



MINUTES OF  
CITY OF CREEDMOOR  
**BOARD OF ADJUSTMENT**  
SPECIAL MEETING  
FEBRUARY 13, 2017

**PRESENT**

Chairman Bobby Wheeler, Dennis Daniel (arrived at 7:24 p.m.), Steve Hall, Harvey Bishop Jr., Ervin Daniel and Charlene Minor. Also present were Planning Director Michael S. Frangos, AICP, CZO, Senior Planner/Stormwater Administrator Randy Cahoon-Tingle, AICP, CZO, City Clerk Kathleen McCorkle, and City Attorney TC Morphis Jr.

**CALL TO ORDER**

The meeting was called to order by Chairman Wheeler and a quorum was recognized.

**APPROVAL OF MINUTES**

Moved by Mr. Bishop to adopt the August 1, 2016, meeting minutes; seconded by Mr. Ervin Daniel. The motion received a 5-0 vote.

**OATH OF OFFICE**

City Clerk Kathleen McCorkle administered the oath of office to ETJ representative Harvey Bishop Jr. who was reappointed for a third three-year term through 2020.

**VARIANCE REQUEST AP-2017-01, DEUARD BOWDEN**

GOLDEN POND - PHASE IV B, LOT #285, 2018 HARRISON COURT

GOLDEN POND - PHASE IV B, LOT #286, 2020 HARRISON COURT

Chairman Wheeler opened the public hearing at 7:08 p.m.

City Attorney TC Morphis briefed the board on the procedures of a quasi-judicial hearing and the four findings, which if found in the affirmative, would necessitate the granting of a zoning variance.

Upon Mr. Morphis' request to disclose any potential conflicts of interest or ex parte communications, Mr. Bishop and Chairman Wheeler stated they visited the site. Chairman Wheeler disclosed a conversation with Mr. Jon Zbonack, but he told Mr. Zbonack he was unable to discuss the case. Upon his arrival, Mr. Dennis Daniel disclosed that as a nearby

homeowner, he received a letter, but he didn't feel it created a conflict. The remainder of the Board did not feel Mr. Bishop, Mr. Wheeler or Mr. Daniel should be disqualified.

Witnesses Michael Frangos, Randy Cahoon-Tingle, Heather Bailey, Michael R. Calus, Sean W. Carroll, Edward Gleason, John Zbonack, and Deuard Bowden were sworn in by the clerk.

Mr. Cahoon-Tingle, Senior Planner/Stormwater Administrator for the City, read a prepared statement and referred the Board to examine maps provided. The statement is incorporated herein by reference as Exhibit 1.

Planning Director Mike Frangos noted the agenda packet was compiled by he and Mr. Cahoon-Tingle, and it was sent out to the Board by the clerk. He emphasized a page in the packet illustrating the slope of the properties. The packet is incorporated herein by reference as Exhibit 2.

Chairman Wheeler opened the hearing to the public.

Mr. Shawn Carroll, 2045 Mangum Avenue, representing the Golden Pond Homeowners Association board of directors, cited 2002 HOA bylaws executed by Mr. Deuard Bowden requiring a 30-foot front setback. He stated that if the variance were granted, a bylaws amendment to allow a smaller setback would be required by the HOA. The bylaws included in part are incorporated herein by reference as Exhibit 3.

Mr. Michael Calus, 2016 Harrison Court, confirmed the need for 4/5 vote to allow the variance, meaning five affirmative votes would be required on a board with six members. He distributed maps to the Board, and asked Mr. Morphis to again review the four conditions to allow the variance. He stated Mr. Bowden wrote the HOA laws and should follow them. He also stated that on question 6 of the application, Mr. Bowden wrote the lot was almost impossible to build on, but Mr. Calus said with a little money, anything is possible.

He emphasized that the neighborhood is now uniform with all homes having the same setback. Moving the homes closer to the front of the lot means they will be closer to other homes, which will decrease property value and result in less pride in the neighborhood. He asked the board to consider the hardships of the homeowners currently in the neighborhood. He handed Chairman Wheeler a petition signed by he and 13 other neighbors. The petition is incorporated herein by reference as Exhibit 4.

Board member Mr. Bishop asked about the HOA-required minimum house size, which the covenants state is 1,200 square feet.

Ms. Heather Bailey, 2019 Harrison Court, stated she moved into the home next door to the applicant's lots in August 2016. She inquired about the driveway of one of the planned homes, which encroaches on a drainage easement. Mr. Frangos assured her any work needed could be done by going through the driveway, or the plans could be changed to move the corner of the driveway outside of the easement. She asked the Board not to approve the variance.

Ms. Bailey stated that everyone should abide by the CCR rules. There are some homes built on steep slopes, and even though it's expensive it can be done with a basement. She presented tax values on the street ranging from \$154,000 to \$192,000 and stated the value of a nearby 1,267 square foot comparable with garage is \$138,000. She feels the planned home will bring down property values. She also voiced concerns with setting precedence for future developers to seek variances.

Mr. Ed Gleason, 1973 Bowles Avenue, spoke as a resident of Golden Pond and as a member of the Planning Board. He said residents must live by the covenants. He had been offered the same property with a walk-out basement and the topography hasn't changed. He stated that a house on Frances court had a lot of fill and they made it work.

Mr. Jon Zbonack, 2011 Frances Court, spoke on behalf of the applicant as the builder of the proposed home. He stated the house on lot 286 on Ferbow Street was the same model at 1,267 square feet and just sold for \$157,900 or \$124 per square foot, which is a record, and should help every home go up in value. He stated the proposed home will conform to everything else in the neighborhood. The house intended for the other lot is a two-story with 1,655 square feet valued at \$191,900.

He stated that just because something is possible doesn't mean it's practical. They don't want to leave the lots empty as the infrastructure to the lots is there and was expensive. It makes sense to build out all the vacant lots as no money is made on empty lots. The proposed homes will be only a few feet closer to the road and will blend in. They will add value to every house around them.

The planned house requires a large amount of fill and a 19-foot tall foundation. If moved back six feet, it would still be within limits of the riparian buffer, but the property keeps dropping and would probably require a 25-foot foundation, which would not be feasible. Mr. Zbonack feels the planned house will cost more than \$157,900 to build with the necessary fill and the foundation, but it can't be done any other way.

Variance applicant Mr. Deuard Bowden, 2641 Bowden Drive, distributed pictures of the slope of the property, incorporated by reference herein as Exhibit 5. He stated he is asking for

six feet, which is the most practical way to do it as he can't build in the center of the lot or it will be in the riparian area. These will be the last two houses in the cul de sac, and no traffic will pass them. He stated nobody will notice the difference in six feet.

Mr. Dennis Daniel stated the land layout has not changed since initial approval and asked what the considerations were at the time lots were done. The riparian area has changed to 50 feet. Mr. Bowden stated that originally he thought he could set it back farther. He also stated he could meet the requirements without including a garage but this will decrease the home value, as the homes around it have garages.

Mr. Bishop asked about a drop-down driveway instead, and Mr. Bowden replied it wouldn't look as good as at street level.

Ms. Bailey commented that a similar home sold for \$157,900 but the lot was different, and without a backyard, the value of this home would be lower.

In reply, Mr. Zbonack stated that the home Ms. Bailey referred to has no backyard. Further, he and Mr. Bowden determined all houses in the back will have two-car garages. A small house with no garage would negatively affect values.

Mr. Calus spoke again about the riparian buffer rules and asked about grading. Mr. Zbonack stated approximately 100 tons of dirt will be brought in so the house can be built at road level like the other homes.

Mr. Gleason added that the riparian buffer changed two years ago. His biggest concern is that a variance will set precedent. Mr. Morphis stated all variance cases must stand on their own merit, and previous cases should not influence the Board's decision. Other developers seeking variances are not entitled to the same decision.

Mr. Bishop opined that if the builder leaves off the garage and drops the home down, he meets the requirements without a variance. However, as a homeowner, he would argue for a nicer house with a garage.

Mr. Bowden restated that he could build a smaller house without a garage and drop it down below the road but in his opinion it would be bad for the neighborhood.

Mr. Dennis Daniel asked if the buffer has changed from the original plat, and it was confirmed that the stream has changed and now meanders. Mr. Tingle-Cahoon stated that streams can change and the outer zone management has changed to 50 feet standard.

Chairman Wheeler asked Sean Carroll if the HOA and the applicant could get together and work it out without a variance.

Mr. Bowden stated to build with a garage would require a variance, but he could build a smaller house without the garage.

Chairman Wheeler called a 10-minute recess. The hearing continued at 9:05 p.m., at which time Chairman Wheeler suggested tabling the case for two weeks to give the HOA and applicant time to discuss solutions.

Mr. Morphis conferred with the board to clarify the definition of hardship.

Mr. Bowden said he would be willing to take two weeks to work with the HOA.

Chairman Wheeler closed the public hearing at 9:10 p.m.

Chairman Wheeler moved to table the matter until February 27, 2016, at 7 p.m.; seconded by Ms. Minor. The motion received a 6-0 vote. (Let the record reflect that Mr. Dennis Daniel did not vote as he was checking his calendar, therefore his vote counted in the affirmative.)

The meeting was recessed until February 27, 2017, at 7 p.m.

[Clerk's note: Following the recessed meeting Mr. Bowden withdrew his application and the board did not meet February 27.]



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Kathleen J. McCorkle, City Clerk