

The Alleghany County Board of Commissioners held a special meeting on Tuesday, July 11, 2006 at 6:30pm in the Conference Room of the County Office Building, 90 South Main Street, Sparta, North Carolina. The purpose of this meeting is to consider an appeal/variance for the Property Rights Protection Ordinance.

Present: Chair Eldon Edwards, Vice-Chair Warren Taylor, Commissioner Graylen Blevins, Commissioner Sandy Carter Herndon, Commissioner Ken Richardson, County Attorney Donna Shumate and County Manager Don Adams. Clerk to the Board Karen Evans was absent.

Chair Eldon Edwards opened the meeting.

County Manager Don Adams explained that this is a Commissioners meeting to hear an appeal/variance. He further explained that the Property Rights Protection Ordinance reads that appeals can be taken to the Planning Board or the Commissioners and variances has to be taken to the Commissioners. He stated that to his knowledge, without talking to Mr. Marlow, that there may be evidence produced that may fall under the variance category and evidence produced that may fall under the vested category. He further stated that this is the reason he stated the notice as an appeal/variance. He informed the Board that he recommends that we proceed as if this is a variance request and there may be multiple ways to deal with this.

Chair Eldon Edwards stated that this meeting is a request by Jerry Marlow for a variance. He reminded everyone that this hearing is judicial in nature. He stated that before opening the hearing, he would like to give the Board members a chance to reveal any possible conflicts and withdraw from these proceedings, if necessary.

Each Commissioner stated that they have none.

Chair Eldon Edwards stated that the order of business is; first, hear from the planning staff, then hear from the applicant and their witnesses, then hear from any opponents to the request. He explained that if the Board is to see written evidence such as reports and maps or exhibits, the witness who is familiar with the evidence should ask that it be introduced during or at the end of his/her testimony. He reminded everyone that the Commissioners cannot accept reports from persons who are not here to testify. He asked everyone to clearly identify themselves for the record before they begin their testimony.

Chair Eldon Edwards sworn in the following people for this meeting; Jerry Marlow, Amy Pardue, Don Adams, Donna Shumate.

Chair Eldon Edwards stated that written evidence should be ruled on before the Board sees it. He further stated that it should be given to the planning staff and then to him. He asked is there anyone who would like to examine this or to object to its admission. He paused. He stated that as there are no objections, this evidence is admitted. He asked that the information be passed around to the Board members.

Chair Eldon Edwards asked Planner Amy Pardue to explain what this request is about.

Planner Amy Pardue stated that Jerry Marlow is here tonight. She explained that he has requested a variance for the Property Rights Protection Ordinance. She reviewed the information that has been submitted. She stated that the variance is requested on the lot size minimum under to Property Rights Protection Ordinance. She continued reviewing the information that has been submitted.

Chair Eldon Edwards asked if the actual question could be repeated.

Planner Amy Pardue stated that the question that is before the Board tonight is that Mr. Marlow owns 1.17 acres in the Piney Creek Township and according to the Property Rights Protection Ordinance in order to have a manufactured home park, which is defined as two or more manufactured homes, you must have at least two acres minimum. She stated that he is asking for a variance on this due to the fact that he had incurred substantial expense prior to acceptance of the ordinance.

Chair Eldon Edwards stated that is almost an acre short of the requirement.

Commissioner Warren Taylor asked if the mobile homes are on the property.

Jerry Marlow stated that they are on the lot next to it that belongs to Roger Choate. He explained that they were owned by Roger Choate, and he purchased them to move to his lot. He further explained that he already had a trailer on his lot that burned two years ago. He talked about the convenience of finding the trailers right beside of his lot.

Commissioner Sandy Carter Herndon asked about the date of the Property Rights Protection Ordinance.

Planner Amy Pardue said May 15.

Commissioner Warren Taylor asked when the backhoe work was completed.

Jerry Marlow stated in April.

Commissioner Sandy Carter Herndon asked if any land will go with the trailers or is Mr. Marlow just going to rent the space to them with the home.

Jerry Marlow stated that is correct.

Commissioner Sandy Carter Herndon asked how far apart these two trailers will be.

Jerry Marlow stated that he has approximately 400 feet of road frontage with one home on one end and the other home on the other end, which would be approximately 250 feet in between the mobile homes. He explained that one would be in the place where the prior one burned, and the other mobile home would go on the other end of the lot.

Commissioner Ken Richardson asked about granting a variance for two, does that mean three, maybe four because once the variance is granted, does it limit it to what Mr. Marlow is requesting or does it open the door for three or four to be put there.

Planner Amy Pardue stated that the answer is that it does not because it would require another variance in order to do any additional work.

Commissioner Ken Richardson asked if Mr. Marlow has gotten approval from the Health Department regarding the septic tanks.

Planner Amy Pardue stated that he hasn't at this time.

Commissioner Ken Richardson stated that the Board doesn't know for sure if it would be two septic tanks or, if he preferred, one septic tank for both trailers.

Jerry Marlow stated one over-sized tank.

Commissioner Ken Richardson asked if Mr. Marlow feels confident that approval could be received from the Health Department.

Jerry Marlow agreed. He stated that Ben was going to put it in before he found out he couldn't do this.

Commissioner Sandy Carter Herndon asked how many bedrooms each of these mobile homes have.

Jerry Marlow stated two.

Commissioner Sandy Carter Herndon stated that the septic system would be accommodating four bedrooms. She asked if the property already has water.

Jerry Marlow agreed.

Commissioner Graylen Blevins asked if the two dots on the Choate property represent where the trailers are.

Jerry Marlow stated that is true.

Commissioner Graylen Blevins talked about they are moving from a 299 foot road frontage to a 436 foot road frontage.

Jerry Marlow stated that they will be farther apart than they are now.

Commissioner Ken Richardson asked if that is what the dots represent because there is one on the property in question.

Planner Amy Pardue stated that yes that is what the dots represent and that one dot represents the trailer that burned.

Commissioner Sandy Carter Herndon asked if the burnt trailer had been removed.

Jerry Marlow stated yes.

Commissioner Sandy Carter Herndon stated that it seems that Mr. Marlow got caught in the transition period.

Chair Eldon Edwards asked if the Planner had looked over this information.

Planner Amy Pardue stated yes, she has.

Chair Eldon Edwards asked the Planner is she concurs with the principal on what he is requesting. He further asked if there was anything she wanted to add to this.

Planner Amy Pardue stated that she thinks that Mr. Marlow has presented most of the evidence to the Board.

County Manager Don Adams talked about reasons for an appeal versus a variance. He further talked about the reasons that the Board can grant a variance and specific reasons why the Board can classify it as vested rights. He explained that is why he advertised this as a variance/appeal meeting. He stated this is why he tried to lay it out for the County Attorney because there are very specific reasons for variances and very specific reasons for vested rights. He further stated that it is available to this Board to give vested rights or it isn't and give a variance or not. He said that is where a legal opinion is needed.

Commissioner Graylen Blevins asked when the ordinance was passed.

Planner Amy Pardue stated May 15.

Commissioner Graylen Blevins reviewed the trailers' purchase date of March 23.

Chair Eldon Edwards asked if the Board has further questions for the Planner.

Chair Eldon Edwards asked Jerry Marlow if he had any comments.

Jerry Marlow stated that he supports the ordinance but he was already in the process of putting this in. He further stated that some type of grace period needed to be given. He said that if he had known all of this before he did this, he wouldn't have done it. He talked about hardship and borrowing \$10,000 and has already spent ninety-some hundred of it. He stated that he was depending on the rent to pay the loan. He further stated that he is making payments on \$10,000 with no way to make any income. He explained that he has already lost two months rent, and he may have lost his renters. He stated that the two months rent would be like \$1,600 or so. He reiterated that he is making a monthly payment on something he isn't making any money on.

Commissioner Sandy Carter Herndon stated that is through no fault of his.

Jerry Marlow agreed. He stated that he has two trailers that he must get off of Roger's property.

Chair Eldon Edwards asked if the variance is approved is Mr. Marlow ready to move these trailers on site.

Jerry Marlow stated yes because he had already had everything lined up to move the trailers.

Commissioner Sandy Carter Herndon asked how Mr. Marlow found out this wouldn't be permitted under the Property Rights Protection Ordinance.

Jerry Marlow stated that he found out when he went to get the permit to set the trailers down because Toni, in Inspections, told him. He further stated that Toni contacted Amy and that is where all of this got started. He said that was approximately the second week in June because that is when he was getting ready to put the septic tank in.

Commissioner Sandy Carter Herndon stated that she was glad to see the system works but

is sorry in Mr. Marlow's case but is glad the system worked.

Jerry Marlow talked about being in the middle and has quite of bit of money tied up.

Commissioner Warren Taylor asked the County Manager which area the Board needs to act on because it appears to him that action could be taken on either situation.

Commissioner Sandy Carter Herndon talked about that is based upon what the law says we can do.

Chair Eldon Edwards asked Mr. Marlow if he has anyone else to speak on his behalf.

Jerry Marlow stated no.

Chair Eldon Edwards asked if anyone is present that opposes this request.

Chair Eldon Edwards referred to the County Attorney for further discussions.

County Attorney Donna Shumate stated that she has tried to apply what has been said to what the ordinance itself allows. She explained that in order to grant a variance there are certain things that the Board has to find as finding of fact and you would have to find that if the applicant complies with the provisions of this ordinance, he can secure no reasonable return from, or make no reasonable use of his property. She asked the Board if they are willing to state that in this situation.

Commissioner Sandy Carter Herndon stated that she isn't but it is true that he couldn't utilize it to the capacity that he wanted to and the property is still useable for at least one.

County Attorney Donna Shumate stated that what the Commissioners would have to find to grant a variance is that if the applicant complies with the provisions of this ordinance, he can secure no reasonable return from, or make no reasonable use of his property.

Chair Eldon Edwards asked for the Board's input.

Commissioner Ken Richardson asked if that is the one condition that has to be answered.

County Attorney Donna Shumate stated that is one of five, with that one being the first one.

Commissioner Sandy Carter Herndon asked to hear the other ones.

County Manager Don Adams handed out copies of that section of the ordinance.

County Attorney Donna Shumate read the other conditions: the hardship results from the application of this ordinance; the hardship is one suffered by the applicant's property rather than by the applicant, his neighbors, or the general public; the hardship is not the result of the applicant's own actions; the hardship is one peculiar to the applicant's property rather than one shared by surrounding properties and/or properties in the same area.

Commissioner Sandy Carter Herndon stated that number four applies in this situation because his actions weren't against any ordinance that the County had in place at that time.

Chair Eldon Edwards agreed but talked about number one being the applicant complies with the provisions of this ordinance; he can secure no reasonable return from, or make no reasonable use of his property.

Commissioner Sandy Carter Herndon asked for clarification if all of these conditions must apply or one of them must apply.

County Attorney Donna Shumate stated that she thinks because of the word and at the end of number four implies that all five of them have to be present.

Commissioner Sandy Carter Herndon stated that she doesn't see how the Board can pass it under this. She asked what the options for appeals are.

County Attorney Donna Shumate said that under vested rights, a vested right may be if a use, structure, or parcel of land existed at the time of enactment of this ordinance, or any amendment thereto. She stated that the business part really doesn't apply. She read another vested rights criteria about an officially approved building permit so long as the permit is valid, unexpired or unrevoked at the time of enactment of this ordinance. She said she doesn't know if that applies.

Commissioner Sandy Carter Herndon asked if he had to have any type of permit or did he have permission to hook up power prior to the passing of the ordinance. She talked about that normally won't be done until they were actually moved and inspected.

County Attorney Donna Shumate stated that the other one concerns a site plan which we haven't had either. She further stated that the only one that may apply is a use, structure, or parcel of land existed at the time of enactment of this ordinance, or any amendment.

Commissioner Warren Taylor stated that he thinks that would be the one that the Board would have to rely on. He further stated that the parcel of land existed at the time of the ordinance and he had vested rights in that property to do what he is proposing to do prior to enactment of the ordinance.

Commissioner Graylen Blevins stated that he agrees.

Chair Eldon Edwards, also, stated that he thinks so.

Commissioner Sandy Carter Herndon talked about then it would be under the vested rights provision not under the variances.

Commissioner Graylen Blevins asked how it needs to be handled under vested rights.

County Manager Don Adams referred the question to the County Attorney.

County Attorney Donna Shumate stated that she is a little uncomfortable because this is the first time she has seen this. She talked about the parcel of land existed at the time of the ordinance is clear but the use or structures were not there.

Commissioner Sandy Carter Herndon stated that the structures were in existence and had been purchased.

County Attorney Donna Shumate pointed out that the structures were not on the parcel of land. She talked about if the structures had been already set up on this parcel of land before, and then there wouldn't be a question at all.

Commissioner Warren Taylor talked about the key word is before.

County Attorney Donna Shumate reiterated that she is a little uncomfortable and would like to do more research before she offers a legal opinion whether this really comes under vested rights or not.

Commissioner Warren Taylor talked about waiting on the legal opinion.

Chair Eldon Edwards asked if this is the only one.

County Attorney Donna Shumate stated that she doesn't think the other ones apply.

Commissioner Graylen Blevins talked about variances one through five where it talks about a hardship is a result of this ordinance applies. He asked does all five have to apply because of the word and.

County Attorney Donna Shumate stated her opinion is she thinks so.

Commissioner Graylen Blevins asked if this was referred to during decisions of the Planning Board.

Commissioner Ken Richardson stated he wasn't sure.

Chair Eldon Edwards stated that he remembers discussing it. He further stated that the County Attorney has a question about 13.9 (a) and needs a clarification.

County Attorney Donna Shumate says yes she does and would prefer that.

Chair Eldon Edwards asked if there is anything else in order to get it all done at the same time.

County Manager Don Adams and County Attorney Donna Shumate talked about how long it would take to research this matter. County Manager Don Adams talked about putting this on the agenda for Monday's Commissioners' meeting.

Commissioner Ken Richardson stated in response to Commissioner Blevins, he would like someone to clarify if all five of these conditions have to be met for a variance.

County Manager Don Adams stated that at this point, he agrees with the County Attorney. He explained that generally speaking variances are not necessarily an easy thing to achieve. He talked about these conditions are in the Statutes that is listed out in order to get a variance. He stated that his discussions with the other attorney involving Maymead and variances were that he had serious questions whether or not a variance could be given (tape inaudible). He stated that he will check on that for Mr. Richardson. He talked about certain criteria for vested rights and legal vested rights that he thinks fall outside of these standard definitions. He stated that the real question for legal counsel is the fact that the trailers were purchased, money was spent, grading already done physically on the property. He said that he thinks that is a much more proper road to

go down when talking about vested right because the money has been spent, the lot size was there. He reiterated that this is a much more legal route to go and probably a much more successful route as far as if the Board wishes to grant this. He said on the vested rights questions, he would have to defer to legal counsel because he isn't comfortable making a stance on it one way or another.

Chair Eldon Edwards stated that if the Board could get a clarification on 13.9 (a), is that the only one under vested rights.

Commissioner Warren Taylor stated that is exactly where Mr. Marlow's situation would fall.

County Manager Don Adams stated that there are clear differences between this situation and the Maymead lawsuit. He further stated that he needs to defer to legal counsel to have more discussions about are the differences distinguished enough; like already owning the land, already invested the money. He said that you can go down the road regarding what has established vested rights but he thinks the County will be safer to get an official legal opinion on that.

Commissioner Graylen Blevins asked about the time frame for Planning Board meetings.

Planner Amy Pardue stated that Planning Board meetings are on the second Tuesday of each month.

Commissioner Graylen Blevins talked about a certain amount of time to respond.

Planner Amy Pardue stated that for variance proceeding, it is just as quickly as possible. She further stated that is at the discretion of the Board to set up the next meeting, if more information is needed.

County Manager Don Adams stated that if the Board will go back to the page about appeals/variances and look at 11.1 regarding 30 days to respond under the appeal section and if more information is needed then this meeting can be continued.

Commissioner Ken Richardson asked if Mr. Marlow wanted to set one of those trailers tomorrow by getting permits and go ahead to get a renter into it while working on the legality regarding a second one.

County Attorney Donna Shumate and County Manager Don Adams agreed.

Chair Eldon Edwards said he would like clarification on 11.2 (c) about variances. He read the section in question; if the applicant complies with the provisions of this ordinance, he can secure no reasonable return from, or make no reasonable use of his property. He asked what reasonable use of the property is and reasonable return.

County Attorney Donna Shumate stated that if the property had no commercial use at all.

Chair Eldon Edwards talked about setting two mobile homes on the property to rent, does that mean anything.

County Attorney Donna Shumate said the question is if he can only do one, is that not a reasonable return.



County Manager Don Adams explained that there isn't a set answer to that question. He talked about taking that question literally. He stated that he recommends the Board have more conversations about the reasonable return. He reiterated that he thinks the better route in this situation is vested rights.

Commissioner Sandy Carter Herndon agreed.

County Manager Don Adams stated that he will go ahead and investigate and verify the variance side of this.

Chair Eldon Edwards stated that he needs a little more clear understanding about what number one means. He further stated that to him it reads that if the applicant complies with the provisions of this ordinance, he can secure no reasonable return from, or make no reasonable use of his property, then if he isn't going to make any use of it, and then what is the purpose of the variance.

Commissioner Ken Richardson gave an example of having an acre of land, and then you can put one trailer or one house and get a reasonable return.

Chair Eldon Edwards agreed and stated that if you put two on there, the variance has to be approved before you can do it.

Commissioner Sandy Carter Herndon stated that if it is done as a variance rather than vested rights.

Chair Eldon Edwards stated that he needs something to clarify this for him.

Jerry Marlow stated that the Board is saying that he can go ahead and put one down, and that is true but if one is put then it will be a normal septic tank or if he gets to put another one, then he will have two tanks.

Commissioner Sandy Carter Herndon talked about putting the larger septic tank in place.

Jerry Marlow stated that is a lot more money, and he would hate to spend a couple more thousand and not need it.

Commissioner Graylen Blevins talked about if you are moving both trailers at one time and not have someone come twice.

Jerry Marlow, Commissioner Graylen Blevins and Commissioner Sandy Carter Herndon talked about increased costs.

Commissioner Warren Taylor stated that he thinks we owe Jerry an answer soon.

The Board of Commissioners and County Attorney Donna Shumate talked about finishing the research on the matter and scheduling the next meeting on Monday.

Commissioner Ken Richardson let Mr. Marlow know that the Commissioners' meeting on Monday is a 10:00am meeting.

Chair Eldon Edwards apologized for the delay in this thing. He talked about this is the first

request the Commissioners have had.

Jerry Marlow stated that it seems to him that there should have been a little bit of a grace period if you already had something in progress.

Commissioner Graylen Blevins asked about grandfathering back on the things that were already in motion.

County Manager Don Adams stated that is the research on vested rights. He further stated that it is difficult for him to give an exact opinion at this point. He said that is why he is deferring to legal on this.

Commissioner Sandy Carter Herndon asked about also discussing this with legal counsel besides local counsel.

Commissioner Ken Richardson talked about the procedures for this meeting.

Commissioner Sandy Carter Herndon stated that she doesn't think the Board has enough information about the findings of fact.

Commissioner Graylen Blevins made a motion to adjourn. The motion died due to lack of a second.

County Attorney Donna Shumate stated that the Board needs to say that the hearing is continued until Monday.

Commissioner Ken Richardson made a motion to continue this hearing until the 10:00am meeting on July 20, 2006. Commissioner Warren Taylor seconded the motion. Vote 5:0.

Respectfully Submitted,

Karen Evans  
Clerk to the Board

Attest:

Eldon Edwards  
Chairman