



Town of Clayton
Board of Adjustment Minutes
Wednesday, July 21, 2021 @ 6:00 PM
Council Chambers

BOARD MEMBERS PRESENT:

Bob Satterfield
Porter Casey
Marty Bizzell
Jim Perricone
John Saluppo
Tom Antoine
Michael Sims

STAFF PRESENT:

Frances Rasberry, Town Attorney
Kimberly Moffett, Town Clerk
Joshua Baird, Town Engineer
Ben Paynter, Planner
Jeff Caines, Senior Planner
Avery Everett, Council Member

BOARD MEMBERS ABSENT:

1 CALL TO ORDER

- a) Board Chair Bizzell called the meeting to order at 6:01 p.m.

2 ADJUSTMENT OF THE AGENDA

- a) Board Chair Bizzell requested that an item be added under Old Business to discuss proposed Rules of Procedures.

3 APPROVAL OF MINUTES

- a) June 16, 2021 DRAFT Minutes

ACTION: Adoption of Minutes

Motion: Board Member Perricone

Second: Board Member Casey

Vote: Unanimous

4 PUBLIC HEARING

- a) 2021-56-VAR O'Neil Overlook Variance
Tag #: 05H03189K / 05H03189M / 05H03189N
Location: Rollingwood Subdivision
Presenter: Planning Staff

Those wishing to offer testimony were issued the Oath of Affirmation by the Town Clerk.

Mr. Paynter presented this request. He stated the applicant requested a variance for allowance of impacts to a slope that meets the definition of a RCA, "Resource

Conservation Area". He stated that O'Neil Overlook Subdivision had a preliminary plat approved by the Town Council on May 3, 2021. The approval was conditioned on the project receiving all required approvals for environmental impacts on areas considered RCA. Additionally, the subdivision as approved would require a second access permitting ingress/egress to the site. The town's UDC requires a second access point for residential subdivisions of greater than 30 units. The applicant concluded that there were no design alternatives that would avoid impacting the slopes that are defined RCA areas by the UDC code 155.500.

Mr. Baird, Town Engineer, shared details about Resource Conservation Areas. He stated the following are considered resource conservation areas and shall be unoccupied or predominately unoccupied by buildings or other impervious surfaces: the 100-year floodplain, stream buffer areas, slopes above 25% of at least 5,000 sq. ft. contiguous areas and jurisdictional wetlands under federal law that meet the definition applied by the US Army Corps of Engineers. Prohibited uses would be stormwater control measures; roads, parking lots and impervious surfaces, except as specifically authorized; and golf courses, agriculture and forestry activities not conducted according to accepted best management practices. He stated applicant had been in contact with Corp. of Engineers and have received all proper approvals to fill in these areas. He spoke about current drainage pattern. Mr. Baird stated there is an area that is currently being monitored. Applicant has submitted all required permits.

Mr. Perricone asked if there were any drainage issues in Rollingwood Subdivision with regard to conservation area. Mr. Baird stated he is not aware of any drainage issue. Board Member Porter clarified applicant intent. Board Member Antoine asked about the number of lots initially approved in Rollingwood to be built on. Mr. Paynter stated he has not viewed the plot plan and could not speak on this. He stated he could pull a plat to check on that. Board Member Antoine confirmed number of lots approved. Board Member Bizzell confirmed preliminary plat was approved by Council. Mr. Paynter stated that was correct. Board Member Bizzell confirmed that this variance is based on lots that are being platted as well as a road in the RCA which makes this different than original approval. Mr. Baird stated that is correct. Board Member Bizzell asked if the RCA was on the preliminary plan was when approved, Mr. Baird stated he believed they were.

Applicant and city planner, Emily Beddingfield of 328 E. Main Street was present. She stated she has a master degree in urban planning, is a certified planner and has 10 years' experience in both private and public sector.

Attorney Rasberry provided details regarding quasi-judicial requirements regarding testimony. He asked that Ms. Beddingfield verify she was not representing the applicant as legal counsel. Ms. Beddingfield stated that was correct.

Ms. Beddingfield provided a Power Point presentation that provided a location of the project. She stated there are 37 lots with 2 entrances. A map outlined all the RCA's at the location. She spoke about the secondary access road that connects directly in the Rollingwood Subdivision. This secondary access is required via the code. Ms. Beddingfield shared details about the location being selected as it is the site that minimizes the RCA impact. She stated a secondary benefit was the additional of a second entrance to the Rollingwood Subdivision. She stated this will enhance public safety for

this subdivision. She stated this access will have impacts on the RCA and stream. She stated approval had been received from the Corp of Engineers with regard to the stream. 12,515 square feet request for variance impact.

Jennifer Burdett was present on behalf of the applicant. She stated she is the owner of Natural Resource Consultants and has been a consultant for 29 years and has a wetland scientist certification as well as a Bachelor's in biology and a Master's in soil science. She stated she handled the permits and certifications for the project. She shared a slide showing the existing condition above the starting point of the stream facing Oakdale Road. This slide showed the existing condition which she stated is causing a lot of erosion on the steep slope. She stated the stormwater would be rerouted and discharged downstream. She stated this was approved by the Army Corps of Engineers. The water quality certification was also approved.

Ms. Eve King, professional engineer with Adams & Hedge, spoke about the concern of stormwater being discharged through the pipe under Oakdale Avenue. She stated there is approximately 2.5 acres of area being discharged in this pipe. If you take a look at the grading for this site, there is a good amount of open land flow that also ends up in the stream that goes through existing properties before it leaves the site and comes back to the O'Neil Overlook project site. She stated there is concern from adjacent neighbors to see if this project would make things worse even though the immediate problem is being improved on, the question is if this re-routing would actually reduce the flow and assist with erosion control. She stated there would not be any additional flow.

Ms. Beddingfield addressed the Findings of Fact. She stated the written responses were included in the application and are part of the record. She stated Ms. Burdett was able to address the environmental benefits. She stated the erosion problem was something that was able to be solved and not just rerouted. She addressed concerns from neighbors about adding to the existing stormwater. She stated as Ms. King testified, the stormwater to the property is being reduced by 25%.

Finding of Fact #1:

She stated the secondary access could not be applied to this project without impacting resource conservation areas. Almost the entire project is surrounded by RCA's, the least impact area was chosen. She stated the impacts to the RCA are necessary for construction of the road and development of the property. If strict application of the ordinance was applied here, the road could not be constructed and a second entrance would not be provided

Finding of Fact #2:

She stated the hardship is a result of topography and as such is peculiar to the property. While steep slopes exist throughout Clayton, they do not routinely affect every property and are not found in every subdivision. In Rollingwood Subdivision, for example, the vast majority of lots do not require slope impacts to develop the property. The lots impacted by these slopes cannot be developed without impacts. The topography as discussed and existing erosion and location of RCA to closed to the road.

Finding of Fact #3:

She stated the stream is a natural feature which is exacerbated by stormwater flow from the nearby pipe. She stated there is a stream water pipe that is adding to the natural flow, this is not something that was caused by the applicant or the property owner.

Finding of Fact # 4:

She stated the environmental and engineering justifications provided this evening are evidence of the benefits of this project. She stated impacts have been minimized and environmental improvements are expected. Ms. Beddingfield as if there were any questions.

Board Member Porter confirmed permit was approved by Corps of Engineers. Ms. Beddingfield stated they did approve it.

Board Member Bizzell asked if the stormwater piping that Ms. King spoke about had been approved yet. Ms. Beddingfield the construction drawing have not been approved yet, this would occur after approval using the design that Ms. King presented. She stated one of the conditions of approval is that the overall design is subject to approval by the Town of Clayton's engineering department.

Board Member Saluppo confirmed there was no known flooding issues known of at this time on the existing property. Mr. Baird stated he was not aware of any. He provided details about the process moving forward if this variance were granted.

Board Member Simms asked if this area was considered wetlands. Ms. Beddingfield referred this to Ms. Burdett to answer. Ms. Burdett stated the area is a stream channel which is the waters of the US, not wetland areas. He asked about building requirements. She provided details about permitting process through the Army Corps of Engineering. She stated this area is not covered by the Neuse River Riparian Buffers rules.

Board Member Antoine asked if any additional permits would be required to build on this lot. She stated as far as waters of the US, there is a nationwide permit by the Corps of Engineers, that permit is not valid unless the state issues a water quality certification. Board Member Antoine asked if an NCDEQ permit was needed for this, Ms. Burdett stated there actually is one. Board Member Antoine asked for review of water flow. Ms. King shared a diagram showing the exact location.

There was no one wishing to speak in favor or in opposition to the project.

With there being nothing further, the item was turned over to the Board for their discussion.

The hearing was closed at 6:53 p.m.

Each Finding of Fact was read into the record.

Finding of Fact #1 was read into the record by Board Member Bizzell. He stated looking at staff commentary he understands the environmental constraints given to make the subdivision meet the town standards. As far as secondary access, there

is an environment constraint. Board Member Antoine stated there are 2 considerations, the fire department consideration is one as well as the ordinance. If a variance is granted based on these lots absorbed into the new subdivision, it would be a 30 lot subdivision. He stated the variance addresses the 4 lots themselves. These 4 lots added to the subdivision now reaches a threshold that would require a second access, that variance should be limited to those 4 lots. Chair Bizzell stated he believed it was based on the entire subdivision. Board Member Antoine stated he felt without this variance on the four lots would be unbuildable.

Finding of Fact #2 was read into the record by Board Member Bizzell.

Board Member Perricone stated he felt it was clear that it meets the criteria peculiar to the property.

Finding of Fact #3 was read into the record by Board Member Bizzell.

Board Member Perricone stated he feels it is just the opposite, the actions of the applicant are likely to mitigate a problem that is occurring and impacting an existing subdivision that over time appears it may get worse and create issues.

Finding of Fact #4 was read into the record by Board Member Bizzell.

Board Member Perricone stated the proposed actions of the applicant are likely to increase safety and provide improvement with regard to public safety. Chair Bizzell also stated that this would also assist with current erosion issues and may help mitigate an existing problem.

There was no further discussion.

ACTION: Approval of 2021-56-VAR with Conditions of Approval as Agreed to by Applicant

Motion: Board Member Perricone

Second: Board Member Simms

Vote: Unanimous

5 OLD BUSINESS

a) 2021-40-VAR Crawford Cookshop Parking Variance

Tag#: 05011016

Location: 401 E. Main Street

Mr. Tew asked if comments would be received. Attorney Rasberry provided details about this process. He stated this is the deliberation phase and stated the public hearing was held and closed. Board Member Bizzell stated they would allow comments to be heard.

Mr. Tew addressed the Findings of Facts and shared his concerns about the lack of conversation applicant had with others as stated in hearing. Mr. Tew stated he believed there would be a problem with folks competing for the parking spaces. He stated he did not feel item #15 attempt was a true attempt. He stated there was no evidence to support item #16. He stated he felt most items were subject to challenge. He spoke of Compare

Foods being a core business of the town for over 40 years. He shared his concerns about the imposition that would be placed on others to include having to install signage, fencing and having vehicles towed. He offered his thanks for having been heard.

Chair Bizzell asked the attorney what was required from the board. Attorney Rasberry stated the public hearing was closed and a summary of the Findings of Fact were provided. He stated these Findings would show there was reasonable evidence in the record to support the decision made at the public hearing.

ACTION: Approved Findings and Conclusions for 2021-40-VAR with minor corrections #4 spelling Starke and #15 locate vs. located

Motion: Board Member Casey

Second: Board Member Simms

Vote: Unanimous

b) Rules of Procedures

Board Chair Bizzell stated the draft Rules of Procedures were circulated and were taken under advisement at the last meeting in June with the understanding that the board would take a month to review these and discuss any comments or revisions necessary and potentially adopt at this current meeting.

Attorney Rasberry shared details regarding proposed Rules of Procedures. He stated this may not come within the rules of procedure as they are presently written but if you're discussing practices and procedures, he would be interested to know if the board and staff are interested in pursuing this method for developing findings and conclusions in the cases or if the board would like to move in a difference direction.

Board Chair Bizzell stated he was happy that the attorney drafted these rules.

Dick Hales, Planning Consultant, stated that he fully supported the drafting of these rules of procedures. Mr. Hails offered apologies for the lateness of some of the materials that should have been included in the agenda.

Board Chair Bizzell stated he appreciated hearing from the town engineer.

Ms. Beddingfield confirmed the timeline regarding decision and Findings of Facts or is the decision made on the effective date. Board Chair Bizzell stated he assumed this plays into the appeal period. Attorney Rasberry stated the practice he is familiar with is that the Quasi-Judicial renders its decision, the Board of Adjustment would give a notice of decision that is transmitted to various inspections and staff members and that serves to free up further permits. The applicant is not being held up at that point, however, the decision itself is final at the next regular meeting.

There was discussion regarding the appeal process. If appeal is filed and everything is put on hold. The appeal period is 30 days from the mailing of the official Findings.

Board Member Perricone would like to see word reasonable defined. Attorney Rasberry stated that was up to board members. Mr. Hails provided timeline of application process. He stated it is certiorari only and the only thing reviewed in the court proceedings is the record, there is no other rounds of testimony or cross-examination. He referred to Attorney Rasberry about the timeline between filing and the court appeal verbatim transcript and then scheduling a response from the courts. Attorney Rasberry stated he believes Section 8a just relates to the time period for the staff to schedule the hearing after the application is received. He stated the appeals process, after a final order, is all covered by the rules of procedures in the general statutes and is not anything the board can modify.

Board Member Antoine stated he felt "reasonable" was appropriate. He stated if it took six to eight months to schedule a hearing, he does not think that would be reasonable and most people would agree with that. Board Member Perricone stated the time frame is based on the filing of the application and he believes the deadline for the count should begin with the acceptance of an application as complete. He stated he thinks that's the relevant point in time. He stated if there are five requests to get to a complete application, a lot of time could be wasted while waiting on the applicant. He stated setting a time frame not from the time of the application submission, as the submission date does not mean anything if it is not complete. Attorney Rasberry stated that is why he intentionally put completed.

There was further discussion on this subject. It was agreed that 60 days with the application being deemed complete.

Board Member Antoine wanted to ensure the member section indicates that alternates only vote in absence of regular member. Attorney Rasberry stated that is widely understood and reminded council had recently approved an ordinance.

There was discussion regarding who can make a motion. There was also discussion regarding the alternate's roles. Attorney Rasberry stated it is usually the role of the alternates to be on standby if there is a recusal, an absence or a vacancy, the alternate would then be able to assume a voting position.

Board Member Sims questioned if the alternates should be able to ask questions. Attorney Rasberry advised that is the discretion of the Board Chair on whether to allow that.

Board Member Antoine stated someone made a comment about routing information. Attorney Rasberry stated the statutes require a copy to be sent to the applicant and all of those who have standing in the case. It is also customary to send the decision to anyone who participated.

Board Chair Bizzell stated Attorney Rasberry will incorporate changes and they would be brought back at the August meeting.

6 NEW BUSINESS

7 ADJOURNMENT

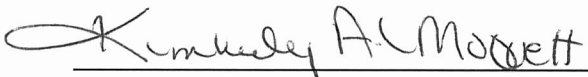
- a) With nothing further, the meeting was adjourned at 7:57 p.m.

Motion: Board Member Satterfield
Second: Board Member Casey
Vote: Unanimous

Duly adopted this the 18th day of August, 2021.


Marty Bizzell, Chair

ATTEST:


Kimberly A. Moffett
Town Clerk / Interim Clerk to the Board

