

Board of Adjustment
Thursday, September 5, 2019
7:00 PM
Hood Room, Matthews Town Hall

AGENDA

- I. CALL TO ORDER
- II. APPROVAL OF MINUTES
- III. ELECTIONS
- IV. VARIANCE REQUEST: BA 2019-2 201 South Ames Street
- V. ADJOURNMENT

**MINUTES
BOARD OF ADJUSTMENT
WEDNESDAY, MAY 2, 2019
HOOD ROOM, MATTHEWS TOWN HALL**

PRESENT: Vice Chairman Jerry Meek, Members Lee Jenson and Jeanne Moore; Alternate Members Aaron Baggarly and Allen Crosby; Attorney Robert Blythe; Interim Planning and Development Director Jay Camp; Senior Planner Mary Jo Gollnitz; Senior Administrative Specialist/Deputy Town Clerk Shana Robertson

ABSENT: Members Steven Lee and Gary Smith

CALL TO ORDER/INVOCATION:

Vice Chairman Jerry Meek called the meeting to order at 7:00 pm.

Lee Jenson gave the invocation.

APPROVAL OF THE MINUTES:

Mr. Jenson made a motion to approve the minutes of the December 6, 2018 meeting. Jeanne Moore seconded and the motion passed unanimously.

ELECTIONS:

With all members not present, the Board agreed to defer the elections.

VARIANCE REQUEST: BA 2019-1, 1423 REVERDY LANE, FRONT SETBACK VARIANCE REQUEST

Attorney Robert Blythe reminded members of the Board and the public that the Board of Adjustment was a quasi-judicial system. The Board made their finding on evidential fact and not based on opinions or hearsay.

Mr. Jenson said that he works for Union County and disclosed that he worked closely with the attorney representing the applicant who also served as the attorney for the Union County Board of Adjustment. Mr. Blythe said that he did not see a conflict of interest and none of the Board members asked Mr. Jensen to recuse himself.

SWEARING IN:

Interim Planning and Development Director Jay Camp, Senior Planner Mary Jo Gollnitz, Sharon Martin, Tom Wolfe, Gina Hoover, Bill Sturges, Craig Jones, Wesley Honeycutt, and Durham Potter were sworn in by Mr. Meek.

STAFF REPORT:

Mr. Camp said that the applicant was requesting a front setback variance for the property located at 1423 Reverdy Lane, further known as tax parcel 227-051-46. The home was part of a neighborhood that was currently under construction by Vicus Builders called Reverdy Farms. Mr. Camp said that it had been discovered that there was an encroachment into the required 40 foot front yard of approximately 10.2 feet, reducing the setback to under 30 feet. The issue was brought to the Town's attention on February 19, 2019 by communications from the surveyor to Senior Planner Mary Jo Gollnitz. After discussions with the

surveyor and inspections by Mecklenburg County, a stop work order was issued on February 22, 2019. Mr. Camp said that after the stop work order was issued the Town authorized the structure to be dried in with a roof. Applicant was aware that this addition was at their own risk not knowing if the structure would need to be modified or removed from the site. Mr. Camp added that after the roof was added there was no additional work done to the Town's knowledge. After no further discussion with applicant, surveyor, or builder as to the next course of action, a Notice of Violation was issued on March 12, 2019. This notice gave 30 days to remedy the situation by demolition, partial demolition, or seek a variance to bring the property into compliance.

Mr. Camp said that the variance request would allow a 10.2' encroachment into the front setback of the property and that would represent a 25% encroachment into the allowed front setback Mr. Camp said that the builder could modify the front of the structure by reducing the side load garage from three bays to two bays. Mr. Camp said that another remedy would involve the partially built home being demolished and reconstructed in the appropriate location adding that the lot was relatively deep with sufficient room to construct a home in the correct area. Mr. Camp said that this was a direct violation of the Matthews Unified Development Ordinance (UDO) and it was a concern that the variance would set a precedence if approved and could influence other developers to disregard town code and seek variances to remedy issues caused by inconveniences.

Mr. Camp reviewed UDO Section 155.604.1 Table of Dimensional Standards and images, emails, and surveys enclosed in the staff report. Mr. Camp said that it should also be noted that curb, gutter, an 8' planting strip, and sidewalk have not yet been installed. Once the required streetscape improvements are installed, the home will appear even closer to the street. Mr. Camp reviewed with the Board members the approved Reverdy Farms Final Plat and the signed Appendix A declaration of understanding that zoning variances are not anticipated in this subdivision that was signed on December 30, 2014 (Exhibits 1 and 2 attached and made part of these minutes). It has been stated to Town staff that the insurance company for the surveyor has required this variance request in order to exhaust all options before paying out a claim for the error. Mr. Camp said that the Town of Matthews has a responsibility to its citizens to uphold the dimensional requirements within the UDO.

Mr. Meek asked if there were any remedies suggested by the applicant that the Town had found to be unacceptable other than the requested variance. Mr. Camp said that there were none that he knew of.

APPLICANT TESTIMONY:

Attorney Bill Sturges Shumaker, Loop & Kendrick, LLP, 101 South Tryon Street, Charlotte, NC 28280 and Applicant Craig Jones, Vicus Builders, Inc, 2201 East 7th Street, Charlotte, NC 28204 made introductions to the Board and distributed materials for the Board's review (Exhibit 3 attached and made part of these minutes). Mr. Sturges asked Mr. Jones to give history of Vicus Builders. Mr. Jones said that Vicus Builders had been in business since 2002. Vicus Builders was a small boutique home builder that do a lot of teardowns and renovation work in areas similar to Reverdy Farms. Mr. Jones said that events such as these were uncharted territory for the company and the structure was the eighth home under construction in this subdivision. Mr. Sturges asked if Mr. Jones had built seven other homes already in the neighborhood. Mr. Jones said that seven homes had been constructed successfully. Mr. Sturges asked if the other seven homes had 40 foot front yard setbacks. Mr. Jones said that they did. Mr. Sturges asked if Mr. Jones was aware that a 40 foot front yard setback was required and Mr. Jones said that he did and they usually added an extra foot as a buffer to avoid error.

Mr. Sturges asked if there was a contract for the purchase of this home. Mr. Jones said that there was and it was a custom-built home. Mr. Sturges asked if the future buyer of the home was present and asked Mr. Jones to point him out. Mr. Jones did and said that they had been under contract with the family since the fall of 2018 and had gone through the process of designing the home for the new resident. Mr. Sturges asked if the three bay garage was part of the contractual agreement for the purchase of the home. Mr. Jones said that it was. Mr. Sturges clarified that the house that was being built on Reverdy Lane was the same agreed upon design and Mr. Jones said that was correct. Mr. Sturges asked if removing one of the garage bays would be allowed. Mr. Jones said that if removed he would be in breach of contract.

Mr. Sturges asked if Vicus Builders did anything to create this issue and Mr. Jones said no. Mr. Sturges asked if the buyer did anything to cause this problem and Mr. Jones said no.

Mr. Sturges asked about the history and process of the house placement. Mr. Jones said that it was a multi-step process with checks and balances. The first time they engaged the surveyor it was to box stake the house so they could identify tree save area. Mr. Sturges asked if the house was located where it was box staked. Mr. Jones said that it was. Mr. Sturges asked if the house was staked 41 feet from the front setback and Mr. Jones said that it was. Mr. Sturges asked what happened after grading the lot. Mr. Jones said that the surveyor comes back to stake the property with more detail for the actual digging of the footers for the home. Mr. Sturges asked what the footer was. Mr. Jones said that was the concrete that went below ground that the house sat on. Mr. Sturges asked if it was surveyed again for 41 feet from the front setback and Mr. Jones said that it was. Mr. Jones said that next they dug the footers and poured the concrete. After the footers are poured the surveyor comes back and drive pins into the concrete to mark the corners so masons can lay the foundation in the appropriate position. Mr. Sturges asked if that was a third survey and Mr. Jones said that it was. Mr. Sturges asked if all three surveys said the same thing. Mr. Jones said that they did. Mr. Sturges asked if the builder went vertical after the three surveys. Mr. Jones said that was correct.

Mr. Sturges asked if there was a formal foundation survey and asked if that was performed with construction of the house. Mr. Jones said it depended on the lender and with this home he owned the land so it was not required but it would be done later for the Town of Matthews impervious requirements. Mr. Jones said that when all the flat work and mechanical equipment placed, calculations are done to have the permits released. Mr. Jones said that it is done later in the building process the fourth time.

Mr. Sturges asked why the foundation survey required by the Town of Matthews was not done earlier. Mr. Jones said that they needed all the concrete in to calculate all the impervious area and list on the final survey. That was not done until close to the end of the construction when all of the driveways, sidewalks, and mechanical pads were in place.

Mr. Sturges asked what happened to discover that the house was not being constructed in the correct location. Mr. Jones said that as part of Reverdy Farms, infrastructure work is being done to widen the road, installing curb, sewer, storm water, and utility lines. Mr. Jones said that the work on the first phase was complete and they had started the installation on the second phase. Mr. Jones said that the sewer line was complete and they were working on the storm water and water main extension. The same surveyor that was used during the entire development process was staking the utility work. Some of the stakes were turning up in the road. Mr. Jones said that was when they knew something was off. Mr. Sturges asked if this was reported to the Town by the surveyor and Mr. Jones said it was immediately reported. Mr. Sturges asked about the further construction to secure what was in place on the house. Mr. Jones said that he called staff and explained his concern of the length of time the process may take and was allowed to put a membrane on the house to prevent weather damages. Mr. Sturges asked if any other construction was done on the house. Mr. Jones said that no other construction had been done to the home.

Mr. Sturges asked if the house looked like it was less than 40 feet from where it was anticipated. Mr. Jones said that it did not. Mr. Sturges asked if the front part of the house extending into the setback create any safety issues in driving down Reverdy Lane. Mr. Jones said that in his opinion it did not cause any safety concern and before being developed it was a wooded lot and the site line was greater now than when they started.

Mr. Sturges reviewed Exhibit D (within the Staff Report package and in Exhibit 3). Mr. Sturges asked if Exhibit D was a plot plan verified by the surveyor. Mr. Jones said that it was. Mr. Sturges asked if that was used in the construction of this house. Mr. Jones said that it was. Mr. Sturges asked if the plot plan showed the house being setback more than 40 feet and Mr. Jones said that it did. Mr. Sturges asked if Mr. Jones and everyone else relied upon that. Mr. Jones said that they did and if they were not doing the infrastructure work in the road, this error may not have been found.

Mr. Sturges reviewed Exhibit E (within the Staff Report package and in Exhibit 3). Mr. Sturges asked if the entire width of the house was in the front setback. Mr. Jones said that it was just the width of the garage. Mr. Sturges asked what the width of the lot was. Mr. Jones said it was 80 feet. Mr. Sturges said that it was

a 22 foot width area where it went into the setback. Mr. Jones said that was correct. Mr. Sturges said that the area within the setback on the right was 10.2 feet. Mr. Jones said that was correct. Mr. Sturges asked how much was in the front yard setback on the left. Mr. Jones said it was 8.5 feet. Mr. Sturges asked if Vicus Builders was only seeking a variance for the rectangle area shown in Exhibit E. Mr. Jones said that was correct.

Mr. Sturges asked if this situation had created a hardship for Vicus Builders. Mr. Jones said that it had. Mr. Jones said that he owned the property, had a contract to sell, and was paying for everything in the interim. He said that it was tough for client relations, personally, and tough for the buyer. Mr. Jones said that the purchaser was in a rental and the family was hoping to move in this summer. Mr. Jones said that they had a great relationship with the Town and have never had a problem. Mr. Jones said that it was stressful and expensive.

Mr. Sturges asked if Mr. Jones was expected to complete this house in a certain amount of time. Mr. Jones said that he was. Mr. Sturges asked if Mr. Jones's obligation on time be influenced if he were made to tear the house down and reconstruct. Mr. Jones said it would and they would have been on schedule to complete the construction in June. Mr. Sturges asked if Mr. Jones was aware of any potential surveying error until the issue of the sewer line was revealed. Mr. Jones said that he was not. Mr. Sturges asked if the sewer line ran in front of other properties and Mr. Jones said that it did.

Mr. Sturges asked if there were other houses with three-car garages in that area. Mr. Jones said that of the seven that Vicus Builders had constructed three homes had three car garages. Mr. Sturges asked if there was one with a three car garage located diagonally across from the structure. Mr. Jones said that there was but they had not constructed that home.

Mr. Meek said that the position taken in the application was that there was something peculiar about this property. Mr. Meek asked that the applicant elaborate why the conditions were particular. Mr. Sturges said that the survey error came from a property line survey pin. Mr. Sturges said that the control pin affected a variety of things. Mr. Sturges said that this was the only property uniquely effected. Part of the uniqueness comes from there being an error in an offsite control that caused an error in the location of the house. Mr. Sturges said that it was a custom house that was under contract and the builder could not remove 10.2 feet because he would not be performing the work that he was contracted for. Mr. Sturges said that the cost was over \$200,000 to deconstruct and reconstruct to its current point. There were three foundation surveys done and it was not something on that property that drove the error. He added that several things drove the uniqueness including the curve in the road, the missing curb, gutter, and sidewalk. Mr. Sturges reviewed photos in Exhibit 3 that showed a center island in the road that caused a unique curve in the road. Mr. Meek asked if it could be explained by the surveyor as to why it would just be particular to this property and there could be an error in an offsite control in any neighborhood. The fact that this was a custom build home did not speak to the property but to the circumstances of the relationship.

Mr. Meek said that the Board needed to determine that the hardship did not result from the actions of the applicant or the property owner. Mr. Meek asked if it was their position that the builder was not responsible for the surveyor with whom he contracted. Mr. Sturges said that they had a buyer of the property and he was the ultimate beneficiary of the variance. In regards to the general contractor and the surveyor, the general contractor did everything that he could do. He used a surveying company that he had done business with for over ten years and had the property staked three times. There was a property pin in the road. In 2008 when the original survey was completed there was only one nail in the road and that was the control pin. When the surveyor went back in 2016, the nail was difficult to see and it was discovered that there was another nail placed in the road, six feet from the first. No one knows where the second nail came from but it was the visible nail. Surveying crew ran off the wrong nail for not just this property but for others. Mr. Sturges added that other properties were not affected by the error.

Mr. Meek said that he understood that they were under contract to build a three car garage and asked Mr. Jones if a two car garage was not marketable in the neighborhood. Mr. Jones said the he would consider the buyer backing out to be a considerable hardship.

Mr. Sturges asked Wesley Honeycutt, Control Point Survey, 6130 Harris Technology Blvd, Charlotte, NC 28269 how long he had been in the surveying business. Mr. Honeycutt said he had been a surveyor since 1998, licensed in North Carolina in 2003 and South Carolina in 2006. Mr. Sturges asked if Control Point had worked with Vicus Builders before. Mr. Honeycutt said they had worked with Vicus Builders for close to 10 years. Mr. Sturges asked if they were involved with the subdivision platting in Reverdy Farms. Mr. Honeycutt said that they did the platting. Mr. Sturges asked if Mr. Honeycutt had done work in this area before Vicus builders got involved with the property. Mr. Honeycutt said that they had surveyed the property in 2008 for a different entity. Mr. Sturges asked what type of work was performed in 2008. Mr. Honeycutt said that a complete boundary survey around the entire property, identifying the corner pins and replaced any that were missing with a complete boundary map that listed the acreage of the property. Mr. Sturges asked if that boundary survey involve a nail that was located in Reverdy Lane. Mr. Honeycutt said that there were several nails on Reverdy Lane and on Homeplace. Mr. Sturges asked if there was only one nail in the area around 1423 Reverdy Lane in 2008. Mr. Honeycutt said that there was only one at that time.

Mr. Sturges said that many years later, Control Point was responsible for staking Lot 7. Mr. Honeycutt said that they were and Lot 7 was up the street a few houses. Mr. Honeycutt added that they had done the construction staking, rough staking, and pinned the footing. Mr. Sturges asked if the wrong control nail being used at that time. Mr. Honeycutt said that it was recently discovered that it was when the error was found on 1423 Reverdy Lane survey error. Mr. Honeycutt said that they resurveyed lot 7 and it was shifted also but the property remained in compliance with the Matthews setback requirements. Mr. Sturges clarified that the survey was slightly off and the house was built but it had no impact on the setbacks and Mr. Honeycutt said that was correct. Mr. Sturges asked if it had to be replotted and Mr. Honeycutt said that it had not but it was fine where it was. Mr. Sturges asked what year was that when the new nail started to be used. Mr. Honeycutt said they had done the staking on lot 7 in June of 2018. Mr. Sturges asked if that incorrect control nail was used multiple times over the next year. Mr. Honeycutt said that it was and another nail was set down the road towards lot 10.

Mr. Sturges distributed pictures to Board Members (Exhibit 4 and 5 attached and made part of these minutes). Mr. Sturges asked Mr. Honeycutt to describe the pictures. Mr. Honeycutt said that the provided pictures showed the two nails in road that he said were about 5.5 feet apart. The nail that was marked as 42 was the correct control nail. Mr. Honeycutt added that wrong nail was painted during the survey and the correct control nail was painted with the 42 after the error was discovered. Mr. Sturges clarified that the 042 was not added until after the error was discovered. Mr. Honeycutt said the nail was there but the paint was not. Mr. Sturges asked if the nail that was circled was the incorrect one that was used as the control when the error was made and Mr. Honeycutt said that was correct. Mr. Honeycutt then described the second picture (Exhibit 5) and said it was more of a reference of the two nails and their proximity to the house. He added that it was a 5.5 foot shift and when you go down the road, that's where you would get the 10 foot error in the setback.

Mr. Sturges asked when the formal foundation survey was completed, would it show a 41-foot setback. Mr. Honeycutt said it would have. Mr. Honeycutt added that their surveyor was familiar with the jobsite and consistently used the same control. Mr. Sturges said that when the complaint came in and showed that the sewer line did not seem to be in the proper location a crew was sent out to check. Mr. Honeycutt said that he did. Mr. Sturges asked what happened. Mr. Honeycutt said that they had sent a different crew member out to check but he had gotten the control from the previous surveyor. When he checked it everything appeared fine, sewer and manholes. Mr. Honeycutt said that was when his partner and himself went to the site and backtracked from original boundary points in 2008 to find the error.

The survey that showed the encroachment into the front setback, Mr. Sturges asked if Mr. Honeycutt had done the measurements of the actual size. Mr. Honeycutt said that it was 210 square feet. Mr. Sturges asked what the total percentage was over the front setback and Mr. Honeycutt said that it was 6% of the total front setback area. Mr. Sturges said that one way to look at this was the variance was requesting 6% of the volume required from the front setback and Mr. Honeycutt said that was correct.

Mr. Sturges asked Mr. Honeycutt if Vicus Builders contributed in any way to the error that occurred. Mr. Honeycutt said that they did not. Mr. Sturges asked if the home buyer contributed any to the error occurring and Mr. Honeycutt said that they did not. Mr. Sturges asked if Mr. Honeycutt observed any safety issue in

regards to site line as a result of the building encroaching into the setback and Mr. Honeycutt said that he had not.

Mr. Meek asked if the violation was the result particular or peculiar to property or was it the result of measurements taken from the wrong point. Mr. Honeycutt said that they were using a point that they should not have been using. Mr. Meek asked if the surveyor followed the instruction the builder. Mr. Honeycutt said that they stake his houses and they give options to reduce impervious area. Mr. Honeycutt added that they look out for the builder and try to make sure that the builder stayed in compliance. Mr. Meek asked if the surveyor sees themselves as an acting agent of the builder. Mr. Honeycutt said that they stake the houses in the field but to protect his license. His goal is to protect the public and put things in the correct locations.

Ms. Moore said that she was having a difficult time understanding why there were two nails in the street and one was correct, where that second nail came from, and who would have changed it. Mr. Honeycutt said that the second nail could have been placed by another surveying company but his company did not place that nail. Mr. Honeycutt said that his surveyor found the second nail in the general location of where one was supposed to be. When the surveyor shot the marker, it gave him a close enough answer to being the correct nail.

Mr. Crosby asked what a close enough margin of error was. Mr. Honeycutt said that for a control it would be less than an eighth of an inch. Mr. Crosby asked how the surveyor was off 5.5 feet. Mr. Honeycutt said that the way the instrument reads is at a distance. The distance between could have been a few inches and it still give a solution on the data collected so the surveyor could continue to work.

Ms. Moore asked Mr. Honeycutt if his company had an errors and emissions insurance. Mr. Honeycutt said that they did. Mr. Sturges asked if that insurance had deductibles and limits. Mr. Honeycutt said that it did.

Durham Potter 2609 Atlantic Ave, Raleigh, NC said that he was president and owner of Builders Unlimited Incorporated. Mr. Sturges asked Mr. Potter what his company did. Mr. Potter said that they were custom home builders. Mr. Sturges asked if Mr. Potter was requested to do an estimate on the cost to tear down and reconstruct, to its current state the house on Reverdy Lane. Mr. Potter said that he was provided with drawings and made an estimate based on those plans and a site visit. Mr. Sturges asked what that total was. Mr. Potter said it would be \$272,726.

Mr. Meek asked if that amount was to tear down and reconstruct to the point the structure was at now and Mr. Sturges said yes.

Mr. Sturges asked Mr. Potter if the materials could be reused. Mr. Potter said that they could not.

Mr. Meek asked if Mr. Potter was asked to determine the cost to reduce the garage from a three bay to a two bay. Mr. Potter said that he was and it would be approximately \$22,000.

Mr. Crosby asked if time was also factored into the equation. Mr. Potter said that it would be a minimum of three months from the time the demolition began.

TESTIMONY IN OPPOSITION:

Sharon Martin, 1420 Reverdy Lane said that she had lived for 25 years in the home across the street from the house that was under construction. Ms. Martin said that she has asked her brother, Tom Wolfe 7132 Paper Trail, Leland, NC to act as her agent.

Mr. Wolfe Introduced himself to the Board and said that Ms. Martin spoke to staff and verified that he could speak on her behalf as long as he was sworn in and it was factual evidence that was given. Mr. Meek asked if Mr. Wolfe was a licensed Lawyer and Mr. Wolfe said that he was not but had professional background. Mr. Meek said that Mr. Wolfe would be able to testify to his factual knowledge. Mr. Wolfe said they planned to testify on the petitioners' evidence. Mr. Wolfe distributed information package to the Board Members and the applicant (Exhibit 6 attached and made part of these minutes).

Mr. Wolfe spoke about the three surveys and lack of curb, gutter, and sidewalk present on the site. Mr. Wolfe also said that the control pins or nails did not need to be painted in order to be found. The metallic allowed for them to be accurately located by metal detection devices. Mr. Wolfe reviewed the pictures and said that a significant amount of work had been done to the house after the stop work order was issued. Mr. Wolfe said that once the roof area was covered, rain water runoff that was in violation of the setback, was being forced into the road and neighboring properties.

Mr. Sturges objected to the statement as there was no issue regarding the impervious area not being met on the property.

Mr. Wolfe reviewed information about Mr. and Ms. Martin. He said that their home was on a private well system. Mr. Wolfe said in the Matthews Land Use Plan said that drainage must be in place prior to the occupancy of the development that it served. Mr. Wolfe said that new development was being occupied in Reverdy Farms without proper storm drainage.

Mr. Wolfe reviewed the surveys submitted in the application pointing out the note to reduce impervious area. Mr. Wolfe said that with the home being closer to the road, and the driveway being reduced in width, that would further reduce the impervious area. Mr. Meek asked if Mr. Wolfe was suggestion that this was not done as an accident but as an intentional act by the surveyor or builder to achieve an objective that would not have been achieved. Mr. Wolfe said he does not assert that it was initially purposely done but it was what they submitted in their application. Mr. Wolfe said he was not going to make that suggestion. Mr. Sturges objected and said that the testimony was not fact and this was not the plan for what was intended.

Mr. Meek, to focus the testimony, reviewed the Findings of Fact and the Quasi-Judicial system.

Mr. Wolfe reviewed the petitioner's application, impervious area, and storm water runoff on Ms. Martin's property. Mr. Sturges said that they were not requesting a variance for the impervious area. Mr. Meek said that he felt Mr. Wolfe was pointing out that the variance request was inconsistent with the spirit of the ordinance.

Mr. Wolf said that the applicant failed to provide facts of the hardship, and asked that the Board Members review the evidence and factual testimony given and deny the variance request.

Mr. Meek asked Mr. Wolfe if asking the builder to tear down the home would constitute a hardship for them or even a portion of the home. Mr. Wolfe said that Ms. Martin did not feel that tearing the house down would bring her any relief as another home would be built. Mr. Wolfe said that Ms. Martin believed in the law, and that when people make a mistake and present it truthful and honest and not people that mislead.

CROSS EXAMINATION:

Mr. Sturges asked if Mr. Wolfe was a licensed surveyor. Mr. Wolfe said that he was not. Mr. Sturges asked if Mr. Wolfe was a licensed builder. Mr. Wolfe said that he was not. Mr. Sturges asked if Mr. Wolfe if he had special knowledge concerning impervious regulations. Mr. Wolfe said that he did not have special knowledge but intense reading of the law and effects of nature of the contaminates and pollution that it carries. Mr. Sturges asked if Mr. Wolfe if he had made any measurements of the property in regards to its impervious requirements. Mr. Wolfe said no. He was relying on the survey. Mr. Sturges said that the surveyor did not say that it was not in compliant. Mr. Wolfe disagreed and referenced exhibit D in the petitioner's application. Mr. Wolfe added that the reduction of impervious area was made by reducing the driveway area.

Gina Hoover, 2417 Stevens Mill Road, Matthews, NC distributed information to the Board members and the applicant (Exhibit 7 attached and made part of these minutes). Ms. Hoover said that the State of North Carolina was a pure race state, if it is not recorded than it does not exist.

Ms. Hoover said that with all the issues involving right of way for Home Place and Reverdy Lane, she did not understand how Reverdy Farms was ever approved. Ms. Hoover reviewed fee simple and said that when traveling south on Reverdy Lane parcels 227-051-26, 227-051-27, and 227-051-28 owned fee simple

to the center line of Home Place. Ms. Hoover added that parcel 227-051-26 also owned fee simple to the center of Reverdy. Ms. Hoover said that the issue with the road was that there were property owners who own fee simple of Reverdy Lane and there were 30 foot right of way dedications from Vicus Builders to the Town of Matthews. Ms. Hoover said the Town was claiming a 60 foot right of ways but they did not own fee simple. She said that the fee simple property was recorded in the home owners deeds. Ms. Martin's property was unclear on the right of way. Ms. Hoover said there could be another error by the surveyor regarding the contested right of way on Home Place with no information on who was contesting the right of way.

Mr. Meek reviewed the Finding of Fact again and said that the Board of Adjustment needed to make a decision for or against allowing a variance based on evidence relating to the property at 1423 Reverdy Lane.

Ms. Hoover said that Vicus Builders had requested a variance due to the house being built in violation to the Matthews UDO front setback. Ms. Hoover said that the UDO regulations were not good if they were not going to be enforced. Ms. Hoover said that with the regulations not being enforced, a hardship was created for surrounding property owners. She added that new development could be hard on existing property owners but disastrous when the new development encroaches on homeowner's property. Ms. Hoover said that the citizens along Reverdy Lane would be affected by the granting of the variance and they had no representation.

Mr. Sturges asked Ms. Hoover where her home was in relation to the property. Ms. Hoover said that her home was not in that area of town but she was a citizen of Matthews who had lived in the Town all her life and had an interest in the Town and what was right and wrong.

Mr. Wolfe said that the final plat states that it was recorded in map book 64 page 316. Mr. Wolfe said that the plat was not stamped, certified, or found and it was misleading to the Board.

Mr. Sturges asked Mr. Jones if Vicus Builders had requested a variance to the impervious area. Mr. Jones said that they had not. Mr. Sturges asked Mr. Jones if the property would comply with the impervious requirements. Mr. Jones said that it would and it was shown on the preliminary plan. Mr. Jones said they went to the surveyor and told them where they wanted the house to be staked. That preliminary plan showed the structure to sit 41 feet back. Mr. Jones said that Mr. Wolfe was double penalizing him and using the math twice against him. The math shown on that preliminary plan was based on the home sitting 41 feet back from the road. Mr. Sturges asked if it was a common notation for a surveyor to note the need to reduce impervious area. Mr. Jones said it was and by right Vicus Builders could have constructed double the number of homes that were built. He said they elected to design the neighborhood with larger lots and elected to put themselves under the most stringent impervious requirements Matthews has in their UDO. Mr. Jones said that they only planned 12 lots on 7 acres. The property is zoned R-15 and Mr. Jones said that would have allow almost three homes per acre.

Mr. Sturges asked if there was storm drainage in exitance on Reverdy Lane before the development of Reverdy Farms. Mr. Jones said there was not and Vicus Builders was putting storm drainage in at their own expense and dedicating it to the Town. Mr. Sturges asked if that would benefit all residents on Reverdy Lane. Mr. Jones said it would greatly reduce the storm runoff and help the storm runoff at Ms. Martin's home. Mr. Sturges asked if Mr. Jones was required to do erosion control and comply with Mecklenburg County Storm Water requirments. Mr. Jones said that they were.

CLOSING REMARKS:

Mr. Sturges said that this was a request for a variance that was 6% of the volume of the setback area. Mr. Sturges said that is was not a significant variance request and it was true that the structure was 10.2 feet into a 40 ft setback and this was a small area in volume of what the setback was intended. Mr. Sturges said that this 6% area did not causes impervious issues or water movement to the property across the street. The petitioner was working on storm water improvements for the overall development area. Mr. Sturges said that this delay was creating a hardship for the homebuyer. Mr. Sturges said that the home builder did not have anything to do with the error and that the surveyor was an independent contractor getting paid

for a job without given direction that an agent would have received. Mr. Sturges said that errors happen and when they happen and a hardship occurs, it is at the Board's discretion to grant variances. There was no effort taken by the homebuilder by sliding the house forward as the lot was large enough that the setback could have been met. Mr. Sturges said that the survey was not a written document and the builder relied upon the surveyor and the surveyor marked the property three times

Mr. Sturges said that the hardship is a custom-built home that is under contract and the contract required the home to be built as designed. The removal of one of the garage bays would be in violation of the contract and a breach of contract would also be a great hardship for the builder. The surveyor's insurance information was unknown and could have a value cap. Vicus Builders may have a claim against the surveyor but that may not be resolved in a timely manner or at all. Vicus Builder now had a \$272,000 hardship. Mr. Sturges said that the Board of Adjustment had granted front yard setbacks in the past and each case was unique. He added that granting this variance would not set a precedent. Mr. Sturges said that there were no public safety issues adding that everyone including himself, the builder, the surveyor and staff had been truthful in their testimony. Opposing testimony did not provide any facts or personal knowledge as to why the variance should not be approved.

DELIBERATION:

Mr. Meek said that because of the absence of two regular members, Aaron Baggarly and Allen Crosby will be appointed as voting members.

Mr. Baggarly said that in looking at the four conditions of the Findings of Fact, he did not see where the applicant met any of those conditions. Mr. Baggarly said that the hardship was self-induced due to a surveying error and the lot was large enough for the home to be built within the required setbacks. There was no loss of use as it could still support any size home being custom or not. There was nothing peculiar about the home as it was on more of a normal shaped lot than the lots on each side. Mr. Baggarly said that the single-family house could still be built and be compatible to the style of the neighborhood and he did not believe the request was compatible to the UDO and 10 feet was significant.

Ms. Moore said that she did not feel that the applicant was not there to deceive the Board members and she agreed with Mr. Baggarly. She added that there were ways to rectify the error but the Town had to abide by the ordinance.

Mr. Crosby agreed that the applicant was not there to deceive but did not think there was anything specific or special about property that warranted a variance.

Mr. Jenson said he also agreed with Mr. Baggarly

Mr. Meek said that he agreed with the observations that the applicants were being forthcoming with the Board. Mr. Meek said that he was torn about if there was a hardship or not. He said that if all that had to be done was the removal of one bay for \$22,000 the hardship did not seem that great. The real flaw was when the surveyor testified that there was something peculiar about the property but the fact that it was measured from the wrong point. Mr. Meek said that he also had a hard time with the suggestion that even though the surveyor was under contract that neither the builder or the property owner was responsible for the result. Mr. Meek felt that created a defect in the application and was not consistent the spirit of the ordinance.

Mr. Crosby motioned to deny the variance request. Mr. Baggarly seconded the motion.

FINDINGS OF FACT

1. Unnecessary hardship would not result from the strict application of this Title. It shall not be necessary to demonstrate that, in the absence of the variance, reasonable use can be made of the property.

Modifying the structure by removing one bay would bring the building into compliance.

2. The hardship does not result 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.)

Surveyor testified that there was nothing particular about the property and measurements were made from the wrong point.

3. The hardship does result from actions taken by the applicant or the property owner.

The surveyor was under a working contract with the builder and was acting on the builder's behalf.

4. The requested variance is inconsistent with the spirit, purpose, and intent of the Title, because public safety is secured and justice is achieved.

The requested variance is inconsistent with the spirit, purpose, and intent of the Matthews Unified Development Ordinance.

The motion to deny the request for a variance passed unanimously.

ADJOURNMENT

Ms. Moore made a motion to adjourn the meeting at 9:20 pm. Mr. Jenson seconded the motion and the motion passed unanimously.

Respectfully submitted,

Shana Robertson
Senior Administrative Specialist/Deputy Town Clerk

**Matthews Board of Adjustment
Variance Request for 1423 Reverdy Lane
BA2019-2
September 5, 2019**

Summary of Request

The applicant requests a 7' variance to the 35' front setback and a variance to allow two principle structures on a parcel for a limited time.

Background

The requested zoning variance would allow the home at 201 South Ames Street to be relocated to the adjoining lot at 145 South Ames Street. The applicant, Mac Crisco, plans to move the home to save it from demolition. The Charlotte Mecklenburg Historic Landmarks Commission has completed a Survey and Research report regarding the home and a Public Hearing to discuss potential designation as a local historic landmark is scheduled for October.

The applicant requests the following two variances in conjunction with the planned move of the home.

Variance 1: (155.604) The requested variance would reduce the front setback from 35' to 28'. The stated reason for the variance is to allow space between the existing home at 145 South Ames and the relocated home. The applicant plans to construct a connection between the two buildings to create one single-family structure.

Variance 2: (155.601.14) This variance would allow, for a set period of time, two principle structures to be located on the same lot. Should the Board approve this request, it may wish to consider placing a reasonable sunset as a condition and may also wish to stipulate that the home be located on a permanent foundation.

**Matthews Board of Adjustment
 September 5, 2019**

Unified Development Ordinance Definitions and Requirements

155.604.1 TABLE OF DIMENSIONAL STANDARDS					
	RESIDENTIAL TRADITIONAL ZONING				
	R-20	R-15	R-12	R-9	R-6
Minimum lot area (sq ft)	20,000	15,000	12,000	9,000	6,000
Minimum overall development area (sq ft or ac)	NA	NA	NA	NA	NA
Maximum overall development area (sq ft or ac)	NA	NA	NA	NA	NA
Area for each additional dwelling unit (sq ft)	NA	NA	NA	NA	NA
Minimum lot width (ft)	90	80	70	60	50
Minimum width when a corner lot (ft)	90	80	70	60	50
Minimum front setback (ft)	50	40	35	30	25
Maximum build-to line (ft)	NA	NA	NA	NA	NA
Minimum side yard, interior (ft) ⁽¹⁷⁾	12	10	10	8 & 6	8 & 6
Minimum corner side yard (streetside) (ft) ⁽¹⁷⁾	12	10	10	10	10
Minimum rear yard (ft) ⁽¹⁷⁾	60	55	50	45	40
Maximum building height (ft)	35	35	35	35	35

Any parcels within the Downtown Overlay or Highway 51 Overlay shall also meet build-to lines, minimum lot sizes, and minimum setbacks. For corner lots or through/double frontage lots, see also § 155.601.11

For lots adjacent to existing or proposed thoroughfares, see also § 155.601.18

⁽¹⁷⁾ Required minimum side and rear yards must be increased one foot (1') for each foot or fraction of a foot in height over 10 feet.

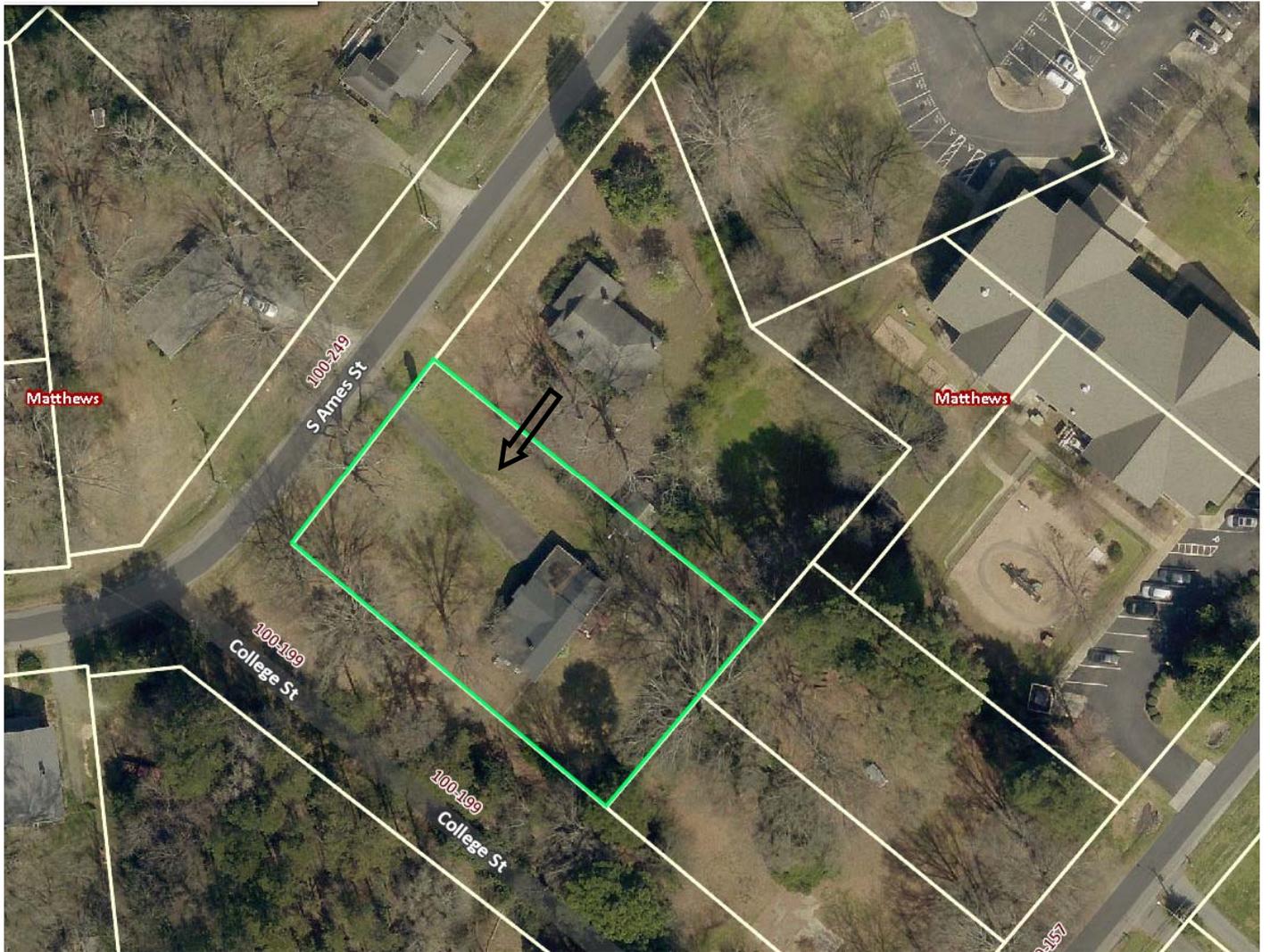
155.601.14 More than One Principal Building per Lot

More than one (1) principal nonresidential building may be located on a lot if a paved access driveway at least ten feet (10') wide is maintained from a public street to each building for use by service and emergency vehicles. Unless a lesser standard is allowed elsewhere in this Title and by applicable building codes, a minimum separation of four feet (4') is required between separate buildings. No more than one (1) principal residential building may be located on a lot, except under the provisions for accessory apartments, cottage cluster developments, multi-family developments,

**Matthews Board of Adjustment
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Example Findings of Fact

In reaching a decision on a variance request, the Board shall make findings upholding all of the following criteria:

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

It is possible to move the home to the adjacent property while still meeting the 35' setback. However, allowing two principle structures on the lot is a temporary condition and would not adversely impact the

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.)

There hardship is related to the existence of a home on the lot where the structure is to be moved to.

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.

The applicant is attempting to preserve a historic home. Moving the structure to the adjoining lot is the only option available for preservation.

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

The variance to the setback would place the home at about the same distance from the right-of-way as it is today. The variance for two principle structures is temporary in nature and does not affect the spirit purpose and intent of the code.