



City of Burlington

Board of Adjustment Meeting Minutes

Jamie Lawson, AICP, CZO | Director of Planning

City of Burlington Board of Adjustment
Municipal Conference Room | Lower Level
425 S. Lexington Ave. | Burlington, NC 27215
January 10, 2023 – 8:30 AM

Meeting Video Link: <https://youtu.be/LOmXXSGD0uw>

Board Members Present:

Robert Giles, II, Chair
Eric Grant
Trish McAllister (Alternate)
Dean Rainey (Alternate)

Members Absent:

Steven Heineman, Vice Chair (ETJ Member)
John Glenn
Mark Kennedy

Agenda

ITEM NO. 1:

Mr. Robert Giles, Chair, presided and called the meeting to order at 8:33 A.M.

ITEM NO. 2:

Mr. Giles, Chair, confirmed there were four members present to establish a quorum.

ITEM NO. 3 | Case # SUBDIVISION VARIANCE-22-04:

Applicant: Ms. Norma Burton
Location: 2528 McKinney St., Burlington, NC 27215
Alamance County parcel identification number 149025
Details: Approval of the December 13, 2022 Board of Adjustment Findings of Fact, conclusions of Law, and Decision.

Mr. Giles, Chair introduced the case and inquired of the board members if they had any changes to the Findings of Fact, conclusions of law, and Decision as set out below. There were no comments or changes.

2528 MCKINNEY STREET
BURLINGTON, NORTH CAROLINA 27217\
TAX ID #149025
APPLICANT: NORMA BURTON

SUBDIVISION VARIANCE 22-04

**CITY OF BURLINGTON BOARD OF ADJUSTMENT
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

The Board of Adjustment (the “Board” or “BOA”) conducted an evidentiary hearing on Tuesday, December 13, 2022 at 8:30 AM. Pending before the BOA was an Application for a Subdivision Variance (hereinafter, “Variance”) filed on September 26, 2022 by Norma Burton (hereinafter, “Applicant”) for real property located at 2528 McKinney Street, Burlington, North Carolina (hereinafter the “Subject Property” or the “Property”). At the evidentiary hearing, the Applicant was present and proceeded *pro se*. The City of Burlington was represented by Sherri Hamlett, Attorney at Law, and David R. Huffman, City Attorney. The BOA was represented by Francis P. Rasberry Jr. of the Cauley Pridgen Law Firm. Upon receiving testimonial and other evidence, the BOA, by unanimous vote of its members, determined that the Applicant’s variance request should be denied. This is the formal Notification of Decision by the Board of Adjustment, including Findings of Fact and Conclusions of Law in support of its Decision, entered pursuant to Burlington Unified Development Ordinance Section 2.3.K. The Board of Adjustment makes the following

FINDINGS OF FACT:

1. Testimony was proffered during the presentation of the Applicant’s case by the Applicant herself, Norma Burton, and Sandra Walker.
2. Called to testify for the City was Jamie Lawson, City of Burlington Planning Director.
3. Norma Burton is the owner and operator of a mental health family care home facility.
4. The State of North Carolina, Department of Health and Human Resources (“NC DHHR”), Division of Health Service Regulation (“NC DHSR”), is responsible for the licensing of all mental health facilities located within the State of North Carolina.
5. The license for Applicant’s family care home facility is issued to Vision of Therapeutic Development, Inc., operating the facility known as Vision II located at 413 Everett Street, Burlington, North Carolina 27215 in Alamance County.
6. Initially, the Applicant operated her family care home, Vision II, at 413 Everett Street, Burlington, North Carolina. Applicant’s license, MHL-001-195, is associated with the 413 Everett Street, Burlington, North Carolina location and is issued for the calendar year beginning on January 1, 2022 and ending on December 31, 2022.
7. At some point in 2022, the Applicant relocated her clients residing at 413 Everett Street, Burlington, North Carolina to 2528 McKinney Street, Burlington, North Carolina. The Applicant could not recall the date she moved her clients to the new location. The subject real property located at 2528 McKinney Street is currently owned by Larry Legrant Graham, Jr. The Applicant herself had previously owned the house and lot located at 2528 McKinney Street. On October 15, 2012, the Applicant conveyed this property to Michael Burton (City’s Exhibit 11). On May 13, 2015, Michael Burton conveyed the property to Larry Legrant Graham, Jr. (City’s Exhibit 12). Under cross-examination, the Applicant refused to disclose her relationship to Michael Burton and Larry Graham, Jr.

8. Upon relocating to 2528 McKinney Street, the Applicant attempted to have her 413 Everett Street license relocated to the new address, 2528 McKinney Street, pursuant to the emergency relocation guidelines set out by the NC DHR.
9. The Applicant testified that the “emergency” purportedly requiring her to vacate the facility at 413 Everett Street was an infestation of raccoons. The Applicant testified that someone located at her facility at 413 Everett Street had been bitten by a raccoon and had to undergo shots for the treatment of rabies. The Applicant testified that raccoon bite and subsequent emergency relocation occurred in early 2022 but could not recall the date.
10. The Applicant later introduced an email dated March 24, 2022 from Glenn Hoppin with the NC DHHS, wherein Mr. Hoppin stated Ms. Burton could go ahead and move her clients to the new location due to the emergency. Said email from Mr. Hoppin instructed the Applicant to take a form that he had attached to the email to the City of Burlington Building Inspector for the inspector to fill out. The Applicant did not produce a copy of that completed form and could not remember when the form was submitted to NC DHHS as requested.
11. The Applicant submitted into evidence pictures purporting to show the raccoons present at 413 Everett Street. The photographs were not day/time stamped. The Applicant did not know what date these photographs were taken. The Applicant testified that the photographs were taken right around the time that the individual had been bitten by the raccoon resulting in a series of rabies shots to be administered.
12. Ms. Walker, testifying on behalf of the Applicant, then testified that she had located on her phone the chart record for the individual who had received the rabies shots after having been bitten by the raccoon. Ms. Walker testified that this chart record reflected that the raccoon bite and subsequent series of rabies shots occurred in August of 2020, not early 2022 as had been testified to by the Applicant.
13. Upon cross-examination, the Applicant could not explain why someone purportedly being bitten by a raccoon in August of 2020 would constitute an emergency so great to require emergency relocation over a year and a half later in late March of 2022.
14. The Applicant testified that she completed the paperwork necessary for the emergency relocation and submitted the documentation to the NC DHR. However, she did not produce any of that documentation for the Board’s purview. Further, the Applicant could not remember when she submitted the documentation to NC DHR.
15. The Applicant’s mental health family care home facility is assigned NC DHR license number MHL-001-195. According to her license, the Applicant has a capacity of a maximum of six beds. Pursuant to her NC DHR license, the Applicant operates her business pursuant to North Carolina Administrative Code 27G.5600A, providing supervised living for adults with mental illness. The license is for the Applicant’s family care home located at 413 Everett Street, Burlington, North Carolina.

16. In the City of Burlington, mental health facilities are referred to as family care homes as by definition, family care homes provide the same services as those provided by the definition of a mental health facility licensed under North Carolina Administrative Code 27G.5600A, which states providing supervised living for adults with mental illness with no more than six beds.
17. The City of Burlington UDO Section 8.4, Definitions, defines a family care home as “A home with support and supervisory personnel that provides room and board, personal care, and habilitation services in a family environment for not more than six resident persons with disabilities. A disabled person is a person with a temporary or permanent physical, emotional, or mental disability including but not limited to an intellectual disability, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impairments but not including mentally ill persons who are dangerous to others as defined in Section 122C-3(11)b of the North Carolina General Statutes.”
18. The subject real property is zoned Medium Density Residential (“MDR”).
19. Pursuant to the UDO’s Table of Permitted Uses, Table 4.2.C, the use of a property as a family care home on a lot located within an MDR zoning district is a permitted use of right, subject to the Use-Specific Standards set out in UDO Section 4.4.A.5.
20. The UDO Section 4.4.A.5.(b) reads, “A lot containing a family care home shall not be located within one-half mile (2,640 feet) of another lot containing a family care home or a group home.” The enabling legislation is found in N.C.G.S. §160D-907(c) which states, “A family care home is deemed a residential use of property for zoning purposes and is a permissible use in all residential districts. No local government shall require that a family care home, its owner, or operator obtain, because of the use, a special use permit or variance from any such zoning regulation; however, a local government may prohibit a family care home from being located within a one-half mile radius of an existing family care home.”
21. City’s Exhibit 7 shows the one-half mile area surrounding the subject property. Already located within this one-half mile radius are four licensed nonconforming family care homes. The Applicant’s family care home makes the fifth family care home located within the one-half mile area surrounding the subject property.
22. Although she indicated that she could not recall the date, the Applicant learned at some point that she needed a zoning letter from the City of Burlington for the 2528 McKinney Street location. This letter was required by the State of North Carolina for her license to transfer to the new address. The purpose of the zoning letter from the City is to assure NC DHHR that the proposed site meets the applicable zoning regulations in the jurisdiction.
23. Sometime in August of 2022, the Applicant first communicated with the City of Burlington Planning Department regarding obtaining the zoning letter needed to transfer to the new address.

24. The Applicant submitted into evidence an email received from City Planning Manager Conrad Olmedo dated August 23, 2022 in which he indicated that the property would not qualify for the issuance of a family care home facility due to the four already existing family care home facilities located within the ½ mile area around the subject property.
25. City staff held a pre-application conference with the Applicant on September 21, 2022 and explained the process for completing a variance application including application and supporting document deadlines in order to appear on the next BOA hearing agenda including specifying to Ms. Burton that the completeness deadline for the subsequent BOA meeting was September 26, 2022.
26. On September 26, 2022, Ms. Burton submitted an application for a variance. The Applicant did not state on the face of the application what type of variance or the nature of the variance she was requesting. Purportedly, the Applicant was requesting a variance to waive or vary the separation requirement between lots where a family care home is located.
27. On September 28, 2022, Jamie Lawson, Burlington's Planning Director, sent a letter to the Applicant indicating her variance application had been received but there were deficiencies in the application including the nature of the variance request, the type of variance being sought, and correct UDO Code References. In this letter, Ms. Lawson attempted to clarify the documentation needed from the Applicant for her variance application. No further documentation was ever forthcoming from the Applicant.
28. A subsequent in-person conference was scheduled for the Applicant with City Staff for October 31, 2022. The morning of the conference, the Applicant communicated with staff that she was sick and requested the conference be rescheduled. Accordingly, the conference was rescheduled to November 14, 2022.
29. On November 2, 2022, Ms. Lawson sent a letter to the Applicant indicating that her variance would be placed on the December 13, 2022 hearing agenda for consideration by the BOA. In said letter, Ms. Lawson again spelled out the deficiencies with her application and encouraged the Applicant to submit certain requested documents. No further documentation was received from the Applicant.
30. On November 14, 2022, the Applicant did not appear for the scheduled conference with City Staff.
31. On November 14, 2022, after the Applicant did not appear for the scheduled conference, Jamie Lawson sent a follow-up letter to the Applicant. Ms. Lawson again informed the Applicant that her variance request would be placed on for hearing at the December 13, 2022 BOA session; she again requested the needed additional documentation. No further documentation was received from the Applicant.

32. N.C.G.S. § 160D-705(d) reads: “Variances. – When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the board of adjustment shall vary any of the provisions of the zoning regulation upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.”

33. On December 13, 2022, the City of Burlington Board of Adjustment conducted a duly advertised and noticed evidentiary hearing on the Burton variance application. Ms. Burton was notified of the hearing via mail and on December 6, 2022, she was sent a copy of the agenda and the link to the packet materials by the City.

34. At the December 13, 2022 hearing, all five regular members of the Board of Adjustment were present for the hearing composing the requisite quorum pursuant to UDO Section 10.4.C.6.b.

35. The granting of a variance requires that the Applicant meet all four criteria set out in N.C.G.S. § 160D-705(d). The Applicant has the burden of producing substantial, competent, and material evidence tending to show that all four criteria have been satisfied.

36. A four-fifths (4/5th) vote of the BOA was required to approve the variance pursuant to N.C.G.S. §160D-406(i).

37. The Applicant failed to introduce material, competent, and substantial evidence to show satisfaction of the four criteria for granting a variance, as required by N.C.G.S. 160D-705(d) (1) through (4).

38. Based on the application, the evidence submitted, the lack of evidence submitted, and the above findings of fact, the Board of Adjustment voted 5-0 to deny the variance.

Based upon the foregoing Findings of Facts, the Board of Adjustment concludes as a matter of law:

CONCLUSIONS OF LAW

1. The granting of a variance requires the Applicant to satisfy all four criteria set out in N.C.G.S. § 160D-705(d). The Applicant has the burden of production with respect to the four criteria in the statute.
2. The Applicant, Ms. Norma Burton, has not carried her burden of production as required by N.C.G.S. § 160D-705(d) and otherwise required by law.
3. Based on the application, the evidence submitted, the failure to produce evidence, and the above findings of fact, the Board of Adjustment voted 5-0 on December 13, 2022 to deny the variance.

Based upon the foregoing Findings of Facts and Conclusions of Law, the Board of Adjustment rules that:

DECISION

1. The Applicant is hereby Denied the variance to vary or to waive the one-half mile separation provision as set out in UDO 4.4.A.5.(b).
2. This decision is effective as provided by law and applicable City Ordinance provisions.

VOTE (4-0)

Mr. Eric Grant, member made a motion to adopt the Board of Adjustment Findings of Fact, Conclusions of Law, and Decision from the December 13, 2022 Meeting.

Ms. Trish McAllister, member, seconded the motion.

Approved by Robert Giles, II, Eric Grant, Trish McAllister, and Dean Rainey.

Motion passed unanimously. Decision was signed by Chairman Giles.

ITEM NO. 4:

Mr. Conrad Olmedo, Planning Manager, notified the board members of the tentative next meeting on February 14, 2023.

ITEM NO. 5:

Mr. Grant made a motion to adjourn. Ms. McAllister seconded the motion.

All were in favor; passed unanimously.

Meeting adjourned at 8:36 A.M.

Mr. Robert Giles, II, Chair