



# BOARD OF ADJUSTMENT

## MINUTES

### Town of Carrboro

301 W. Main Street Carrboro, North Carolina 27510

May 21, 2008

MEMBERS PRESENT		TOWN ATTORNEY	STAFF
David Collins		TC Morphis	James Thomas
Thomas Arnel			Lisa Buckley
Sriv Navaratnam			Jane Tuohey
Mark Brantley			
Richard Ellington			
<b>Absent/Excused:</b> 3 (Catherine DeVine, John Gant, Robert Kirschner)			

### MINUTES APPROVAL

MOTION MADE BY RICHARD ELLINGTON AND SECONDED BY SRIV NAVARATNAM TO APPROVE MINUTES FROM APRIL 16, 2008 MEETING WITH THE FOLLOWING CHANGE: VOTE: AYES 5 (David Collins, Thomas Arnel, Sriv Navaratnam, Mark Brantley, Richard Ellington). NOES 0; ABSENT/EXCUSED 3 (Catherine DeVine, John Gant, Robert Kirschner)

Page 1 – Members Absent/Excused should read 1 – Thomas Arnel.

### PUBLIC HEARING: Special Exception Permit at 110 Dillard Street

The applicant, Joel Kraeuter, is requesting a Special Exception Permit for the construction of an eighteen (18) foot by fourteen (14) foot deck addition to the single-family residence that will encroach into the rear yard setback. The proposed addition will encroach six (6) feet into the required twelve (12) foot rear yard setback. Section 15.92.1 of the Land Use Ordinance gives the Board of Adjustment the authority to grant Special Exception Permits to allow reductions of up to fifty percent (50%) in the required distances that buildings must be setback from lot boundary lines.

Jane Tuohey, notary public swore in all who wished to speak throughout this entire meeting. Jane Tuohey introduced Lisa Buckley to the Board and she gave the staff presentation. This property is surrounded by single family residential properties in R-10 zoning district, 11 of the 16 neighbors have given approval for this request. Lisa has not received any negative feedback. The applicant mentioned to Lisa that he may make a screened in porch in the future, so Lisa informed the applicant that the roof cannot encroach more than the 50% into the rear yard setback.

MOTION WAS MADE BY THOMAS ARNEL AND SECONDED BY MARK BRANTLEY TO CLOSE THE PUBLIC HEARING. VOTE: AYES 5 (David Collins, Thomas Arnel, Sriv Navaratnam, Mark Brantley, Richard Ellington). NOES 0; ABSENT/EXCUSED 3 (Catherine DeVine, John Gant, Robert Kirschner)

MOTION WAS MADE BY THOMAS ARNEL AND SECONDED BY SRIV NAVARATNAM THAT THE APPLICATION IS FOUND TO BE COMPLETE. VOTE: AYES 5 (David Collins, Thomas Arnel, Sriv Navaratnam, Mark Brantley, Richard Ellington). NOES 0; ABSENT/EXCUSED 3 (Catherine DeVine, John Gant, Robert Kirschner)

MOTION WAS MADE BY THOMAS ARNEL AND SECONDED BY SRIV NAVARATNAM THAT THE APPLICATION COMPLIES WITH ALL (A-F) APPLICABLE REQUIREMENTS OF THE LAND USE ORDINANCE. VOTE: AYES 5 (David Collins, Thomas Arnel, Sriv Navaratnam, Mark Brantley, Richard Ellington). NOES 0; ABSENT/EXCUSED 3 (Catherine DeVine, John Gant, Robert Kirschner)

MOTION WAS MADE BY THOMAS ARNEL AND SECONDED BY RICHARD ELLINGTON THAT THE APPLICATION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS. VOTE: AYES 5 (David Collins, Thomas Arnel, Sriv Navaratnam, Mark Brantley, Richard Ellington). NOES 0; ABSENT/EXCUSED 3 (Catherine DeVine, John Gant, Robert Kirschner)

1. the applicant shall complete the development strictly in accordance with the plans submitted to and approved by the Board, a copy of which is filed in the Carrboro Town Hall. Any deviations from or changes in these plans must be submitted to the Zoning Administrator in writing and specific written approval obtained as provided in Section 15-64 of the Land Use Ordinance
2. if any of the conditions affixed hereto or any part thereof shall be held invalid or void, then this permit shall be void and of no effect
3. that the special exception is granted only to the extent necessary to provide for the proposed addition (including roof overhangs), and that no other additions or enlargements of any other portion of the house is permitted by this special exception permit.

MOTION WAS MADE BY THOMAS ARNEL AND SECONDED BY MARK BRANTLEY THAT THE APPLICATION BE GRANTED SUBJECT TO THE ABOVE CONDITIONS. VOTE: AYES 5 (David Collins, Thomas Arnel, Sriv Navaratnam, Mark Brantley, Richard Ellington). NOES 0; ABSENT/EXCUSED 3 (Catherine DeVine, John Gant, Robert Kirschner)

**PUBLIC HEARING: Minor Variance at 302 Rossburn Way**

The property owners at 302 Rossburn Way are requesting a minor variance to allow an in-ground pool and deck to encroach one (1) foot and six (6) inches into the required twelve (12) foot rear yard setback and the existing deck to encroach five (5) feet into the required twelve (12) foot side yard setback. Section 15-92 of the Land Use Ordinance gives the Board of Adjustment the authority to grant minor variances if certain findings are made.

Jane Tuohey, notary public swore in James Thomas. David Collins, Chair, asked TC Morphis, Town Attorney to explain the difference between a special exception and minor variance. Mr. Morphis explained that the provisions are there as a way for the Board to legalize mistakes that were made inadvertently during the construction process. The standard for criteria is lower, in this case there is an existing pool so all findings have to be met.

Mr. Thomas gave the staff presentation and showed board members where the property is located. Mr. Thomas explained that the pool is required to meet the setbacks, there is a portion that doesn't meet them, it is 10' 9" from the rear property line and it should be 12'. Also the deck doesn't meet the applicable side yard setbacks; it should be 12' but is 7' 1". A zoning and building permit was issued for the pool in July 2004, the pool was shown on the plan to be within the setbacks, the pool was installed and inspected by Carrboro Building Inspectors. Zoning doesn't require an as-built survey for pools, nor do they go out and inspect so this was installed and used for several years and was not noticed until an adjacent property owner reported this. The homeowners have tried to purchase additional property from their Home Owners Association, because behind them is private open space, but the HO Association asked them to go through a minor variance process. The HOA are not willing to grant additional property at this time. Letters were sent to 13/14 home owners, Mr. Thomas has received a couple of calls and he made them aware of the meeting this evening.

Mr. Arnel asked if the neighbor that reported them was concerned. Mr. Thomas said that this was reported because of a noise issue and under the LUO there is nothing that deals with noise issues between residential property owners. Mr. Thomas stated that Crystal Clear Pools in Burlington were the applicant for the permits, not the homeowners.

Mr. Brantley asked if there is a tree or shrubbery buffer between the back of the pool and the neighbor that complained or is it open land, Mr. Thomas said that there is a 6' privacy fence around the entire pool with landscaping in front of the fencing. Installation of pools requires fencing under the building code, but zoning do not require any fencing or landscaping.

Mr. Arnel asked if the pool and deck are two different issues, Mr. Thomas said that staff is looking at this as one variance.

Mr. Collins made a point that if this was applied for before construction that this could have been a special exception because they are within the limits of 50% and neither of these are more than half way into the setback, but noted that he is well aware that this is a minor variance application, not a special exception application.

The property owners said that they have huge Leyland's along the fence around the sides and the back of the pool.

Further discussion took place about the private open space which is owned by the Home Owners Association and the fact that maybe some could be purchased to solve the problem of the pool but this doesn't solve the problem of the deck encroaching into the side yard setback.

**MOTION MADE BY RICHARD ELLINGTON AND SECONDED BY THOMAS ARNEL TO CLOSE THE PUBLIC HEARING. VOTE: AYES 5 (David Collins, Thomas Arnel, Sriv Navaratnam, Mark Brantley, Richard Ellington). NOES 0; ABSENT/EXCUSED 3 (Catherine DeVine, John Gant, Robert Kirschner)**

The Board spoke about many issues including if this error wasn't made then 18" wouldn't have made any difference to the noise which is why this complaint arose and if there was a permit issued for the installation of the deck, Mr. Thomas said, no a zoning permit wasn't issued, Mr. Navaratnam also asked if a permit should have been pulled to which Mr. Thomas said, yes. Mr. Brantley asked if the pool and deck were built at the same time, the homeowner said yes, but they were built by two different companies. It was noted that the deck also serves as a fence and it is there for safety as well, it has footers and Carolina jasmine all around created for visual and sound barrier and it cost thousands of dollars. Also, the home owners said that the complaint came from the other side and they have since moved and it would be a major financial burden to move the deck. Mr. Navaratnam asked why a permit wasn't applied for, the homeowners said that they went to the Home Owners Association, but had no idea that there wasn't a permit applied for because the contractors applied for the permits.

**MOTION WAS MADE BY DAVID COLLINS AND SECONDED BY MARK BRANTLEY THAT THE BOARD MAKES A FINDING THAT THE REQUESTED VARIANCE MEETS 15-92 (1)(b) of the LUO, BASED ON THE GOOD FAITH ERROR MADE BY THE BUILDER. VOTE: AYES 4 (David Collins, Thomas Arnel, Sriv Navaratnam, Mark Brantley). NOES 1 (Richard Ellington); ABSENT/EXCUSED 3 (Catherine DeVine, John Gant, Robert Kirschner)**

**MOTION WAS MADE BY DAVID COLLINS AND SECONDED BY SRIV NAVARATNAM THAT THE BOARD MAKES A FINDING THAT IN THE ABSENCE OF THE MINOR VARIANCE, THE APPLICANT WILL SUFFER SIGNIFICANT HARDSHIP. VOTE: AYES 5 (David Collins, Thomas Arnel, Sriv Navaratnam, Mark Brantley, Richard Ellington). NOES 0; ABSENT/EXCUSED 3 (Catherine DeVine, John Gant, Robert Kirschner)**

MOTION WAS MADE BY DAVID COLLINS AND SECONDED BY SRIV NAVARATNAM THAT THE BOARD MAKES A FINDING THAT THE DEVIATION WILL NOT HAVE AN ADVERSE IMPACT ON SURROUNDING PROPERTIES. VOTE: AYES 5 (David Collins, Thomas Arnel, Sriv Navaratnam, Mark Brantley, Richard Ellington). NOES 0; ABSENT/EXCUSED 3 (Catherine DeVine, John Gant, Robert Kirschner)

MOTION WAS MADE BY DAVID COLLINS AND SECONDED BY THOMAS ARNEL THAT THE BOARD MAKES A FINDING THAT THE HARDSHIP OF WHICH THE APPLICANT COMPLAINS IS ONE SUFFERED BY THE APPLICANT RATHER THAN BY NEIGHBORS OR THE GENERAL PUBLIC. VOTE: AYES 5 (David Collins, Thomas Arnel, Sriv Navaratnam, Mark Brantley, Richard Ellington). NOES 0; ABSENT/EXCUSED 3 (Catherine DeVine, John Gant, Robert Kirschner)

MOTION WAS MADE BY DAVID COLLINS AND SECONDED BY MARK BRANTLEY THAT THE BOARD MAKES A FINDING THAT THE HARDSHIP RELATES TO THE APPLICANT'S LAND RATHER THAN A PERSONAL CIRCUMSTANCE. VOTE: AYES 5 (David Collins, Thomas Arnel, Sriv Navaratnam, Mark Brantley, Richard Ellington). NOES 0; ABSENT/EXCUSED 3 (Catherine DeVine, John Gant, Robert Kirschner)

MOTION WAS MADE BY DAVID COLLINS AND SECONDED BY THOMAS ARNEL THAT THE BOARD MAKES A FINDING THAT THE HARDSHIP IS UNIQUE, OR NEARLY SO, RATHER THAN ONE SHARED BY MANY SURROUNDING BY MANY SURROUNDING PROPERTIES. VOTE: AYES 5 (David Collins, Thomas Arnel, Sriv Navaratnam, Mark Brantley, Richard Ellington). NOES 0; ABSENT/EXCUSED 3 (Catherine DeVine, John Gant, Robert Kirschner)

MOTION WAS MADE BY DAVID COLLINS AND SECONDED BY SRIV NAVARATNAM THAT THE BOARD MAKES A FINDING THAT THE HARDSHIP IS NOT THE RESULT OF THE APPLICANT'S OWN ACTIONS. VOTE: AYES 4 (David Collins, Thomas Arnel, Sriv Navaratnam, Mark Brantley). NOES 1 (Richard Ellington); ABSENT/EXCUSED 3 (Catherine DeVine, John Gant, Robert Kirschner)

MOTION WAS MADE BY DAVID COLLINS AND SECONDED BY MARK BRANTLEY THAT THE BOARD MAKES A FINDING THAT THE VARIANCE WILL NEITHER RESULT IN THE EXTENSION OF A NONCONFORMING SITUATION IN VIOLATION OF ARTICLE VIII NOR AUTHORIZE THE INITIATION OF A NONCONFORMING USE OF LAND. VOTE: AYES 4 (David Collins, Thomas Arnel, Sriv Navaratnam, Mark Brantley). NOES 1 (Richard Ellington); ABSENT/EXCUSED 3 (Catherine DeVine, John Gant, Robert Kirschner)

MOTION WAS MADE BY DAVID COLLINS AND SECONDED BY SRIV NAVARATNAM THAT THE BOARD MAKES A FINDING THAT THE VARIANCE IS GRANTED AS SUBMITTED.

VOTE: AYES 4 (David Collins, Thomas Arnel, Sriv Navaratnam, Mark Brantley). NOES 1 (Richard Ellington); ABSENT/EXCUSED 3 (Catherine DeVine, John Gant, Robert Kirschner)

**OLD/NEW BUSINESS**

Mr. Collins noted that there is a seat vacancy for the ETJ area.

There being no other business, MOTION MADE BY SRIV NAVARATNAM AND SECONDED BY MARK BRANTLEY THAT THE MEETING BE ADJOURNED. VOTE: AYES 5 (David Collins, Thomas Arnel, Sriv Navaratnam, Mark Brantley, Richard Ellington). NOES 0; ABSENT/EXCUSED 3 (Catherine DeVine, John Gant, Robert Kirschner)