

MINUTES
BOARD OF ADJUSTMENT
City of Burlington, NC
September 10, 2013

Members Present

Mr. Mike Gee, Acting Chairman (City)
Mrs. Joyce Lance (City)
Mr. Todd Smith (City)
Mr. Haywood Simpson (City Alt.)
Mr. David McDevitt (ETJ Alt.)

Members Absent

Mr. Chalmers Brumbaugh (ETJ)
Mrs. Sylvia Greeson (ETJ Alt.)
Mr. Ed. Wilson (City)
Mr. Eric Grant (City Alt.)

Also present was Mr. Joey Lea, Zoning Administrator for the City of Burlington and Mr. Chris Marland, Zoning Enforcement Officer.

Vice Chairman Mike Gee called the meeting of the Board of Adjustment to order at 8:30 a.m. Mr. Gee stated the city representatives to the Board of Adjustment are appointed by the City Council. This is a quasi-judicial hearing. Everyone speaking before the board should state their name, sign the log on the podium, and swear or affirm that everything they say is true to the best of their knowledge. Appeals of the Board's decisions may be taken to the Alamance County Superior Court. The City will state their position because of their knowledge of the case and the technical codes. The applicant will state their case, and then anyone from the public may speak. After the city, applicant, and the public have presented all evidence, the board will then close the meeting to the public and discuss the case and vote. An affirmative four-fifths vote is required to grant a variance, special use permit or an appeal.

Mr. Chris Marland stated, in the minutes that you approved from last month, there were statements made that the statute is changing, we need to inform you that is not happening until October. Right now we are under the same rules we were always under, so just proceed as normal.

DUE PUBLICATION

Mr. Chris Marland, Zoning Enforcement Officer with the City of Burlington, stated, due notice and publication of this meeting of the Board of Adjustment has been made, and all contiguous property owners were mailed a notice advising of this meeting.

SWORN TESTIMONY

Prior to testifying before the Board, each party was sworn in or affirmed that the testimony they were about to give was true to the best of their knowledge.

SWEARING IN

Vice Chairman Gee stated, the first item of business for today is to swear in a Board member. City Clerk, Beverly Smith swore in Mr. David McDevitt.

MEETING MINUTES

Acting Chairman Mike Gee stated the second order of business is going to be the approval of the minutes from the July 9th meeting. Did everyone receive their copy of the minutes? Mr. Marland stated there is a change to the minutes. Mr. Chris Marland, Zoning Enforcement Officer with the City of Burlington, stated, there is technically not a change to the minutes because that is what was said. However, we do need to let you know that the statute does not take effect until October

1, 2013. In the minutes I believe it was stated at the next meeting it would be in effect. But we just wanted to clear up that it will not be in effect until October 1, 2013 so we are still under the same rules. Acting Chairman Mike Gee asked, are there any other changes noted in the minutes? Is there a motion to approve the minutes? Board Member Todd Smith made motion to approve minutes held from the July 9, 2013 meeting. Board Member David McDevitt seconded the motion. The Board voted unanimously to approve the July 9, 2013 Meeting Minutes.

ITEM NO. 1:

CASE NO. 06-13 – SPECIAL USE PERMIT (CITY)

Celia's Divine Child Care

610 Plymouth St.

Alamance County Tax Map 12-39-18

§ Section 32.13.W

Child Care in R-6 district.

EVIDENCE PRESENTED:

Mr. Chris Marland stated, Ms. Celia Poteat is seeking a Special Use Permit for an In Home Child Daycare with eight children per shift for three shifts to be located at 610 Plymouth Street. I have received some phone calls. Two of the calls had no objections to the child care being there. I did receive another call from a party that had called me previously; she had stated she had some concerns about the area surrounding the property of 610 Plymouth Street with trash, debris and over growth of grass. I contacted Ms. Poteat and asked her about the residence at 610 Plymouth St. and she confirmed to me that it will be taken care of and cleaned up. We visited the site and it is about 80% done and needs a little bit more work but she did confirm to me that it will be done before any children get there. In your packages you will notice that she does plan on putting a fence up in the back yard. As you know our requirements are 100 sq. ft. of fenced in play area per child. This will require a minimum of 800 sq. ft. She has more than enough area that she is going to fence in. Mr. Haywood Simpson asked, is it necessary to have it rezoned from a residence? Mr. Chris Marland stated, no sir, it's allowed with the Special Use Permit as an in home day care, that's what we are here today to do. Mr. Todd Smith asked, you said there was brush clean up, is that reflected on the picture? Mr. Marland stated, in the picture there is a section along the side and up the back that needed to be cut. There was one tree that has fallen that Ms. Poteat said she will have cleaned up. Pretty much all the back was cleaned out and cut down to where it needs to be so it is not in violation. But the back section and about half way up this side, probably ten to fifteen feet in from the property line still needs to be done. Mrs. Joyce Lance asked, it appears to me that the person that called with the concerns about the trash and debris is not sitting in the gallery, is that correct? Mr. Marland stated, no, not that I am aware of. Mr. Todd Smith asked, is the fence up yet? Mr. Marland stated, no, it is not. Mr. Haywood Simpson asked, you don't think traffic will be a problem since it is a pretty severe curve there? Mr. Marland stated, I don't think it will be a problem. You can get in and out pretty easily at this site. It is a pretty quiet neighborhood and not a lot of traffic there already.

Acting Chairman Mr. Mike Gee stated, if someone from Celia's Divine Touch Child Care would like to come forward. Ms. Celia Poteat stated, I plan to have three shifts. I've already been a foster parent for 28 years. I'm very experienced with children. I've adopted four children from the state and raised them and they are already grown and gone. As far as the child care, I will be offering care before school, after school and the three shifts. Acting Chairman Mr. Mike Gee asked, how many children are you planning on caring for? Ms. Celia Poteat stated, eight per shift. Board member Mr. Haywood Simpson asked, how many employees will you have? Ms. Celia Poteat stated, when I get eight kids then I can have one employee or two employees per shift. Board member Mrs. Joyce Lance asked, how many children do you anticipate on having

right now when you open? Ms. Celia Poteat stated, eight. Board member Mrs. Joyce Lance asked, so you already know how many children you will have as soon as you open? Ms. Celia Poteat stated, no, not as soon as we open. Board member Ms. Joyce Lance asked, in the beginning it will just be you until you get eight per shift then you will add one employee? Ms. Celia Poteat stated, yes. Board member Mrs. Joyce Lance stated, looks like you will be open 24 hours with three shifts. Ms. Celia Poteat stated, that will be five days a week. We will be closed on Saturday and Sunday. Acting Chairman Mr. Mike Gee asked, are you currently keeping children or is this going to be a new venture? Ms. Celia Poteat stated, this will be a new address for me. I won't be keeping them at my home where I am living now. I just have to relocate. That is the reason the place looks so junky. I asked the lady if I could wait and get an approval from the Board first and then we will work on taking care of everything. Acting Chairman Mr. Mike Gee asked, so you are going to move into this house and live here as well as keep children here? Ms. Celia Poteat stated, yes. You must live in the home to have an in home day care. Board member Mr. Haywood Simpson asked, do you own the home? Ms. Celia Poteat stated, no. I will have to rent it. Board member Mrs. Joyce Lance stated, even though you don't have to have that extra employee now, when you run a 24 hour operation we are going to hope these kids sleep at night and we all know they don't always do that. Do you have back up to help you like family members? Ms. Celia Poteat stated, well I have my cousin's wife right now. Board member Mrs. Joyce Lance asked, in the event that you would get sick do you have someone to help you? Do you have back up that is not an actual employee? Ms. Celia Poteat stated, not yet but we are working on it. I have to go through a little training also so they will tell me everything I am supposed to do. Board member Mr. Haywood Simpson stated, I noticed there is a day care over on Jackson Street not too far from you. Is one reason you are entering into this new venture because you think there is an over flow from there? Have you heard they have more children than they can contend to? Ms. Poteat stated, no, that wasn't the reason. I have a sister and her sister-in-law live side-by-side and they run a day care and they do real good at it. My sister told me it wouldn't be a problem. I have asked her about the location since I would be behind this other daycare and my sister told me that she has been in business for twelve years and regardless of where you move if you do a good business people will bring you their children regardless of where you are located. Board member Mr. Haywood Simpson asked, is the house next to you occupied? Ms. Celia Poteat stated, looking at the new house, the house on the left is occupied but the house on the right is not occupied. Board member Ms. Joyce Lance stated, one of the things we have to look at here is the safety of the children. Apparently this is a quiet neighborhood and you are not worried about traffic getting in and out of there safely. You must have adequate lighting since you are operating a 24 hour facility. Is there adequate lighting there for people to see? Ms. Celia Poteat stated, everything seems to be ok but if it is not enough light I can always have more lights installed. Board member Mrs. Joyce Lance asked, did you say besides going into fostering this is the first time you are going into the daycare business?

Ms. Celia Poteat stated, I started it one time after I closed up my beauty shop, but I changed my mind. Mrs. Joyce Lance asked, you are obviously familiar with state regulations and requirements that you have to meet? Ms. Celia Woods-Poteat stated, yes. Acting Chairman Mr. Mike Gee asked, have you been working with the state for your license for this? Ms. Celia Poteat stated, they told me to get all this out of the way and then they will come in and train me. Acting Chairman Mr. Mike Gee asked, there are certain things that have to be met and so I'm just going to ask you, do you believe that if you locate a child daycare facility in this house that you are going to have a negative effect on the property around you? Ms. Celia Poteat stated, no, I don't. Acting Chairman Mr. Mike Gee asked, you have testified that you have family members that operate daycare facilities and that there is a need for additional childcare in the area. Is that correct? Ms. Celia Woods-Poteat stated, yes. Acting Chairman Mr. Mike Gee asked, within this area are there any other folks operating facilities like this? Ms. Celia Poteat stated, the only one that I know of is on Jackson Street. She has a center. I would say it's about two miles. Board member Mrs. Joyce Lance asked, we know that there were a couple calls in support of this and

then there was the one phone call with the concern about the trash and the debris, have the neighbors talked with you face to face? What kind of environment do you feel like you are going to be opening this in? Is it going to be a friendly environment that welcomes you to the neighborhood, or do you have anybody expressing negative thoughts? Ms. Celia Poteat stated, I don't think there will be anybody thinking that I would do anything wrong or not be friendly because I am across the street most of the time. Board member Mrs. Joyce Lance asked, so no one has expressed anything negative to you? Ms. Celia Poteat stated, no.

DISCUSSION & FINDING OF FACTS:

Acting Chairman Mr. Mike Gee stated, this is a two part motion. The first thing we need to do is make a motion based on the four conditions and stating the findings to support the conditions. I think the testimony is pretty consistent with other in home day care requests that we have had in the past. It appears that she has met all the conditions.

DECISION:

Board Member Mr. Todd Smith states, I would like to make a motion that the four required conditions for issuing a Special Use Permit in accordance to Section 32.13.B(1)(a) are met due to the following Finding of Fact:

1. **the use will not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and approved;**
the findings of fact are that this is a residential neighborhood and not a lot of traffic. There is another day care in the area and Ms. Poteat has testified that this is a safe area as well as the people that have called in about this day care;
2. **the use meets all required conditions and specifications;**
the findings of facts are that the fence will be added on before the daycare is opened. Ms. Poteat is going through the licensing requirements;
3. **the use will not substantially injure the value of adjoining property or that the use is a public necessity;**
the findings of fact are that Ms. Woods-Poteat has testified that this will not substantially affect the value of the property;
4. **The location and character of the use if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the plan of development of Burlington and its environs;**
the findings of fact are that typically in home daycares add value to neighborhoods. This type of use is clearly designed for home neighborhoods;

Mr. David McDevitt seconded the motion.

AYES: Simpson, Lance, Gee, Smith, McDevitt

NOES:

Board Member Todd Smith made a motion to approve the Special Use Permit for in home day care located at 610 Plymouth Street in Burlington, due to the previously stated Findings of Fact and the applicant be required to complete the fence as indicated on the plans that have been submitted and to meet all requirements that the state requires for in home day care and the applicant/owner shall complete the development according to the plans submitted and approved by this Board and if any conditions affixed hereto or any part thereof shall be held invalid or void then this permit shall be void and of no affect.

Mrs. Joyce Lance seconded the motion. The board voted unanimously to approve the Special Use Permit.

AYES: Simpson, Lance, Gee, Smith, McDevitt

NOES:

ITEM NO. 2:

CASE NO. 07-13- VARIANCE (ETJ)

Wade Journey Homes

276 Rosemary Dr.

Alamance County Tax Map 12-5B-16

§ Section 32.3.E(5)

Front Yard setbacks in R-9 district

EVIDENCE PRESENTED:

Mr. Chris Marland stated, Wade Journey Homes is seeking a two foot variance to the front yard setback requirement of 30ft. for the house located at 276 Rosemary Dr. This was discovered after an as built survey was done after completion of the home. As you can see on the original site plan that was done, the house was in the setbacks. They have since done an as-built survey. You can see the front porch here comes across that front setback line. Again this was discovered after construction of the home with this as built survey. Acting Chairman Mike Gee asked, this is for a two foot variance to the front yard setback? Mr. Chris Marland stated, correct, this is an R-9 district. This is a 30ft. front yard setback. Acting Chairman Mr. Mike Gee asked, prior to construction, plans that were submitted to the city are they the same plans that were built? Mr. Chris Marland stated, no. Board Member Mr. Todd Smith asked, a plan was made but poured in the wrong place, is that what happened? Mr. Chris Marland stated, yes. Board member Mr. Todd Smith asked, is this the only house out there? Mr. Chris Marland stated, no. They are constructing quite a few homes at the moment. Board member Mr. Todd Smith asked, is this all by the same company? Mr. Marland stated, no.

Mr. David Hodgeman with Wade Journey Homes stated, I am the division manager for Wade Journey Homes. I oversee all sales and construction in the Burlington and Greensboro markets for the company. Acting Chairman Mr. Mike Gee asked, can you explain to us what happened and what you are seeking from the board? Mr. David Hodgeman stated, in March of 2013 a home was proposed to be built for a Mr. Donald Hughes. He put a contract on it for a pre-sale home, this is the 1800 plan. He purchased an elevation B from us to be built on lot 17 with in the Hawthorn Community. The information was all put together and submitted to the City of Burlington's building department for a permit. We have all our plans on file with our surveyor and we tell them what home and which elevation of that is located on the site. They have the subdivision plans and obviously make sure that we meet all the setbacks that are generally required. The surveyor took that information and they did our footing stake with the information we had provided to them. Once they did the footing stake and we had our underground plumbing and stuff put in we then prepped and poured our monolithic slab. Soon after we poured the monolithic slab we started framing construction of the home. At that time the customer, Mr. Donald Hughes came to the site and noticed that there was an issue. The issue was that there was a stoop that had been poured and it did not meet the rendering in the specification that we had written his contract under in that he was supposed to have a front porch. Basically the situation that accrued was that there was a label that was misplaced on the set of construction drawings on the 1800 plan. Basically we made a revision to all our plans to streamline some things and make some things more efficient at the end of 2012. When this plan went in for that revision we were building "A", "B", and "C" elevations. We did away with all our "C" elevations but there was an error made on this particular plan where the front porch was actually labeled as a "C" elevation

and the "B" was labeled with the stoop as you can see in the site plan drawings as far as that goes. So that is how the house was put on the ground showing just the small stoop not the larger front porch. The issue came to the attention of my builder that there was a situation with the stoop after discussing it with the homeowner on site. He did some leg work to see how the roof trusses on site were built whether they were able to accommodate the front porch. He knew from the rendering, and after having the conversation with the customer, that this was supposed to have a front porch. He then proceeded with installing the front porch as it was originally proposed to the customer, overlooking the fact that this front porch was going to encroach into the front setback. Construction proceeded all the way through to certificate of occupancy which was issued, I believe the 27th or the 28th of August. We do an as-built foundation survey at the completion of a home once the yard is finished and as part of the loan proceeding process. The customers were actually at the closing table on the 29th at about 5:30 p.m. when we received the call from the land surveyor saying that there was an issue with the front setback encroachment. Shortly after that it was Friday morning that I came out and spoke with the gentlemen in the Planning Department to discuss what the situation was and to be able to see what options we had as far as that goes. Unfortunately for the customer, we did not hold the closing at that point. We did not allow them to proceed any further with conveying the property to them. We didn't want them involved with it any more than what they already were. The couple is in their mid to late 50's. They lived in a mobile home about a mile and a half down the road from this property off of Maple Avenue. They recently adopted their two year old granddaughter that is living with them. They have watched the progress of the construction closely. They are very excited about the home and to be able to move out of the mobile home that they have been in for about 34 years. We obviously had to stop all their moving plans. They actually have their mobile home sold and we had to hold the sale of that property so that they would have a place to reside until we could come to some resolution on this situation. Mr. David Hodgeman stated, Wade Journey Homes is asking the board to grant us a variance on this front setback due to the error that was made with the construction of the home. We've obviously tried to be as conscientious as possible about every detail of the home. Not only the construction of the home but also to be sure we meet and maintain the City ordinances, setbacks and building regulations. Unfortunately Mr. Hughes couldn't even get off work today or he would certainly be here. I met with him about 6:00 p.m. last night because he is very concerned and stressed. I'm sure he is praying for this situation to go well now. Acting Chairman Mr. Mike Gee asked Mr. Chris Marland, has the City had any instances with Wade Journey Homes in the past where a situation like this has arisen and the house not been built as the plan was submitted into the City? Mr. Chris Marland stated, no we haven't. Acting Chairman Mr. Mike Gee asked, in your opinion this really is an error on their part and not intentional? Mr. Chris Marland stated, yes sir. Board member Mrs. Joyce Lance asked, you have in your documentation here that your framing had started when the issue was discovered, how much framing? Mr. David Hodgeman stated, well it is a single story home with one room over top of the garage and I believe that it was the first walls that were framed at that time and I do believe that they were getting ready to set roof trusses. I know that the roof trusses at that moment in time after discussing this with the builder of the home later on, definitely were not set on the roof as far as that goes at the time the situation came up with the customer. Mrs. Joyce Lance asked, you said here that the concrete was poured, so what is the hardship? Mr. David Hodgeman stated, the hardship is that the residence, as it's built, is not able to have the front porch that we put under contract with the customer. The home is set as far as that goes and there would be no way to really alter the structure for them to have a porch that would be any larger than two feet. Board member Mrs. Joyce Lance asked, except if your company had corrected it at the time it was noticed, is that correct? Mr. David Hodgeman stated, at that moment in time if the setback situation had been realized the correction would have been to tear the entire concrete slab up out of the ground and push it back. Which is something, if it had been noticed, we absolutely without a doubt, would have done. By no means would we have used this application as a way to correct an error because it would have been torn out of the ground and it

would have been resolved correctly if the situation was realized. Board member Mr. Haywood Simpson stated, I thought I heard you say that the inspector realized it before you even started framing. Mr. David Hodgeman stated, no, the homeowner realized it when the concrete slab was poured and the framing had started when he came over to the site. Board member Mr. Haywood Simpson stated, so it was at the beginning of the framing. I agree with Ms. Joyce Lance, that was plenty of time to stop it. Mr. David Hodgeman stated, if the builder had realized the situation that the setback was going to be encroached upon. Basically the way it was perceived after discussing with him is that the surveyor had made an error and had not staked out the rest of the front porch. Simply put, what was there was missing a couple of pins when they staked for the footing. Because they staked the front porch as well and they had made an error to do that was what the presumption was and there was no realization that the setback was encroached upon. Acting Chairman Mr. Mike Gee stated, the error that was discovered was not that you were in violation of the setback requirements, but it was just that the porch wasn't there. Mr. David Hodgeman stated, it was just that the porch wasn't poured as big as it should have been. Acting Chairman Mr. Mike Gee stated, to summarize what you are saying is that there was an error on the contractors part who was pouring the concrete based on the fact they felt like it was just pinned wrong by the surveyor for the porch. Mr. David Hodgeman stated, the assumption was made by the concrete contractor that it was pinned wrong by the surveyor and the assumption was made by my builder that there was an error from the surveyor as far as that goes and they just didn't reflect it. Looking at the construction drawing you can see where the foundation plan was labeled. "A" and "B" are labeled the exact same foundation and "C" is a different foundation. If you look to the first floor plan you see that the "B" elevation shows the front porch and the "C" elevation is not even mentioned. In fact it's not mentioned anywhere else in the construction drawings. Mr. Chris Marland stated, there were some assumptions and errors obviously made but Wade Jurney was under the impression everything was fine until the as-built survey was done and that's when they were really notified of the problem of what had occurred. You are talking from concrete and framing to when it's done and that is when it was brought to their attention. That is when they finally got wind of it and then they came to see us. Mr. David Hodgeman stated, I wanted to make one other statement and that is I have spoken with my Vice President as well as the President of our company and because this situation occurred, it is so very important to us. We are currently the largest home builder in the triad, we're doing a lot of business in Burlington and we have several subdivisions in fact we are looking at new ones all the time; we are so serious about this issue and it never occurring again, that we are going to do an as-built survey on every single foundation to make sure that every issue is maintained. From a planning stand point we are going back to our surveyors and we are going to take the largest footprint that we have and add two feet to push the house that much further back to make sure that we don't have anything that's even anywhere close. Now side setbacks on a lot of the lots in these types of subdivisions are always a bit of a question. We have a lot of five foot side setbacks throughout the area and we are right on five foot so that one is a little tight, but obviously the front setback is something that in most all cases we have the ability to shift. And it is a very large lot. In fact the gentleman is planning on building a two car garage in his backyard because he has plenty of room. Acting Chairman Mr. Mike Gee stated, I was going to point that out because there is another house in the back yard before you get to the rear setbacks so I think that if it had been known you guys would have obviously started two feet further back. Board member Mrs. Joyce Lance stated, I've been known many times on this board to say that human error does occur and I think part it's of what we have to look at here. I think you have adequately clarified it and we are only talking two feet here and we're not talking ten feet, but what we have to make sure that this wasn't something that could have been fixed at the time. I think Mr. Marland has clarified that you didn't really know. There is really two issues here it seems to me. So you understand the burden that we have because we can't always fix the problems that occur between the builder and the buyer, but I think you have done a good job clarifying that. Acting Chairman Mr. Mike Gee stated, Mr. Hodgeman can you explain to us for the record to help us to determine that if we

grant a variance that it is in harmony with the intent of the ordinance. Mr. David Hodgeman stated, as I understand the ordinance, I spoke with the gentleman in the Planning Department a bit about this, it is my understanding that the larger front setback in R-9 is obviously to create a curb appeal so folks have larger front yards but it also has to do with having line of sight. Particularly, coming around a corner, and with this being an open air porch it does have three aluminum columns that do come down for decorative purposes on the front of the home. I even took a couple of photographs where we were looking from the street through as far as that goes and I do feel that the home fits in well with the community. In fact on the left side of the street with it being such a large lot we've exceeded the side setbacks requirements by I believe 7.6 feet. So it does sit back and it does sit on the lot well but I do wish it was sitting 2 feet further back on the lot than what it currently is. Board member Mr. Todd Smith asked, so it is on a cul-de-sac and not a lot of traffic right there? Mr. David Hodgeman stated, that's correct. Board member Mrs. Joyce Lance stated, is the picture of the house that was up there, was that taken with the photographer standing on Thistle Drive? Mr. David Hodgeman stated, that is correct. Board member Mrs. Joyce Lance asked, what are your usual landscaping plans? I admit to you, if that was my front porch I would want to put 8 f.t. shrubs all the way around it, so that way I would have privacy. I don't know Mr. Marland if we have any authority over such things as loading that up with shrubs that would interfere with the line of sight, to the best of my knowledge we don't. Mr. Chris Marland stated, no ma'am not around the porch. Mr. David Hodgeman stated, there is an active homeowners association there and so any type of exterior improvements or modifications would need to be approved by the homeowners association. I'm not saying they would allow them to put some evergreens in that would grow up, but that is certainly something that would need to be approved. With the homes that we build it is a fairly basic landscaping package and nothing that is currently in the ground has the capability of becoming too large unless it's just overgrown or something like that. Board member Mr. Todd Smith asked, are these Wade Journey homes in the top of the section? Mr. David Hodgeman stated, what you see in the black is the recorded sections. D.R. Horton actually started in the community and so they built several of the ones on Buckeye Court and they built one of the first homes in the neighborhood but everything that isn't built on those vacant lots is under contract with Wade Journey Homes. Board member Mr. Todd Smith asked, no one has complained about the two foot encroachment? Mr. Chris Marland stated, no, I did not receive any calls about this case.

DISCUSSION & FINDING OF FACTS: Acting Chairman Mr. Mike Gee stated, I think Mr. Hodgeman has addressed the situation very thoroughly. The hardship can be argued that it was created by error from multiple parties during the construction process and there is practical difficulty in trying to solve this in ways other than a variance. I think that those standards have been met. The variance in my opinion is in harmony with the general purpose and intent of the ordinance as again testified by Mr. Hodgeman the ordinance is really designed for consistency, curb appeal and line and sight issues. The fact that this is an open air porch addition looking at the plans that have been presented, the plat of the subdivision, the way the house is sitting on the lot and the fact that it is an open air porch I think actually helps to satisfy both the second and third requirement because I don't believe that there will be any public safety or welfare issues that we run into in granting this variance. Board Member Mrs. Joyce Lance stated, in addition to that, for line of sight, it is a cul-de-sac and that may change years down the road, but I think at this point, it will not be a problem or a safety issue. Acting Chairman Mr. Mike Gee stated, the request at hand is for a two foot variance to the front yard setback at 276 Rosemary Drive. Board Member Todd Smith stated, I think that we should grant the motion. I would caution that with a different make up of this board or a statute change, I'm not sure it would pass again. Mr. Chris Marland stated, we would like to request that in the motion the 28 foot standard is not to be used anywhere else throughout this subdivision from here forth. It is an R-9 zone with a 30 foot setback.

DECISION: Acting Chairman Mr. Mike Gee stated, I would like to make a motion to approve a variance for a two foot front yard setback for the property located at 276 Rosemary Drive, Burlington, North Carolina based on the findings of fact being that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance. Mr. Hodgeman who is a division manager of Wade Journey Homes in Burlington has testified at length regarding the fact that surveyor plans had been submitted to the contractor prior to construction that did not include a front porch on this property. When the concrete was to be poured there was a miscommunication error where the contractor was under the assumption that the footprint of the house was not pinned correctly by the surveyor and the porch was poured based on the plans that went with the house. There is definitely a practical of difficulty if the variance is not granted. All though there is room in the backyard of the house that it could be located differently, to tear the house down and move it for the two foot setback is not a practical solution to this problem. We would note that the 28 f.t. standard for front yard setback is not to be a standard throughout the rest of the subdivision if this variance is granted. The second condition is that the variance is in harmony with the general purpose and intent of the ordinance and it preserves the spirit. The third condition is, that in granting the variance, the public safety and warfare have been assured and substantial justice has been done. Again, I think through testimony and information provided by the applicant the ordinance is in place to provide for inconsistencies in a subdivision, curb appeal and most importantly to insure that there are no issues with the line of sight and safety concerns. The testimony does indicate this is an open air structure. The traffic flow in this location is going to be light because it does sit on a cul-de-sac, so I feel that this condition has been met. So I move that we grant a two foot variance setback for 276 Rosemary Drive, Burlington.

Mrs. Joyce Lance seconded the motion. The Board voted unanimously to approve the variance.

AYES: Simpson, Lance, Gee, Smith, McDevitt

NOES:

NEW BUSINESS:

None

MEETING ADJOURNED

Ed Wilson, Chairman

Chris Marland, Secretary of the Board