

**VILLAGE OF WESLEY CHAPEL
BOARD OF ADJUSTMENT MEETING
April 10, 2017 at 7 PM**

MINUTES

The Board of Adjustment of the Village of Wesley Chapel, North Carolina, met at the Wesley Chapel Town Hall, 6490 Weddington Road, Wesley Chapel, NC 28104.

Present: Chairman Butch Byrum, Members Bill Rodriguez, Creig Williard and Karen Izzo, Alternate (sitting as regular member) Ty Jaiyeoba

Absent: Member Elaine Rosoff

Village Staff present: Cheryl Bennett - Village Clerk; Bill Duston – Planning and Zoning Administrator

1. Pledge and Invocation

Butch Byrum led the pledge and gave the invocation.

2. Election of Chair and Vice Chair

Creig Williard nominated Butch Byrum to be the Chairman. Bill Rodriguez seconded the motion.

The motion passed unanimously, with Butch Byrum abstaining.

Butch Byrum nominated Creig Williard to be the Vice Chair. Bill Rodriguez seconded the motion.

The motion passed unanimously, with Creig Williard abstaining.

3. Additions, Deletions and Approval of Agenda

Creig Williard motioned to approve the agenda. Karen Izzo seconded the motion.

The motion passed unanimously.

4. Approval of Minutes – June 16, 2014

Bill Rodriguez made a motion to approve the minutes from the June 16, 2014 meeting; Karen Izzo seconded the motion.

The motion passed unanimously.

5. Basic Primer on Board of Adjustment Responsibilities

Bill Duston presented a PowerPoint to review the role of the Board of Adjustment (BOA). BOA membership is five regular and two alternate members. The Chair and Vice Chair are elected by the members for one year terms. Alternate members serve in place of absent members or members who have been recused. Variances and appeals of the Zoning Administrator's decisions require quasi-judicial hearings. A BOA decision can only be appealed to Superior Court and not to City Council. Variances were reviewed, you need a 4/5 vote of BOA membership to approve a variance, and they are generally difficult to obtain. He reviewed the findings that must be met, generally an unnecessary hardship would result from strict application of the ordinance, and results

from conditions that are peculiar to the property. The hardship cannot result from actions taken by the applicant or property owner, nor from conditions that are common to the neighborhood or general public. Certain conditions you cannot obtain a variance for in Wesley Chapel, including sign setbacks, sign square footage, setbacks for Class III Essential Services, variances for setbacks that involve a greater than 50% reduction in the setback area, and no setback or bulk variance unless a foundation survey was first approved by the Village. You cannot obtain a use variance.

An appeal can be made to the BOA of the final written decision of the Zoning Administrator, within 30 days of the receipt of actual or constructive notice of decision. The BOA can reverse, modify or affirm in whole or in part the decision. Anyone with standing to contest the decision may file an appeal with Superior Court. A complete application must be submitted to the Village Clerk, whatever is in the record is sent to the BOA members and the applicant. The person whose decision is being appealed must be at the public hearing as a witness, if a request for an expedited hearing is made, the hearing must be held within 15 days of the request. A majority vote of the BOA membership is needed to make a decision.

BOA Rules of Procedure are the bylaws and includes when and how officers are elected, when regular meetings are held, attendance requirements, how abstentions are handled, who can make motions, discussion of cases outside the public hearing and how to amend the Rules.

Quasi-judicial hearings are to gather evidence, must be properly advertised, and people can give evidence only after having been sworn in. The BOA must make findings that support their decision for variances. A written record of the hearing must include written findings and the facts that support them and how any contested facts were resolved. The final decision must be sent to the applicant and any other party who requested a copy. The hearing is opened by the Chair who explains hearing procedures. The Chair asks if all members can vote fairly on the case, if any member has a conflict, has an opinion on the case that is not subject to change or has had any ex-parte conversation. Staff once sworn in should give an overview of the case. A sign-up sheet for persons who want to present evidence is used. The applicant or his agent presents the case. Persons who are sworn in can be cross examined by persons with standing. Hearsay should not be relied upon. After the Chair closes the public hearing, clarifications on testimony can still be given, and you can allow the applicant to comment on any conditions to be imposed. The BOA deliberates and decides based on substantial competent and material evidence presented at the hearing. Mutually agreeable conditions can be placed on the approval, as long as they are fair and reasonable and land-use related. There are no closed door deliberations. A hearing can be continued to a time the applicant can come, but it does not require 48 hours' notice. If only four members are present, you can ask the applicant if they want to wait until five members are present, and then you need a 4/5 vote.

Persons with standing can file appeals of the Administrator's decision, request a person be subpoenaed, and challenge the BOA decision in Superior Court. NC GS 160A-393 defines "standing" as someone who has ownership or leasehold interest in the property that is the subject of the decision or an interest created by easement, restriction, or covenant in the property, has option or contract to purchase the property subject to the

appeal, applicant requesting the appeal, or any other person who will suffer special damages as the result of the decision being appealed. Also included is an association (e.g. HOA) so long as the association was not created in response to the particular development or issue, and a city/county whose decision-making board has made a decision that the council believes improperly grants a variance from or is otherwise inconsistent with the proper interpretation of an ordinance adopted.

Conflicts of interest can be financial, personal bias, or associations with those affected by a decision. In NC you must recuse yourself if you have a fixed opinion on the matter not subject to change, undisclosed ex-parte conversation, close familial business or other associational relationship with applicant, or financial interest in outcome.

Competent evidence does not allow reliance on lay witness testimony on use of property that would affect property values, increase in vehicular traffic that would pose a danger to public safety, or matters which only expert testimony would generally be relied upon. Let persons know if what they are saying is perceived as hearsay.

Any person who has given sworn testimony may be cross-examined by the opposing party or by a person who has standing. The Village attorney should attend the BOA hearing.

All variance decision require a 4/5 vote in favor of the applicant; appeals only require a majority vote, calculated on the number of persons eligible to vote (exclude vacancies and recusals, but not absences). Each finding is voted on. If one finding is found in the negative, continue on the other findings. A decision must be rendered within a reasonable time period. BOA members can visit the site, but they must disclose at the hearing what information they gleaned from that visit. BOA members can ask staff for technical information but that info must be passed on by staff to all other BOA members. BOA members cannot state their opinions on the case outside the public hearing. A person can post a sign on their property letting others know that a land use decision was made affecting their property.

6. Other Business - none

7. Adjournment

Creig Williard made a motion to adjourn, and Karen Izzo seconded it.

The motion passed unanimously.

Respectfully submitted,

Cheryl Bennett, Clerk

Henry C. Byrum, Chairman