

TOWN OF ELON BOARD OF ADJUSTMENT MINUTES

In Person

Elon Town Hall Council Chambers, 104 S. Williamson Ave., Elon, NC 27244

October 27, 2022 at 6:00 P.M.- Special Called (Recessed) Meeting

Board members present: Jim Beasley, Diane Gill, Ralph Harwood, Aeisha Leath, Mark Podolle, and Phil Owens.

Staff Present: Lori Oakley and Mary Kathryn Harward.

Item A - Chairman Beasley called meeting to order at 6:00 P.M.

Item B – Request for Variance from the Provisions of the Elon Land Development Ordinance Regarding Rear Setback Requirements, Submitted by Matthew Stecz, Trustee of the Rottach Trust.

Chairman Beasley introduced the item and opened the public hearing. Chairman Beasley reviewed the order of procedure for quasi-judicial decisions and proceeded to swear in anyone wanting to speak on the matter.

Ms. Harward then gave a summary of the project, as follows.

Mr. Matthew Stecz, Trustee of the Rottach Trust, has submitted a Variance application to request a variance from the provisions of the Elon Land Development Ordinance (LDO). The specific request is regarding rear yard setback requirements contained in the Neighborhood Residential Planning District and Traditional Neighborhood Development (TND) overlay. The property is located at 1142 Stone Gables Drive (Tax Map & Parcel 170067) on 0.2 acres of land.

The applicant, representing the owner, is requesting a reduction in the rear yard setback requirement for an existing home in the neighborhood residential planning district from the required 25-foot setback (section 3.3 in the LDO) to 15 feet. This would allow the existing home to encroach 10 feet into the setback. No encroachment into the HOA-owned land to the South was requested.

On January 16th, 2009, the original Developer subdivided the land for Phase 1, Section 1 of the Cable Square subdivision, at which time parcel #170067 was created as Lot #32. Lot #32 was adjacent to land contained in the common open space for the subdivision and was also adjacent to an existing transmission utility easement.

In March of 2010, the Developer submitted a building permit application with the home on lot 32 oriented to meet all setbacks. However, prior to construction the floor plan was revised. The developer then recorded a map to change the configuration of the property and shift the rear property line south so that the house would meet setbacks. The new plat was approved by the Town of Elon planning staff and recorded in the Register of Deeds Office. However, a correlating deed which would have depicted the property line shift (per the revised map) was never submitted.

In June of 2010, Chad and Connie Autrey purchased the home at 1142 Stone Gables Drive. The closing attorney for the buyers later filed a corrective deed referencing the map that was submitted to fix the house encroachment into the required rear setback. At that time, the developer had already deeded the common open space (parcel #170071) to the Cable Square Homeowners Association, so the corrective deed filed was null and void.

In July 2011, the property was then sold to Rottach Trust c/o Matthew Stecz, Trustee. In June 2022, the property was again listed for sale and in August of this year, the realtor contacted the Planning Department staff about applying for a variance.

Ms. Harward then indicated that the findings of fact and suggested motions were included in the staff report and were shown on the slides but would not be explicitly detailed during the presentation. A letter from the Cables Square HOA (submitted by Mrs. Mary Bragg) was noted, which stated that the HOA supported the passing of the variance, however they will not take on any legal consequences of the variance being passed.

Mr. Paul Koontz, representative lawyer for the applicant, then addressed the board. He supported the information previously presented and clarified the process of how the corrective deed recorded with the corrective plat was never legally binding, which created the hardship on the owner.

The Board of Adjustment options were as follows:

1. The Board of Adjustment may:
 - a. Approve the variance request in whole, with or without conditions;
 - b. Approve the variance request in part, with or without conditions;
 - c. Deny the variance request.
2. If any of the findings (shown as recommended motions on the following slide) are decided in a manner that does not support the variance request, the request may not be approved.
3. A four-fifths majority is required to approve a variance request.
4. The Board may consider applying conditions to any approval decision limiting the variance to the specific requests, or any other or additional conditions they deem to be appropriate.

Motion #1- A motion was offered by Mrs. Gill that unnecessary hardship would result from the strict application of the ordinance. The motion was seconded by Mr. Podolle and received a vote in favor by a margin of 6 to 0.

Motion #2 – A motion was offered by Mr. Owens that the hardship related to the requested variance does result from conditions that are peculiar to the property, such as location, size, or topography. The motion was seconded by Mr. Harwood and received a vote in favor by a margin of 6 to 0.

Motion #3 – A motion was offered by Mr. Podolle that the hardship related to the requested variance does not result from actions taken by the applicant or property owner. The motion was seconded by Mr. Owens and received a vote in favor by a margin of 6 to 0.

Motion #4 – A motion was offered by Mr. Harwood 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 received. The motion was seconded by Ms. Leath and received a vote in favor by a margin of 6 to 0.

Motion #5 – Ms. Gill offered a motion that, based on the findings of fact and the evidence presented, the Elon Board of Adjustment issue approval of the requested variance, in whole, without conditions. The motion was seconded by Mr. Podolle and received a unanimous vote in favor by a margin of 6 to 0.

Item C- Items from Planning Director

Mrs. Oakley updated the Board on the rezoning of University Property that borders Elon municipal boundaries. The rezoning was determined to be a limited use/conditional rezoning, without much further detail given in the Planning Board agenda by the City of Burlington.


Item D- Motion to Adjourn

The meeting was called to adjourn by Chairman Beasley at 6:29 PM. Ms. Gill offered a motion for adjournment and was seconded by Mr. Owens.

Respectfully Submitted,



Chair Jim Beasley



Recording Secretary, Mary Kathryn Harward
Town of Elon Planning Department – Planner I
(The minutes were based off a recording of the meeting)

