



**Minutes of the Regular Meeting of the
Board of Adjustment**

**Tuesday, January 22, 2019
1:00 p.m.**

Chairman Mark Hoek called the meeting to order at 1:00 p.m.

ROLL CALL

Present:

**Chairman Mark Hoek
David Lusk
Lyn Weaver
Wyn Hardy- Alternate
Al Joyner- Alternate
Stephen Webber, Council Liaison**

Absent: Neil Gurney, Bill Bay, Melvin Owensby, Vice Chair

**Also Present: Brad Burton, Community Development Director
Garrett Murphy, Development and Environmental Review Specialist
Sha'Linda Pruitt, Recording Secretary**

APPROVAL OF THE AGENDA

Mr. Burton made mention that the election of officers needs to take place and should be added to the agenda. Mr. Hardy made a motion to accept the agenda as amended with the inclusion of the election of officers, it was seconded by Mrs. Weaver. All voted in favor.

APPROVAL OF THE MINUTES

Mr. Lusk made a motion to approve the minutes of the December 18, 2018 regular meeting as amended to include three edits suggested by the Chairman. The motion was seconded by Mrs. Weaver. All voted in favor.

HEARINGS

Let the record show that Mr. Burton, Mr. Murphy, Mrs. Butera, and Mr. Kunath were sworn in. No board members have any ex parte interest or conflict towards this hearing. Mrs. Butera did not wish to challenge any of the board members over this matter.

- a. ZV-2018005, a request by Mara Butera for a variance of the minimum lot size requirement of 10,000 sf to approximately 8,712 sf, for a variance of 1,288 sf; and a variance for the minimum lot at building width requirement of 100 feet reduced to 63.87 feet, for a variance of 36.13 feet.

Staff presentation was led by Mr. Murphy.

Mara Butera is requesting two dimensional zoning variances for her residence located at 135 Neighborly Drive in Lake Lure, North Carolina. The property is located in the R-1 zoning district, and is identified by Tax PIN 223770.

One variance is to reduce of the minimum lot size requirement of 10,000 sf to approximately 8,712 sf, for a variance of 1,288 sf in the minimum lot size requirement.

The second variance for the minimum lot at building width requirement of 100 feet reduced to 63.87 feet, for a variance of 36.13 feet in the lot width at building line requirement.

The non-conforming pre-existing structure that is currently located on the parcel has knob and tube electrical wiring, is not insulated, and has exposed wall studs. The home has also been in disrepair for some time. Ms. Butera is desirous of improving the neighborhood by demolishing the structure, and rebuilding a new residence that complies with the setback requirements.

Ms. Butera owns another residence on a contiguous parcel of land that with a reconfiguration of both parcels by establishing new lot lines, would make the respective parcels more balanced in regard to the minimum lot size requirement.

Mr. Murphy pointed out that within the packet you can see a GIS map of the property. The highlighted blue parcel is what we are referencing. Mrs. Butera basically would like to demolish the existing structure and rebuild a home. With the variance the new home will be a lot closer to the lot size requirement. Mrs. Butera falls under a land hardship.

Mr. Murphy opened the floor to questions from the Board.

Mr. Hardy wanted to know what other lot options are available to Mrs. Butera, other than having to make adjustments to the lot size? Since she's going to be removing one building and putting up a new one so obviously there are other options that can be done and still stay within the set lot configuration.

Mr. Murphy if the lot would not have been revised than you would have to stay on the current foundation as far as reconstruction should go.

Mr. Burton- added that once you wipe it off the pad it's a green site so you would have to start fresh. What this project is attempting to do is to bring this site into 100 % conformity with the exception of the lot size.

Once you get down in there it gets smaller very quickly, even a modest house would be hard to place in this location without these modifications from the structures and proposed structures its gaining. If you will notice that the existing lot lines which are labeled as the old lines on the map to even put a smaller modest home on the lot would be prohibited with these existing conditions in place. The pump house is going to be removed. The property will now be in conformity with the setbacks. The stairs and access structures to the lake have been accepted in these plans. By the virtue of owning a continuous property they are able to borrow and build out from that. The way the lot is set up Mrs. Butera would still likely have to request a variance to build anything onto that parcel.

Mr. Joyner questioned whether we have precedent that allows reconfiguration of a lot line when it's on continuous property? Also is there precedent that after the reconfiguration of the lot is still under 10,000 sf as long as you stay within the setback that you can still build?

Mr. Burton proceeded to answer. Yes reconfiguration of a lot line can be done on continuous property. Next precedent doesn't exist for this board. Established practice can be considered but there are no precedents to follow because each case that is presented is unique to itself. Everything is based on evidence and testimony as it applies to each applicant. There have been other cases previously were reconfiguration on a lot under 10,000 sf has been done. Yes construction can be completed on a lot this size. What previously has been done was the applicant submitted an attorney Certificate of Title for the property which states that the lot size is exactly the same as it was the day the lot was created. As long as the applicant stays within the setbacks then we have a record stating that it is a nonconforming lot and pursuant to that Certificate of Title and the administrator will allow the applicant to proceed. What makes this situation unique is there is in fact a change being made to the actual lot line which is why we are here today.

Mr. Hoek asked for clarity of the lot's location whether the continuous lot is facing the lake on the left? And if there have been any comments from neighbors concerning this project?

Mr. Murphy replied that yes that is the correct location, it was surveyed the to the north. Also he had one email from a neighbor which was replied to via a phone call. The neighbor was just curious as to what was taking place with this site whether both parcels would be combined to make one large house. Mr. Murphy explained that Mrs. Butera was demolishing a cabin and putting up another structure in its place to which the neighbor was satisfied. There were no other comments.

Mr. Hoek also pointed out that on the application the first part of the minimum lot area has 10,000 reduced to 800. Didn't we say it was 8712 sf?

Mr. Burton confirmed this changed need to be updated and amended within the application and asked Mrs. Butera if she would be willing to amend such at this time?

Ms. Butera stated that she would agree to amend the application to be read as being reduced to 8712 sf?

The Chairman opened the floor to give Mrs. Butera the opportunity to present her case to the Board and add any additional thoughts, comments, or statements.

Mrs. Butera responded that this is a very technical case and as such she did not wish to contribute anything additionally outside of the staff presentation.

The Chairman then asked whether any members of the Board had any questions for Mrs. Butera? The Board members did not.

Mr. Joyner had one final question. The deal with the sf on the front of lake so this is less than 100 the lot where the structure is being built, it appears that it is stating here it was.

Mr. Burton replied that yes it had been moved back a little bit more. Basically this is stating where it was the where it will be does not meet the standard which is why she was seeking the variance.

Mr. Joyner asked in reference to lake front distance required. Have there been cases where variances have been issued to build a larger structure on a non-conforming lot with a lake front less than 100 ft.

Mr. Burton replied that essentially what we have here is a proposed drawing of this new structure, with the lot reconfiguration that will comply with the lake front set back requirement.

Mrs. Weaver reiterated but what about lake front distance?

Mr. Joyner: in the application it makes reference to minimum lot width as well.

Mr. Burton asked for a brief pause for administration to discuss such. This has not previously been addressed but should be addressed seeing that the door has been opened for a variance all dimensions should be explored. Unfortunately that has not been advertised we have not given notice to everyone that such is a requirement, and with this case we are only focused on building width and lot size.

Mr. Webber had an opinion to offer. The shore line length has no bearing on this variance because it is a non-conforming lot of record. The lot was established prior to the zoning regulations being developed and put into place. The 100 ft. requirement was not established until after and as part of those zoning regulations. Therefore the shore line length has no bearing on the lot, or on the development of the lot, nor the variance.

Mr. Burton interjected that he humbly and respectfully disagree with Mr. Webber.

Mr. Webber continued to state that where it comes into play is when you develop a lake structure. Lake structure regulations allow for certain developments at different lengths but as far as building on the lot it's a nonconforming lot of record seeking a variance and it really doesn't apply to the building of the lot.

Mr. Burton now agreed with Mr. Webber's point from that perspective.

Mr Hoek asked Mrs. Burtera if at this time she had plans to change the existing boat or dock?

Mrs. Buetra responded that no, not at this point in time.

Mr. Hoek then let it be known that at which point she will then need to come back before the board for a second variance.

The Chairman opened the floor for any additional testimony to be given.

Mr. Eric Kunath began with praise for the Board for all they do for the community, it's important especially for builders. Mr. Kunath continued that most of this came about with seeing the difficulty of conforming this lot. Because Mrs. Burtera owns both lots we borrowed from the bigger lot so that the lots would come into closer balance for the neighborhood. We held to all side line setbacks.

Finding of fact:

"With regard to Case Number ZV-2018005, I move the Board to find that the applicants have demonstrated that unnecessary hardships exist as per the following testimony":

Unnecessary hardships would result from the strict application of the regulations.

A literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.

The hardships result from conditions that are peculiar to the property, such as location, size, or topography of the property. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question that are not applicable to other lands or structures in the same district.

The hardship did not result from actions taken by the applicant.

The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

The requested variance is consistent with the spirit, purpose, and intent of the regulations; will secure public safety and welfare; and will preserve substantial justice.

Substantial justice is not achieved when granting the variance would be injurious to the neighborhood or to the general welfare.

All Board members voted yes on the finding of fact.

Mrs. Weaver gave the motion, "Accordingly, I move the Board to grant the requested variance in accordance with and only to the extent represented by the application as previously amended with the minimum lot area." The motion was seconded by Mr. Joyner. The variance is granted

NEW BUSINESS

ELECTION OF OFFICERS FOR CHAIRMAN AND VICE-CHAIRMAN

Will be held during the February Meeting.

OLD BUSINESS

None.

ADJOURNMENT

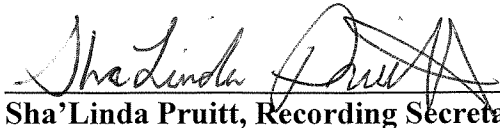
Ms. Weaver made a motion seconded by Mr. Hardy to adjourn the meeting. All voted in favor.

The meeting was adjourned at 2:22 p.m. The next regular meeting is scheduled for Tuesday, February 26, 2019 at 1:00 p.m.

ATTEST:



Chairman Mark Hoek



Sha'Linda Pruitt, Recording Secretary