed variance will change the district boundaries shown on the zoning map; the proposed variance will impair any adequate supply of light and air to adjacent property; the proposed variance will materially increase the public danger of fire; the proposed variance will materially diminish or impair the established property values within the surrounding area. Special circumstances are that attached to the property that generally apply to others affected by the ordinance provision and due to these special circumstances noted above, the enforcement of the terms will not result in undue hardship for the applicant and undue hardship will not result because there can be a reasonable use of the property without the variance. The motion was seconded and the Board voted 5-1 in favor of the motion to deny, with Ms. Talbert being the negative vote in this case.

Chair Ksieniewicz stated that the motion to deny the request for a variance carries by a vote of 5-1.

A short recess was taken and discussion ensued concerning the motion that was made at the May 2021 meeting. After a short discussion, it was determined that the Board would deny the variance request and the SUP that was approved at the May meeting would be revoked. Therefore, Ms. Cheek would have to re-apply for the SUP and possible variance through the Planning Department and the site plan would have to show a 20-foot wide driveway.

Ms. Cheek returned to the podium and stated that she would try to move forward with this project and would re-apply for the permits and/or variances needed. Counsel Morris suggested that Ms. Cheek work closely with staff to make sure the proper steps are taken during the re-application for this project. Ms. Cheek stated that she would jump through whatever hoops were necessary to get approval of her project.

OTHER BUSINESS

Consideration of Special Use Permit, Case #2021-08 for a Travel Trailer Park. This Permit was conditionally approved upon the applicant's ability to obtain the driveway variance. Approval of the variance will grant approval of the Special Use Permit, in conjunction with the other Permit conditions noted in the UDO. Denial of the variance will indicate revocation of the conditionally approved Permit. The outcome will be noted in the record. Tax PINs 793400385264 / 793400378210, 651 Lowe Rd – New Bethel Township

7. NEW BUSINESS

Mr. Cochran stated that the position of Community Development Director is now vacant as Ms. Spencer has left for another position, as have the other staff Planners. The County just posted the position for Planning Director and they will engage in a broader advertising campaign to try to bring in someone to fill that position. He is not sure what the long-term plan is for the structure of the Department. He will be staffing as a Consultant for the foreseeable future.

Chair Ksieniewicz thanked Mr. Cochran for his efforts on the Board's behalf.

Chair Ksieniewicz announced that the Land Use Plan has been adopted by the County Commissioners.

Mr. Cochran clarified that the next meeting on the 21st will be to adopt a Resolution that the Ordinance will adhere to the NCGS 160D statutory requirements of the Ordinance as a whole. It is not yet complete and will not be voted on at the Commissioner's next meeting.

8. OLD BUSINESS

- a. Old Business - None
- b. New Business - Update on Land Use Plan and UDO contract.

9. ADJOURN

There being no further business before the Board, the meeting adjourned at approximately 8:21 pm.

Minutes Read and Approved

Paul J. Ksieniewicz 08/09/2021
Chairperson, Planning Board Date

Respectfully submitted,

[Signature] _____
Planning Staff Date