

**GUILFORD COUNTY
PLANNING AND DEVELOPMENT
BOARD OF ADJUSTMENT MEETING MINUTES**

Carolyn Q. Coleman Conference Room
First Floor, Old Guilford County Courthouse
301 W. Market Street, Greensboro, N.C. 27401

March 4, 2025

Regular Meeting

6:00 PM

Chair Miller called the meeting to order at 6:00 p.m. and asked staff to call the roll.

A. Roll Call

The following members were in attendance in person for this meeting:

Ditra Miller, Chair; Willie Johnson, Vice Chair; Franklin Havens; Carey Campbell and Cory Randolph

The following alternate Board member was not in attendance at this meeting:

Larry Standley

The following staff members were in attendance in-person for this meeting:

Avery Tew, Senior Planner; Troy Moss, Planning Technician; and Matthew Mason, Chief Deputy County Attorney

B. Agenda Amendments

None

C. Approval of Minutes: November 12, 2024

Mr. Randolph moved to approve the November 12, 2024, meeting minutes, as submitted, seconded by Mr. Johnson. The Board voted unanimously in favor of the motion.

D. Rules and Procedures

Chair Miller read the Rules and Procedures for those in attendance.

E. Old Business

None

F. New Business**Evidentiary Hearing Item(s)**

Swearing in of staff and those speaking on the case

Case #25-01-BOA-00013**2010 Trosper Road, Greensboro, NC 27455**

James and Jean Elms are requesting variances from the Unified Development Ordinance (UDO) to:

- (1) Section 4.2.2.B, which requires a minimum street setback of 40 feet for properties zoned RS-40 that front a local or collector street, in order to reduce the required setback by 16 feet to allow a minimum required setback of 24 feet; and
- (2) Section 4.2.2.B.3, which requires accessory structures to be located behind the principal structure for properties zoned RS-40 that are less than 2 acres in size, in order to allow an existing 16-foot by 22-foot carport to remain in its current location in front of the existing home on the property.

Located at 2010 Trosper Road (Guilford County Tax Parcel #137485 in Center Grove Township), the subject property comprises approximately 0.93 acres and is zoned RS-40, Residential. **(GRANTED)**

Avery Tew, Senior Planner, presented the staff report for the case.

Chair Miller asked anyone wishing to speak in favor of this application to come forward to be sworn or affirmed.

Jean Elms, the applicant, was sworn in and stated that they were unable to put the carport in the back or side of the property because of the topography of the land and the slope, plus the trees on the property. An existing well and gas line prevented them from placing the carport closer to the house. They initially constructed the carport because there are a lot of trees on the property and they need protection from falling limbs. The carport was placed over an existing parking pad and nothing had been built previously at that location.

Mr. Johnson asked how County staff came to be aware of the carport? Mr. Tew explained that a building permit application was submitted which was then forwarded to the Planning Department as a result of the existing structure not meeting the required street setback.

Ms. Elms said they had hired a contractor in Fall 2024 to construct the carport. She understood that all necessary permits would be acquired prior to beginning work. When she spoke to the contractor, he claimed that a permit was not required because the cost of the carport was under a certain threshold. She called the Planning Department to verify his claims and was told that the contractor was incorrect, so work on the carport was then stopped and they submitted a building permit application.

Mr. Randolph asked what existed on the parking pad prior to construction of the carport? Ms. Elms clarified that there had been no structures on the pad.

Mr. Johnson asked if the property was served by a well and septic system? Ms. Elms responded that there was a septic tank in the back yard and a well in the front of the house, to the left.

Mr. Johnson asked for clarification that there was no water or electricity running to the carport structure, and Ms. Elms confirmed that there was not.

Mr. Johnson asked if County staff had received any complaints from neighbors regarding the carport? Mr. Tew and Mr. Moss both said they had not.

Melinda Waegerle, 2013 Trospen Road, was sworn in and stated that her property is located diagonally across the street from the subject property. She said the carport was an attractive structure and poses no obstruction of sight through the structure in terms of traffic or visuals.

There being no one to speak in opposition, Chair Miller closed the evidentiary hearing.

Discussion

Mr. Randolph stated that he was in favor of the request. He moved to grant the two variances. He stated that the Guilford County Board of Adjustment held a hearing on March 4, 2025, to consider Case #25-01-BOA-00013, submitted by James and Jean Elms, a request for two variances: (1) a variance from UDO Sec. 4.2.2.B to reduce the required street setback by 16 feet to allow a minimum required street setback of 24 feet; and (2) a variance from UDO Sec. 4.2.2.B.3 to allow an accessory structure to be located in front of the primary structure on a lot that is less than 2 acres in size. Having heard all the evidence and arguments presented at the hearing, he made the following FINDINGS OF FACT and drew the following CONCLUSIONS:

1. It is the Board's CONCLUSION that unnecessary hardship **will** result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. This conclusion is based on the following FINDINGS OF FACT: The carport provides necessary cover to protect persons and vehicles, in particular given the potential for falling tree debris in the area of the parking pad, and the current existing house on the property provides shelter and protection for the applicant and individuals on the property.
2. It is the Board's CONCLUSION that the hardship **does** result from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. This conclusion is based on the following FINDINGS OF FACT: The property has a unique shape and the rear of the property has a 30' drop-off in elevation, which require the

utilization of the side property for an existing water tank and utility lines. Additionally, the other conditions that are unique to the property are the size of the lot where the house can be located such that the property can be utilized toward residential use.

3. It is the Board's CONCLUSION that the hardship **does not** result from actions taken by the applicants or the property owners. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. This conclusion is based on the following FINDINGS OF FACT: The conditions of the property are the result of the property's unique topography with the drop-off to the rear, which resulted in the need for the variance.
4. It is the Board's CONCLUSION that the requested variance **is** consistent with the spirit, purpose and intent of the Ordinance, such that public safety is secured and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT: By granting this variance the homeowner will be able to park in the area of the existing pad with greater safety to persons and vehicles. There are no public safety concerns that are heightened by the proposed variance because the carport is transparent, thus allowing an individual to see through the property and safely and securely use the roadway that is in front of the property. Substantial justice is achieved by the individuals being allowed to utilize their land and property in a manner that is consistent with other residential uses in the area.

Therefore, on the basis of the foregoing, Mr. Randolph moved to grant the two variances subject to the following: compliance with all local, state and federal laws. The motion was seconded by Mr. Johnson. (Ayes: Miller, Johnson, Havens, Campbell and Randolph. Nays: None.)

Case #25-01-BOA-00014 4809 Edinborough Road, Greensboro, NC 27406

Selden P. Morris is requesting a variance from UDO Section 4.2.2.B, which requires a minimum side setback of 15 feet for properties zoned RS-40. Located at 4809 Edinborough Road (Guilford County Tax Parcel #133984 in Fentress Township), the subject property comprises approximately 0.60 acres and is zoned RS-40, Residential. The applicant is seeking a 10-foot variance to allow a minimum side setback of 5 feet in order to permit an existing 29.53-foot by 26.25-foot deck to remain in its current location. **(DENIED)**

Mr. Tew presented the staff report for the case.

Chair Miller asked anyone in favor of the request to come forward to be sworn or affirmed.

Selden Morris, the applicant, was sworn in and stated that he applied for the variance because the existing deck and dome was constructed based on information provided

by Guilford County zoning enforcement staff. It was inspected and he received a letter saying that the case was closed, so he continued with the project. Removal of the deck would create significant hardship due to the topography and landscape of the property. Initially, he was not aware of the setbacks. He said nothing about the setbacks was mentioned during the inspector's visit, and the inspector granted permission. The contractors who built the dome said that it was under 600 square feet, and since it was a non-permanent structure, it did not need any permits to be built close to the property line. Recently, he found out that because the deck was over 600 square feet, that is what triggered the variance application. The topography of the land is very sloped and the deck's current location is the only site where it could have been constructed. Everything else is sloping downward. The way the pillars were built, they were built to suit the lay of the land and in harmony with the surrounding environment. There is no other place where it could be positioned. He said he relied on incorrect guidance of the zoning enforcement staff that no permit would be required. He was later informed of additional requirements.

Mr. Johnson asked if the project was initially approved by Guilford County? Mr. Morris said that it was. Mr. Johnson pointed out that the dome is considered non-permanent, but that the deck is what has triggered the need for a permit. Mr. Morris stated that that was correct. Mr. Johnson asked for clarification on whether County staff had inspected and approved the deck? Mr. Morris said County staff had stated that no permit was required for the deck.

Mr. Johnson asked how the variance request originated? Mr. Tew stated that a complaint was initially received about the dome in November 2021, at which point construction had already begun. Mr. Johnson asked for clarification that the complaint was about the dome rather than the deck. Mr. Tew confirmed. He said that the zoning enforcement officer had visited the property to inspect the dome, and issued a letter stating, "Upon my site visit on December 2, 2021, I was given access to the property where this dome-like structure was located. I was able to take photos back to the Inspections Manager who did advise me that, since this is no permanent structure, a permit would not be required." Mr. Tew pointed out that the letter addressed whether the dome required a permit, but not the deck. He said he did not think the deck received a permit prior to construction. Mr. Johnson asked if the deck would have required a permit? Mr. Tew confirmed that it would. He said that deck permits were issued for other projects on the same property around this time.

Mr. Johnson asked when the dome was constructed? Mr. Morris responded that the dome was started in August 2021 and the deck was there previously. Mr. Johnson asked about the purpose of the dome? Mr. Morris stated that the dome is used for meditation and as a sacred place for his family and they go and relax.

Mr. Johnson pointed out that it may be considered permanent because there is an air conditioning unit in one of the windows and a couple of add-ons so there must be electricity running to the dome. Mr. Morris stated it was a tent structure, so it is technically not permanent.

Mr. Havens stated that the structure appears to have electrical, mechanical, and plumbing, and asked if this would require a permit? Mr. Tew confirmed that it would.

Mr. Randolph asked what had been considered in the zoning enforcement officer's determination that the structure was not permanent? Mr. Tew pointed out that the zoning enforcement officer was not present. He could not speak, specifically, to the state of construction at the time of the inspection. The zoning enforcement officer referenced that photos were taken, but Mr. Tew said he did not have access to those records at this time. He understood that the complaint that was received specifically targeted the dome. He said County zoning enforcement was complaint-based, and generally only investigates those issues for which complaints have specifically been received.

Mr. Randolph asked for clarification on whether, at the time that construction began on the deck in 2021 if Mr. Morris was unaware of any setback requirements? Mr. Morris confirmed that he was not.

Mr. Randolph asked the applicant to expand on his previous statements about the topography of the property? He also inquired about the feasibility of removing a portion of the deck to come into compliance with setbacks. Mr. Morris said the deck was built to support the dome, and there was not much extra deck space around the circumference of the dome. Mr. Randolph asked about the size of the deck? Mr. Morris stated that the deck was 29' x 26' and the dome was 22 feet in diameter. In terms of the topography of the land, he explained that the spot where the dome is located is the only somewhat flat area on his property. Everything else in the back yard slopes downward at an angle, going towards the lake, so that is the only spot it could be placed and constructed, and it cannot be removed and placed anywhere else. The legs for the deck are different heights to make the deck surface level.

Mr. Randolph asked what options the applicant would have for utilizing or relocating the deck if the variance request were denied? Mr. Morris stated that the deck could not be moved. He has spent almost \$90,000 on the deck so far. His intention is to put a better structure there, which would be an additional \$46,000. The material he intends to use is going to be more eco-friendly and would be more in harmony with the neighborhood. It would be much more beautiful.

Mr. Johnson reminded the applicant that the dome was not before the Board for consideration, but rather the location and size of the deck because of how close it was built to the adjacent property line. Mr. Johnson suggested that they listen to some of the comments by the neighborhood residents.

Since no one else was present to speak in favor, Chair Miller asked for those wishing to speak in opposition to the request to come forward to be sworn or affirmed.

Glenn Collins, 4811 Edinborough Road, was sworn in and stated that he is the next door neighbor to the subject property. His property is located on the side of the house where the deck is situated. He said the existing regulations are meant to protect the

neighborhood privacy, safety and overall property values. This deck is built too close to the property line and negatively impacts the neighborhood property and, specifically, his home. The deck is located less than 25 feet from the corner of his house and it obstructs his view, reduces his privacy and creates a less than desirable aesthetic look. He said he was not speaking about the dome. This could devalue his property because potential buyers would find the rear yard unappealing, especially as it leads to privacy concerns that make the land feel very cramped. There is no room near that corner of the house. The topography of all the back yards is slightly downward. To move the deck 10 feet would increase the far side of the deck about 3.5 to 4.0 feet in elevation to keep it level. He said it was already up about 2.5 feet. There was never any conversation or consideration from Mr. Morris how it was going to impact his property. It is his understanding that the 15 foot setback requirement applies to any permanent structure. The deck, with the dome, has water, power and sewage connected. He feels that that should be considered a permanent structure. His family chose to live in Forest Oaks because it is a nice, rural community which is quiet, peaceful and everybody had space around their home. The intended use of the property was not discussed, nor was the addition of another structure on top of the deck. He expressed great concern about the deck. He would like the deck moved to its proper place in accordance with the regulations.

Mr. Johnson asked how Mr. Collins' situation would be changed if the deck were to be relocated, considering he would still be able to see the deck even if it were located 10 feet farther? Mr. Collins responded that it would be an improvement if the deck were located 10 feet farther from his property with no structure on top.

Mr. Collins added that there was no room to construct a fence or plant bushes between his property and the deck. He believes that the dome is intended to sleep in and is connected to utilities, so he views it as a permanent apartment. is the dome and the deck are a combined structure.

Mr. Johnson again pointed out that the view of the structure from Mr. Collins' property would not be significantly changed depending on whether the deck was moved 10 feet farther away. Mr. Collins said he did not think the topography would pose a significant issue in relocating the deck.

Mr. Randolph said he thought one reason for setback requirements was to limit potential disputes between neighbors along shared property lines. However, he added that, in this case, Mr. Collins probably had a greater view of the structure than he otherwise would because of how his house was situated on the lot. He said the applicant had no control over how Mr. Collins' house was oriented.

Brenda Dawson, 4321 Brookhaven Drive, was sworn in and indicated on the map where her residence is located. She stated that she lives in Forest Oaks and is part of their community association, which is voluntary rather than a mandatory homeowner's association. However, she said they do have restrictive covenants and the subject property is encumbered with the covenants. She referenced Guilford County Deed Book 2448, pages 430 through 433. She presented a copy of the covenants for the

Board members' review. She pointed out several covenants which she said required written approval for new structures and which prohibited non-residential uses. She does not know the intent for the deck or structure going forward, but at one time it was listed as an Airbnb, with reviews from people who had stayed in it. The community association sent two letters in 2021 stating that the homeowner had not received written approval and needed to remove the structure. Later, the community association received a grievance from the City of Greensboro Human Rights Department for discrimination. That case was dismissed because the property is not within Greensboro's city limits. A few months later, the community association received the same grievance from the State of North Carolina Civil Rights Division and they were under investigation. That was when they determined that the property was listed as an Airbnb. She has a photo of the ad but can no longer access the ad because it has since been removed. Because of the complaints discussed earlier, an inspector visited the property and issued a stop work order for all trades, and a sign was placed in the yard, on May 3, 2023. Two weeks later, she received a letter from the State Civil Rights Division stating that there were no reasonable grounds to believe that an unlawful discriminatory housing practice had occurred. Because the community association is voluntary, there were no funds to hire an attorney for that, and they spent at least \$2,000 defending themselves from the discrimination claim. She said any County regulations are the homeowner's responsibility. Her understanding is that, at the time of the zoning enforcement officer's visit in 2021, the structure had no power or running water.

Mr. Havens asked how the Board's responsibilities interact with the restrictive covenants that Forest Oaks has? Mr. Johnson said, in his view, the testimony about restrictive covenants was irrelevant to the decision the Board would need to make regarding the setback variance request. Attorney Mason agreed with Mr. Johnson and stated that the restrictive covenants and the Board's findings would be independent of one another. If the Board were to grant the variance, whatever the issues are between the property owner and the community association under the restrictions would still exist.

Michael Gromko, 4912 Warfield Drive, was sworn in and stated that he is not a direct neighbor, but he drives by the subject property every day. He pointed out that the homeowner had stated that he is going to be making upgrades to his property. He feels that, if the homeowner is going to invest in his home, then it would be reasonable to ask him to invest additional funds to move the deck. He said he is an engineer, but not a structural engineer, and he believes that relocating the deck ten (10) feet would not be overwhelmingly burdensome.

Terry Lee, 5825 Hagan Stone Park Road, was sworn in and stated that he is the owner of Forest Oaks Country Club at 4600 Forest Oaks Drive. He referenced Deed Book 8651, page 2202, and explained that this was the transaction where Mr. Morris purchased the subject property. The minimum restriction in Forest Oaks is 2,000 square feet, heated. He said Mr. Morris has a 2,000+ square foot house, with a deck on the back of it, and he is claiming that he needs a dome in his back yard so he can meditate. He feels that within a 2,000 square foot house the owner should be able to

find somewhere inside to do his meditation. He said he had challenged Mr. Morris when the deck was built and he responded by slandering Mr. Lee. He added that Mr. Morris' claim that the County misled him is not true. He said Mr. Morris agreed to the restrictions by signing the deed. The restrictions clearly state that he has to have approval to build any additional structures and the setbacks are set at 30' in the restrictions and recorded in the Guilford County Register of Deeds. Mr. Lee would like the structure removed as he feels it is ugly and detrimental to the neighborhood. He said his club is not discriminatory. He said Mr. Morris wants to rent the property and get income from it and that is what the neighborhood objects to. He said business operations are not allowed.

Mr. Johnson reminded Mr. Lee that the issue before the Board was the setback requirement. Mr. Lee said Mr. Morris agreed to honor the restrictions when he signed the deed.

Mr. Randolph asked how many complaints Mr. Lee had received regarding the structure? Mr. Lee said he had received many, and he requested that the Board deny the variance request.

Mr. Havens asked whether the structure would still be in conflict with the restrictive covenants if it were located ten (10) feet farther from the property line? Mr. Lee said he could not speak against the structure if it were relocated. He added that operating a business out of the property was not allowed.

Ryan Lee, 4600 Forest Oaks Drive, was sworn in and stated that he was in charge of operations at the Forest Oaks Country Club. He said it was his understanding that the applicant must prove a hardship. He asked whether a variance could be granted if it then places a hardship upon another property owner? Attorney Mason said that was not an element of the statutory language, but one of the requirements is that substantial justice is achieved. Mr. Lee feels that if the variance is granted it would pose a hardship for Mr. Collins, who is the next door neighbor. Mr. Randolph asked if he had evidence supporting the claim? Mr. Lee said it was a matter of opinion. He said it was his opinion, based on his building and construction experience, that the topography of Mr. Morris' property would not be too steeply sloped to relocate the deck. He said he thought the dome and the deck should be viewed as a combined permanent structure. He said Mr. Morris claimed that the structure was not permanent, but temporary structures should be easy to move. He pointed out that the zoning enforcement officer had been called to the property to determine whether a permit was required, rather than whether the structure met the setback requirements.

Mr. Randolph asked what impacts the structure had on golf course operations? Mr. Lee stated that numerous concerns had been raised about the subject property. He asked where the line would be drawn when they start allowing something of this nature to be built?

Mr. Randolph asked if there would be an opportunity for the applicant, the adjacent homeowner and the community association to discuss the situation? Mr. Lee stated that they would welcome that opportunity.

Since there was no one else wishing to speak in opposition to the application, Chair Miller asked if Mr. Morris wanted to make a rebuttal? Mr. Morris stated that he did not have anything to add in rebuttal.

Chair Miller noted that there were no other speakers and closed the evidentiary hearing.

Discussion

Mr. Johnson moved that the Board go into closed session to consult with Attorney Mason, seconded by Mr. Randolph. The Board voted unanimously to go into closed session. (Ayes: Miler, Johnson, Campbell, Havens and Randolph. Nays: None.)

The Board entered closed session at 7:40 p.m.

Minutes of the closed session are separately maintained to preserve confidentiality.

The Board returned to open session at 7:55 p.m.

Mr. Randolph moved to re-open the evidentiary hearing to direct a question to staff. Mr. Johnson seconded the motion. The Board voted unanimously to re-open the evidentiary hearing. (Ayes: Miler, Johnson, Campbell, Havens and Randolph. Nays: None.)

Mr. Randolph asked Mr. Tew if he could refer to the provided topography map and give more detail on the slope of the subject property relative to the surrounding area? Mr. Tew pointed out that the slope on some nearby lots was apparently equal to or greater than the slope on the subject property.

Mr. Randolph moved to close the evidentiary hearing, seconded by Mr. Havens. The Board voted unanimously to close the evidentiary hearing. (Ayes: Miler, Johnson, Campbell, Havens and Randolph. Nays: None.)

Mr. Randolph said he understood that there are significant concerns on both sides. In light of the testimony heard from staff that the topography that exists on the subject property seems to be no more unique or peculiar to that property than any of the other adjacent or adjoining properties, therefore, without having any testimony otherwise, he is not sure that the applicant has met his burden to demonstrate the peculiarity of the claimed hardship as required by statute.

Mr. Randolph moved that the Guilford County Board of Adjustment, having held a hearing on March 4th, 2025, to consider Case #25-01-BOA-00014, submitted by Selden P. Morris, a request for a 10-foot variance from Section 4.2.2.B, which requires a 15-foot minimum side setback, for his property located at 4809 Edinborough Road,

being Guilford County Tax Parcel #133984, in a manner not permissible under the literal terms of the ordinance, and having heard all the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

1. It is the Board's CONCLUSION that the hardship **does not** result from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. This conclusion is based on the following FINDINGS OF FACT: As evidenced by, without limitation, the topographical map in the record and related testimony by staff, which the Board finds credible and factual, several nearby properties show a relative topography that is equal to or steeper than the slope of the subject property. Therefore, the shape and topography of the subject property, which Applicant contends create the hardship that requires the deck to be located within the side setback, are not peculiar to the subject property.

Therefore, on the basis of the foregoing, Mr. Randolph moved to deny the variance request. Mr. Johnson seconded the motion and the Board voted 4-1 in favor of the motion to **DENY** the request. (Ayes: Johnson, Campbell, Havens and Randolph. Nays: Miller.)

G. Other Business

Election of Officers

Mr. Campbell nominated Mr. Johnson to continue as Vice Chair. Mr. Randolph seconded the nomination. The Board voted unanimously in favor of the motion.

Mr. Campbell nominated Ms. Miller to continue as Chair.

Ms. Miller nominated Mr. Randolph to serve as Chair.

After a short discussion, Mr. Johnson seconded Mr. Campbell's motion to nominate Ms. Miller to continue as Chair. The Board voted unanimously in favor of the motion.

H. Adjournment

There being no further business before the Board, the meeting adjourned at 8:28 p.m.