



**Town of Clayton  
Planning Board Minutes  
May 28, 2019 @ 6 PM  
Town Council Chambers**

**BOARD MEMBERS PRESENT:**

Andria Merritt  
Ross Benson  
Stephen Powers  
James Lipscomb  
Marty Bizzell  
Bob Ahlert  
Frank Price  
James Moore  
George "Bucky" Coats

**STAFF PRESENT:**

Samantha Wullenwaber, Planning Director  
Haley Hogg, Planner  
Damiere Powell, Planner  
Bob Satterfield, Council Member  
Merrick Parrott, Town Attorney

**MEMBERS ABSENT:**

**1 CALL TO ORDER**

Bob Ahlert called the meeting to order at 6:00 p.m.

**2 ADJUSTMENT OF THE AGENDA**

**3 APPROVAL OF MINUTES**

a)

**ACTION:** Approval of April 22, 2019 minutes

Motion: Stephen Powers

Second: Andria Merritt

Vote: Unanimous

**4 PUBLIC HEARINGS**

a) 2019-65-VAR 501 Lakeview Drive Variance (Quasi-Judicial)

NC PIN: 165807-68-9571

Tag #: 05H03029

Location: 501 Lakeview Drive

Town Attorney Merrick Parrott explained the Quasi-Judicial process. Town Clerk Kimberly Moffett gave the affirmation of oaths for all variances to be heard at this meeting.

Planner Damiere Powell, presented this project. This request is for a variance from the minimum lot requirements in the UDC. 501 Lakeview Drive, is zoned R-E. The existing lot is 8885 square feet, minimum requirement is 20,000 square feet. The applicant is requesting a variance to be able to develop on the lot.

Mr. Powell addressed the Findings. This lot is an existing non-conforming lot. The applicant would meet all setbacks. The surrounding lots also do not meet the minimum lot size requirements of the district. The variance request is in compliance with UDC to allow a variance for lot size if created prior to minimum lot size being set.

Stephen Powers asked why each lot had to get a variance in this subdivision, and why the Town cannot rezone the entire subdivision (Clayton Estates) to a district that had smaller minimum lot sizes and would not require applicants to go through a variance each time.

Samantha Wullenwaber stated that double wide mobile homes are only permitted in this zoning district, which most lots have at this time. If rezoned the existing dwellings would become non-conforming. Mrs. Wullenwaber stated that the Town had historically handled situations in this area through the variance process, but staff is re-evaluating how to address these lots. The primary reason staff does not rezone them though is because double wide's are only permitted in the R-E district.

Curk Lane, on behalf of the applicant, addressed the board. He stated that he has had a history obtaining variances for this reason in the Clayton Estates subdivision. He stated that if the property were rezoned then the manufactured homes would not be able to be replaced, as they would be non-conforming. This is why the applicant has chosen to proceed with a variance request instead for the minimum lot size.

Mr. Ahlert closed the hearing. James Lipscomb motioned to approve the variance application. He read the Findings of Facts. It was seconded by Stephen Powers. The board voted to approve.

**ACTION:** Approve the request with the conditions presented by staff.

Motion: James Lipscomb  
Second: Stephen Powers  
Vote: Unanimous

- b) 2019-66-VAR 507 Lakeview Drive Variance (Quasi-Judicial)  
NC PIN: 165807-78-0267  
Tag #: 05H03197E  
Location: 507 Lakeview Drive

Planner Damiere Powell, presented this project. The request is for a variance of 507 Lakeview Drive. It is a variance request from minimum lot size requirements. The lot is located in Clayton Estates, zoned RE and is existing.

Mr. Powell went over the Findings of Facts. The subject property and other lots within the Clayton Estates are non-conforming lots. Mr. Powell stated the UDC does permit variances for non-conforming lot sizes. The applicant has addressed the Findings of Facts.

There were no questions for staff. Mr. Ahlert called upon the applicant to address the board. Curk Lane spoke on behalf of the applicant and offered to answer any questions the board may have.

Frank Price asked if the lot backed up to the condos. Mr. Lane said it did. Mr. Price asked if a buffer was there to separate the two lots. Mr. Lane stated there is vegetation, but it is not a specific buffer in the UDC.

Andria Merritt read the Findings of Facts and motioned to approve the variance request. George Coates seconded the motion. The board passed the variance request.

**ACTION:** Approve the request with the conditions presented by staff.

Motion: Andria Merritt

Second: George Coats

Vote: Unanimous

- c) 2019-67-VAR 601 Lakeview Drive Variance (Quasi-Judicial)  
NC PIN: 165807-78-0281  
Tag #: 05H03190A  
Location: 601 Lakeview Drive

Planner Damiere Powell presented this project. He stated the applicant is requesting a variance from minimum lot area and lot width requirements outlined in the UDC section.

The minimum lot requirement is 20,000 square feet, and the existing lot does not meet this. The existing lot width is 72' and the code requires 80'. The proposed side setback is 14.1' and the code requires min. 15' setback.

The lots in this area do not meet the minimum lot area and width requirements. The variance request is in accordance with a section in the UDC that addresses nonconforming lots, and allows for variance requirements for lots that were created before the code was established.

The board did not have any questions for staff. Curk Lane, on behalf of the applicant, addressed the board. There were no questions from the board for Mr. Lane.

Ross Benson made a motion to approve the variance request. James Lipscomb seconded the motion. The board approved.

**ACTION:** Approve the request with the conditions presented by staff.

Motion: Ross Benson  
Second: James Lipscomb  
Vote: Unanimous

- d) 2019-64-VAR 703 Lakeview Drive Lots 80 & 81 Variance (Quasi-Judicial)  
NC PIN: 165807-77-0962  
Tag #: 05E99005N  
Location: 703 Lakeview Drive

Damiere Powell, Planner, presented this variance request. The request is for a variance that is running concurrently with a minor subdivision application. The applicant is requesting to subdivide an existing lot into two separate lots. A variance is requested for the minimum lot area requirements and setback requirements for the new lot created.

Lot 81 is a proposed new lot. The interior setback proposed is 10' with less than 8000 square foot lot area proposed. The lot width proposed also does not meet the minimum standards of the R-E district. Lot 80, the existing lot, already has an existing home located on it. This lot would need a variance for decreasing the lot size further.

The lot is an existing non-conforming lot and the applicant is requesting to subdivide it. This would expand the nonconforming lot status, which is not permitted by the UDC. The variance would further expand the nonconforming lot and would create an additional nonconforming lot. There appears to be financial gain as the purpose for the variance request, which is not a valid reason for a variance to be granted. The proposed lot would be smaller than other lots within the neighborhood. The proposed variance contradicts the language in the UDC to not further expand a non-conformity. There were no questions for staff.

Curk Lane, on behalf of the applicant, addressed the board. Mr. Lane confirmed that he is requesting a variance for a new lot in the neighborhood. Previously there were two lots in this location, but they were recombined into one lot. They are now proposing to subdivide back into two separate lots. The new lot would be slightly smaller than the original lot 81.

Mr. Ahlert asked when the original lot 81 was created. Mr. Lane responded it was part of the original subdivision of Clayton Estates. He did not state when the lots were recombined into lot 80.

Mr. Moore asked if it was definitely two separate lots. Staff comments state that they may have been two separate but it is not a validation. Mr. Powell stated that based on Johnston County Map Click it appears that there were two separate lots at one point due to the line on the map. Mr. Moore asked for

validation that there were actually two separate lots. Mrs. Wullenwaber stated that Johnston County keeps the old lot lines on the maps, but there is no record of when it was subdivided. She stated that the UDC states that two existing lots adjacent to one another must be combined to meet minimum requirements. She stated that the proposed lot is substantially smaller than the existing, and would have to be altered from set standards. She stated that this request does not meet any of the Findings of Fact, especially Finding #4.

Stephen Powers requested clarification on where the new property line is located. Mr. Lane addressed the question to provide clarification. He confirmed the new lot width is 70 feet. Mr. Powers asked if the new lot is going to be smaller, and Mr. Lane confirmed it would.

Mr. Price stated that it is difficult to determine what the hardship for this variance would be. The lot is currently in use and can continue to be used. He stated that it appears to be a request for financial purposes.

Mr. Lane stated that since the applicant recombined the properties to be one lot, per the UDC requirements, they are no longer able to develop lot 81. He stated that the code requires two non-conforming lots to be recombined into one to create a conforming lot. However, this recombination still did not create a conforming lot since the single lot still does not meet the minimum lot size requirements. He stated that if they kept both lots separate, they would be asking for the variance still tonight.

Mr. Powers asked if the house was existing when the applicant was asked to recombine the lots. Mr. Lane stated he believes it was existing. Mr. Powers stated that the house should have been relocated to be within the lot lines it was supposed to be in on lot 80. He does not believe making the new lot smaller to accommodate the existing residence is acceptable. It would create a more nonconforming lot than what it would have been originally when lot 81 was originally created. Mr. Lane stated that his client did not own the land when it was recombined. Mr. Powers stated he was not sure if a variance should be granted and continue to be granted just because others have been granted in the past.

Mrs. Wullenwaber stated that the Town does not know why the properties were recombined. She does not know if the Town requested the recombination to occur, or if the owner did. She stated that the Town does not typically ask for lots to be recombined, but would enforce the current requirements if the owner requested. Mr. Lane concurred and stated that he does not know why the properties were recombined either, but stated that he is only basing this off past cases he has seen in this area.

Marty Bizzell asked if Mr. Lane had found an actual recombination during his research. Mr. Lane stated that he did find a deed, from the individual homeowner.

The applicant addressed the board. She is the owner of the lot and currently lives at the existing residence. She stated that when she purchased the lot they

were combined together. She does not have any use for the additional land, which is why she would like to subdivide it. She stated the area is collecting weeds at this time and is an eyesore. She plans to develop the additional lot so that it can be of use and it will help beautify the area. She stated that if the variance wasn't approved then she would have extra land that she doesn't need that would be collecting weeds. She would like to encourage more tenants in this location.

Mr. Ahlert closed the hearing. He stated that he has a difficult time seeing how the applicant meets Finding of Fact #3. The applicant would be creating a hardship by subdividing the lot. Ms. Merritt stated that she agreed and felt that the applicant would be creating a hardship for herself by subdividing. Mr. Lipscomb stated he could be more supportive if the applicant was subdividing back to the original lot lines. He stated the applicant purchased the property in its existing condition.

Andria Merritt motioned to deny the variance request. George Coats seconded the motion to deny. The board voted to deny.

**ACTION:** Denied the request.

Motion: Andria Merritt  
Second: George Coats  
Vote: Unanimous

## **5 NEW BUSINESS**

### **a) 2019-86-OA Recreation/Open Space Ordinance Amendment**

Mrs. Wullenwaber presented the staff report. She stated that this is a code amendment for the recreation and open space standards in the ordinance. She stated staff has been working on this for a while now, in relation to the budget as well.

The request is to amend the requirements of the open space standards to require all subdivisions, including open space, pay 100% of recreation fees. Open Space subdivisions are given a density bonus by providing additional recreation within the subdivision. Right now, those subdivisions only pay 50% of recreation fees. Most ordinances statewide require open space for subdivisions to have higher density development and clustering of units, which is what open space subdivisions do. The amendment requests that the 50% credit towards recreation fees not be permitted, unless the recreation is dedicated and accepted by the Town...in this case those subdivisions would receive 100% credit.

The attorneys for the Town have reviewed the amendment and declared that it is legal. This is running concurrently with a fee adjustment that is underway to begin July 1st, 2019. Mrs. Wullenwaber stated that the open space subdivisions receive a density bonus already, but this should not allow them a

reduction in recreation fees. These fees would be paid at the time of final plat. If passed, it would apply to new subdivisions only.

Mr. Lipscomb asked if subdivisions approved previously would be subject to these fees. Mrs. Wullenwaber stated that if a subdivision previously approved submitted a plat application for a phase after this amendment is passed then that subdivision would be subject to pay 100%. Mr. Lipscomb discussed the large increase in recreation fees, based upon what he saw in the proposed budget for 2019-2020. He stated he is concerned about the large increase in recreation fees for the development community. Mrs. Wullenwaber stated that she understands the concern and that his concerns are linked to the budget. She stated that the Town's recreation fees have not increased in 20 years and that the Town is currently behind the rising costs in recreation facilities to keep up with the rapid growth in the Town. She stated that the fee increase is large, and the Town is planning to implement the fees slowly to help the development community adjust to the rising costs.

Mr. Lipscomb asked if a developer is required to install a walking trail for the Town, such as extending Sam's Branch Greenway, would they be required to pay the full cost of the fee since the greenway cost is significant and is for the Town. Mrs. Wullenwaber stated that she is unsure of the process in this situation, but that there would be discussions in unique situations.

Ms. Merritt asked for clarification on the timeline of the new fees. Mrs. Wullenwaber stated July 1st the fees would increase to \$1000, and by July 2020 the fees would go up to \$2000. Ms. Merritt stated she has seen an increase in use of Town recreation facilities and believes that the Town needs to have the money to maintain these facilities to continue a high quality of life for residents. Mr. Lipscomb agreed, but stated that the fees increasing from \$375 to \$2000 within one year is drastic and is why he has concerns. He stated that the open space subdivisions do receive a density bonus and he understands why they should pay the full 100%. He is concerned that the compounding of this change plus the fee increase will harm the development community, and that this change is too substantial to occur in just two fiscal years.

Ms. Merritt asked how many subdivisions were previously approved but have yet to plat, and would be subject to this fee. Mrs. Wullenwaber stated there are 5000 units entitled but not built. Mr. Benson asked why the Town would require platted lots to pay this fee. Mrs. Wullenwaber stated that this is not for existing lots. It is only for new lots that have yet to be platted. Sometimes these subdivisions will have been approved 2 years ago, but wait to plat. Mr. Lipscomb asked if someone submitted an application prior to July 1st then would that subdivision be subject to the new fee if they do not receive approval until after July 1st. Mrs. Wullenwaber stated that most final plats do not take very long to obtain approval following submittal, so she does not feel that will be an issue. She also reminded the board that this amendment is only for the increase from 50% of fees to 100% of fees for open space subdivisions; the fee is a budget request.

Mr. Ahlert stated that the fee increase is not part of the request. The fee is determined by the Town Council. Mr. Price stated that he understands why fees are required, but is concerned about requiring open space subdivisions to pay the full fee even when providing private recreation. He stated this may deter developers from developing open space subdivisions. Mrs. Wullenwaber stated that she understood, but that the open space subdivisions must provide private recreation in order to receive higher density allowances. This typically is favorable for developers because it allows them to develop more lots. Mr. Price stated that some subdivisions have golf courses, pools, and clubhouses. He stated he is concerned developers would be less likely to have those types of amenities if they have to pay higher recreation fees regardless.

Mr. Bizzell stated that he supports this amendment, but does have concerns that previous subdivisions approved would not be grandfathered. He stated most developers do budgets up front, and that this could cause issues for them if they plat after the new fees go into effect. He stated that he feels there should be some type of grandfathering language in the ordinance to protect previously approved subdivisions. Mrs. Wullenwaber stated that she will review with staff and would be open to potentially allowing developments with approved construction drawings to be grandfathered into the old fee. She stated this will be discussed internally prior to the hearing.

Mr. Lipscomb asked for clarification that the subdivisions can offer to dedicate recreation to the Town. Mrs. Wullenwaber stated that is correct, and if the Council accepts the dedication then they would not have to pay the full amount of recreation fees.

Andria Merritt motioned to recommend approval. Ross Benson seconded.

**ACTION:** Recommendation to Town Council

Motion: Andria Merritt  
Second: Ross Benson  
Vote: Unanimous

**b) 2019-101-OA Architectural Standards Ordinance Amendment**

Samantha Wullenwaber presented the staff report. Staff is proposing to have all structures be architecturally consistent on all sides visible from right of ways or adjacent properties. This is in the Town's design guidelines currently, but is not a code requirement. This would apply to nonresidential and multi-family residential development. This does not apply to townhomes built to single-family building code standards. She stated that it will help the community aesthetically and is a common standard.

Ms. Merritt asked how often this gets used since it is in the Clayton design guidelines. Mrs. Wullenwaber stated most applicants already comply, but it has come up in the past as a concern from applicants. Mr. Lipscomb asked if all

sides must match in materials. Mrs. Wullenwaber stated that is correct. He asked if a feature on the front of the building has a mix of materials, could the rear of the building consist of one of those materials. Mrs. Wullenwaber stated that the intent is not ensure that quality materials and facades are on all sides and is consistent. She stated that if the features are on one side then it is definitely something that can be continued on all sides.

Mr. Price stated that this was an issue in the past when a building was proposed to be masonry on one facade with metal on all other sides. He stated that the building did not meet architectural standards in the guidelines. Mr. Bizzell stated that the board in the past has tried to implement this in the past for applications, and that this amendment seems to just reinforce the guidelines to create code. Mrs. Wullenwaber stated that this does not dictate materials or design, but only dictates consistency.

George Coats motioned to recommend approval. Stephen Powers seconded the motion.

**ACTION:** Recommendation to Town Council

Motion: George Coats  
Second: Stephen Powers  
Vote: Unanimous

## **6 INFORMAL DISCUSSION AND PUBLIC COMMENT**

Mrs. Wullenwaber updated the board on upcoming ordinance amendments. She stated that an amendment in June will be in front of the board to add accessory use standards to the UDC. She also stated that if Council approves the budget as presented, the Planning Department will begin a full rewrite of the UDC starting late summer.

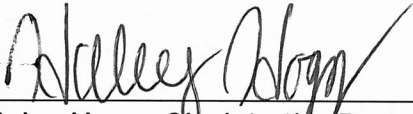
Mr. Moore asked who holds developers accountable for erosion and runoff issues in subdivisions. Mrs. Wullenwaber stated that erosion control with Johnston County handles these concerns. She stated that Town staff alerts the county when these complaints are received. Mr. Moore stated that there is a significant amount of runoff and debris on the Lionsgate greenway trail. Mrs. Wullenwaber stated she will alert the County.

## **7 ADJOURN**

With there being nothing further, the meeting was adjourned at 7:30 p.m.

  
Robert J. Ahlert, Chair

ATTEST:

A handwritten signature in cursive script, appearing to read 'Haley Hogg', written over a horizontal line.

Haley Hogg, Clerk to the Board