

MINUTES
BOARD OF ADJUSTMENT
City of Burlington, NC
March 10, 2015

Members Present

City:

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

Members Absent

Mr. Ed Wilson, Chairman
Mrs. Joyce Lance
Mr. Todd Smith

ETJ:

Mr. David McDevitt (Alt. ETJ)
Mrs. Sylvia Greeson (Alt. ETJ)*

* Not Voting

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

Acting Chairman Mike Gee called the meeting of the Board of Adjustment to order at 8:30 a.m. Acting Chairman 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 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

Board Member Mr. Robert Giles, III made a motion to approve the minutes as corrected. Board Member Mr. Eric Grant seconded the motion. The Board voted unanimously to approve the January 13, 2015 Meeting Minutes.

ITEM NO. 1:

CASE NO. 04-15 Variance (CITY)

Brady Goforth

815 W. Davis St.

Alamance County Tax Map number 87-369-29

§ Section 32.3(C)(4)

R-15 Side Street Setbacks.

EVIDENCE PRESENTED: Zoning Enforcement Officer Mr. Chris Marland stated, case number 04-15 is for Brady Goforth and Angela Arnold located at 815 W. Davis Street. They are seeking a variance to the side street setback for a sunroom that they plan to attach to the rear of the house. This setback will be 5.9 feet into the required setback for the side street. What they are asking for has already been approved by the Historic Commission. They received a certificate of occupancy in February of 2015 contingent upon receiving a variance. We have received probably four to five phone calls on the issue but no one has a problem with it. One gentleman was worried about the vision along the street until I explained that the sunroom would be setback from the existing walls where the house is now. We did receive a phone call from someone not in the area that was driving by and she stated that she wanted me to address the board and say that she is in favor of anything that would upgrade that neighborhood in anyway what so ever; so I am stating that for her for the record.

Mr. Brady Goforth stated, my name is Brady Goforth, my fiancé and I have recently purchased the property and have been improving the property and we would like to add a sunroom to the backside of the house. With the existing house already within the setback, it is kind of tough to add something that is not going to go over into the setback a little bit. To do something with a reasonable configuration we just about have to get into the setback to make some reasonable room there, otherwise we would be positioning around the side and back of the house and that would not make a very easy configuration. Acting Chairman Mr. Mike Gee asked, you are on a corner lot so if you are looking at the front of the house the sunroom is not going to protrude from the left side? Mr. Brady Goforth stated, 6.8 feet from the closest corner to the road end. Board Member Mr. David McDevitt asked, any of your neighbors have a problem with it? Mr. Brady Goforth stated, I have spoken with the one on the left and to the right of me, I have not seen the one behind my house but again I have heard no objections. The house has sat there for a while and we have come in and started improving it so everyone is kind of excited and they are glad to see this happen. Acting Chairman Mr. Mike Gee asked, to clarify, the house is within the required setbacks as it sits today? Mr. Brady Goforth stated, the house is already in the setback area on both sides. It does not meet the setback requirements. Acting Chairman Mr. Mike Gee stated, it's already nonconforming. Board Member Mr. Eric Grant asked, what is the age of your house? Mr. Brady Goforth stated, it was built in 1920 from records that we could find. Board Member Mr. Eric Grant stated, that explains why it is across setback lines pretty well. Zoning Administrator Mr. Joey Lea stated, I want to make sure the board is aware that the ordinance gives the board the authority to grant variance's in the historical district as long as that variance does not create problems for health or safety to the public. Acting Chairman Mr. Mike Gee asked, if you, Mr. Goforth, get this variance, will it create any issues regarding the health and safety of the public? Mr. Brady Goforth stated, from what I can tell I can't see any and I've looked at all angles from each neighbor and I don't see a hardship on anyone.

Acting Chairman Mr. Mike Gee asked, Mr. Marland can you clarify what exactly the variance request is for. I think I know what it is and just want to make sure we got our dimensions correct. Zoning Enforcement Officer Mr. Chris Marland stated, it would be for 5.9 feet in the required side street setback of 20 feet.

DISCUSSION & FINDING OF FACTS: Acting Chairman Mr. Mike Gee stated, I think that it has been testified to that the house is nonconforming and based on when it was built it's not of the homeowners own doing. The addition is not going to propose any problems of the health and safety of the adjoining property owners. I think the hardship is not the creation of anything the homeowner has done here, it really has to do with when the house was built and the way the lot is configured.

DECISION: Acting Chairman Mr. Mike Gee stated, I would like to make a motion that we grant a variance of 5 feet 9 inches in a required 20 foot side setback for Brady Goforth and Angel Arnold to be located at 416 East Davis Street. Due to the finding of facts and the testimony presented before us, this house was built in 1920, approximately, and it is totally out of compliance as it sits today and that is not of the homeowners doing. The hardship in this case is really created by the configuration of the lot and the fact that the setbacks were put into place after the house was built. As testified by the applicant, there are no potential problems for the health and well-being of the neighborhood. The proposal had been approved by the Historical Commission subject to the variance. There is no conflicting testimony to give us any reason to think these facts are false. Board Member Mr. Robert Giles III stated, I would like to amend the motion so that it applies to 815 West Davis Street as opposed to 416 East Davis Street. Acting Chairman Mr. Mike Gee stated, the motion will be amended to reflect change proposed by Mr. Giles to 815 West Davis Street.

Board Member Mr. David McDevitt seconded the motion. The Board voted unanimously to approve the variance.

AYES: Grant, Gee, Giles, McDevitt

NOES:

ITEM NO. 2:

CASE NO. 05-15 Amendment to Special Use Permit (CITY)

Meredith Webb Printing

334 N. Main St.

Alamance County Tax Map numbers 28-96-60 & 28-96-58

§ Section 32.9

Special Use Permit required.

EVIDENCE PRESENTED: Zoning Enforcement Officer Mr. Chris Marland stated, Meredith Webb located at 334 North Main Street, is asking for an amendment to the Special Use Permit that they already have. The original Special Use Permit for the printing shop was approved in April of 1977. If you remember, in June of 2013 they came in to amend the Special Use Permit again for a warehouse and dock extension on the north side off of Sellars Street. They are planning on adding some office space on North Main Street and right down on the corner of North Main and Ruffin is a parking lot expansion they are looking at doing. They are on the opposite side of the property from where they were in June of 2013. We have posted signs all around the property and we have received probably three or four phone calls. One of which came from the houses on Sellars Street. I was asked what they were doing and I explained that they

were on the North Main Street side with an office and a parking lot expansion and they said they had no problem with it. The other calls were just curious asking what's going on when they drove by. If you look on the site plan you will see the office expansion on the corner of North Main and Holt. Right down from that at North Main and Ruffin is the parking lot expansion. Acting Chairman Mr. Mike Gee asked, it seems like what they are doing is consistent with the operations that are already in place, why does this require an amendment to the Special Use Permit? Zoning Enforcement Officer Mr. Chris Marland stated, anytime that they amend the site plan they have to come in and amend the Special Use Permit. Adding the parking and the warehouse addition is basically amending the site plans which requires them to amend their Special Use Permit. Board Member Mr. Eric Grant asked, does the amendment to the Special Use Permit require the full four step as insurance to the new Special Use Permit. Zoning Enforcement Officer Mr. Chris Marland stated, that's correct. Zoning Administrator Mr. Joey Lea stated, actually what you are doing is issuing a new Special Use Permit. Acting Chairman Mr. Mike Gee stated, ok for an expanded printing shop. Zoning Administrator Mr. Joey Lea stated, it's like starting all over again.

Mr. Kelly Webb stated, We have a proposed addition with the office area on the right side as you are looking at North Main Street around 10,835 square feet and that is a proposed addition. Then part of that would be adding the parking lot to the left side. Acting Chairman Mr. Mike Gee asked, no substantial change to what the property is going to be used for? Mr. Kelly Webb stated, no. Acting Chairman Mr. Mike Gee stated, you are really not proposing that you change the use of the property more so, just expanding the facility, do you think that granting this Special Use Permit would materially endanger the public health or safety? Mr. Kelly Webb stated, no sir. Acting Chairman Mr. Mike Gee asked, I'll verify this with the City, at this point if the Special Use Permit is granted is it going to meet all the required conditions and specifications with the City? Mr. Kelly Webb stated, it will. Acting Chairman Mr. Mike Gee asked, again technical question here but just want to make sure that this use will not injure the value of any adjoining property owners? Mr. Kelly Webb stated, in my opinion no sir. Acting Chairman Mr. Mike Gee asked, if this addition is done is it going to be in conforming harmony with the rest of the businesses in the area? Mr. Kelly Webb stated, it will. Acting Chairman Mr. Mike Gee asked, the additional parking, are you losing parking somewhere else in this?

Mr. Kelly Webb stated, actually we combined two properties to meet the requirements for parking for the entire lot, but it is additional parking we may need and additional office space for more people. Acting Chairman Mr. Mike Gee asked, would the changes affect any adjustments to lighting or anything like that on the property? Mr. Kelly Webb stated, if the parking lot is put in then we would have additional lighting. Acting Chairman Mr. Mike Gee asked, any substantial impact on traffic flow with the new changes that are proposed? Mr. Kelly Webb stated, no sir. Acting Chairman Mr. Mike Gee asked, is this something that had to go back to technical review committee prior to submitting it? Zoning Enforcement Officer Mr. Chris Marland stated, no sir.

DISCUSSION & FINDING OF FACTS: Board Member Mr. Robert Giles stated, this meets all the criteria and they are upgrading the property. Acting Chairman Mr. Mike Gee stated, continued investment in the downtown area in particular, really getting towards the east side of town, everything is beneficial I think. Board Member Mr. Eric Grant stated, this construction is consistent with the area there too.

DECISION: Acting Chairman Mr. Mike Gee 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, expansion of an existing business operation that has been operating under a Special Use Permit since April of 1977; an extension of the warehouse was done in 2013 and this is a comparable extension that will be done with this request.

2. **the use meets all required conditions and specifications;**

the findings of facts are, testimony from City and the applicant that it does meet the required conditions and is consistent with the existing Special Use Permit.

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, testimony from the applicant, it is an opinion but it is an acceptable opinion that it would not injure the value of adjoining property and there has been no testimony contrary to that.

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, this is an existing business that has been operating on site, I think that the board agrees that this is going to be an improvement to that facility which has continued to enhance the area and will be in harmony.

Board Member Mr. Eric Grant seconded the motion.

AYES: Grant, Gee, Giles, McDevitt

NOES:

Acting Chairman Mr. Mike Gee stated, I would like to make a motion to approve the Special Use Permit for Meredith Webb Printing to be located at 334 North Main Street due to the previously stated Finding of Facts, and the applicant shall complete in accordance with 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, Gee, Giles, McDevitt

NOES:

ITEM NO. 3:

CASE NO. 06-15 Variance (CITY)

James Murray

1222 Evans St.

Alamance County Tax Map number 12-55-25A

§ Section 32.3(E)(5)

R-9 Side Setback

EVIDENCE PRESENTED: Zoning Enforcement Officer Mr. Chris Marland stated, Mr. James Murray at 1222 Evans Street is seeking a variance to put a modular home on the lot. Normally the modular homes come in a twenty-eight foot width but they cannot get it any smaller than twenty-five foot. Mr. Murray stated to me that they are now in a home that has no heat and it is an older home so they are looking to get out of there and upgrade their living facility to a safer

environment. We have posted the property; we've had numerous calls on this one. Everybody was in favor of it; nobody had anything bad to say and one lady did ask me to tell you that she believes that this would be a very good thing for the neighborhood to have this newer modular unit put on the property. Acting Chairman Mr. Mike Gee asked, I think I heard you but to just verify we are looking at a nine inch side setback yard variance? Zoning Enforcement Officer Mr. Chris Marland stated, that is correct.

Mr. Todd Mauser with Oakwood Homes stated, we are looking to put a modular for Mr. Murray on the property and we are about nine inches off. Sometimes builders don't do their due diligence but we went ahead and did it cause we knew it was a tight lot and as you can see we are roughly nine inches off so that is why we are applying for the variance. I definitely think it will help beautify the neighborhood and they are real appreciative to get a new home. Acting Chairman Mr. Mike Gee asked, is there a house on the property now? Mr. Todd Mauser stated, not on that property, no. Acting Chairman Mr. Mike Gee asked, would you say that the configuration of the lot has created some of this? Mr. Todd Mauser stated, it's just a real narrow lot. Acting Chairman Mr. Mike Gee asked, does Mr. Murray own this lot at this point? Mr. Todd Mauser stated, yes. Mr. Mike Gee asked, so this is the absolute smallest home that could go on this footprint, is that correct? Mr. Todd Mauser stated, yes sir. We have actually called the builder and asked if they could possible build one 24 ft. wide and they said not in a modular, which of course has to be in the city. Acting Chairman Mr. Mike Gee asked, tell me how it may impact the neighbors. Mr. Todd Mauser stated, I don't see it impacting the neighbors. We actually have some gentlemen here that own the property next to this and are in favor of the variance request. I don't think it would impact their situation at all except for beautifying the neighborhood. Acting Chairman Mr. Mike Gee asked, so when the applicant took ownership of the property was he aware of any issues that would prevent him from putting a home on this property? Mr. Todd Mauser stated, to my knowledge it was family land and he didn't originally buy it to put that there. I guess it was gifted family land and he wanted to upgrade his situation. Acting Chairman Mr. Mike Gee asked, he didn't find out that it was too narrow for any other option until the survey? Mr. Todd Mauser stated, correct; until we got ready to propose this modular. Zoning Enforcement Officer Mr. Chris Marland stated, the standard lot width in an R-9 zoning is 75 feet. It's our opinion that even a conventional home, stick built or otherwise, would have to have a variance on this lot. Board Member Mr. Robert Giles asked, what is the current use of the property? Mr. Todd Mauser stated, just vacant. He just made me aware that there was a home prior that was on that property a couple years ago. It was torn down.

Board Member Mr. Eric Grant asked, Mr. Marland this lot as it exists, does not meet the R-9 requirements does it as far as square footage, etc.? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Board Member Mr. Eric Grant asked, it is nonconforming period isn't it? Zoning Enforcement Office Mr. Chris Marland stated, correct, it is a nonconforming lot of record. Zoning Administrator Mr. Joey Lea stated, the ordinance allows for a nonconforming lot to be built upon however, the requirement is that they have to meet setback requirements; lots size and lot width is not a concern for a legal nonconforming lot. Acting Chairman Mr. Mike Gee asked, as long as it meets the requirements for setbacks which is why we are here today. Zoning Administrator Mr. Joey Lea stated, correct and in this case the configuration is prohibiting them from meeting this exactly. Board Member Mr. Eric Grant asked, but this is residential property on both sides? Zoning Enforcement Officer, Mr. Chris Marland stated, that is correct.

DISCUSSION & FINDING OF FACTS: Board Member Mr. Eric Grant asked, we can get the nonconforming lot that does not meet the code; trying to make a good use of it. Acting Chairman Mr. Mike Gee stated, right, and I think that given the testimony that it does improve the location. If the home was able to meet the setback requirements then it would be allowed even though the lot is nonconforming. The testimony by the applicant and the City it seems to indicate that there

is really no way to get any house on the property. Board Member Mr. David McDevitt stated, it seems that there are no other options. Acting Chairman Mr. Mike Gee stated, and I think the hardship is the fact that it is a nonconforming lot and he didn't realize that, it wasn't his own doing. It was brought to his attention when the survey was done and at the end of the day we are talking about nine inches. I think it would be a good thing to have a new dwelling on the property and even though it is hear-say evidence the calls were favorable for the request.

DECISION: Acting Chairman Mr. Mike Gee stated, I would like to make a motion that we grant an eighteen inch variance to the side yard setback requirement for Mr. James Murray to be located at 1222 Evans Street due to the finding of facts that we discussed. If this variance is not granted then there is really no other alternative for this property other than a vacant lot in this neighborhood which can create issues that many neighbors historically don't like to have. I think that the hardship in this case is this is a nonconforming lot and because of that even though the City allows for homes to be built on nonconforming lots they do have to meet the setback requirements and it has been testified by both the applicant and the City that there is really no smaller home that they can get on this property and so I think it makes sense to grant the variance based on those facts. It's not going to create any harm to adjoining property owners. It is in the spirit and purpose of the ordinance and the hardship was not the result in anything that the applicant did. He was really not even aware of the issue until an engineer survey done.

Board Member Mr. Robert Giles, III seconded the motion. The Board voted unanimously to approve the variance.

AYES: Grant, Gee, Giles, McDevitt

NOES:

ITEM NO. 4:

CASE NO. 07-15 Variance (CITY)

David Hargrove

128 S. Logan St.

Alamance County Tax Map number 23-79-134

§ Section 32.3(F)(5)

R-6 Front & Rear Setbacks

EVIDENCE PRESENTED: Zoning Enforcement Officer Mr. Chris Marland stated, Mr. David Hargrove at 128 S. Logan St. is asking for a variance to place a home on his lot. It is an extremely small lot of record. When he originally purchased the property there was a house on it. Back in 2012 he had a permit and he was working on the house to upgrade it. While he was away, the house burned down completely. The lot is now vacant and like I said the lot is extremely small. The property is zoned MF-B which goes by R-6 requirements when it comes to putting a house on the lot. He is asking for a variance for the front and rear setback. He is looking to place the house in the middle, it is not a large house but it is what will fit there and serves its purpose. He is looking for a variance of three feet on the rear and two feet on the front. We have put signs on the property and we've had multiple calls for this. By far the most calls we've had on any of the cases today. Everybody really wants to see it there, especially the VFW on Webb Ave. that backs up to this. What has happened up until now is the property has become a trash dump and a nuisance for Mr. Hargrove and the neighborhood. He is looking to get the house back on there so it will stop being used as such. Everybody was in favor of the variance and would like to see the house put back on the lot to stop the nuisance of the trash dump. Acting Chairman Mr. Mike Gee asked, the house there before, was it nonconforming? Zoning Enforcement Officer Mr. Chris Marland stated, yes sir. You can see the house pictured in our

2010 aerial view before it burned. Board Member Mr. Robert Giles, III asked, were they granted a variance then? Zoning Enforcement Officer Mr. Chris Marland stated, no sir we looked it up and I could not find when it was originally built looking in our records and the county records, I could not find an original year built. A lot of houses in the neighborhood that matched this one were built in the teens and twenty's however. Board Member Mr. Eric Grant asked, is this a nonconforming lot also under current code? Zoning Enforcement Officer Mr. Chris Marland stated, yes sir. Acting Chairman Mr. Mike Gee asked, so any request would have to have a variance, I guess my question was in some cases can't they go back in the existing footprint? Zoning Enforcement Officer Mr. Chris Marland stated, not when it is completely destroyed. They have to meet all the setbacks that are in place at that time. Acting Chairman Mr. Mike Gee asked, so it is really a similar story to the previous case? Zoning Enforcement Officer Mr. Chris Marland stated, correct, in some ways. Acting Chairman Mr. Mike Gee stated, it looks like based on the prior location that the proposed new home will be setback farther from the road than the prior house was. Zoning Enforcement Officer Mr. Chris Marland stated, correct. The old house was extremely close to the road. Board Member Mr. Eric Grant asked, looking at the drawing in the packet, the front yard shows twenty-three feet, is any variance required there? Zoning Enforcement Officer Mr. Chris Marland stated, yes he is looking for two feet on the required twenty-five feet front setback. Board Member Mr. Eric Grant asked, on the rear yard what is the variance being asked? Zoning Enforcement Officer Mr. Chris Marland stated, three feet. Board Member Mr. Eric Grant asked, on the right hand side with the sixteen feet measurement? Zoning Enforcement Officer Mr. Chris Marland stated, he is fine on both sides. Board Member Mr. Eric Grant asked, so it comes out as two variances, a three foot in the rear and a two foot in the front? Zoning Enforcement Officer Mr. Chris Marland stated, yes sir.

Mr. David Hargrove stated, I bought the property with a house on it as stated before and I was renovating it to rent. I went out of town to work and while I was gone it burned down. I really wasn't aware that it would require variances if it burnt down but I was made aware right after the fire. I let it sit there and wasn't going to do anything with it but it did turn into a trash dump that I've been cleaning up since 2011. I thought the best thing to do was put something back on there to help the appearance of the neighborhood and decrease my aggravation with the property because I'm just paying taxes on it. Acting Chairman Mr. Mike Gee asked, when you build the house will this be a property that you will be living in? Mr. David Hargrove stated, no it will be a tenant. Board Member Mr. Eric Grant asked, when did you purchase the property? Mr. David Hargrove stated, in 2011 I believe it was, like January or February then it burned down I think in April of that same year. Acting Chairman Mr. Mike Gee asked, because you were just renovating it you didn't have any issues or needs for any type of variance with the existing structure? Mr. David Hargrove stated, right. I was just fixing the porch system and stuff like that, no wiring. Just repairing sagging floors and bad sheet rock. Acting Chairman Mr. Mike Gee stated, the fact is that public safety will be enhanced if you put a house here.

DISCUSSION & FINDING OF FACTS: Acting Chairman Mr. Mike Gee stated, I think that it is pretty straight forward, this is a nonconforming lot. Again there was a residence on the property, the owner has stated that when he bought the house originally he didn't realize that it was nonconforming because he had no reason to know; he really was not trying to change the footprint of the structure. The lot actually being nonconforming created the hardship in this case, along with a fire. As we have talked about it in some cases you can come back on the existing footprint if a house is moved or torn down but apparently if there is a fire you cannot do that; so that is a hardship to them that the owner didn't create. I think this is going to make it a better place than a dump.

DECISION: Board Member Mr. David McDevitt stated, I would like to make a motion to grant a variance for David Hargrove for 128 South Logan Street, Burlington; a variance of two feet

from the front setback and three feet from the rear setback. The hardship is that the lot is nonconforming as it is and they are replacing a house that had burned down. He will actually be improving the area by building a residence instead of the lot being a trash dump. Through no fault of the owner, the hardship was not caused by the owner and anything they have done. The variance is consistent with the spirit and intent of the area and increases public safety; I make a motion to approve this variance.

Acting Chairman Mr. Mike Gee seconded the motion. The Board voted unanimously to approve the variance.

AYES: Grant, Gee, Giles, McDevitt

NOES:

NEW BUSINESS: None

MEETING ADJOURNED

Ed Wilson, Chairman

Kelly Peele, Secretary