

**TOWN OF UNIONVILLE
BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES**

The Board of Adjustment of the Town of Unionville held a meeting on Monday, November 20, 2023, at 6:00 PM in Unionville Volunteer Fire Department #22, 3229 Concord Highway, Monroe, NC. Chairman Andrew Benton, Gene Price, Jaren Simpson, Jeff Broadaway, Chad Simpson, Board Attorney Melanie Cox, and Alternate Jerry Adams were present. Absent were Alternates Craig Rushing and Roddie Baucom.

Chairman Benton welcomed everyone in attendance and called the meeting to order at 6:00 PM.

Chairman Benton stated that the Board had received the minutes from the September 11, 2023, minutes. Upon a motion duly made by Gene Price to accept the minutes as presented, with a second by Jaren Simpson, the Board unanimously approved the minutes of the September 11, 2023, Board of Adjustment meeting.

Chairman Benton declared a quorum and stated that Attorney Melanie Cox had not arrived at the meeting. Chairman Benton said that normally the Board Attorney Ken Swain would be in attendance, however he recused himself due to a conflict of interest, so he requested that Melanie Cox take over and fill in as Board Attorney for the night. Chairman Benton asked for the pleasure of the Board, asking if the Board would want to wait until Attorney Cox was contacted. He said he thought it would be best to have Council, personally. Jaren Simpson said that there was some time before the Council meeting and made a motion to temporarily adjourn to await legal counsel. The motion was seconded by Jeff Broadaway and passed unanimously. The meeting was adjourned temporarily at 6:02 PM.

At 6:09 PM, upon a motion by Jaren Simpson, seconded by Jeff Broadaway, the Board unanimously voted to return from recess because Board Attorney Melanie Cox was present.

Chairman Benton then formally opened the meeting. He asked for any conflicts of interest or pre-fixed opinions on the case. If so, he advised that they need to step down from the meeting. There being none, Chairman Benton introduced the next item of business, the consideration of Appeal #ZA-23-01. He asked Attorney Melanie Cox to present the case. Attorney Melanie Cox said that this is an appeal by Ronald L. Whitaker appealing the Land Use Administrator's decision to not allow an accessory structure closer to the road than the primary structure. The parcel is located at 2223 Old Camden Road on 14.10 acres, tax parcel number 09-075-012. She said that typically at this time, all witnesses can be sworn in at the same time, and then the Land Use Administrator can speak. Chairman Benton said that all witnesses would be sworn in, at which time the appellant Ronnie Whitaker and Land Use Administrator Sonya Gaddy were administered the oath by Chairman Benton.

Chairman Benton then asked Land Use Administrator Sonya Gaddy to speak, then they will ask Mr. Whitaker to step up and speak. Attorney Ken Helms said that he would assist Sonya in her testimony if the Board approved it. Chairman Benton approved this request. Attorney Ken Helms then asked Ms. Gaddy to introduce herself. She said that her name is Sonya Gaddy and she is the Clerk, Tax Collector, Land Use Administrator for the Town of Unionville. Attorney Helms asked Land Use Administrator Gaddy to give the Board a history of the application. Land Use Administrator Gaddy said that the applicants, Mr. and Mrs. Whitaker, asked for a permit for an accessory structure on their property, 2223 Old Camden Road. She said she advised them as to what the requirements of the ordinance were. When they did bring the drawing, that is in the Board packet, indicating the accessory structure is closer to the road than the primary structure, it did not comply with the ordinance, so she did not grant that permit. Typically, they should have a primary structure in order to have an accessory structure, and the applicant did not have a primary structure at the time. However, she was willing to grant that permit along with the accessory structure permit at the same time just to indicate that there will be a primary structure there. That has happened once or twice in the past. However, since it did not comply with the ordinance, the application was not granted. Attorney Ken Helms asked her to walk the Board through the packet as far as the photographs, so everyone is on the same page with the proposed location with both the principal structure and accessory structure. Land Use Administrator Gaddy said that there is a staff report, appeal application, adjoining properties. There are two maps on the next pages. The first is an abstract map showing where Old Camden Road is, where the property is outlined in red, and then drawn in the proposed accessory structure and the placement of the proposed home. That is the first map in the packet. The other map is an aerial map from Union County's GIS map, indicating the outline of the property. On the right is Old Camden Road, but she did not include the proposed locations for the accessory and primary structures on that map, but it is on the first map. Attorney Ken Helms asked which sections of the ordinance apply here. Land Use Administrator Gaddy said that the section that deals with accessory structures 185, specifically 185B – states that accessory structures would be allowed within 5 feet of the rear and side lot lines so long as the structure is located entirely behind the rear line of the principal building. That is the section that she based the application on. Attorney Ken Helms asked her if she was referencing section 185 A or B. He asked her to make sure it was clear. Land Use Administrator Gaddy said it was 185 B, she asked if it was A. She apologized. Attorney Ken Helms asked her to look at the ordinance for clarification. Ken Helms said that it was subject to subsection B. Land Use Administrator apologized and said it was Section 185 A. Attorney Ken Helms asked if her denial is based on section 185 A. Land Use Administrator said yes. Attorney Ken Helms asked her to walk the Board through the requirements of 185 A and explain the grounds for her denial. Land Use Administrator Gaddy then read Section 185

A

says,

“While accessory buildings shall generally be required to comply with the building setback standards set forth in Section 184,” Attorney Ken Helms asked Land Use Administrator Gaddy what Section 184 pertained to. Land Use Administrator Gaddy said that it dealt with setbacks of any kind for primary structures, signs, etc. in all zoning classifications. Attorney Ken Helms asked her to continue with section 185. Land Use Administrator Gaddy read, “accessory buildings in residential districts shall, subject to subsection (b),” and Attorney Ken Helms stopped her there to ask if this is a residential district that we are dealing with. Land Use Administrator confirmed that

it was. Attorney Ken Helms asked what subsection B stated. Land Use Administrator read subsection b, "With respect to any lot in a residential district where accessory buildings are constructed under authority of subsection (a) closer to rear or side lot boundary lines than is generally permissible under Section 184." Then it goes into two different provisions. The first being, "If the high point of the roof or any appurtenance of an accessory building exceeds twelve feet in height, the accessory building shall be setback from rear or side lot boundary lines an additional one foot for every foot of height exceeding twelve feet up to the required principal building setback; thereafter, no further setback is required." Attorney Ken Helms asked if subsection B is an issue within this type of thing. Land Use Administrator said that she did not think it was an issue. Attorney Ken Helms asked her to go ahead and read the rest of Section 185. She continued, "they would be allowed within five feet of a rear lot boundary line and within five feet of a side boundary line so long as the structure is located entirely behind the rear line of the principal building." Attorney Ken Helms asked Land Use Administrator Gaddy to tell the Board what portion of section 185 A she used to base her decision on. Land Use Administrator said that she was basing it mainly on the wording "so long as the structure is located entirely behind the rear line of the principal building." She said that the way they look at that is from the road. We do not have design standards in the ordinance. We have to look from the road to define the front setback, and the rear setback, and the side setbacks of properties in residential districts. When you look at the map from the road, you can see that the proposed accessory structure is before, or in front of the proposed primary structure. That was what she based her decision on. Attorney Ken Helms asked if there was an appeal filed. Land Use Administrator Gaddy said yes, there was an appeal filed on October 16, 2023. She said that she did not know if it was significant, but there was also a text amendment filed as well. Attorney Ken Helms asked for the stated reason for appeal. Land Use Administrator read the reason for the appeal from the applicant's submission, which read, "Our tract of land is 14.1 acres and does not have road frontage. To get to our land, you have to go through the City of Monroe easement. We desire to build a building between 1,000-1,200 feet from Old Camden Road and it would not be visible from the road. The rear setback of the building would be 145 feet and is thickly wooded. The house would be located closer to Lake Twitty and has a gradual drop of 20 feet behind the house." Attorney Ken Helms asked if the ordinance set out a definition for a building front. Land Use Administrator Gaddy said it does. Attorney Ken Helms asked what that definition was. Land Use Administrator Gaddy said that it was defined as the side of the building closest to and most nearly parallel to the street which provides access to the lot. In the case of a corner lot or through lot, the street line forming the least frontage shall be deemed the front of the lot. Attorney Ken Helms asked which street serves this property. Land Use Administrator Gaddy said that it is Old Camden Road. Attorney Ken Helms said that was a complete history of the application. He asked how Section 185 A had been applied by the Town of Unionville in the past. Land Use Administrator Gaddy said it had been applied the way she had done here. She looks at the lot compared to the road, whether it has road frontage or not. The accessory structure is required to be behind the primary structure from the road. Attorney Ken Helms said that was all the questions he had for Ms. Gaddy at that time.

Attorney Melanie Cox asked if Mr. Helms was entering the packet as exhibit 1. He confirmed that he was and thanked her.

Chairman Benton asked Mr. Whitaker to come up and present his case. Mr. Whitaker asked if he was allowed to ask a few questions. Chairman Benton advised him to record his questions and give his testimony first and then they will address his questions. Mr. Whitaker introduced himself and said that he and his wife own the property at 2223 Old Camden Road. The property is in the Town of Unionville, and as stated, they have an easement from the City of Monroe and it is 14.1 acres. Before getting to the property, you have to go through two gates currently. The property is approximately 600 feet from the road. There are lots of woods. If you've been out to the lake to the boat landing, you know what he's talking about. Once you get to the property, where he was looking to put his building is probably another about 400-500 feet off to the left, backed up to a set of woods. It was about as level of a place he could find. He said that they plan to build the house and had cleared out trees to make it pretty. The land has a lot of waterfront and there is approximately a 20-foot drop down to the waterway. If he wanted to put a building pack there, he guessed it could be done, but it would be costly. But, he does not want to block the views from the lake. He said that if anyone had a place out there, they would not want to block that view either. He said that his guess is that this ordinance is probably for the purpose of some of these developments. He said he gets it. No one wants to have one-acre lots in some of the developments and might throw up a building in the front yard. No one wants to see that. He said that if a hurricane came through and took out all the trees on the property, his building would still not be visible from the road. The only people who will see--and if the purpose of this is the way it looks in appearance-- the only folks who will see his property are fisherman between March 1 until October 31 and about two neighbors across the lake will be the only people who will see his house. He said that they presented this application for the zoning to put his building up because he has some equipment out there and he wanted to protect it while he was trying to get his house built. The building is not sitting in front of his house. While looking at the front of his house, the building is back up approximately another 400-500 feet from his house, off to the right. Mr. Whitaker said that he spoke to Ms. Gaddy on the phone after his wife had met her. He said she told him that she was told to interpret that ordinance the way that she did, he said that he told her that he respectfully disagreed with her interpretation. He said that she was reading "so long as the structure is located entirely behind the rear line of the principal building. He said that readers had to look at the front of that [statement] because there is no comma there. It is talking about if you are putting a building within 5' of the sideline and 5' of the rear line, then it has to be entirely behind the principal building. He said that was what he was talking about and it is clear as day. He questioned that if she had to get help to start with, whenever that was, he asked if she had to seek that help because it was not clear to her and perhaps her interpretation is wrong. He said perhaps his interpretation of it is right. He said that he had other towns' [ordinances] that he looked up to compare theirs. Monroe's says that accessory uses and structures shall not be located between the front of the principal structure and the front lot line. He said that was clear and Unionville's was not clear like that. He said Norwood's stated that accessory structures shall meet the following side and rear setbacks and no accessory structures shall be located in a required front yard nor shall any accessory structure on a residential lot located in any zoning district be placed between the street and front building line of the principal structure except that, and they give some leeway here, if accessory structures are located more than 100 feet from the street. They have a little bit of leniency there. He then read the Cornelius ordinance, which states that accessory buildings, pools

and other similar structures in all residential zoning districts shall be constructed in the rear yard only. He said that Unionville's ordinance says nothing like that unless someone is planning to put it within 5 feet of a side or rear boundary line. He said it was clear for that. He said that the only place that Unionville has anything about structure requirements is on the zoning permit application. He read, "The structure requirements accessory uses or structures, well houses, and swimming pools shall be located no closer than five feet to the side or rear lot line if the high point of the roof of the proposed structure is twelve feet or less. Minimum setbacks must be increased by one foot for each additional foot in height above twelve feet. Accessory structures are allowed so long as the structure is located entirely behind the rear line of the principal building." He said it was on the permit application, but the Town cannot go by that permit application. He said that was not the ordinance and is not law, Section 185 is the ordinance and that is the law. He said that the town cannot decide what they want it to say or what they hope it says but go by what it says. He said that when they read what Land Use Administrator Gaddy read to them, as he did, they cannot just pick up right where it begins with "so long as," but they have to read everything in front of it. He said it was one sentence. That's what it pertains to, and the only time it has to be, according to the town's ordinance, has to be entirely behind the house is when it's within the side line or rear line of five feet. He said he did not disagree, but that maybe that is what it should be saying like she says that she has interpreted it. He said it was not there now. He said that was something that the Town of Unionville might want to look at for the future.

Chairman Benton asked for anyone to offer testimony for or against. Attorney Ken Helms said he did not want to give testimony, but he asked if he may be heard. Attorney Melanie Cox said that they had to give each an opportunity to ask questions of one another. Chairman Benton asked if he needed to be sworn in. Attorney Melanie Cox advised that as an attorney he would not have to be sworn in. Attorney Ken Helms said that he had no questions, but he would like to be heard in response to Mr. Whitaker's interpretation. Chairman Benton asked Mr. Whitaker if he had any questions that he wanted to ask at that time. He then invited Attorney Ken Helms to speak.

Attorney Ken Helms said that he had brief comments. He said that the ordinance has to be read as a whole, reading Section 184 as well as Section 185. Section 184 is the setback requirements for all of the districts. The first part of Section 184, the first sentence says subject to Section 185, so they are read in tandem. Section 185 starts out that generally accessory buildings are subject to 184, however for residential districts, so Section 185 is really the only place the ordinance is speaking to accessory buildings in residential districts. It says the requirements there again, reading in tandem with Section 184, but also saying there is an exception in residential districts, in that an accessory structure can be put closer to the side and rear setback than what normally is allowed outside of residential districts, but on the condition that it is located entirely behind the rear line of the building. The ordinance is making a distinction between accessory structure and uses and residential versus non-residential districts. There is no limitation. That sentence is set out there, but the last part of that that starts with "so long as the structure is located entirely behind the rear line of the principal structure," modifies all of Section 185, which is subject to Section 184. He said that the sentences could not be chosen in fragments of those sentences. He encouraged the board to look at the ordinance as a whole, specifically Sections 185 and 184 be read together.

Attorney Melanie Cox asked if Attorney Ken Helms could get copies of Sections 185 and 184 for the Board to review. Attorney Ken Helms asked Land Use Administrator Gaddy if she could provide the Board with those. Attorney Ken Helms said that he thought 185 may be in the packet, but Attorney Melanie Cox said she was unable to locate it in the packet. Land Use Administrator Gaddy said that she would get those copies to the Board.

Attorney Ken Helms said to note that the Board has Section 185 and to accept the applicant's interpretation of 185A, it will require the Town to approve an accessory structure in a residential district located in the middle of the front yard. Chairman Benton asked if Mr. Whitaker had any questions. Mr. Whitaker said he had no questions, but a response to Attorney Ken Helms' comment. He said that Attorney Ken Helms said it would be in the front yard, but it would not be in the front yard. He said that technically it is 500 feet from his house, and he is not planning on considering that in his mowed yard area. He has a tractor and bushhog to mow that with. He said it had been a farm for several years growing hay. He said that his yard is up closer to his house and behind it. That will be a barn for all practical purposes to put his tractor and stuff in.

Chairman Benton asked for any other comments. He asked if anyone else in the audience had a testimony they would like to give, it was time to speak up.

Hearing none, Chairman Benton closed the period of public discussion. If anyone has any questions of those who have been sworn in, it can be asked. If anyone in the audience had anything, it would have to be new evidence only. He then opened the floor to the Board for discussion. Jaren Simpson said he had some questions. He asked Mr. Whitaker what size building he was talking about. He said he was considering building an old-style barn that is high in the center that slopes off the sides with black metal roof, black trim, and white. It would be about 52 feet by 33 feet. Jaren Simpson asked if he was planning to have electricity and plumbing. Mr. Whitaker said that he was planning to have electricity and there will be a sink. Chairman Benton said that he had a question for our attorney, since this is the Board of Adjustment, he asked if they were only ruling on the Land Use Administrator's decision to deny the application. Attorney Melanie Cox said that was correct and the Board is just looking at if she interpreted the ordinance correctly in denying the application, or if she did not interpret the application correctly and the application and permit should have been granted. That is the only thing the Board should be looking at. Chairman Benton said that from a procedural matter, he is accustomed to the Town using Special Use Permits; but the Board is voting more or less up or down for the use. Attorney Melanie Cox said that for the decision letter, there still needs to be some findings of fact, so it would be helpful to summarize the evidence the Board finds as a finding of fact so she can prepare that decision letter and it can be signed. Chairman Benton thanked her.

Jaren Simpson asked if they should complete the finding of fact at this time. Chairman Benton said they could, or if there were any other questions. Attorney Melanie Cox said that she could help the Board out with basic ones. She told the Board that they should start out with Mr. Whitaker owns parcel 09-075-012 which is zoned RA-40. It is approximately 14.10 acres. It is located at 2223 Old Camden Road. He currently has an easement from City of Monroe to get to his property. The lot is currently vacant. The applicant wants to build a house on the property and an accessory structure. She told them that at this point, they would need to look at the various

sections of this ordinance, and they need to decide which ones are applicable, and how they interpret it in terms of whether or not he should be permitted to build the accessory structure as it relates to where he will build the primary residence.

Attorney Melanie Cox told the Board they would perhaps want to have some discussion on how they want to vote, then she could assist the Board in the findings of fact. Jaren Simpson said that personally he would say that the shoreline, where he has proposed building the home, would be the front of the home, and not the back. That is just his take. He said the focal point would be the lake. The front of the house would be the lake, therefore, the building would be actually behind the home. He said he thinks that these are unique situations that we need to look at on a case-by-case basis. He said that was his take on it. He said that we are defining it from Old Camden Road and as best he can tell, he cannot see Old Camden Road from the property. Mr. Whitaker said that was correct. Jeff Broadaway asked that if that were correct, which direction would the house be facing? Mr. Whitaker said that the front door is away from the lake. There will be porches, a full basement, and have a screen porch to see the lake and enjoy the views. Jeff Broadaway said that most folks who build houses on the lake like that, the back of the house is facing the water, not the front. Jaren Simpson said he was looking at it from a focal point. Jeff Broadaway said that with the way it is worded, normality would have the front facing away from the water. Jeff Broadaway said that his question would be about the possibility about a variance in this situation. He said that he agreed that no one would want a building between the view and the reasonable thing, for him. He said that he sees where he is coming from to have the building off to the side, but he also sees that we are at a point where the ordinance says one thing. He said that it is kind of like doing surgery and we do not want to do surgery with a machete, but with a scalpel blade. He said that the Board has to make sure they are balancing that with the entire community. He said that he would probably be more inclined for a variance for this particular property to allow you to do what you need to do, to keep in tact. He said from his understanding of this right now, Sonya's decision was appropriate, as far as how it is worded currently. He asked if they needed to look at the wording and consider addressing that. He said he thought that was a valid point, but he does not think it should completely be redone all in one go, but he thought they should be pragmatic about it. Jaren Simpson said that he agreed with Jeff. Chairman Benton asked if the variance was something that would be applicable in this situation. Attorney Melanie Cox said that it was the same process. The applicant would have to prepare an application and it would go before the Board. She said a variance is different in that it is not a majority; it is a 4/5 vote to grant it and they must find specific findings of fact such as "there is a hardship because of the shape of the lot", or she would have to look at the ordinance, but there are four or five things that they would have to find positive evidence on in order to grant it. Chairman Benton said that it was definitely a unique lot. He asked if the fact that there is a right-of-way through the City of Monroe, if that would have any implication towards determining how the lot is laid out. He said that it looks like it goes through one parcel off Old Camden. Jeff Broadaway said that he did not know that it mattered how you get to it. He told Mr. Whitaker he did not think he would swim up to his lot. Mr. Whitaker said that he would not. Jeff Broadaway asked Mr. Whitaker if he would be willing to make an application for the variance. Mr. Whitaker said he would if the Board would waive the fee. Jeff Broadaway said he thought that would be fair. He said that he would be in favor of waiving that fee and he thought that made more sense in this situation. Mr. Whitaker said that he was not aware

that a variance was an option. Jeff Broadaway said they want to be fair with him and what he is dealing with, but at the same time they want to be fair across the board. Attorney Melanie Cox asked that it was mentioned there was a text amendment related to this issue and she asked if that was scheduled to go to the Planning Board any time soon. Land Use Administrator Gaddy said that the Planning Board heard it this month and made a recommendation. She said that Council will set a public hearing for it tonight. Attorney Melanie Cox asked if that would be a quicker time frame versus a variance. Land Use Administrator Gaddy said it would be. Jeff Broadaway asked if the Board of Adjustment would be the one who would approve the variance. Land Use Administrator Gaddy said they would. Chairman Benton said that regardless of the timetable, to make sure things were good on both ends, that if he were the applicant, he would request a waiver and do both. Mr. Whitaker said that there was a time limit on filing the appeal within 30 days. He asked if there was a time limit that he would have to file a request for a variance. Attorney Melanie Cox said that there should not be unless they have started construction and they have gotten a letter that they are out of compliance and in violation. But, that is not the case. Land Use Administrator said that there were so few requested and she apologized for not being well versed in them.

Attorney Melanie Cox asked if it was the general consensus of the Board that the language of Section 185 states that any accessory structure needs to be behind the primary structure. Chairman Benton said if that was the general consensus they would vote on that after they heard from the Town. Land Use Administrator Gaddy said that she did not find a timeline for a variance. Attorney Melanie Cox said that it should be before construction begins, so the property owners would not be in violation. That was all that she had ever seen. Jeff Broadaway said that for him the question would be that if they are looking at this information and the information will not change from this application to an application for variance, he asked if the motion be made to approve a variance and call it Variance #ZV-23-01 and put it with this particular parcel number. He asked if this could all be handled tonight instead of putting it off another month. Attorney Melanie Cox said that her concern would be the public notice requirements because the town would be required to give property owners and the public notice of what is being heard. She is not saying there are, but there may have been property owners who were confident that it was interpreted correctly and did not come, but now that it is a variance, it changed. She said that they could not switch gears midstream without following public notice requirements.

Chairman Benton said it seems that the consensus is to uphold the Land Use Administrator's ruling on this particular case based on finding of fact that Sections 184 and 185 considered jointly define the setup for property layout. Chairman Benton asked if he was interpreting that correctly. Jaren Simpson said that he was. Chairman Benton asked if anyone else had any additional comments. Attorney Melanie Cox asked Attorney Ken Helms if he disagreed with her interpretation. Attorney Ken Helms said he did not. Jeff Broadaway asked Mr. Whitaker if he would be willing to get by Town Hall to get paperwork done to get this moved forward. He said they wanted to follow the law and see if it can move forward in a way that is best. Mr. Whitaker said he would. Chairman Benton said that he agreed it was an atypical lot that requires extra consideration. Chairman Benton made a motion that the Board upholds the Land Use Administration decision on this particular parcel on this particular date. Jeff Broadaway seconded the motion. It passed unanimously.

Land Use Administrator Gaddy asked if the Board needed to go through the four findings of fact. Attorney Melanie Cox said that was only for variance, not for upholding the Land Use Administrator's decision. That would be for next time.

Chairman Benton called for any further business. There being no new business, the meeting was adjourned at 7:06 PM.

Respectfully submitted,

Melody Braswell

Deputy Clerk