

DRAFT Minutes

BOARD OF ADJUSTMENT

Regular meeting

6 p.m. Nov. 13, 2024

Board Meeting Room of Town Hall Annex, 105 E. Corbin St.



Present: Chair Sean Kehoe, Vice Chair Raul Herrera, Richard Chapple, Eddie Sain and Jenn Sykes

Absent: Member Robert Iglesias

Staff: Senior Planner Tom King

Others: Board of Adjustment Attorney Brian Ferrell, Town Attorney Bob Hornik (representing the applicant), and representatives for the applicant, Town Environmental Engineering Supervisor Bryant Green, Architect David Daniel, Chuck Hill and Eric Wennerstrom

1. Call to order and confirmation of quorum

Chair Sean Kehoe called the meeting to order. Senior Planner Tom King confirmed the presence of a quorum.

2. Minutes review and approval

Minutes for the regular meeting on April 10, 2024.

Motion: Member Jenn Sykes moved approval of regular meeting minutes from April 10, 2024, as written. Member Raul Herrera seconded.

Vote: 5-0. Motion passed.

3. Adoption of the 2025 meeting schedule

Draft 2025 meeting schedule.

Motion: Herrera motioned to approve the 2025 meeting schedule. Member Eddie Sain seconded.

Vote: 5-0. Motion passed.

4. Quasi-judicial evidentiary hearings

Case BA- 02-2024: Adron F. Thompson Addition/Renovation Project- Variance request at 711, 715 & 719 Dimmocks Mill Rd (Orange County PIN 9864-23-7369). The applicant is Marie Strandwitz, Utilities Director. The owner of the property is the Town of Hillsborough, North Carolina. The request is for a maximum 80-foot variance from the required 100-ft setback applicable to certain public utility structures. The request specifically relates to the requirement as applied to the property's Dimmocks Mill Road frontage.

King provided details of the 13.5-acre site, noting it's located in the town's Extraterritorial Jurisdiction (ETJ) and zoned Office/Institutional (OI). King stated that the applicant, Marie Strandwitz, is an employee of the property owner. The property is currently home to the town's water treatment plant and other buildings associated with its operation.

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Board of Adjustment Attorney Brian Ferrell introduced himself and instructed the board on evidentiary hearing procedures.

Kehoe swore in the speakers as a group, including King.

Motion: Sykes motioned to open the evidentiary hearing. Sain seconded.

Vote: 5-0. Motion passed.

Ferrell suggested that the board disclose any ex parte communication they may have had regarding the application including any site visits; potential conflicts of interest they may have or other associations with the applicant. Kehoe surveyed the board members.

Sykes acknowledged she is the Chair of the town's Water and Sewer Advisory Committee, and that town Environmental Engineering Supervisor Bryant Green had informed the committee of the potential for a town Utilities department application proceeding to the Board of Adjustment, but she had no biases one way or the other regarding the project. Ferrell asked her if she could be impartial in this matter and Sykes agreed. The board determined Sykes had no ex parte communication or conflict of interest in the matter.

Ferrell polled people present in the audience as to whether they had standing to participate in the proceedings. The applicant was not present but was represented by their representatives. No others were present to participate in the hearing

King, having previously been sworn, offered the staff report into the record and stated he requested variance is from UDO (Unified Development Ordinance) Section 5 (Use Standards), Subsection 5.2 (Use-specific Standards), Paragraph 5.2.40 (Public Utilities), Sub-paragraph 5.2.40.1 (Standards of Evaluation): "The following specific standards shall be used to evaluate an application for approval of these uses: ...5.2.40.1.g - All structures except public water storage facilities are set back at least one hundred (100) feet from the property line. Elevated public water storage facilities shall observe a setback equal to the greater of the height of the storage facility or the setback required in the district where the facility is located."

The variance would allow a proposed vehicle storage building to be set back 20-ft from the road right-of-way and a proposed building addition built approximately 62-feet from the road right-of-way.

Town Attorney Bob Hornik, representing the applicant, introduced project architect Daniel and town staff member Green. Hornik stated town management deputized Green to represent the town since Green has been primarily involved in the project's plan development. Hornik reminded the board that the purpose of a variance is to grant relief from ordinance requirements when an ordinance standard, as applied to a specific property, causes unnecessary hardship that isn't suffered by similarly situated properties. The matter before the board this evening is a request for relief from complying with a UDO requirement that structures used for public utility land uses be set back 100 feet from property lines as they concern proposed improvement to be made at the Adron F. Thompson facility. Hornik stated the 100-foot setback from Dimmocks Mill Road, an overhead utility easement and mapped floodplain along the Eno River all create a situation specific to this property that prevents the proposed vehicle storage building to be constructed on site and impedes construction of a needed addition to the Adron F. Thompson building. Hornik explained the setback and flood plain requirements did not exist during the original site's construction. Also, allowing improvements to the facility in the setback instead of the floodplain follows adopted town policy in limiting substantial development in floodplain areas. With the board's allowance, the town's utilities and water and treatment services can continue using the facility to serve the town without encroaching into the floodplain. Hornik reiterated the purpose of the variance is to allow for the modernization of the water treatment plant.

David Daniel of RND architects introduced himself, architect Eric Wennerstrom, and Chuck Hill of Thomas and Hutton Civil Engineering. Daniel, having previously been sworn, presented a MicroSoft PowerPoint presentation giving an overview of the project site plan, site constraints applicable to the property and some of the pertinent existing and proposed building locations. He described the architecturally historic building, dating to 1936, and the sustainability in reusing the existing historic water treatment building. He provided pictures showing the street view of the site, including employee parking, existing buildings and a current vehicle and apparatus storage building.

Daniel detailed the following exhibits in the application:

- Exhibit A depicts the proposed development of a vehicle storage building and an addition to the Adron F. Thompson building. It includes the 100 and 500 yr floodplain areas. Daniel expressed the town's desire not to build in the floodplain, noting it would necessitate a variance from the town's Flood Damage Prevention Ordinance.
- Exhibit B depicts the 100-ft setback applied along Dimmocks Mill Road and showed that half of the existing buildings in the area are partially or wholly within the setback.
- Exhibit C depicts the proposed building's placement in front of the setback.
- Exhibit D depicts the proposed buildings built to the UDO standards behind the setback. The vehicle storage building would be in the floodplain. The proposed building addition would be offset in a manner resulting in inefficient use of space for staff.
- Exhibit E depicts the buildable land outside the floodplain and behind the setback, which limits site accessibility.

Daniel expressed environmental concerns in building in the floodplain and his firm's adamant opposition to building in areas of known environmental impact. He cited recent flooding from Hurricane Helene in western North Carolina, adding that a building with essential town equipment located in the floodplain could compromise critical town operations in protecting the health and welfare of residents.

Daniel stated that a risk assessment required by the "America's Water Infrastructure Act of 2018" was necessitated since the site is an active water treatment facility. Meeting the 100-foot setback could cause security issues due to lessening of building visibility from law enforcement and the public. A less secure building could be detrimental to future funding opportunities for improvements to the site. Continuing with risk assessment analysis, Daniel noted a North Carolina General Statute makes it a Class 1 felony to trespass on an active water treatment plant. He purported buildings nearer Dimmocks Mill Road would provide better visibility for the plant to detect illicit activity.

Next, Daniel highlighted town sustainability concerns alleviated by reusing the historic building. Renovations would bring the historic building up to code. However, if the setback is enforced, the proposed building would likely be used for storage or vacated, leading to degradation. Daniel stated unused buildings often are not well maintained.

Finally, Daniel stated the need for the variance is a public concern and need.

Member Richard Chapple inquired the reasoning behind a 100-ft setback. King suggested the reasoning could be to mitigate visual, noise, odor or dust associated with public utility uses. He noted the ordinance requirement was written before his employment with the town. Daniel interpreted the spirit of the UDO as keeping unaesthetically pleasing utilities back from property lines to avoid loss in adjacent property values. He added that the proposed building's design features will be subject to building design standards found in the UDO.

Then, after determining that Green had been employed by the town over two years, Kehoe inquired about historic flooding on the property. Green stated utilities staff have that information and noted the upstream Lake Ben Johnston's overflow weir mitigates flooding on the site. Ferrell confirmed that Greene had been sworn in.

Chapple inquired about buffering for noise and dust. The architecture described the improved visuals for the neighbors with staff parking being located by an ordinance-required landscape buffer.

Hornik pointed out the high voltage power lines as another hardship on the site.

Sain inquired about trees on the northwest corner of the site. Daniel stated some trees will be removed to make an additional entrance. He stated it will be safer ingress/egress for larger trucks and trailers entering the site from the west. Sain and King noted the town owns the property to the west.

Chapple asked about materials used for paving. Answering, Daniel stated most of the parking will remain gravel with select areas paved with asphalt and meeting town UDO standards.

Hornik stated that adjacent property owners were notified of the hearing. Then, King noted he had received one phone call and two emails inquiring about the proposed variance. One emailer had concerns about landscaping along the road frontage.

The board discussed materials and design used for the proposed site, and Ferrell informed the board that these details will be revisited during a hearing on the Special Use Permit required for the project. He reminded the board that currently the variance is the only matter before them for consideration.

Hornik added that he hopes the board is satisfied to approve the variance request.

King asked the applicant if his provided summary of unnecessary hardships found in the staff report is adequate for the final order document that will be prepared for the variance, if approved. Hornik stated it was.

Ferrell clarified the role of the board in issuing a variance and instructed them procedurally. This included that all UDO standards must be met to allow the variance with discussion and a vote for each finding to be made. Hornik confirmed the applicant sufficiently presented the need for the variance.

Farrell read and summarized the findings. He instructed the board on wording regarding the hardships and consideration of staff findings in the report. King added staff notes and recommendations.

Finding #1: Unnecessary hardship would result from the strict application of the ordinance.

The board found as fact that, based on the applicant's reasons as presented in their application and summarized in the staff report, that unnecessary hardship will result if the variance is not granted.

Issues raised by the applicant were that failure to grant the variance could lead to potential future environmental and fiscal damage to town equipment and property, damage to downstream properties; a situation could be created where town staff are hindered or unable to respond in a flooding situation; and failure to grant the variance could hinder the applicant's ability to continue use of the historic Adron F. Thompson building.

Motion: Herrera motioned to affirm Finding #1. Sykes seconded.
 Vote: 5-0. Motion passed.

Finding #2: The hardship results from conditions that are peculiar to the property such as location, size or topography.

The board found as fact that, based on the applicant's reasons as presented in their application and summarized in the staff report, that the hardship complained of results from conditions peculiar to their property; specifically: (i) the property's irregular shape; being narrow at the west end and widening to the east; (ii) approximately 50% of the property is located within federally mapped floodplain; (iii) an approximately 70-foot-wide high tension electric line easement crosses east to west through the central portion of the property; and (iv) that the required 100-foot setback applies specifically to the subject property because of its land use and not to other properties in the neighborhood.

Motion: Sykes motioned to affirm Finding #2. Herrera seconded.
 Vote: 5-0. Motion passed.

Finding #3: The hardship did not result from actions taken by the applicant or the property owner.

The board found as fact that no evidence was presented proving the hardships complained of are self-created.

Motion: Sykes motioned to affirm Finding #3. Sain seconded.
 Vote: 5-0. Motion passed.

Finding #4: 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.

The board found as fact that, based on the applicant's reasons as presented in their application and summarized in the staff report, allowing the vehicle storage building to be built within the 100-foot setback from Dimmocks Mill Road ensures public safety will be secured from the effects of potential flood damage if it were allowed to be placed within the floodplain area on the property.

Motion: Sykes motioned to affirm Finding #4. Chappell seconded.
 Vote: 5-0. Motion passed.

Decision

Ferrell instructed the board on what actions they must take in rendering a decision on the approval.

Motion: Sykes motioned to approve the variance with no conditions. Herrera seconded.
 Vote: 5-0. Motion passed.

Close the evidentiary hearing

Motion: Sykes motioned to close the evidentiary hearing. Herrera seconded.
 Vote: 5-0. Motion passed.

5. Committee and staff reports

King reported that the recently hired planning technician had resigned to take a job with a Raleigh consulting firm. King also went over upcoming board members' term statuses, noting that Kehoe's term is expiring in late

April 2025. Former member Portia Made-Jamison resigned earlier in the month because she's moved outside the town's planning and zoning jurisdiction. Lastly, King also needs to examine Sykes' eligibility for reappointment as well, but her term may also end in late April 2025 as well.

6. Adjournment

Motion: Sykes motioned to adjourn. Herrera seconded

Vote: 5-0. Motion passed.

Kehoe adjourned the meeting at 6:55 p.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Tom King".

Tom King, AICP, CZO
Senior Planner
Staff support to the Board of Adjustment

Approved: Month X, 202X