Town of Clayton
Board of Adjustment Minutes
Wednesday, August 18, 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
Heidi Holland, Deputy Town Clerk
Dick Hails, Planning Consultant
Avery Everett, Council Member

BOARD MEMBERS ABSENT:

1 CALL TO ORDER

a) Board Chair Bizzell called the meeting to order at 6:04 p.m.

2 ADJUSTMENT OF THE AGENDA

3 APPROVAL OF MINUTES

a) July 21, 2021 DRAFT Minutes

ACTION: Adoption of July 21, 2021 Minutes

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

4 PUBLIC HEARINGS

5 OLD BUSINESS

a) Review Findings & Conclusions
2021-56-VAR O'Neil Overlook Variance
Tag #: 05H03189K / 05H03189L / 05H03189M / 05H03189N
Location: Rollingwood Subdivision

Board Chair Bizzell began discussion on the Review of the Findings & Conclusions in regard to 2021-56-VAR O'Neil Overlook Variance from the previous case heard on July 21, 2021. Board Chair Bizzell began discussion, he asked Attorney Rasberry if he would like to make a presentation on this. Attorney Rasberry stated a copy of the suggested document had been sent over to board members of the suggested or proposed findings affecting conclusions of the law representing the final decision in this variance case. He stated this is suggested by Council, if anyone take issue or feels it is too long or would like to edit in some way that is fine, but he stated everyone has been provided copies previously.

Board Chair Bizzell asked if everyone has had a chance to review the Findings & Conclusions, he stated he has read through and does not have any changes to make, they seem to be very accurate. He asked if anyone had any comments are changes that need to be made. Board Member Satterfield asked if this needs to be voted on, Attorney Rasberry stated they would need to be voted on. Board Member Satterfield stated it was his understanding this was voted on and approved with the variance. Attorney Raspberry replied the grant of the variance was approved; however, this is the course of the final decision document which has to include financial conclusions and the signature of the chair is a statutory requirement. He stated he understands the point about action being taken to grant the variance, but this is the final decision document that would need to be voted on separately. It is conceivable that a member might want to add or delete something or suggest edits.

Board Member Satterfield asked does this document make the first vote null and void. Attorney Rasberry stated because the decision was to grant the variance, this is consistent with that decision to grant that, however this is the final decision document. Board Member Perricone asked if it's fair to say this is supporting documentation for that decision and we're simply providing the documentation and approving the documentation to confirm what has already been done. Attorney Rasberry stated it is. Board Member Satterfield asked if there is a way of making the first vote the decision and adding the Findings of Conclusions into it later but not making this something that has to be voted on since the board has already voted on all the information in the first document. He stated his concern is holding up the developer 60 days to do an appeal, the process from day one of the developer is long and hard. He stated he is not in favor of adding 30 more days to this process.

Attorney Rasberry stated he understands the procedure for reaching the decision at the night of the July hearing and then what form the final decision the document takes and how that is prepared and approved is an open question. He stated he understands there has been conversation amongst town staff and council about this process. He stated the method where the board acts in some refashion to either approve or disapprove or request, generally is taken at the first meeting. He stated the board took that action the night the hearing was concluded. There was further discussion among the board on this item. There was discussion on whatever the decision on the Findings of Fact for the variance is, staff notifies that applicant and developer of the decision. At that point, the developer has the green light to continue to make submissions to apply for further permits and to proceed with the project but with the understanding that the final decision has to have Findings & Conclusions and be signed by the Board Chair. The final decision will not be signed and will not be final until 30 days later. He stated that does create a circumstance where you have 30 days before the first decision, the final adoption of Findings & Conclusions 30 days later. That initiate the time period for filing an appeal. He stated it is the board's choice if they decided to advance this process by reaching the final decision by adopting Findings & Conclusions and have a document signed at the hearing when the first decision is made. He stated there is no law in the state on whether this abbreviated process is valid or not. Board Member Satterfield that is the way it has been done in the past.

Dick Hails, Planning Consultant, shared the process of another town's that he is familiar with. He discussed further these processes as well as discussion on this process among the board.

Board Member Antoine offered a couple of opinions, he stated there are two obvious tensions between making business decisions and what legal consequences of actions are, he stated those are two things that are trying to be balanced. He stated from the business perspective the expediency of understanding a decision was made and allowing a developer to move forward in this particular economic climate, he stated he thinks is very acute from the perspective price escalations. He furthered discussed this issue. He stated time right now is more valuable than actual cost of developing drawings and going through permitting process. He stated he believes there should be some certainty to the developer to move forward and then later follow up with the Findings & Conclusions document.

Board Member Satterfield stated he agrees but his point is whoever opposes a project has 60 days to appeal. Instead of the written 30 days, he has 60 days. He stated you can do it after the first meeting another 30 days, we approve it again he has another 30 days after that. He stated everything in the Findings & Conclusions must be on record already. Board Member Antoine stated the Findings & Conclusions would be the first document a court would look at under an appeal. Board Member Satterfield confirmed if the Findings & Conclusions any different than the approved Findings of Fact. Attorney Rasberry responded the record was everything that was heard by the board. He stated the findings that were made reflect what was chosen to believe as well as important and what was found to support the decision. The Findings of Conclusions document is a reduction to a document that should support the decision.

Board Member Perricone questioned whether the appeal started after the document had been approved. Attorney Rasberry stated the appeals period begins when the chair signs the final decision document. It was confirmed the developer has 60 days to appeal after the first vote. Board Chair Perricone addressed concern what are the risks to the developer and what are the risks to the opponents. He stated he believes there is probably more risk on the first decision because it was controversial and there were opponents, the Findings of Conclusions risks are very low. He stated from a practical standpoint as a developer, he would assess the risk of moving forward against getting stopped down the line, that would be how he makes the decision. He stated he did not think the 30 days alone would be the determining factor. He stated he agrees having this document, and having it prepared well, is better than not having it and works in the board's favor. He stated he is not in favor of having a document prepared before a meeting. Board Member Satterfield agreed.

Board Chair Bizzell stated he does not see anything out of the realm that would hurt a developer or petitioner as long as they would be able to move forward with staff in their permitting development process. Board Member Perricone asked if it would be possible to set forth a date for the board so they know what each decision what the appeal time frames would be and to keep the board apprised of any appeals filed so the board is aware of what is going on. Board Chair Bizzell stated that is a great idea.

ACTION: Motion to Approve Findings & Conclusions

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

b) Rules of Procedures Updates
Presenter: Frances Rasberry, Town Attorney

Board Chair Bizzell began discussing stating Attorney Rasberry presented an updated file on the Rules of Procedures which included the changes discussed at the July meeting. Attorney Rasberry discussed the changes. He stated the changes were extensive, three substantive and a couple very minor changes. The first suggested change discussed alternate members and their functions and responsibilities and when they are allowed to participate fully in place of a regular member. The second suggested changes add specifics filled out regarding meetings. The third suggested meeting added language which addresses the question of what a completed application and then provides for the 60-day timeframe or scheduling a hearing after the board clerk receives a completed application. There was further discussion on the rules and procedures among the board in regard to alternates.

ACTION: Motion to Approve with Discussed Changes

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

6 NEW BUSINESS

a) Mr. Hails stated a new Planning Director, Benjamin Howell, would begin work with the Town on August 30th. He stated he has worked with the Planning Department in Morrisville for the past 9 years. He has served as President of the NC Planning Association and comes to Clayton with a lot of experience. Mr. Hails stated he has enjoyed his time with each of the board members. Board Chair Bizzell thank Mr. Hails for all he has done for the board, he stated he has been a great resource and they wished him well.

7 ADJOURNMENT

a) With nothing further, the meeting was adjourned at 6:59 p.m.

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

Duly adopted this the 20th day of October 2021.

Marty D. Bizzell

Marty Bizzell, Chair

ATTEST:

Chrissy Freeman

Chrissy Freeman
Clerk to the Board