

**TOWN OF HARRISBURG, NORTH CAROLINA  
BOARD of ADJUSTMENT MEETING  
TUESDAY, JULY 19, 2016  
6:00 PM**

**MINUTES**

**1.**

**CALL TO ORDER**

Lloyd Quay called the meeting to order.

PRESENT: Lloyd Quay, Thelma Thorne-Chapman, John Overcash, Scott Noel (alternate),  
Andy Rathke

**2.**

**CONSENT AGENDA**

**3A.**

**OLD BUSINESS**

None.

**4A.**

**NEW BUSINESS**

**H2016-02(V) – Brandon Melton RSOD Variance Request.**

**Wayne Krimminger, Zoning Administrator, presented the background information:**

The applicant is Brandon Melton from Concord, NC and the owners are John and Diane Keys from Byron, GA. The property location is 4088 Riverside Drive, right just beyond us down Roberta Road right before you get to the river. The property zoning is RE, Rural Estate. The property size is 1.27 acres. Mr. Melton is asking for relief for two separate items to create a buildable envelope for a single-family dwelling. After speaking with Mr. Melton this evening, he has decided to withdraw the first one. The 10ft no disturb; he does not need that anymore. He wants to withdraw that from his application, so we won't be considering that one. The only thing we are going to consider is the reduction of the 45ft setback to a 20ft setback. That sums it up a whole lot. Mr. Melton provided a survey for you to take a look at which kind of lays out; if you will just disregard those second, the no-build lines into the RSOD buffer; that won't be in play anymore and the only thing we are going to focus on is the front setback.

Additional information:

- A. If granted, a site plan must be submitted, which will be this, for Zoning Officer to review and ensure that all other regulations are met per the Harrisburg UDO as well as the approved variations from the ordinance granted by the Board of Adjustment.
- B. The applicant has submitted a complete application and has complied with the process of review per Article 3, Section 3.7 of the Harrisburg UDO.
- C. The public hearing notice has been published as required by the Harrisburg UDO.
- D. The adjacent property owners have been notified by US Mail.
- E. A sign has been placed on the property stating the time, date, and location of the public hearing.
- F. If approved, a variance granting order must be notarized and filed at the Cabarrus County Register of Deeds.

With that said, if you have any questions for me; the applicant is here; I will be happy to entertain them as I'm sure he will. That is basically the short and sweet version of it, but that's basically the gist of it. He needs a 25ft front setback to be able to get a house in among the bedrock, get it out of the RSOD no-build buffer, and without it I think it would be very difficult, but that is at the discretion and the decision of this Board. If you have any questions of me by all means ask away.

**John Overcash**

Wayne I looked down there; I didn't drive down there because I was in a time constraint, but when I looked there were already existing homes there, right? Were they built before our ordinances?

**Wayne Krimminger**

I'm sure they were.

**John Overcash**

Okay.

**Wayne Krimminger**

We actually have some owners of those homes here.

**John Overcash**

Okay. What do most of the setbacks look like for the existing homes?

**Wayne Krimminger**

I believe these nice folks here are roughly 22-25 feet from the road. That's some rough calculation of my own. If, say for example, the road is 24 feet wide; you have a 60ft right-of-way on this road so if you take 12 off of that to get into the edge of the right-of-way, that's about 18 feet, and 26 is what Brandon has marked on this. That will give you roughly 45 feet from the edge of the pavement. That's about what it is. It is basically in line with the rest. It's not creating any sort of snout effect or anything like that. It helps that there are no houses developed way on down the road anyway. At the time, I don't know who did the permitting when those houses were built, but they are so staggered. You have some that are very large and some that are very small. I suppose since 2001 it has been 45 feet. Prior to that I don't know what it was. I have no idea what it was prior to that.

**Lloyd Quay**

There was a variance granted some time back for the house on the left right at the bend where the road turns and goes to the right. There is a house sitting there on the left; there was a variance granted for that. His was more for rock.

**Wayne Krimminger**

Yes. It was. He had absolutely no suitable soil. Without blasting he had nowhere to go. That house will be roughly the same distance as this one will. Maybe just a wee bit shorter, but not much.

**Scott Noel**

This is one of the bigger lots.

**Wayne Krimminger**

Yes.

**Scott Noel**

Looking at this it is two-thirds floodplain.

**Wayne Krimminger**

Yes.

**Lloyd Quay**

It's two lots here actually.

**Wayne Krimminger**

It was. They were combined. This is not an easy place to build. It has its challenges. It has its geological challenges as well as river challenges, but Mr. Melton is a house builder by trade and he believes with his knowledge and his placement of the house with the diminished front setback he can make it work. He is also aware that the floodplain exists all over. We discussed either way this went that our floodplain ordinance would be in effect. He will still have to have two feet of (?) above his elevation. He understands that and knows the house is going to have to come up. There is no way it can sit flat on the ground.

**Lloyd Quay**

He's still in the floodplain?

**Wayne Krimminger**

Absolutely. Every drop, yes. Every ounce of it.

**Lloyd Quay**

Well, I went down there and saw the property in question and then there are a couple of cleared lots and then there's a gray house sitting back off the road. They seem to be in the normal setback range. Is that right? Because I don't remember us getting a variance for that.

**Wayne Krimminger**

Right. I don't know long it's been there. I don't know how that came to be. The river does bend and that RSOD goes in and out.

**Lloyd Quay**

And the rocks are all over the place. You don't know what you've got until you start.

**Wayne Krimminger**

I suspect that was either prior to our tenure or it was; the bend was just advantageous to that person and they were higher; the floodway wasn't that close to them.

**Lloyd Quay**

The one down at the end of the road is on stilts.

**Wayne Krimminger**

Yes it is.

**Lloyd Quay**

You all have any more questions for Wayne? So the actual request is for, to reduce the 45ft setback to a 25ft setback? Is that correct?

**Wayne Krimminger**

It was to a 20ft.

**Lloyd Quay**

Okay, to a 20ft setback.

**Scott Noel**

Just to confirm, that is roughly in line with the adjacent houses.

**Wayne Krimminger**

Correct. You wouldn't create any kind of offset.

**Andy Rathke**

Most of those houses there will have the same problems.

**Wayne Krimminger**

Right. They will all have challenges.

**Lloyd Quay**

Okay. Any more questions for Wayne? Okay. Mr. Melton?

**Brandon Melton**

The only thing I was going to add...

**Lloyd Quay**

Step up to the microphone and state your name and address please.

**Brandon Melton**

First name Brandon, Last name Melton. Current address; just moved out of 2999 Deep Cove Drive in Concord into a lease at 430 Dockside Lane in Concord. We hope to relocate from Concord to Harrisburg. Two things I did want to comment on; the question for Mr. Krimminger about the streetscape and how it compares to the rest of the homes; assuming the GIS is accurate with the measuring tools and the placement of the houses on the lots. In preparing the packet, I did give three references to Wayne in print showing those measurements. All three houses are on Riverside, one adjacent, one down the street, and one is across the street but adjacent as well. They range from 16 feet from their property line to 23 feet from their property line. So this is in line with at least the three closest homes in proximity to 4088. I can't comment for the whole rest of the community but in comparison to the homes that will be visible when looking at mine coming down the street, it's in line. My second comment is to the Town and for anyone to be able to build on that; this is my occupation and what I do daily; without the variance for myself or anyone else for that matter I see the lot being pretty much unbuildable for any home of any substance. Three, four, five bedrooms, anything like that, aside from possibly a modular home, without a variance for myself or anyone there probably won't be a home built there. I ask you to take that into consideration.

**Lloyd Quay**

Have you scouted locating any rock outcroppings?

**Brandon Melton**

Part of the reason I requested where it is is because probably the first third from the right side is all bedrock. Very large substance rock. Everything from the center over I have not excavated or done any deep core testing, but from the surface and taking a few core samples across the property, the middle to the left of the envelope is about the only place you can build without major cost for drilling or blasting.

**Lloyd Quay**

You're still going to have to blast some, or you don't know?

**Brandon Melton**

I wouldn't doubt it. I've built quite a few homes in the Magnolia Springs neighborhood here in Harrisburg and I saw what we dealt with trying to get homes with slabs and basements in Magnolia Springs. I am aware the area is real conducive to having natural rock.

**Scott Noel**

There is no basement in this house in particular?

**Brandon Melton**

It will be a crawl space. If you guys have any questions about the proposed structure, I do have a draft plan. I'm not sure if that really matters to the Board. Upon approval we already have a set of plans that we would build.

**Lloyd Quay**

Any questions for Mr. Melton? Thank you sir. Appreciate it. If any questions come up we will call you back up. I'd like to ask Rich a question before we have a motion on this. Since this is a pending sale; Mr. Melton, you are not the owner of the property at this point in time?

**Brandon Melton**

At this point we are in due diligence and upon approval of the variance we are set to close on Friday.

**Lloyd Quay**

Typically the way things come before us has been that the owner of the property has encountered an impediment or an inconsistency or a problem regarding or relating to the property and could we; are we granting a variance to facilitate a sale?

**Rich Koch**

I don't see a problem with that. Particularly since the owners appear to have signed the application. It's not just Mr. Melton, the actual owners signed off on it too.

**Lloyd Quay**

Okay.

**Brandon Melton**

The owners have actually provided a letter of support and encouragement for the Board as well to consider.

**Andy Rathke**

Unfortunately it wasn't part of the packet.

**Wayne Krimminger**

I will be glad to read it to you. This letter is dated July 14, 2016 from John and Diane Keys from Byron, Georgia; re: variance request for lots 5-6 Harrisburg Estates, Riverside Drive, Harrisburg, NC. We are the current owners of lots 5-6 Harrisburg Estates, Riverside Drive in Harrisburg. Mr. Brandon Melton and his wife have the lots under contract and Mr. Melton has submitted a request for a variance so that he and his wife can build on the lots. We have owned the lots since 2005 and planned to build a small house when we retired so that we could be close to our two grown children and their families who all lived within 5 miles of the lots. We were planning to apply for a variance to build on the lots. However, we decided to sell the lots after our daughter and her family moved to another state for job reasons a few years ago. We respectfully request that the Board of Adjustment approve the requested variance at the meeting on Tuesday, July 19, 2016 so that Mr. Melton and his wife can go forward with building their new home on lots 5-6. We can be contacted at the numbers above if more information is needed. Please let us know if we need to attend the meeting on July 19. Thank you, John and Diane Keys.

**Lloyd Quay**

Thank you. Alright, do I hear a motion?

**MOTION:**

Andy Rathke made a motion to approve H2016-02 (V), the variance request for Brandon Melton changing the front setback from 45ft to 20ft. Second was made by Thelma Thorne-Chapman. **The motion passed 5-0.**

**Scott Noel**

I will just state for the record that the removal of the reduction of the no-build buffer made this a little bit easier and my decision as well, and what we covered in your questions to Rich earlier.

Rich Koch prepared the Findings of Fact shown below, and the granting order as well.

FINDINGS OF FACT  
VARIANCE H 2016-02(V)  
Brandon Melton  
4088 Riverside Drive

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

a) See Findings of Fact #1 from Application, which are incorporated by reference.

b) This lot abuts Rocky River. The UDO requires an 76 foot River Stream Overlay District (RSOD) setback from the River and a 20 foot no build buffer in addition. With the 45 foot front setback, this residential lot is essentially unable to be utilized to construct a residence.

c) The RSOD setback and the 20 foot no build buffer were enacted and imposed after this lot was created.

d) The applicant has offered to withdraw his application for a variance of the 20 foot no build buffer if the front setback requirement is reduced from 45 feet to 20 feet.

e) There is considerable bedrock on the property in the building envelope which further reduces such envelope unless a variance is allowed.

f) The present property owners, John and Dianne Keyes, have joined in the variance application and by separate letter to the Board have urged the granting of this variance request, without conditions.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

a) See Findings of Fact #2 from Application, which are incorporated by reference.

b) This lot abuts Rocky River. The UDO requires an 76 foot River Stream Overlay District (RSOD) setback from the River and a 20 foot no build buffer in addition. With the 45 foot front setback, this residential lot is essentially unable to be utilized to construct a residence.

c) The RSOD setback and the 20 foot no build buffer were enacted and imposed after this lot was created.

d) The applicant has offered to withdraw his application for a variance of the 20 foot no build buffer if the front setback requirement is reduced from 45 feet to 20 feet.

e) There is considerable bedrock on the property in the building envelope which further reduces such envelope unless a variance is allowed.

f) The present property owners, John and Dianne Keyes, have joined in the variance application and by separate letter to the Board have urged the granting of this variance request, without conditions.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

a) See Findings of Fact #3 from Application, which are incorporated by reference.

b) This lot abuts Rocky River. The UDO requires an 76 foot River Stream Overlay District (RSOD) setback from the River and a 20 foot no build buffer in addition. With the 45 foot front setback, this residential lot is essentially unable to be utilized to construct a residence.

c) The RSOD setback and the 20 foot no build buffer were enacted and imposed after this lot was created.

d) The applicant has offered to withdraw his application for a variance of the 20 foot no build buffer if the front setback requirement is reduced from 45 feet to 20 feet.

e) There is considerable bedrock on the property in the building envelope which further reduces such envelope unless a variance is allowed.

f) The present property owners, John and Dianne Keyes, have joined in the variance application and by separate letter to the Board have urged the granting of this variance request, without conditions.

4. The requested variance is consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

a) There are other existing structures in the neighborhood which are closer to the street than the proposed reduced setback line for this lot.

b) The applicant has offered to withdraw his application for a variance of the 20 foot no build buffer if the front setback requirement is reduced from 45 feet to 20 feet.

c) The Board has granted variances for other lots in this subdivision that border Rocky River, for essentially the same reasons.

## 5. STAFF UPDATES

## 6. ADJOURNMENT

There being no further business, Lloyd Quay made a motion to adjourn, with a second from Andy Rathke. **The motion passed 5-0.**

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Lloyd Quay, Chairman

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Janet Rackley, Secretary