

MINUTES
BOARD OF ADJUSTMENT
City of Burlington, NC
January 13, 2015

Members Present

City:

Mr. Ed Wilson, Chairman
Mrs. Joyce Lance
Mr. Todd Smith
Mr. Eric Grant (Alt.)
Mrs. Sylvia Greeson (Alt. ETJ)

Members Absent

Mr. Mike Gee, Vice-Chairman
Mr. Robert Giles (Alt.)

ETJ:

Mr. David McDevitt (Alt. ETJ)*

* Not Voting

Also present was Mr. Joey Lea, Zoning Administrator and Mr. Chris Marland, Zoning Enforcement Officer.

Chairman Ed Wilson called the meeting of the Board of Adjustment to order at 8:30 a.m. Chairman Wilson 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 applicant and the public have presented all evidence the Board will then close the meeting to the public and discuss the case and vote. During this time no more evidence shall be admitted nor any other arguments made unless the Board wishes to ask the Applicant a question pertaining to the evidence already presented. Anyone that tries to make an argument or present any evidence at this time will be out of order. The Chairperson may order any individuals who willfully interrupt, disturb, or disrupt to leave; failure to comply with this order is punishable by imprisonment up to 60 days, a fine of up to \$1000.00 or both. An affirmative four-fifths vote is required to grant a variance. A majority vote is required to grant a Special Use Permit or to determine an appeal.

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.

MEETING MINUTES

Chairman Mr. Ed Wilson stated, the first item of business for today is going to be the approval of the minutes from the October 14, 2014 meeting. Does anyone have any corrections? Board Member Mrs. Sylvia Greeson stated, I have some very minor typos noted that need to be corrected. Chairman Ed Wilson stated, would anyone like to make a motion to approve the minutes with the proposed changes? Board Member Mr. Eric Grant made a motion to approve the minutes as corrected. Board Member Mr. Todd Smith seconded the motion. The Board voted unanimously to approve the October 14, 2014 Meeting Minutes.

ITEM NO. 1:

CASE NO. 01-15 SPECIAL USE PERMIT (CITY)

The Lamb's Chapel

Intersection of Troxler Rd. & Alamance Rd.

Alamance County Tax Map numbers 3-22E-51, & 3-22E-32

§ Section 32.9

Churches in I-1 district.

EVIDENCE PRESENTED: Zoning Enforcement Officer Mr. Chris Marland stated, the first case to come before you is the Lamb's Chapel Church at the intersection of Troxler and Alamance Road. They have applied for a Special Use Permit and they have also summited full plans through the TRC process. There was a lengthy discussion on some traffic issues but they have since been resolved. In an addendum that I sat next to your agenda package, you will see what they have proposed there for traffic calming issues. This is a large church and it takes up a good bit of acreage as you can see. Chairman Mr. Ed Wilson asked, the City had issues with the traffic? Zoning Enforcement Officer Mr. Chris Marland stated, there were traffic issues that were brought up during TRC Review and they have been addressed. Board Member Mrs. Sylvia Greeson asked, as a point of clarification, drive 3 would only be closed on Sunday mornings and Wednesday evenings and would be open for other days of the week for traffic getting in and out, is that correct? Zoning Enforcement Officer Mr. Chris Marland stated, I will let the applicant testify to that.

Mr. Charles Huffines stated, I represent The Lamb's Chapel and I testify that everything I say will be the truth based on the best of my ability. Let me address Mrs. Greeson's question first, that driveway will be closed on Sundays and Wednesdays in the interest of distributing traffic to our four other entrances, but during the week, that is a vital access point for the office, front part of the church, and the children ministries. That will be the main, full access entrance during the week. Over the past two months the City and DOT have resolved concerns that would arise with this site. We feel like between the City staff, the DOT staff, our team of Engineers, and the pastor that we are bringing to you a plan that works and is an asset. Chairman Mr. Ed Wilson asked, do you believe that this property, if approved as submitted, will materially endanger the public health or safety if located where proposed and developed according to the plans that you have submitted? Mr. Charles Huffines stated, I do not believe that we will endanger the public health and safety. Chairman Mr. Ed Wilson asked, do you think that it will substantially injure the value of adjoining properties? Mr. Charles Huffines stated, I believe that the development will have little to no effect on adjoining properties.

Chairman Mr. Ed Wilson asked, so you believe that your proposed plan as developed will be in harmony with the area? Mr. Charles Huffines stated, yes sir I do. We've held to the City's ordinances, standards, landscaping, site and development, site work, construction process, traffic and I believe that we have conformed to those items.

Chairman Mr. Ed Wilson asked Mr. Marland, are there any specific requirements of the zoning ordinance for the church? Zoning Enforcement Officer Mr. Chris Marland stated, no sir, just the general requirements.

DISCUSSION & FINDING OF FACTS: Chairman Mr. Ed Wilson stated, Mr. Huffines testified that they met all 3 of the conditions. This went through TRC and there was an issue and the issue was resolved. So, by testimony by the City, this has met all the required conditions of that and there are no specific conditions attached to a church in the zoning ordinance. Board Member Mr. Todd Smith stated, I think it is a nice project. I drive by it all the time, my father-in-law lives out there and I think it will be a great thing.

DECISION: Board Member Mr. Todd Smith stated, 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, Mr. Huffines testified that they have done extensive site workout here with the DOT and the City. They have worked on the plan for parking, and an access to Alamance Road. They have addressed all issues and there doesn't appear to be any other issue with public health or safety.
2. **the use meets all required conditions and specifications;**
the findings of facts are, there are no specifications for a church.
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, Mr. Huffines testified that it won't change the value at all. I think that we can infer that it would increase the value on the undeveloped land.
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, it's a residential area with industrial behind it and adding the church will not endanger that. I think it is in harmony with the other things in the area.

Board Member Mrs. Sylvia Greeson seconded the motion.

AYES: Grant, Lance, Wilson, Smith, Greeson

NOES:

Board Member Mr. Todd Smith stated, I would like to make a motion to approve the Special Use Permit for Lamb's Chapel Church located at the intersection of Troxler Road and Alamance Road in Burlington, NC due to the previously stated Finding of Facts, and the applicant be required to comply with all of the State and City requirements, and that the applicant/owner shall complete the development according to the plans submitted and approved by this Board and if any of the conditions affixed hereto or any part therefore shall be held invalid or void then this permit shall be void and of no affect.

Board Member Mrs. Sylvia Greeson seconded the motion. The board voted unanimously to approve the Special Use Permit.

AYES: Grant, Lance, Wilson, Smith, Greeson

NOES:

ITEM NO. 2:

CASE NO. 02-15 SPECIAL USE PERMIT (CITY)

Trish's Little Angels

2824 Blanche Dr.

Alamance County Tax Map number 3-21-71

§ Section 32.13.W

Child Care Center.

EVIDENCE PRESENTED: Zoning Enforcement Officer Mr. Chris Marland stated, Trish's Little Angel's child care is located at 2824 Blanche Drive. She is applying for a Special Use Permit for a childcare facility for 10 children on 2 shifts. As you see in your packet she has plenty of fenced in area in the back. She has up to 8000 sq. ft. fenced in area. Also, I have received no calls on this case.

Ms. Patricia Evans stated, I have been in child care for the last 11 years. I did 10 years in Guilford County. I've been here in Alamance County for the last 8 months. I was licensed in June of last year and I want to increase the number of children I can have. I'm licensed for 5 children now. Chairman Mr. Ed Wilson asked, have you been keeping those 5 in the same place you are now? Ms. Patricia Evans stated, yes. Chairman Mr. Ed Wilson asked, I presume that you are aware of the requirements of the state Ms. Patricia Evans stated, yes I am. Chairman Mr. Ed Wilson asked, and you are willing to go through that process? Ms. Patricia Evans stated, yes. Chairman Mr. Ed Wilson asked, is the fence around the lot there now? Ms. Patricia Evans stated, yes it is. Chairman Mr. Ed Wilson asked, do you believe Ms. Evans, that this use as a child care center will endanger the public or safety being located where it is now? Ms. Patricia Evans stated, no. Chairman Mr. Ed Wilson asked, do you think that it will substantially injure the value of adjoining properties? Ms. Patricia Evans stated, no. Chairman Mr. Ed Wilson asked, do you think the location and character of the use is in harmony with the area? Ms. Patricia Evans stated, yes. Chairman Mr. Ed Wilson asked, are there any other child care facilities near this location? Ms. Patricia Evans stated, not that I am aware of. Board Member Mrs. Sylvia Greeson asked, do you have any traffic concerns with people dropping off 10 children instead of 5?

Ms. Patricia Evans stated, not really, plus the drop off and pick up times will vary. Board Member Mrs. Sylvia Greeson asked, do you feel like you have adequate driveway space and parking space for parents moving in or out? Ms. Patricia Evans stated, yes I do. Board Member Mr. Todd Smith asked, what kind of fence do you have? Ms. Patricia Evans stated, it is a 4ft. chain link fence. Board Member Mrs. Sylvia Greeson asked, what age children are you keeping or do you plan to keep? Ms. Patricia Evans stated, as of right now I have 6 months up to 5 years and maybe some after school. Board Member Mr. Todd Smith asked, any problems in the last 8 months while here in Alamance County? Ms. Patricia Evans stated, no. Chairman Mr. Ed Wilson asked, what hours are you going to offer? You said 2 shifts. Ms. Patricia Evans stated, 6:00am until maybe 9:00pm. Board Member Mrs. Sylvia Greeson asked, do you have additional staff besides yourself? Ms. Patricia Evans stated, yes. Chairman Mr. Ed Wilson asked, anyone here from the public that wishes to say something? Having no public here, we will close for deliberation amongst ourselves.

DISCUSSION & FINDING OF FACTS: Chairman Mr. Ed Wilson stated, Ms. Evans has testified that in her opinion she has met all of the conditions for a Special Use Permit. The City has testified that she has a proper fenced in area, which meets the City requirements. Board Member Mr. Eric Grant stated, there is no problem with this, just merely increasing from 5 to 10 children is no problem. She already has setup a business there. Chairman Mr. Ed Wilson stated, and it is in harmony. Board Member Mr. Todd Smith stated, I agree. Board Member Mrs. Sylvia Greeson stated, I agree.

DECISION: Board Member Mr. Todd Smith stated, 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, I think we can find in the evidence that she has already been running a daycare there with 5 children and that she has adequate parking, lighting and fencing and she has met all requirements from the State.
2. **the use meets all required conditions and specifications;**
the findings of facts are, the two required conditions that she has to do is the State process, which she has testified that she has done, and that she has the fencing. The City has determined this fact true.
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, I find it hard to believe that if she was running this business here that anybody didn't like, we would have had people here complaining. I believe this probably increases the value of the property. Ms. Evans testified that it does not decrease the value of the property of the neighbors.
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, Ms. Evans has been there for 8 months and has provided a service that seems to be working very well and is in harmony with the area.

Board Member Mr. Eric Grant seconded the motion.

AYES: Grant, Lance, Wilson, Smith, Greeson

NOES:

Board Member Mr. Todd Smith stated,, I would like to make a motion to approve the Special Use Permit for Ms. Patricia Evans to be located at 2824 Blanche Drive in Burlington, NC due to the previously stated Finding of Facts, and the applicant be required to comply with all of the State and City requirements, and that the applicant/owner shall complete the development according to the plans submitted and approved by this Board and if any of the conditions affixed hereto or any part therefore shall be held invalid or void then this permit shall be void and of no affect.

Board Member Mr. Eric Grant seconded the motion. The board voted unanimously to approve the Special Use Permit.

AYES: Grant, Lance, Wilson, Smith, Greeson

NOES:

ITEM NO. 3:

CASE NO. 03-15 VARIANCE (ETJ)

Eddie & Cathy Foust

2607 Rolling Meadows Ln.

Alamance County Tax Map number 3-1A-47

§ Section 32.3.9(5)

Street side setback requirements.

EVIDENCE PRESENTED: Zoning Enforcement Officer Mr. Chris Marland stated Eddie and Cathy Foust at 2607 Rolling Meadows Lane are seeking a variance to put a two-car garage on their property. You will notice from the site plan that the property is on the corner, so the side street setback will be 15ft. However, there is a utility easement running along that line on a slight bend through the property for the road. They can provide the 13.32 feet to the corner of the garage so they are seeking a 1.68 foot variance from the side street setback. Board Member Mrs. Sylvia Greeson asked, did you say it should be 15 feet? Zoning Enforcement Officer Mr. Chris Marland stated, that is correct. Board Member Mr. Eric Grant asked, the dotted line on the drawing on the screen is that their property boundary? Zoning Enforcement Officer Mr. Chris Marland stated, no their property boundary would be the solid dark blue line. The dotted line shows the extent of the utility easement that is in this neighborhood. Zoning Administrator Mr. Joey Lea stated, the blue dotted line shows where the property would be if it didn't have the bend to it. Board Member Mrs. Sylvia Greeson asked, so physically, there is over 17 feet from the side of the proposed garage to the curb, is that correct? Zoning Enforcement Officer Mr. Chris Marland stated, that's correct. Zoning Enforcement Officer Mr. Chris Marland stated, the reason they can't get closer to the house is that there is a fireplace vent on the side of the house, and of course you can see the bay window. Board Member Mrs. Sylvia asked, so this is a completely detached garage, correct? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Board Member Mr. Todd Smith asked, what are the dotted lines on the right is that a driveway? Zoning Enforcement Officer Mr. Chris Marland stated, correct.

Ms. Kathy Foust stated, We are interested in adding a two-car garage to our property. We actually tried to put it over top of the existing driveway and it just wasn't wide enough to go that way. Billy Sipes is our contractor and he placed the garage where you turn and go left. Then we have the fireplace and the bay window. We have spoken to neighbors on both sides. Actually the neighbor across the street who isn't even on the screen, she is the one that will see it the most because of the way our driveways are back to back and so we actually have letters from them that we had notarized. I've got Billy our contractor here if you have any questions on the specifics.

Mr. Billy Sipes stated, I have three letters from the adjoining properties and the neighbor across the street that are notarized that I can present to you. The dotted line there is the utility easement and from that dotted line to the street I think it is 11.5 feet. The air flow to that property and the view of that property should not be a problem. It has the same type of building structures over there. Chairman Mr. Ed Wilson asked, the materials to build the garage out of are consistent with the house and consistent with the neighborhood? Mr. Billy Sipes stated, yes, with the configuration of the lot there, the property line comes around the curb and gutter there with the street. It eats up the front side of the property quite a bit there. Typically it follows the easement lines. Chairman Mr. Ed Wilson asked, would you describe the utility easement as your hardship? Mr. Billy Sipes stated, yes. Chairman Mr. Ed Wilson asked, you have already testified that you think this variance, if granted, will be in harmony with the area, do you also believe that in granting the variance that public safety has been assured? Mr. Billy Sipes stated, yes it has been assured. Board Member Mr. Eric Grant asked, Mrs. Foust mentioned that the garage could not be located where the present driveway is, what is the problem there? Mr. Billy Sipes stated, it encroaches on the rear setbacks. Zoning Administrator Mr. Joey Lea stated, when you put an accessory structure on a corner lot that is located within the rear or anywhere in the first 25 ft., it

also has to maintain the front setback of lot to the rear. This was R-9 so that front setback would be 30 feet as opposed to the 15 feet. Chairman Mr. Ed Wilson asked, so in the City's opinion this is the best compromise? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Chairman Mr. Ed Wilson asked, anyone here from the public that wishes to say something? Having no public here, we will close for deliberation amongst ourselves.

DISCUSSION & FINDING OF FACTS: Chairman Mr. Ed Wilson stated, I think that the applicant and the City have testified they met all of the conditions. The hardship has been defined as the utility easement. The excessive easement on the front corner and the fact that this is a corner lot, and the shape of the lot, prevents the garage from going further in the back because of the setbacks. The utility easement is skewed on the front corner and so this is an application for variance of 1.68 feet to the side street setback. Is there any discussion? Board Member Mr. Eric Grant stated, I see no reason why this would affect the utility easement. Should they have to do anything in that easement the location of the garage should present no problem. Board Member Mrs. Sylvia Greeson stated, we're not affecting the sightline for traffic. There is plenty of space there, they aren't coming near the curb. We're not impacting anything out there.

DECISION: Board Member Mr. Todd Smith stated, I would like to make a motion that we grant a variance for 1.68 feet to the side street setback for this house on the corner of Rolling Meadows Lane and Rolling Meadows Court for Ms. Kathy Foust and her husband Mr. Eddie Foust. I would say there is a practical difficulty that is an unnecessary hardship in the way of carrying out the strict letter of the ordinance. It looks like when they put the easement in, they put a curve on this corner lot. Someone buying this lot would have thought it was more square than it really is and it's a curve. This made a hardship for the Foust's. The variance is in harmony with the general purpose and intent of the ordinance and it preserves its spirit and I don't think the neighbors will even know that the variance was set aside. Not only that, but Mrs. Foust has gone around to all the neighbors and made sure it was no problem with them building this garage and everybody seems to be in agreement with it. Therefore, it is in harmony with the general purpose of the neighbors and of the ordinance as well. Granting the variance assures the public that substantial justice has been done. This is not a large setback that would cause any problems for traffic or for neighbors. I think all the requirements have been met so I move to grant the 1.68 foot variance for the side street setback for this property.

Board Member Board Member Mrs. Sylvia Greeson seconded the motion. The Board voted unanimously to approve the variance.

AYES: Grant, Lance, Wilson, Smith, Greeson

NOES:

NEW BUSINESS: None

MEETING ADJOURNED

Ed Wilson, Chairman

Kelly Peele, Secretary