

Village of Misenheimer
Board of Adjustment Meeting Minutes
Public Meeting for Variance Request Submitted
Community Building
June 6, 2013 6PM

Board Members Present:	Ahren Burrage, Chairman Mark Stephenson Nancy Henderson Joel Rogers Peter Edquist, Alternate	Staff:	Pam Humphrey, Administrator/Clerk Erik McGinnis, Zoning Officer
		Counsel:	Mac McCarley
		Applicants:	Lane E. Peeler Doris P. Redding
Board Members Absent:	Judy Hammill, Vice Chairman	Others:	Linda Peeler John Lefler Michael Herron Jeff Watson

Call to Order: Due to inclement weather and power outages in the Village, Burrage called the meeting to order at 6:33PM declaring a quorum present.

Introduction of Visitors: Burrage welcomed the Staff, Counsel, Applicants and other members in the audience.

Approval of June 6, 2013 Board of Adjustment Agenda: Edquist made a Motion to accept the Meeting Agenda as presented. Stephenson seconded the Motion and it was approved by a vote of 5/0.

Motion to Move to Public Meeting: Burrage made a Motion to move the meeting to a Public Meeting. Stephenson seconded the Motion and it was passed by a vote of 5/0.

Burrage introduced all of the Board of Adjustment Members and the Alternate to the audience.

Burrage advised that the public meeting portion of tonight's meeting is to address an Application for Variance from the regulations in the Zoning Ordinance submitted to the Village by Lane E. Peeler and Doris P. Redding on May 14, 2013.

1. Burrage also announced the following regarding the proceedings of the public meeting:
 - a. All parties who plan to give testimony, pro or con, must complete the oath form to speak, and be sworn in.
 - b. Consideration of any challenges based on conflicts of interest will be addressed by Counsel.
 - c. The Village staff will explain why a variance is requested.
 - d. The Board may question the Village staff, and then the Applicant may question the Village staff.
 - e. The Applicant will present his/her testimony for this case.
 - f. The Board may question the Applicant, and the Village staff may question the Applicant.
 - g. The Applicant may present sworn witnesses. They will be subject to questioning.
 - h. Other parties wishing to speak, pro or con, will be given reasonable time to present sworn testimony (twenty (20) minutes for the parties not opposed and twenty (20) minutes for the parties opposed.
 - i. The Village staff, and then the Applicant, will be given an opportunity for rebuttal.
2. After hearing the case, the Board will review the evidence and render a decision. This will be done in closed deliberations, meaning, no further comments are allowed from any party. However, the Board may elect to take up to thirty (30) days to render a decision.

- a. You may remain present during the deliberations, or
 - b. You may call the Village staff after the session to receive the decision of the Board.
3. All exhibits must remain with the Board. Please hand them to the Clerk. If your case is not appealed to Superior Court after 30 days, you may pick them up or they will be kept in our files.
 4. If you feel there is a conflict of interest of any Member of the Board, or an association that would prejudice your case, please let it be known at the start of the case.
 5. The Board is acting in a quasi-judicial capacity for purposes of this hearing and can accept only sworn testimony. While the Board will not specifically exclude hearsay evidence, it is only given limited weight.
 6. Appeal from this Board is to the Stanly County Superior Court. You have thirty (30) days from the date of the Board's written decision in which to appeal, in accordance with NCGS 160A-388e.
 7. Please turn all cell phones and pagers off.
 8. In order to receive a written copy of the decision, any aggrieved party **MUST FILE A WRITTEN REQUEST** for a copy of the Board's Decision with the Board's Clerk or Chairperson no later than 5:00 p.m. tomorrow.

Burrage requested that all parties requesting to give sworn testimony be sworn in/affirmed by the Clerk. Humphrey, Administrator/Clerk swore/affirmed the following persons:

Applicant: Lane E. Peeler

Zoning Officer: Erik McGinnis

Others: Linda Peeler, John Lefler, and Mike Herron

Mac McCarley, Counsel to the Board, asked the Applicants, those in the audience requesting to speak regarding the Variance request, and the Board of Adjustment members if they had any perceived challenges and/or conflict of interests regarding tonight's meeting with the Applicants, surrounding property owners, or anyone else that would preclude their ability to hear the sworn testimony and make a fair and honest decision regarding the evidence presented. No one stated that they had any challenges and/or conflict of interests.

Consideration and Determination of Cases-Peeler Variance Request Submitted May 14, 2013:

- **Erik McGinnis, Zoning Officer, Statement to the Board of Adjustment Members:**

McGinnis addressed the Board members and the audience with the following sworn testimony:

- The Peelers are proposing to construct a new permanent residence on jointly owned family property (Mr. Peeler and Ms. Redding) located at 48166 Wesley Chapel Road in Misenheimer, NC by subdividing a two (2) acre portion of the entire property.
- Mr. Peeler and Ms. Redding's Variance request was for **either**:
 - A setback variance of seven (7) feet from the rear yard setback requiring fifteen (15) feet as indicated in the Village's Zoning Ordinance Article VI Section 601.1
 - OR**
 - A road frontage variance of seven (7) feet from the required fifty (50) foot minimum lot width at road frontage as indicated in the Village's Zoning Ordinance Article IV Section 402 and Section 405.3.
- McGinnis stated that the plot for the proposed new residence to be constructed as presented would not meet the Village's Zoning Ordinances and therefore a zoning

variance request was submitted by Mr. Peeler and Ms. Redding for the Board of Adjustment's consideration.

- **Public Testimony from Applicants:** Lane E. Peeler gave sworn testimony on behalf of the Variance request that he jointly submitted with his sister, Doris P. Redding, to the Village. Mr. Peeler advised the Board members and the audience regarding the following:
 - Mr. Peeler thanked those attending the meeting and gave the audience background information regarding his connection to the Misenheimer community.
 - The Peeler Family farmhouse residence (over one hundred (100) years old) could not be renovated. It was unsafe and was recently torn down and removed from the property.
 - Mr. Peeler explained why he had submitted a variance request for either a setback variance or a road frontage variance since he could not meet the Village zoning requirements with the current placement of the proposed new residence to be constructed.
 - The Peeler farm is zoned RA-Residential Agricultural. The variance request is not a request to change the RA zoning. Our variance request is intended to maintain the RA "spirit" of the ordinance.
 - Mr. Peeler submitted the following exhibits of evidence at the meeting which will be kept on record with the Village Clerk for thirty (30) days after the meeting date of June 6, 2013:
 - Two (2) Page Summary of Research Regarding Some North Carolina Municipalities with Zoning Ordinances That Require Road Frontage (Street Access) of Fewer than Fifty Feet. Mr. Peeler advised that numerous other municipalities and counties have lower road frontage zoning requirements than the Village's current fifty (50) foot requirement.
 - Concord, NC Article 7: Base Zoning Districts (Either 15 or 30 feet)
 - Cumberland County, NC Article XI Lot and Yard Regulations (At least 20 feet)
 - Iredell County, NC Section 3.2 Every Lot Must Abut a Street (At least 25 feet)
 - Morganton, NC Sec. 9-4004, Application; general provisions; exceptions and modifications (Not less than 40 feet)
 - Mount Holly, NC Article III Application, General Provisions, and Definitions (Not less than 20 feet)
 - Spruce Pine, NC The Official Zoning Ordinance of Spruce Pine, NC (For at least 25 feet)
 - Elkin, NC Section 53 Rules Governing Interpretation of District Boundaries
 - Trinity, NC Section 5-6. Road Access
 - Vance County, NC Zoning Ordinance 4.1 Street Access
 - Williamston, NC Section III-General Provisions 3-6 Street Access
 - Mr. Peeler stated that the Peeler family had been good neighbors to the community. In orienting their proposed new residence to be constructed at an angle to Wesley Chapel Road facing the Ferebee field and possibly using screening plantings, the desire is to maximize the privacy for all involved.
 - Mr. Peeler submitted the following exhibit of evidence at the meeting which will be kept on record with the Village Clerk for thirty (30) days after the meeting date of June 6, 2013:
 - Supplemental Addendum from Todd Rummage, State Certified Residential Appraiser, stating that "Based upon the market area, the proposed use (residential) being consistent with the current zoning granting a variance of either of the 2 proposals provided would not appear to injure any of the surrounding properties in the immediate area."

- Mr. Peeler noted that the architectural style of the proposed residence to be constructed will be an attractive two (2) story Carolina Piedmont Village Farm House style floor plan. A local contractor will be used to build the home thus helping out the economy of this area.
- Mr. Peeler explained that consideration had been given to locating the proposed new residence to be constructed near to the Ferebee field. However, this would have presented a hardship to the agricultural use of the family farm. There are storage buildings and underground utilities to consider and the Bob Peeler house would have issues with retaining a two (2) acre plot.
- Mr. Peeler concluded his remarks by summarizing the following in his asking for his variance request to be granted:
 - The spirit of the zoning ordinance must be preserved.
 - The situation described is asking for zoning road frontage or setback flexibility in order to support agricultural use.
 - Several other municipalities have less stringent road frontage requirements.
 - Public safety and health secured.
 - One (1) more car will be traveling Wesley Chapel Road.
 - Public safety has been improved with the removal of the old house.
 - A septic permit was issued by Stanly County which included abandoning an old well. This was provided to Erik McGinnis, Zoning Officer.
 - Values of property will not be injured.
 - Improvements have already been made with the removal of the old house since it was an eyesore and a safety hazard.
 - It will add property to the tax rolls.
 - The appraiser commented that the proposed new residence to be constructed will not affect property values to nearby properties.
 - Village Land Use Planning Principles
 - **2. Enhance the provincial, residential, and educational appeal of areas of our Village that already possess such, and nourish new potential areas.** Mr. Peeler addressed this principle by stating that the proposed new residence to be constructed will enhance the residential appeal of the property without taking up any additional space since it will be replacing a house that was previously there with a Carolina Piedmont farmhouse style home that is fitting to the provincial nature of the Village.
 - **9. Promote sound and sustainable agricultural practices rooted in the values and traditions of successful family farming.** Mr. Peeler addressed this principle by stating that the proposed new residence to be constructed will provide suitable access to the bulk of the Peeler Family Farm that will support sustainable agricultural practices. We plan expanded gardening and landscaping projects guided by his wife, a Master Gardener. We will be on-site to continue the Peeler traditions of well-maintained fields and pastures that are farmed sustainably.
 - **11. Preserve, wherever possible, the Village's historical properties, structures, records, and traditions.** Mr. Peeler addressed this principle by stating that the proposed new residence to be constructed will allow him to build a home where his grandparents' home stood thus preserving Peeler Family history. Some siding boards, window frames, doors, and bricks were saved from the old house. Whenever possible, we intend to incorporate them into the new house to continue the historical link to the past.

- **12. Grow the Village to serve as a pleasing, viable home to its residents and entities, and as a destination for educational opportunity and tourism.** Mr. Peeler addressed this principle by stating that the proposed new residence to be constructed will increase the population of the Village by two (2) making the Village our permanent home. Living here full time, we will be able to maintain the Peeler Farm which lies in the heart of the Village of Misenheimer, thus presenting an appealing family farm as a part of the charm of the Village.
 - Mr. Peeler summarized that he and his wife want to come home to live at the Peeler Family Farm located in the Village.
- **Public Testimony from Those in Support of the Applicant's Request:** Linda Peeler and John Lefler spoke in support of the Applicant's variance request.
 - Mrs. Peeler gave sworn testimony that she was not opposed to her husband and sister-in-law's Variance request. She made the following comments to the Board and the audience:
 - Judge their Variance request on the facts that are unique to this situation.
 - The Peeler/Redding Variance request is intended to preserve the spirit of the Village ordinances.
 - Placement of the proposed new residence to be constructed was situated to maintain a free large segment of farm land on the rear side of their property.
 - The old Peeler home place has been removed since it was beyond repair and was a potential health hazard.
 - The family goal is to retain the history of the Family farm.
 - An old well was abandoned on the property thereby maintaining the safety of ground water.
 - The appraiser's letter indicates that surrounding property values would not suffer.
 - The proposed use fits the land use plan. It respects history and the family farm.
 - Orientation of the proposed new residence to be constructed was also situated so that a view of the Peeler Farm fields and Pfeiffer University was available and that the maximum privacy for the neighbors was considered.
 - Mr. Lefler gave sworn testimony that he was an adjoining property owner with no opposition to the Peeler/Redding's Variance request that he described it as making total reasonable sense. He stated that he owns approximately fourteen (14) acres in the Village and may someday also want to subdivide his property to build a new residence. He also stated that he had walked over to the Peeler/Redding field and did not see where adding a new home would be considered a negative. Moreover, he stated that he and his wife are in support of the Peeler/Redding's Variance request.
- **Public Testimony from Those Not in Support of the Applicant's Request:** Michael Herron, an adjoining property owner, gave sworn testimony regarding his opposition to the Peeler/Redding Variance request. He urged the Board to work toward the future of the Village by not granting the Variance request.
 - Mr. Herron submitted the following exhibits of evidence at the meeting which will be kept on record with the Village Clerk for thirty (30) days after the meeting date of June 6, 2013:
 - A color aerial photo of the Peeler/Redding land including the Herron's property and some of the other adjoining properties
 - Joint driveway perpetual easement agreement signed in 1986 between Janet Warner, Perry Henderson, Michael Herron, Barbara Herron, and Robert Peeler.
 - Copy of Mr. Herron's remarks read to the Board members and the audience. Copies were not provided to the Board or to the audience.

- Mr. Herron cited several reasons why the Variance Request should not be granted. They are as follows:
 - NC Statute indicates that a variance should not be granted unless *values of properties will not be injured*. Mr. Herron stated that his home will lose privacy with the proposed placement of the new residence to be constructed. A planned windowless side to the proposed new residence and garage to be constructed will be the new view from the back portion of the Herron's home.
 - The orientation for the proposed new residence to be constructed will have it facing at an angle to all nearby existing homes. If a proposed new residence is to be built, it should be practically situated similarly to the other existing second row of homes.
 - The existing brick house's (Bob Peeler home) value will be denigrated by the primary loss of its driveway.
 - NC Statute directs that even with a variance granted that the *spirit of the Zoning Ordinance must be preserved*. The future of the Peeler/Redding and surrounding properties must be considered now.
 - Consideration should be given now to property owners of the future.
 - A variance should only be granted if the owner can show *practical difficulties or unnecessary hardship*. Mr. Herron stated that the Peelers could live in the existing brick ranch home (Bob Peeler home) already on the Peeler/Redding property.
 - Mr. Herron stated that a possible relocation for the proposed new residence to be constructed would be more appropriate if located near the Ferebee home.
 - Mr. Herron requested that the Village's motto of "Preserving the Future" be seriously considered and he requests that the Board deny the Variance requests.

Rebuttal:

Mr. Peeler responded as follows:

- Mr. Peeler's appraiser recommended the orientation of the house. How the placement of the residence to be constructed affects the Bob Peeler house is not Mr. Herron's concern as the Peelers own that house. The Herron home is farther from the placement of the new residence to be constructed. The Byers house and the Bob Peeler house are closer.
- The driveway is as semi-circular drive. Taking one drive out does not affect the other drive.
- The proposed new residence to be constructed was designed to be near to where the old original farmhouse was located on the property.
- The septic drain field would not work near the Ferebee field so there were few choices as to where to place the proposed new house to be constructed. Twelve (12) holes were dug to locate suitable septic drainage. The septic drainage field did not end up where he wanted it to. A septic system will not work near the Ferebee field.
- Big farm equipment accesses the Peeler Farm acreage via the Ferebee field vs. primarily using the Peeler residential driveway accessed from Wesley Chapel Road.

Board of Adjustment Questions Answered:

1. Rogers asked Mr. Peeler how wide the farm equipment is. Mr. Peeler answered that a combine is eighteen (18) feet wide. Sometimes the farm equipment has to be dismantled and reassembled to get it back to the fields.
2. Stephenson asked Mr. Peeler if the septic was on the slope facing the campus. Mr. Peeler answered that eleven (11) places were tested for perking on the property in order to find an area that would perk. The septic system was within fifty (50) feet of the old well where the pipes had to be located and then filled with concrete. All of this had to be done to lay out the septic system acceptable to Stanly County.
3. Burrage asked Mr. Herron where the Herron home was located on the color aerial map that Mr. Herron provided the Board as evidence. Herron answered by showing where his property is located on the map.

4. Edquist asked Mr. Lefler where the Lefler property was located on the color aerial map. Mr. Lefler answered by showing where his property is located on the aerial map that Mr. Herron provided the Board members as evidence.
5. Edquist asked if the Peelers and Herrons had had the opportunity to speak with each other regarding this matter. Mr. Herron answered that they had had several conversations. Mr. Peeler answered that they had spoken when the surveyor was at the Peeler/Redding property.

Further questions from the Board of Adjustment members were closed.

Burrage stated that we have now concluded the portion of the meeting that pertains to the presentation of evidence. The Board shall now proceed to the discussion and decision portion of the meeting. Interested parties are not permitted to address the Board during this portion of tonight's meeting. However, everyone is permitted to remain present and listen quietly to the Board's discussion and vote.

In order to receive a written copy of the Decision, any aggrieved party must file a written request for a copy of the Board's Decision with the Board's Clerk or Chairperson by 5:00 p.m. tomorrow.

Board of Adjustment Variance Request Discussion:

The Board of Adjustment members discussed the evidence presented and considered the following proposed findings of fact and conclusions of law as presented by Counsel.

Proposed Findings of Fact and Conclusions of Law:

1. The variance is in harmony with the general purpose and intent of the ordinance and further preserves its spirit.
2. In granting the variance the public safety and welfare have been assured and substantial justice has been done.
3. Granting the variance, with conditions, will not adversely affect adjacent or contiguous properties.
4. Denial of the request would work unnecessary hardship upon the petitioner.
5. Granting the variance will not alter the essential character of the neighborhood.
6. All adjoining property owners were duly notified and there were no challenges, no conflicts of interest or pre-hearing bias challenges raised.
7. The hardship is peculiar to the applicant's property.
8. The hardship is unique to the property because of the shape of the property.
9. Placement of the septic field contributed to the shape of the lot chosen by the applicant.
10. Granting a setback variance reduces the impact of the proposed residence on neighboring properties by moving the house further away from neighbors.

McCarley stated that the condition that he hears the Board considering is that the Applicant must install and maintain a berm and/or landscaping buffer (but not a berm alone) between the proposed Peeler house and the Herron house sufficient in placement, height, and material in the opinion of the Zoning Officer to create visual privacy between the two (2) properties.

McCarley asked if the Chairman believes that the Board is ready for a vote and that the statements of fact correctly represent the Board's judgment on the matter. The Board of Adjustment adopted the proposed Findings of Fact by a vote of 5/0.

Burrage asked the Board members if they are ready for a vote and does the setback conditional verbiage and the statements of fact correctly represent the Board's judgment on the matter.

McCarley stated that a Motion is put before the Board by the Applicant as they have asked the Board to consider their variance requests.

Burrage asked the Board if the Board members would adopt the findings of facts and conclusions.

Board of Adjustment Vote to Grant or Deny the Variance Requests:

- The Variance request of seven (7) feet from the fifty (50) foot minimum lot width at road frontage was DENIED.
- The Variance of seven (7) feet from rear yard setback was GRANTED, by vote of 5 to 0 with the following conditions:
 - The applicant must install and maintain a berm and/or landscaping buffer (but not a berm alone) between the proposed Peeler house and the Herron residence sufficient in placement, height, and material, in the opinion of the Zoning Officer, to create visual privacy between the two (2) properties.

McCarley advised that he would prepare the Decision and Order for the Chairman's signature.

Motion to Return to Regular Meeting: Burrage made a Motion to return to the regular portion tonight's Board of Adjustment meeting. Edquist seconded the Motion and it was approved by a vote of 5/0.

Approval of Minutes of the Board of Adjustment Meeting on Thurs, April 11, 2013: Burrage made a Motion to approve the April 11, 2013 Minutes as presented. Henderson seconded the Motion and it was approved by a vote of 5/0.

General Public Comment Period: Herron remarked that it was a good thing to have had Counsel present at the public meeting portion of the meeting tonight.

Adjournment: Rogers made a Motion to adjourn the meeting. Henderson seconded the Motion and it was approved by a vote of 5/0. The Board of Adjustment meeting was adjourned at 8:00PM.

Chairman/Vice Chairman	Date	Pam M. Humphrey, Administrator/Clerk	Date
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