

**VILLAGE OF WESLEY CHAPEL
BOARD OF ADJUSTMENT MEETING
March 10, 2010, 7:00 PM**

MINUTES

The Board of Adjustment of the Village of Wesley Chapel, North Carolina, met at the Wesley Chapel United Methodist Church, 120 Potter Road, Monroe, NC 28110.

Present: Chairman Butch Byrum; Vice Chairman Bruce Ewing; Members Diana Bowler, Lisa Ghannam, Tonya VanWynsberg

Village Staff present: Cheryl Bennett, Village Clerk; Joshua Langen, Planning/Zoning Administrator; Bill Sturges, Attorney for Board

1. Welcome and Determination of Quorum
The meeting was called to order; a quorum was present.
2. Additions, Deletions, Corrections, and Adoption of the Agenda
Diana Bowler made a motion to adopt the agenda; Lisa Ghannam seconded the motion.
The motion passed unanimously
3. Hearing on Variance for Wesley Chapel Volunteer Fire Department Fire Station

Variance Request by Wesley Chapel Fire Department Concerning Property at 315 Waxhaw-Indian Trail Road; Case No. V-10-1

Chairman Butch Byrum went over procedural issues, and asked that all cell phones be shut off. The petitioning party was represented by attorney Anthony Fox of Parker, Poe. Butch Byrum asked Joshua Langen if the proper application had been submitted, he replied yes. The fee has been waived. Proper notice was given to both parties and adjacent owners. Attorney Fox agreed on these matters.

Butch Byrum noted that members of the Board of Adjustment are required to state any conflicts they have. There were none, and no challenge from Fox. Butch Byrum stated for the record he assisted the Fire Department in renewing its incorporation twenty years ago, was on their Board fifteen years ago, ten years ago assisted with a piece of equipment they were buying, and five years ago prepared documents on a piece of equipment. He did not feel it presented a conflict to him. Fox agreed.

The Variances being requested per the application are:

- a) The Wesley Chapel Fire Department requests a 20 foot variance on the side of the property which abuts Lots 10, 9, 8, and 7 of The Glen at Wesley Oaks

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subdivision from the Village's 40-foot minimum rear yard setback requirement contained in Section 5.3.3 of the Village's Zoning Ordinance. The Village Council has determined that this side of the Property is the rear yard, and as such, Wesley Chapel Fire Department must obtain a variance from the rear yard setback in order to construct a new fire station on the Property. The variance requested does not exceed fifty (50%) per cent of the minimum side yard setback requirement.

- b) The Wesley Chapel Fire Department requests a 5-foot variance on the side of the property abutting the Siler Church Cemetery from the Village's 15-foot minimum side yard setback requirement contained in Section 5.3.3 of the Village's Zoning Ordinance. The variance requested does not exceed fifty (50%) per cent of the minimum side yard setback requirement.
- c) In the event the pavement on the north side of the Property is determined not to be a driveway, the Wesley Chapel Fire Department requests a 9.2 foot variance on the side of the property abutting the Siler Church Cemetery from the Village's 19.2 foot buffer requirement under Section 4.2 of the Village's Zoning Ordinance.

Chairman Butch Byrum noted the burden of proof is on the applicant and they need a 4/5th vote.

Witnesses were sworn in.

Attorney Fox presented evidence:

Exhibit 1 – variance application.

Exhibit 2 – Staking and materials plan dated Feb. 11, 2010

Exhibit 3 – Tax maps of subject property and surrounding parcels

Exhibit 4 – Planting plan and notes dated April 6, 2009

Exhibit 5 – Village of Wesley Chapel Council decision on CUP dated July 13, 2009

Exhibit 6 – Previous Elevation drawing dated January 17, 2009

Exhibit 7 – Previous site plan dated January 23, 2008

Exhibit 8 – Impact study of proposed Fire Station

Attorney Fox stated the applicant is requesting three variances, the twenty foot variance is based upon council's determination that this constitutes the rear yard. Chairman Byrum asked if we are bound by that determination. Fox replied that is a question for your Council, even if it doesn't find it to be the rear yard, Council could still find it as such and it would be back before you.

Witness Jason Galloway who works for Perigon who did the civil engineering, stated he is a professional civil engineer, and did the grading site plan. He explained the site plan. Fox asked why the variances were necessary; Galloway stated both driveways are necessary, they moved the building over and need a variance. Fox asked if the proposed fire station meets all setbacks if there is a variance on that side setback; Galloway replied yes. Galloway described the property as irregular shaped, with no clear rear and side yard. Exhibit 3 from Union County GIS shows the fire department property and neighboring properties. Galloway stated the other properties are more rectangular, and it is

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easier to site on a rectangular property; there are difficulties fitting the building and required driveways; it gets narrower in the back. Fox asked if the first variance is less than 50%; Galloway said it's equal to 50%. He said the five foot variance is required to fit the building and driveway, shape impacts the siting, and the determination on the rear yard impacts it because it is moving away from the other side. Galloway said Exhibit 4 shows a scaled down version of the previous landscape plan; the current plan hasn't been completed, but will comply. Fox asked if this makes reasonable use of the property, and if no variance then they can't use this property with the current configuration. Fox stated he wasn't sure if the ordinance creates a hardship, but Council's determination does. Fox asked Galloway if they had looked at abutting properties; Galloway stated other properties might not need this variance, a hardship was created when council determined the setbacks, it is unique to this property, the project was in harmony with the Wesley Chapel ordinance, they will honor the buffer except for the width, there will be the same number of trees and shrubs. The current station is about twelve feet off the left setback, and the existing driveway goes on neighboring property. Galloway stated the new fire station is needed to provide better fire service.

Langen had no questions for Galloway.

Diana Bowler asked what was shown at the right of the building; Galloway stated it is a washing and maintenance bay. Bruce Ewing asked if the trucks go out the front; Galloway said they will go out of the front and back, the bays go all the way through. Galloway stated the driveway is a straight shot out from the bay for safety. Bowler inquired about the sleeping facilities; Galloway stated there are twelve bed cubicles; Bowler asked if there are twelve beds why are there fifty-eight parking spaces. Galloway said there will be training and they have over sixty members, also there is a section to be used for the Sheriff. Diana Bowler said then this is a joint facility for fire and Sheriff? Tonya VanWynsberg asked about the left side of the current building; the corner of the building is currently twelve feet from the corner. Bruce Ewing asked if the original right rear side was closer to the right side; Galloway stated it was all shifted to the left about eight feet. Both sides are accessible to the parking in back. Lisa Ghannam asked about the parking in the right rear; Galloway said it is for fire trucks. Butch Byrum asked if the driveways are required by code or by design of the fire station. Galloway said they are not by code, but to access the rear of the building. Butch Byrum asked if comments that the new fire department is required to service the community are based on opinion or objective standards. Galloway said he was not sure what the requirements are, but if you see the current fire station you would know; no one can sleep there. Butch Byrum asked if they are required to have someone there twenty-four hours a day. Tonya VanWynsberg asked what is considered the side. Galloway stated originally both the north and south sides. Bowler asked where the rear of the building is; Galloway said the east side.

Fox called Terry Byrum as a witness. He stated he joined the department in 1977, and retired in December after being Chief for 24-25 years. He stated the existing fire station was built in December 1975, it is metal with brick around three sides, it served the purpose of the rural community and the three original apparatus. It

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now has plumbing problems; there are no sleeping quarters because they never thought they would need them. Terry Byrum stated the square footage was determined by the fire Department to provide adequate services, they have paid staff ten hours per day seven days per week. Currently they have an eight by ten office, couch, chair and a heater. In 1975 there were no full time employees. Fox asked if all the staff are males; they have nineteen females out of a staff of sixty, and the current facilities are not adequate for them. There is no storage space. In 1975 they had three used trucks; they currently have a hundred foot platform ladder truck, two engine trucks, a 2500 gallon tanker and a Ford brush truck. Terry Byrum said the current fire station does not fit the trucks; there is a six inch clearance at the front bumper, and eighteen inches in the back. Fox asked if a new fire station would improve fire services and response time. Terry Byrum stated it would by having sleeping facilities staff can be there immediately, volunteers will like to be at the building, and it would help morale. The building is built to last for forty-fifty years. In answer to Fox, Terry Byrum said he did not know the population in 1975, but it has changed since. The fire station meets current demands and has room for one more truck. He asked if the EMS unit wanted to be included; and they did not. There is space that will be leased to the Sheriff's department. Fox asked him to walk through the elements of design. Terry Byrum said the station now has an island in front, for decorative and safety elements, it wouldn't be a problem to getting out. On the right side they need room for a truck to get out; the state highway on the left side provides the required road width. Terry Byrum said the sleeping quarters will be on the second story; the maintenance bay gets vehicles out of the elements in winter, the washing water goes through a separator to get the oil out, it is high enough to raise the cabs. Terry Byrum said it will be possible to get calls for service and be responsive while maintenance is going on. He said they would lose quite a bit of money if they can't build a fire station on the property. Butch Byrum asked why; Terry Byrum said people wouldn't want to live next to a cemetery. Fox asked if it was difficult to get property of that size and location; Terry Byrum stated the property is not as expensive, the property behind allows you a sewer tap; no sewer is available now. He stated it was in harmony with the area, and the variance would help the public safety and welfare.

Langen had no questions for Terry Byrum.

Lisa Ghannam asked if they ever considered downsizing; Terry Byrum said they did, we wanted four drive-through bays, we downsized; two planners had told him what the back and sides were; if the planners had said otherwise they wouldn't have gone on. Bruce Ewing asked if they could downsize further; Terry Byrum said it would be detrimental; Ewing asked if they could have two smaller fire stations; Terry Byrum said we need this size building. Ewing asked if they could leave the bays alone and downsize other parts of the building; Terry Byrum said it can't be done. Lisa Ghannam asked if this is what Planning Board approved; Terry Byrum said yes it was this size. Butch Byrum asked how much money was invested when the rear and side yard determination was made; Terry Byrum said probably \$100,000, they also met with the State highway people regarding sight distances. Bruce Ewing asked if the original plans were further to the right; Terry Byrum said there is a driveway on both sides on both plans; the left side for the

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sheriff's office, and the right side for trucks. If they get the variances, they can put a brush truck on the right side and the turning radius will work. Butch Byrum said with this design and even with the variances, you still can't freely manipulative all the vehicles but put them in certain spots to go out the back way. Diana Bowler asked if the building was designed for anything else than fire, sheriff, training and sleeping. Terry Byrum said there is an exercise room, weight room, kitchen, office space, meeting room upstairs, training room downstairs. Bowler asked if the Sheriff knew you had space for them; Terry Byrum stated the sheriff came and testified at the CUP hearing that they were ready to come and move in as soon as the building was done. Byrum said there are four full time fire rotating personnel on duty. Terry Byrum said there are guaranteed to be two people at any one time, and hopefully four. Terry Byrum said the Department of Insurance rates all fire departments; we have the best rate of any department of anyone in Union County except for Monroe. The best rate for homeowners is 6. The commercial can get a better rating down to 4 or 5; with the new facility they hope to get that to help the businesses. They serve 95% of Wesley Chapel's citizens, Marvin, most of Weddington; about 28,000 to 30,000 population. All the things such as fire facilities, sleeping quarters counts for points in the ratings. Terry Byrum said the facility will serve for the future, they could cut back today, but in ten years it would be needed. Bruce Ewing asked if 30,000 in population requires a four bay fire station. Terry Byrum stated no, they have a five mile radius from the fire station, one thing the state looks at in ratings is road miles, they need the station in this area. Their response time is 6 minutes. Tonya Van Wynsberg asked if the statement that it was designed to grow with the town for forty to fifty years was based on objective facts or opinion. Terry Byrum replied that they need another engine, they won't have twelve sleeping there, but that is the goal. Diana Bowler said the plan for this is to be a full fledged facility, does the New Town Road facility have training facilities. Terry Byrum replied that that is a smaller station, there are two stations and one fire department. Diana asked why they need two training facilities; Terry Byrum replied that the other station is too small now, that why they need this facility larger. Ideally they would train at both stations. Invariably if you train at one location, the call is near the other location. Diana Bowler asked if the sixty volunteers are between both fire stations; Terry Byrum replied yes. She asked how many come here; he replied it depends on what the call is and where it is; he didn't want to strip one station. Diana asked if he was planning for training facilities for both stations here; Terry Byrum said yes and no, he needs to have all at both stations. He said he does have sleeping facilities for twelve at the New Town Road station. Bruce Ewing asked if the 3.97 acres was what they bought in 1975. Terry Byrum replied that they started with one acre, they leased it for one dollar per year; several years later they bought two acres. Three to four years ago they bought the two acres behind the existing facility. Bruce Ewing asked if there was anywhere else they could buy four acres; Terry Byrum said by market value, he didn't think so; it would have to be in close proximity. Diana Bowler asked for the percentage of time spent on trucks being repaired. Terry Byrum replied he couldn't say; two out of nine were being repaired now. Diana asked if they need that bay now; Terry replied there is not a repair bay at New Town Road, they didn't have room

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there. She asked if there was a way to take that bay and put runoff in, it would give more room. Terry Byrum said not forty feet; it would give us room to store a truck there too. Bruce Ewing asked if the trucks at New Town Road are brought here; Terry Byrum said in winter they are brought over to work on, but not to be washed. Diana Bowler asked why can't you wash them outside here; Terry replied you could, you know growth is coming, they are planning ahead, they bought a truck in 2000, you have houses fifty four feet high, you need an aerial device; they put in what they think they'll need now and in the future. Diana Bowler asked if they had plans for another fire station; he replied no.

Attorney Fox brought up witness Butch Plyler. Butch Plyler said he was the president of the Board of Directors, and had been with the fire department for twenty year; he signed the variance application. The basis for the application he said was so they could build; he met the ordinances with the information the planner provided; but Council determined the south side must be the rear setback. He talked to the planner, surveyor, appraiser and architect and they all said it was the side setback. The options were to go to court or submit the variance request. Fox asked if the request assumes the rear yard setback is on the side, and if the previous site plan was in compliance with the ordinance, and but for that determination they could have put this on the site; Butch Plyler replied yes to all these. Plyler affirmed that the application went through the required factors, and that they could adopt the findings in the application as if it were his testimony. Butch Plyler noted the village ordinance provides for a variance to be requested. Butch Plyler noted the architect had talked to the previous planner Justin Krieg and he said the side setback was fifteen feet; and the rear yard was the east side. Lisa Ghannam asked if there was anything in writing: he said you would have to ask the architect. Tonya VanWynsberg asked if Butch was present at that meeting; Butch Plyler replied yes. He said Mr. Krieg left, then Mr. Garner called Joshua Langen and asked if he concurred and he did; Butch said he would take the planners' word after being told so by two different planners. Diana Bowler asked if this was the final drawing. Butch Plyler said yes, there was a committee of seven, they worked nine months, had several meetings, made three rough preliminary drawings and were at 28,000 square feet. Currently the plans are a little more than 24,000 feet he said. Diana Bowler asked if they could alter them? Butch said they have, they feel this is the best plan for the next forty to fifty years. Butch Byrum asked if they reduced the plan size three times; Butch Plyler said yes.

Attorney Fox called Scott Garner as a witness; Mr. Garner said he was contacted two to three years ago, and went through the process with the fire department to design the station. He said he designed the larger building, and talked to the village planner who said they needed a height change since there was a thirty five foot height restriction, and they couldn't build within that height. Mr. Krieg told them to apply for a height text change, and they got the height changed to forty five feet for emergency vehicles; during that time they discussed setbacks many times and Mr. Krieg told Mr. Garner the setbacks were side fifteen feet, and rear forty feet. Mr. Garner said he talked to Mr. Langen and had a copy of an e-mail

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(which he gave to the village attorney) from him saying he would honor the setbacks as Mr. Krieg had said. Scott Garner said he planned the building based on those setbacks and complied with the ordinance, the Planning Board approved the CUP, then the Council said they considered the south was the rear setback and they were not in compliance. Garner confirmed that tab 5 was the denial letter. Exhibit two is the result of the re-design, and that necessitated variances. He said he designed the building three times to meet the needs of the fire department as it moves forward. Now it is primarily volunteer, it will be more and more paid people. He said he designed forty fire stations. You look at the total picture, future population growth, and the type of buildings happening in the area now. He noted the Harris Teeter and Target stores require ladder trucks. He said driveways are important, on the left it is designed for autos coming to the fire and sheriff office; the other driveway is for fire trucks only. An island separates the two. DOT has regulations on how wide the driveway can be. Diana Bowler asked the width of a fire truck; Scott Garner said eight feet; there will be signs so cars can't come in the emergency driveway. Exhibit 6 is a rendering of the fire station, he said, and the final drawing is slightly different. Mr. Garner stated they designed the fire station to meet the fire departments needs which covers a much larger area than just the village. The fire department is building the building, not the village; they service a much wider area. Regarding the washing/maintenance bay, Charlotte has central station 11; Wesley Chapel has no place to send their trucks, they need a place to drop an engine; it can also serve as a bay for a fire truck. Now they have six bays and five trucks; in five years they will fill the bays and have a truck in the maintenance bay. He said he designed the building at New Town Road; and was asked if he anticipated growth there. He said it was a donated site, that is fully maxed out. They could not build more; it is in Weddington. Bruce Ewing asked his opinion on whether the building was an appropriate size. Scott Garner replied yes it is an investment in the future; the building is practical, it has an exercise room because they have to be physically fit. You get more points if you can train here and when the bell goes off, the firefighters are there. You want guys to hang around the fire station so they can respond to emergencies.

Attorney Fox called witness Rob Morrison. Mr. Morrison stated he is the owner of Morrison Appraisal in Monroe, and was employed to do an impact study which is Exhibit 8. Mr. Morrison said he looked at three similar locations in Union County, near the existing fire station, the fire station on New Town Road, and the new fire station in Hemby Bridge and found that properties that adjoined fire stations were not adversely impacted. Butch Byrum asked if he talked to homeowners. He replied no, he looked at sales.

A brief recess was held.

Joshua Lange, Village Planning and Zoning Administrator, said he would like to offer points of clarification. The planner's opinion recommended approval on the first CUP, with the assumption that the setbacks on the side line near lots 6-9 were side setbacks. He showed on the map where Council determined the rear yard

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and side yards were. He stated he felt bound to that decision by Council. Langen stated you have to decide what parking is since parking is not allowed in rear or side setbacks. A common practice is to allow driveways in the side and rear yard setbacks; he pointed to our definitions in Article 2, and read the definition of parking bay. Langen said the Board will have to make an interpretation whether the parking is a parking bay or not. Attorney for the Board of Adjustment Bill Sturges said the board can not make interpretations. Langen said there is some degree of interpretation that must be made. Langen said he was pointing out relevant sections of the ordinance; parking is not allowed on the right side, and the two parking spaces in the back intrudes into the forty foot setback, so they clearly need a variance there. On the left side, if you consider this a driveway, you don't need a variance, if you consider it parking, you need a five foot variance. The buffers explicitly allow driveways; Langen read section 4.2.8 of the ordinance; the required buffer is 19.2 feet, so they are asking for a 9.2 foot variance. Sturges said he was confused about the requirement for driveways, the ordinances he had seen show driveways a few feet off from the main road, and not the whole thing that goes up the side, otherwise you destroy your buffers. Langen said driveways are not defined; he envisioned possible configurations of driveways, and he couldn't say there was only one way a side driveway could be. Bruce Ewing asked about the requirement of the number of parking spaces: Langen said the requirements don't mention training; they based it on the number of offices and active firefighters, which is only about twelve. There were no other questions for Mr. Langen.

Butch Byrum asked for public comments.

Steve Fellmeth, president of the Wesley Oaks HOA read a letter of support from the Board of Directors for the fire department; it said they regard the fire services as essential and vital to the residents of the village and fire district. Their 446 home subdivision abuts the fire station property.

Robert Esposito who lives in lot 7 said there was a variance in height for this building, now a variance for the buffer; he felt the building was awfully large for this site and would impact property values. He is an emergency room physician, and said the sheer size of the site should be considered; he asked if the site will include helicopter landings; on Sunday afternoon one landed fifty feet from his backyard. Four fire engines pulling out, he felt the noise would have an impact, with eight engines right off his back yard; as do the ATV's on the property. He said he has the helicopter on video from his back porch, and asked where the oversight was. He said he wanted a nice fire department, but was it reasonable in this location.

Wayne Tucker said the fire department is putting their lives on the line for us, and he appreciated it; he was totally in support, but they are going from a log cabin to the Taj Mahal; he had concern for the magnitude of the project and proximity to their homes, If it goes up, at least there should be a large planting buffer; he lives in lot 8.

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Amelia Tucker said the other problem is the height; if you have forty five feet height, plus it is ten feet higher than her property, it becomes fifty five feet above her backyard; its not that we don't want it, but the magnitude is very big.

Todd Elmore said he owns two lots (lots 2 and 3 in the back), and have an unbuffered view, his lots have gained in value, and was in total support of the fire department. He said he thinks the helicopter came from a buy in Aeroplantation.

Diana Bowler said she was trying to get a perspective of a 24,000 to 25,000 size building where the main level is 12,000 square feet, what is it comparable to? Langen said Blockbuster is smaller, he couldn't speculate. Scott Garner said the average height is thirty-one feet eleven inches; the ridge is forty-two feet high, and the peak is forty-five feet high. Amelia Tucker and Robert Esposito noted their lots are ten feet lower which increases the relative height.

Fox presented the closing argument. He encouraged the board to look at the rules in the ordinance and the evidence and testimony presented. He said the facility is needed to meet the linear district; to maintain ratings and response times. Langen noted staff is not required to render an opinion or written recommendation on this matter.

4. Possible Decision on Variance

Diana Bowler noted there was a desperate need for a new fire station. Butch Byrum said what concerns him most was that property owners can rely to their detriment on the Zoning Administrator unless they get an advisory letter from the town council saying what the zoning administrator said is acceptable. He was concerned that they were counseled that their building was going to meet the requirements of the ordinance, and in reliance on that spent tens of thousands of dollars only to learn that what they thought the guidelines were, were not. He asked attorney Sturges if the zoning administrator had the ability to make a binding decision. Sturges said his opinion was it was the zoning administrator's interpretation, and didn't think Council could overrule the zoning administrator's decision, although in the context of the CUP it could be different. He said he wasn't sure what happened in the process, but it was reasonable for the fire department to rely on the statement of the zoning administrator. Butch Byrum said up until the Council vote, the fire station was in compliance, Joshua Langen did support it, he had concern that a property owner does something the zoning administrator approves, and later they say you can't do that. Diana Bowler said she agreed, but had concerns because today she heard that this is a sheriff department too and what would change next. We are in desperate need of a new station, but to put something that large and add features, she had concerns with it. Butch Byrum said we heard testimony under oath, that said the EMS wouldn't be there; as far as the sheriff having a presence, it is getting benefit without paying for it. Butch Byrum said if a helicopter landed in my backyard, I would not be pleased, and he hoped the fire department takes care of that. Bill Sturges said it was his understanding that a CUP will still be needed after the variance, and they can put controls on; the Board of Adjustment is limited the variance; if you grant

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a variance you can have conditions with it to address the land use needs. Bruce Ewing said the Sheriff's piece is not mentioned anywhere in the application. Bill Sturges said it is irrelevant to whether the side yard should be permitted to be compromised or not. Lisa Ghannam said we need conditions that help the homeowners. Bill Sturges asked Joshua Langen what can go in the side yard; Joshua said parking spaces are prohibited, there is a definition of side yard which he read aloud; it says parking is not allowed in the rear and side setbacks. He was asked if he had an opinion on whether driveways are allowed in the side and rear yards; Langen said he called professionals, and researched on the internet, and yes it was allowed. Bill Sturges said his impression at least to the right bay there is a driveway, so it may be that they need a variance for that. The other side is more complicated, there is clearly some parking, and access to the parking. Bill Sturges said there is a buffer issue, he sees ordinances that say a lot more about what you can and can't do in a buffer; he was not sure whether you can put the driveway there and then say you don't need a buffer. Butch Byrum said the issue is simply to grant the variance or not. Bill Sturges said it is appropriate if you want to place conditions also. Joshua Langen was asked for the planting requirements in Section 4.2.4; he said five trees per one hundred feet, 40% large mature trees, and eight feet at the time of planting, and shrubs are also required. Bill Sturges asked if there is a wall; Langen said yes, the buffer width is reduced on both sides, because they are providing a wall, shown as the dark line, it is six foot high. Langen was asked about noise reduction; he said with the slope it was hard to say whether it will block noise. Scott Garner showed the planting plan for the previous fire station; there are large maturing trees around the perimeter. In addition to the retaining wall at the property line you have a six foot masonry fence at the X's; it allows you to reduce the buffer by twenty-five per cent. On the right side the height goes from zero to four-to-five feet in the center, and back to zero at the end. The low point is in the right front; which is natural drainage. Diana Bowler asked if the grade is level; Garner said the six foot masonry fence is at the property line and showed where fill would be and where the natural grade would be.

Bruce Ewing made a motion to approve variance (a). Tonya VanWynsberg seconded the motion.

The motion passed unanimously.

Diana Bowler said she would like for the rear to have a solid wall; it will be solid.

Diana Bowler made a motion to approve variance (b). Bruce Ewing seconded the motion.

The motion passed unanimously.

Diana Bowler made a motion to approve variance (c). Lisa Ghannam seconded the motion.

The motion passed unanimously.

Bill Sturges will draw up a findings of fact and decision letter. (Incorporated herein.)

VILLAGE OF WESLEY CHAPEL BOARD OF ADJUSTMENT

March 10, 2010

**DECISION LETTER OF THE BOARD OF ADJUSTMENT
OF THE VILLAGE OF WESLEY CHAPEL,
UNION COUNTY, NORTH CAROLINA**

**VARIANCE REQUEST BY
WESLEY CHAPEL FIRE DEPARTMENT
CASE NO. V-10-01**

**VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED
AND HAND DELIVERY**

Wesley Chapel Fire Department
c/o Mr. Butch Plyler
5817 Weddington-Monroe Road
Matthews, North Carolina 28104

Wesley Chapel Fire Department
c/o Mr. Butch Plyler
315 Waxhaw-Indian Trail Road
Waxhaw, North Carolina 28173

Wesley Chapel Fire Department
c/o Anthony Fox
Parker, Poe, Adams & Bernstein, LLP
401 South Tryon Street, Suite 3000
Charlotte, North Carolina 28202

**Re: Variance Request by Wesley Chapel Fire Department
Concerning Property at 315 Waxhaw-Indian Trial Road; Case
No. V-10-1**

Dear Mr. Plyler and Mr. Fox:

This letter will serve as the written decision letter of the Board of Adjustment for the Village of Wesley Chapel ("BOA"). This matter was heard before the BOA on the Wesley Chapel Fire Department's ("Fire Department") Application for a variance, dated February 20, 2010. The Fire Department

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requested variances from Sections 4.2 and 5.3.3 of the Village of Wesley Chapel Zoning Ordinance ("Village Ordinance"). A Public Hearing was conducted on the variance request on March 10, 2010. Based upon the evidence presented at the Hearing, the BOA grants the three requested variances.

The BOA bases its Decision on the following Findings of Facts:

1. The Fire Department owns property at 315 Waxhaw-Indian Trail Road, Waxhaw, North Carolina, which contains about 3.97 acres (the "Property"). It is identified by Tax Parcel Numbers: 060-7200-7H and 060-7200-7A.
2. The Property is zoned R-40.
3. There is an existing fire station building on the Property. This structure was erected in about 1975.
4. The Fire Department desires to construct a new and larger fire station building on the Property. The proposed site plan is set forth on the drawing by Garner & Brown Architects, P.A., titled "Staking and Materials Plan – Revised," dated February 11, 2010 (the "Plan"), which is attached and marked as **Exhibit A**.
5. The Fire Department is requesting the following variances in order to construct a fire station pursuant to the Plan:
 - a. Twenty (20) foot variance on the rear yard of the Property, which abuts Lots 10, 9, 8, and 7, of the Glenn at Wesley Oaks Subdivision. The Village Ordinance requires a forty (40) foot minimum rear yard setback (Section 5.3.3) and the Fire Department wishes to reduce this setback to twenty (20) feet.
 - b. A five (5) foot variance on the side of the Property abutting the Siler Church Cemetery. The Village Ordinance requires a fifteen (15) foot minimum side yard setback (Section 5.3.3) and the Fire Department wishes to reduce this setback to ten (10) feet.
 - c. A nine point two (9.2) foot variance on the side of the Property abutting the Siler Church Cemetery, concerning the required buffer. The Village Ordinance requires a nineteen point two (19.2) foot buffer (Section 4.2) and the Fire Department requests to reduce this to ten (10) feet in the event the pavement on the north side of the Property is determined not to be a driveway.

6. The Fire Department's Property is irregularly shaped. The irregular shape of the Property impacts the ability to develop the Property.
7. The Property has six different Property lines. Thus the lot has an irregular shape and there must be interpretation as to what is the rear yard and what are the side yards.
8. The properties near and around the Property are not irregularly shaped.
9. The configuration of the Property results in what would normally appear to be a side yard becoming a rear yard. This results in requiring a greater setback than would typically occur for the portion of the Property next to lots 10, 9, 8, and 7 of The Glenn at Wesley Oaks Subdivision.
10. In connection with the development of a new fire station, the Fire Department discussed zoning issues with the planner for the Village of Wesley Chapel ("Village"). The planner for the Village advised the Fire Department which boundaries would be considered the side and rear yards of the Property. As part of the development process, the Fire Department was required to obtain a Conditional Use Permit ("CUP"). Based on the representations by the planner of the location of the side and rear yards, the Fire Department designed the new fire station and submitted its CUP Application. As designed, the new fire station met all side and rear yard setback requirements. This was confirmed by the planner when he recommended approval of the CUP Application in May, 2009.
11. The Village Council conducted a hearing on the Fire Department's CUP Application. At the conclusion of the hearing, the Village Council denied the CUP Application and issued a resolution on July 13, 2009, that the location of the side and rear yards were at different locations than determined by the planner and as a result the proposed fire station violated various side and rear yard requirements.
12. With the revised rear and side yards, the designed building did not fit on the Property without infringing on the side and rear yard setback requirements.
13. The Property already has an existing fire station on the Property. Thus, the use on the property will be the same. However, the intensity of the use will increase by the larger fire station.
14. The location of the fire station in the community is important to meet fire service needs. The fire station covers a five mile radius,

thus the fire station needs to be at the current location or very near it.

15. The types of buildings and equipment needed for fire services have changed significantly since the original fire station was built in 1975.
16. The fire station needs to be larger than the current building to meet current and future fire service needs in the area.
17. The current fire station is inadequate for current fire service needs. The truck bays are too small, there are no sleeping facilities, the building does not meet disability access requirements, the building does not accommodate female firefighters, and the facility has many additional shortcomings.
18. The new proposed fire station will meet the current and future fire service needs of the area.
19. The new proposed fire station will allow quicker response time for emergencies since firefighters will be able to sleep at the station.
20. The proposed new fire station and variance request will not have a negative impact on the value of adjoining properties.
21. In regard to boundaries with Lots 10, 9, 8, and 7 of the Glenn at Wesley Oaks Subdivision, there will be a retaining wall, 20 foot natural area, and then a 6 foot masonry fence. These features should reduce the impact of Fire Department activity on the Wesley Oaks residents.
22. The Fire Department cannot obtain a reasonable return on the use of their Property unless the fire station is rebuilt to current standards, which will require variances from the strict compliance with setback requirements.
23. The hardship results from the application of the strict provisions of the Village Ordinance to this particular Property. It is not due to the Fire Department's actions.
24. The hardship is not common to the surrounding neighborhood. It is unique due to the configuration of the irregular Property.
25. The hardship is the result of the growth of the surrounding community and the need for a larger fire station. The larger fire station can only be accommodated through infringement on certain setbacks and buffers for which variances are requested.

26. The variances will be in harmony with the general purpose and intent of the Village Ordinance in that the same use will be on the Property as previously existed. Fire stations generally are in harmony with surrounding residential areas.
27. The granting of the variances will not negatively impact public safety or welfare and substantial justice will be done.
28. The variances are the minimum needed for the reasonable use of the land.

Based upon the foregoing Findings of Fact, the BOA makes the following conclusions of law.

1. There are practical difficulties and unnecessary hardships in applying the strict setback and buffer requirements to the Fire Department's Property.
2. The variances are in harmony with the general purpose and intent of the Village Ordinance and preserves its spirit.
3. The granting of the variances are in the interest of public safety and welfare and results in substantial justice.
4. The variances granted are the minimum to make use of the Property as proposed.

Based upon the foregoing Findings of Fact and Conclusions of Law, the BOA grants the requested variances. Specifically, the BOA grants the following variances:

1. Twenty (20) foot variance on the rear yard of the property, which abuts Lots 10, 9, 8, and 7, of the Glenn at Wesley Oaks Subdivision. The exact location of this variance is shown on **Exhibit A** to this Decision and is marked **Variance 1**.
2. A five (5) foot variance on the side of the property abutting the Siler Church Cemetery. The exact location of this variance is shown on **Exhibit A** to this Decision and is marked as **Variance 2**.
3. A nine point two (9.2) foot variance on the side of the property abutting the Siler Church Cemetery, concerning the required buffer. The exact location of this variance is shown on **Exhibit A** and is marked as **Variance 3**.

The BOA Decision on this matter may be appealed to the Superior Court within thirty (30) days from the dated set forth below, which is when the Decision

Minutes 03.10.2010

Approved 06.21.2010

of the BOA was filed at the Village of Wesley Chapel, or thirty (30) days after a written copy is delivered to the Fire Department's attorney, who made a written request for a copy of the Decision of the BOA.

This the ____ day of March, 2010.

Henry Byrum, Jr.
Chairman

Decision filed with The Village of Wesley Chapel:

Date

Joshua Langen
Planning and Zoning Administrator

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Minutes 03.10.2010

Approved 06.21.2010

Respectfully submitted,

Cheryl Bennett, Village Clerk

Henry C. Byrum, Chairman