



TOWN OF PINE LEVEL
MINUTES OF
PINE LEVEL PLANNING BOARD MEETING
APRIL 28, 2022

MEETING INFORMATION

The Pine Level Planning Board met on Thursday April 28, 2022 at 6:30 p.m. at the Pine Level Town Hall. The meeting was called to order by Chairman Randy Jones.

ROLL CALL

<u>✓</u> Randy Jones	<u>✓</u> Trenton Broadwell (alt 2)
<u>✓</u> Kevin Kornegay	<u>✓</u> Randy Holloman (alt 3)
<u>✓</u> Terry Rains	<u>✓</u> Tonia Hill
<u>✓</u> Berry Godwin	<u>✓</u> Tammy Register
<u>✓</u> Faye Starling	<u>✓</u> Greg Johnson
<u>✓</u> Cecelia Joyner (alt 1)	<u>X</u> Leighanna Worley

STAFF PRESENT: Zoning Administrator Scottie Hayes, Curtis Lee from Triangle J School of Government, and Administrative Assistant Ashley Willoughby

OTHERS PRESENT: Attorney Stephon Bowens, Nicole Miller, John Lowdermilk, Carl Doug Baker, Dianne Blackmon, and Don Ellis.

MINUTES- MARCH 24, 2022 -

Terry Rains made a motion to approve the March minutes and was seconded by Faye Starling. Motion passed by unanimous vote.

Berry Godwin made a motion to close the regular meeting in order to hold a public hearing. Faye Starling seconded the motion and the motion passed by unanimous vote.

PUBLIC HEARING FOR VARIANCE REQUEST BY NIVEK HOMES LLC- Quasi Judicial Hearing

Finding Number One

Chairman Randy Jones called to order the Board of Adjustment. He said, "That this meeting is different from the regular meeting, it is now considered a court. No one speaks unless they have been sworn in as far as outside this board, they have to be sworn in, and actually what we're looking for is expert testimonies for the request that is before us. Hearsay of what you think, your opinion, they're all great but they're not facts. So, we're asking that we do stick to the facts. There are four different criteria of things that have to be met. To go forward, we will take each one separately. Each one will be voted on, but not as a whole. With that being said, is there anyone that wants to be sworn in to speak?" Attorney Stephon Bowens asked Chairman Jones if he had to be sworn in; stating that he was an attorney and was not providing evidence but will be speaking. Chairman Jones stated he would have to be sworn in. Zoning Administrator Scottie Hayes stated that any adjacent property owners that wanted to speak will also have to be sworn in. Chairman Randy Jones asked Administrative Assistant Ashley Willoughby to swear in Zoning Administrator Scottie Hayes, Kevin Kornegay representing Nivek Homes LLC, Curtis Lee- representative of Triangle J School of Government, Nicole Miller, Attorney Stephon Bowens, and Carl Doug Baker.

Chairman Randy Jones continued by saying, "Our board has to have a certain number and we are at that number. So, we are good, however, I have two board members to my knowledge that will have to recuse themselves so that needs to happen now." Kevin Kornegay said he would like to recuse himself. Chairman Randy Jones said, "Kevin Kornegay which is the name on the application, as far as his company is concerned, so that everyone in the room does know what that is." Chairman Jones inquired whether Tonia Hill would have to recuse herself being an adjacent property owner. Curtis Lee of Triangle J School of Government said that unless she has financial interests regards to the property she will have to, and Tonia Hill said that she did not. After hearing that, Chairman Jones continued with the public hearing. Chairman Jones said, "We've got our ETJ's covered, we have our In-Town covered, so we have our forum that we need." He then asked for the board members to raise their hand so those in the room will know who are on the board. Attorney Stephon Bowens asked if there was an alternate subbing for Kevin Kornegay. Chairman Jones stated that there was an alternate present. Attorney Stephen Bowens asked, "Just so I make sure does your usual course to have the staff do a presentation on the site and then have the applicant come in?" Chairman Jones said that the Board already has the application, site, and the dimensions. Attorney Bowens asked, "So everything is before the board already?" Chairman Jones said that was true and asked if there was an extra copy. Attorney Bowens was then given a copy of the staff report.

Attorney Stephon Bowens- office address 500 Fayetteville Street Suite 300, Raleigh, was here on the behalf of Miss Nicole Miller, 205 Church Street, Pine Level. Attorney Bowens said, "Just for the record, I am going to object for the record to the staff report being provided today and not being made available to the public prior to the opening of the meeting itself, but that I'm objecting, just objecting for the record." Chairman Jones said, "So noted we appreciate that however that is something that's required in this particular Board of Adjustment. As long as we give it to you when you come in and you've got it. The only thing about the hearing is to let you know that there is going to be one. With that being said, we will now go into the Fact Finding of the variance. The applicant Nivek Homes, LLC has a desire to purchase the property from the current owner Carl Baker, which is present. The applicant is asking for this variance to the lot size to be adjusted as well as a variance to the road frontage. So, we'll start with finding number one. We're going to do each one of these separately. Number one is unnecessary hardship would result from the strict application of regulation." Chairman Jones asked if

everyone has read this and notice the notations that's been given to you by staff. He continues to say, "Going to finding number one, I will read to you what the staff has come to us and we've gone through so that everyone in the room knows Triangle J. Curtis can you explain what Triangle J is?" Curtis Lee explains that the Triangle J is a local government entity where it's a regional council of government that works with seven counties, forty-six municipalities, and we just offer advising consulting essentially for multi municipalities. Chairman Jones said, "That the Town of Pine Level has hired Triangle J to do just that. They are staffed or being paid by the town to be a part of what we've got going now here. So, number one the fact-finding part of this that we've got to go through each one. Hardship resulting from strict application of town subdivision zoning ordinance. It is saying that in the current state, the lot in question is substandard to such a degree that it would be impossible for it to meet the requirements of the zoning ordinance. The current owner of the lot is Carl Baker held lot in question and neighboring lot, which I think it was Miller's house, in common ownership, so he owned both. Mr. Baker sold neighboring lot on February 16, 2022 without recombining the substandard vacant lot with the occupancy substandard lot. With that being said, it is up to the people giving evidence in the room to say that's not been met or has been met or we can just as a board can discuss it quickly and we can decide that." Attorney Bowens said, "Just to be clear the question before the body right now is whether or not and are you talking as it relates to?" Chairman Jones answered by saying, "Question number one with the hardships resulting from strict application town subdivision zoning ordinance."

Attorney Bowens asked, "At any point are you going to require the applicant to present their application?" Chairman Jones said, "The applicant has already been presented and the application has already been filed." Attorney Bowens said, "I understand that, I'm asking a specific question procedurally at in my experience and I apologize; I'm not trying to run your hearing for you. In my experience, the hearing would come with; if you're saying that you have staff recommendations the applicant still has to provide their evidence to prove that they meet all the criteria and they have to do that." Chairman Jones said, "And that is what I'm asking for at this time. Right now, under number one because that's what you're just saying. The application with the variance which I have and which all of you have; Nivek has asked for the following variance which is a lot size reduction and a front setback reduction. I'm reading strictly from what's in y'all's packet: I'm adding nothing to this. They're also saying that in here that under the question of unnecessary hardship result from the strict application regulation is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. And with that they have written on the application, existing recorder lot would not be buildable without the lot size reduction. We will meet rear/ side setbacks and will be less than 40% lot coverage. The homes on either side of this lot are twenty-five feet or less from the road." Attorney Bowens said, "So that is their evidence." Kevin Kornegay with Nivek Homes said, "I don't know if I wrote on there, the owner was left with a lot that he could not use in that zoning district. So that is the hardship; the hardship is that the owner had a lot he could no longer use, there is no use in that district at all."

Attorney Bowens said, "Once again my name is Attorney Stephon and I'm here on the behalf of Miss Nicole Miller of 205 N Church St. and I wanted to speak with you about the requirements and I'll start with the first one and that's the only one I'm going to address at this time. As to your ordinance with respect to non-conforming uses which would be under section 503.1 of the ordinance. It requires that for an existing vacant lot of substandard lot where the owner of the lot at the time of adoption of the ordinance and this ordinance was adopted December 13, 2015. Does not own sufficient land to make it conformant then they can move forward with attempting to put in a single-family unit. However, in this instance, because the owner owned lots two and three and also lot five. Lot two and three are the adjacent lots, which is the property that was sold after the effective date of this ordinance." Chairman Jones said, "Can I stop you right there? What he is saying, are we actually not getting into other findings other than number one?" Curtis Lee said, "Well, this point is going to come up multiple times." Chairman Jones said, "Okay go ahead. I've got what you're saying is actually in other spots, but go ahead." Attorney Bowens said, "It comes up throughout because the question is whether or not you can even move forward with going to the variance and our position is that under section 503.1 of your ordinance because the owner of the lot changed the conditions of the lots themselves. In fact, created the nonconforming use because he sold the lot that he also owned that was adjacent that this should

not move forward and so in courts are very consistent under North Carolina law, with respect to this, that when the owner creates the conforming use event, he cannot then come before the Board of Adjustment and request relief. I could go into under number one what the applicant also listed, which was that the applicant listed that for example that it would be able to... burden is on the applicant to prove its case. Having said that in this instance on the application itself, the applicant stated in paragraph one as it attempts to meet the requirements that the hardship is that its resulting from the strict application of the ordinance and it states that existing record lot would not be buildable without the lot site reduction. We will meet the rear/ side setbacks and will be less than forty percent of the lot coverage. The homes on either side of the lot are twenty-five foot or less from the right of way. Well in that statement in and of itself it identifies an issue which is common and not peculiar to the neighborhood. Under North Carolina law if the issue in question is not common is not uncommon in the neighborhood. In other words, it occurs rarely because this neighborhood and these lots are relatively old. In fact, my client's home was built around 1969 and as you will notice in the application, it refers to the lot frontage for my client's lot being nineteen feet from the road. So that is a common and recurring issue. The problem is for the applicant, unfortunately, that because it is common, it is not peculiar and therefore does not meet the standard of the undue hardship." Kevin Kornegay said, "Can I object, are we in the position to where I can object because we are going into finding number two right now." Chairman Jones said, "We are really in all of them because it comes up in all of them but I got your point." Attorney Bowens said, "All I'm doing is going where he listed it on the application. Now as it relates to lot size, the minimum lot size as I understand it under the requirements of your ordinance are ten thousand square feet and the applicant has indicated that the lot size itself is forty-seven hundred and ten feet. Now given that the lot itself is forty-seven hundred and ten feet, if you looked at your ordinance in section 503.1 there is a two-step process. Number one is the issue of the existing vacant substandard lot, right, we've already addressed that with respect to the owner taking action that would cause it not to be conformed. Number two along in that ordinance, it says that a single-family home would be permitted provided it meets the requirements within the district provided lots with a lot area not more than twenty percent below the minimum specification. In this case, the applicant for the variance is asking for a reduction of fifty-three percent. So, it is more than twice the minimum requirements that are indicated in your ordinance as it relates to lot size reductions that are authorized by the Board of Adjustment. As such in this instance, it would not meet the effective actual standard that is identified in your ordinance. If your ordinance says a twenty percent lot reduction in this case, he has gone essentially two and a half times below the requirement. Because his lot size is forty-seven percent of the required ordinance lot size. So, in that aspect the lot does not meet requirements, it is going way outside the standards and therefore the inquiry should stop at level one. I'll talk about the other ones as we move forward and I think I'll stop there."

Kevin Kornegay said, "To address to the owner creating the hardship, he didn't subdivide the lot, he had two existing lots for the record. So, by him selling that property I don't see how that is creating an undue hardship with the lot that we're speaking about tonight. As far as it being peculiar, the way I'm looking when I did some research in the area, I'm seeing maybe two other lots in the downtown area that are less than the twenty percent and that's why I'm saying it's peculiar or we wouldn't be here tonight. In other words, since we are more than twenty percent, that's why we're here tonight. So, to say that we shouldn't move forward because we don't meet the twenty percent, we wouldn't even be here if it wasn't for that. So, we're here requesting this variance because we are more than a twenty percent reduction and it's peculiar in my eyes because the other lots in that area are all within that twenty percent. Since this one falls outside of that, I call it peculiar." Attorney Bowens asked, "Do we get the opportunity to examine in this process, typically in the process of judicial hearing, we'll have the opportunity to question both staff and the applicant." Chairman Jones said, "Sure, the staff here is actually the one that wrote what you've got in your hand, so it should go really accordingly to what you're reading as far as that goes. But he might add a little more to the number one from what you've brought up." Curtis Lee said, "My name is Curtis Lee from Triangle J Council of Government, I'm essentially the planner for Pine Level at the moment. So, for the finding of fact one, the hardship is also strict application of the Town's Subdivision Zoning Ordinances. In my staff report, I decided to say that he had met this, obviously this is my professional opinion. The sole reason in just being in finding one is

that because he does not have a buildable lot at the moment for only finding one. Without any context I would say to that because there's nothing you can do, it's just a tiny piece of land that should not exist."

Carl Baker, owner of the lot in question, said, "I'm Carl Baker and I own the lot that they said me selling was going to cause me a hardship, but when I bought these properties, they were already divided into two lots, the house that she bought and the other lot. It did have a single-family dwelling on the other lot when I bought it. So, somebody was living there and both houses, what I mean is that somebody has lived on both lots." Attorney Bowens asked Chairman Jones if he could ask Mr. Baker a few clarifying questions. Attorney Bowens asked, "Mr. Baker, you said you bought the two lots separately, correct, and were they by one owner?" Mr. Baker confirmed that was true. Attorney Bowens asked, "with respect to the acquisition of the property were all of those lots together being used as one lot for the home?" Carl Baker said, "No sir, someone lived in one and someone lived in the other." Attorney Bowens asked, "So there was a house on lot five; on the lot in question?" Carl Baker confirmed that was true. Attorney Bowens asked, "So the house is no longer there is that correct? So, the house was torn down by whom?" Carl Baker said, "Yes it was torn down by me and that's why I'm here."

Chairman Jones said, "We are getting out of finding one. Not trying to be offensive to anyone, I'm just trying to stay within the guidelines and the rules of what we really need to be keeping our mindset to. We've heard from two different sides of two different facts of what y'all have heard. With that being said I'm looking to the board to have a vote on number one. You've heard both sides, you've heard that the hardship results from an application, you've heard from Curtis, and you've got your recommendation as far as that is in front of you. Are there any questions from any board member asking for any particular information that you don't think you've heard already? All right from that sense, I'm going to ask for a motion of the number one finding whether it's been met or unmet, and I need a motion from a board member and a second to go forward from this point." Terry Rains made a motion that the hardship has been met and Faye Starling seconded the motion. Chairman Jones asked Administrative Assistant Ashley Willoughby to take the vote by roll call. Terry Rains, Berry Godwin, Faye Starling, Cecelia Joyner, Tonia Hill, Tammy Register, and Greg Johnson unanimously voted for the motion.

Finding number one: Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

Judgement- Finding number one was met.

Finding Number Two

Chairman Jones continues the hearing by going into finding number two and reading the statement on the application. Chairman Jones continues to say, "The hardship is not a result of condition that are peculiar to the property. Now again, I'm going to go with what you got in your hands so that everybody in the room knows what's going on. That the applicant claims that hardship of meeting the lot size set back requirements is peculiar to the property, however, the applicant substantiates this claim by illustrating the substandard setbacks of neighboring property. The surrounding neighborhood was clearly zoned, permitted under an adequate standard has now made most of the surrounding lots non-compliant in one aspect or another. However, these lots are able to remain in compliance with zoning ordinances as a result of section 502.4 and 506 which allows for grandfathered and non-compliant lots and uses with the condition that if such nonconforming uses discontinues or terminated for a period of more than one hundred eighty days. Any future use of structure land shall comply with the provisions of this ordinance, Zoning Ordinance 502.4. The hardship faced by the applicant is universal throughout the Town of Pine Level for any substandard lot that forgoes its non-compliance status. The owner forewent their grandfathered status with the removal of a mobile home that had once occupied the property for a period of over one hundred eighty days."

Kevin Kornegay, with Nivek Homes said, "As far as he forewent his grandfathered status because of the removal of the mobile home for a period of (one hundred eighty days). We are not wanting to put

another mobile home on that lot. So that is true, if we were looking to put another mobile home back on that lot, it's the way our ordinance reads. So that ordinance speaks about mobile homes, not structures and we're building a single-family structure not a mobile home so the hundred and eighty days does not apply per our ordinance. Section 502.4 speaks of uses not structures; structures are addressed in 501.3 which backs up the no one hundred eighty-day condition requirements. As far as the setbacks goes, I put that down on my application, really the setback does not require a variance. There is in section 304.5 of our ordinance; setbacks are address and if you go off of your neighboring adjacent property owners, there is a section in our ordinance that addresses that, and so we would meet that requirement without the variance. I spoke about the peculiar aspects already; to speak again since we're into finding number two. If you go on GIS and search the lots in that area, you'll find that there's maybe two other lots in the downtown area that fall outside of that twenty percent." Chairman Jones said, "I hate to stop you on that. I understand where you're coming from with comparisons, but we're actually speaking just of this lot. Of what it meets and what it doesn't meet." Kevin Kornegay said, "So in this finding it speaks about is it peculiar and so to judge if it's peculiar or not. You have to look at the other lots in the area. You have to compare or how else would you know it was peculiar... if you don't compare it to other lots in the area. I don't see how you can judge that with looking at other lots in the area." Chairman Jones said, "It's peculiar because the lot size is forty-seven percent in itself." Kevin Kornegay said, "So let's say you don't compare it to other lots. Let's say that we know the fact that it's outside of the twenty percent so that's what makes it peculiar. That's what I have for finding number two."

Chairman Jones asked if there was anyone else that would to speak. Attorney Bowens said, "I would just stand on my arguments I think the staff, again I'm Attorney Stephon Bowens here on the behalf of Miss Nicole Miller, I would say to you that the finding number two was unmet. I would not challenge essentially what is said by the staff, with respect to this, that they essentially got to the point which I was going to make which I was trying to make earlier. Which is that by removing/ tearing down the structure on the lot they lost their grandfathered provisions and in essence have created the hardship themselves and therefore you know no longer eligible for a variance." Curtis Lee said, "In regards to 502.3-4 which says if a non-conforming use is damaged by fire or explosion or other calamity to the extent of more than fifty-one percent of its current equalized value, it shall not be restored except so as to comply with the use provisions of this ordinance. In 502.4 it says, if such nonconforming use is discontinued or terminated for a period of more than one hundred eighty days, any future use of the structure, land, or water shall comply with the provisions of this ordinance. So, what we're speaking about here, yes, it's a structure, but it's the use of the structure. You're making use of this lot by putting a structure on it. So, 501 the mentioned ordinance before did not really apply here. It's the use of the lands were contending with here. So just to clarify that point is what I want to speak on."

Kevin Kornegay said, "To speak on this, 502.4 speaks of uses of the land such as automobile shops, storage yard, livestock pens, amusement parks that's uses. You know housing that's uses and so that quote in finding number two when it says if such nonconforming use is discontinued or terminated for a period more than hundred eighty days any future use of the structure shall comply with provisions of 502.4. I don't see how that applies here, we're talking about a lot and not a use. So, we're not coming in here, we didn't have a building that burned down that was grandfathered in. Let's just say that it was a livestock right in the middle of downtown and a hundred eighty days we come back in and try to build another livestock site and it would not be allowed, that's a use. We're not changing the use; we're just looking to put a structure back on this property. I don't see how, the way I read that....502.4 speaks of uses not structures." Curtis Lee said, "So this is one of those things where it's a terminology question semantics, but use includes single-family housing. It's like our table of uses has single-family housing listed and various other types of residential housing. Because you have to have them listed to make them permitted within town. So, it's a semantic argument, but a house is a use. Which means you just continue the previous. Now it's a terminated use, so now you can't build on that lot essentially which is 502.4."

Chairman Jones said, "With that being said, I need a motion on finding number two of being met or unmet from this board." Terry Rains made a motion that finding number two was unmet and Cecelia Joyner seconded the motion. Chairman Jones said, "With that being said we have a motion on the floor

of unmet and it has been seconded. Again, a roll call of the vote." After a vote by roll call the following board members voted for the motion: Terry Rains, Berry Godwin, Faye Starling, Cecelia Joyner, Tonia Hill, Tammy Register, and Greg Johnson. Finding number two is unmet.

Finding number two: 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 basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under Federal Fair Housing Act for a person with a disability.

Judgement- Finding number two was unmet.

Finding Number Three

Chairman Jones continued to finding number three and Randy Holloman questioned the need to go to finding three. Zoning Administrator Scottie Hayes said, " ...what Chip (Hewett) was saying we do all four if he were to challenge in court then all of them happened. If we stop now, then we've got to come back and meet again and talk about the other two." Chairman Jones said, "Number three and your question is the hardship did result from actions taken by the owner. With that being said, I will read it like go through the motions of them all. Of what we've gotten from staff, is the current owner failed to adhere to section 503.2 of the Zoning Ordinance which states; if two or more adjoining lots in record are in one ownership when this ordinance is adopted or at any time after the adoption of this ordinance, and such lots individually do not meet the minimum dimensional requirements of this ordinance for the district in which such lots are located in such group of lots that be considered as a single lot or several lots of minimum permitted width and area for the district in which located and therefore the provisions of subsection 503.1 do not apply. Zoning Ordinance section 503.2, the current owner made the choice to sell the neighboring lot that he held in common ownership, which according to the Zoning Ordinance should have been considered a single lot for combination of that lot with the one of which the applicant is seeking this variance."

Kevin Kornegay said, "It's very clearly in our ordinance 503.2 speaks of vacant lots, it's spelled out very clearly vacant lots. The property next door to where we're asking for the variance clearly was not a vacant lot when he sold it. So, it does not apply, he should not have to combine the two lots, in other words, if there were no structure on the property next door at the time then the ordinance does say two vacant lots, you can't sale them, you have to combine them to create a standard acceptable lot. Since it was not vacant, there was already a home there our code doesn't speak about that. Not the one quoted, not 503.2, that's all I got." Curtis Lee said, "From the interpretation of section 503 and 503.2. Obviously 503.2 is a subsection of section 503 which is existing data substandard lots. So, I interpreted existing vacant substandard lots as being plural in the sense that it applies to lots within the town, not requiring multiple vacant lots. My interpretation is that a vacant lot next to another lot in common ownership, which says you know two or more adjoining lots of record are in one ownership. It doesn't mention vacant in the subsection, hence, having one vacant lot is enough to trigger the recombination process."

Attorney Bowens said, "I would concur with the staff's interpretation of it. More so in this particular instance I would say that because the owner sold the property with the home on it in February of 2022 that the owner was obligated if he wanted to use that lot to have taken off whatever portion necessary from those other lots in order to make that lot buildable and in this case (he) did not. So therefore, again the variance request does not meet the standards that are set for both by the statute and by the ordinance and by the statute of 160D. With respect to municipalities and it is not consistent with state law as determined by multiple court cases."

Chairman Jones asked for a motion on finding three of being met or unmet. Terry Rains made a motion that finding number three was unmet and Cecelia Joyner seconded the motion. After a vote by roll call the following board members voted for the motion: Terry Rains, Berry Godwin, Faye Starling, Cecelia Joyner, Tonia Hill, Tammy Register, and Greg Johnson.

Finding number three: 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 is not a self-created hardship.
Judgement- Finding number three was unmet.

Finding Number Four

Chairman Jones said, "We go into the final finding number four, the proposed lot size dimensions do not meet the spirit, purpose, or intent of the Town of Pine Level Zoning Ordinances. Now it's saying this allowance from our staff, again you've got in front of you the paper I'm reading right along with you all. That this allowance for such a major alteration of the Town Zoning Ordinance would undoubtedly set a precedent that fails to achieve significant justice for either the Town or its residents and as of yet unprecedented. This lot is only forty-seven percent of the lot size required in the zoning district. While the applicant has stated that he would only need to vary the front setbacks to meet setback requirements for the lot zoning district, allowing such a significant decrease in the lot size would set up a poor precedence and is a questionable authority given the required uniformity of the zoning districts and the extent of the variation."

Kevin Kornegay said, "It says an unnecessary precedent, I think we did that whenever we approved a PUD across the street with five thousand square foot lots. We need some density in town, Triangle J has even recommended that in our land use plan that we need more density, whatever the terminology, and what better area to have density than in your downtown area. You know if you want to sprawl, you want every bit of your farmland and like everyone on Facebook page who don't want all the farmland sold off and developed into subdivisions. We have a downtown area that's where your density in my opinion, not only my opinion, but the people that we've hired to do the planning and that's the fact here. The people of Triangle J that we hired here for planning recommends that we have tighter density, I think it's a great area for it. That last number four speaks about public safety, you know, the only thing that impede upon safety maybe if you didn't know the side setbacks or a rear setback where your less than desirable from a fire code reason to another property, but we're not asking for that. We're within the setbacks to put in another single-family home there. It's not going to make the area be more unsafe than it is now. That's what I got." Curtis Lee said, "So the question of public safety I don't know specifically relevant in this situation. Public safety I think is adequate, regardless, I think the question of justice and uniformity, I mean if we're going to be honest, forty-seven percent of the actual district is quite a decrease. And yes, I do generally recommend more density in the downtown area but that is a process of the future Comprehensive Land Use Plan and not process of the variance at the moment. If it happens that we change the zoning districts at a future date, you know the lot may become buildable then but in terms of the variance request that is not right now meet the justice of the Town or its residents."

Attorney Bowens said, "I think we all at least my conclusions and review of the application essentially turned out to be very similar to staff review. Although I may have gotten to certain points sooner than staff did, I think we've reached the same conclusion with respect to the lot size itself being forty-seven percent of the current zoning ordinance and not even meeting the minimum threshold for, if it were going under section 300 of the ordinance, in and of itself it indicates that it is substantially out of compliance and would do substantial harm to the community and surrounding units. The fact that it is forty-seven percent of the size that is required both it is not conforming with the zoning ordinance, the zoning map, and the Comprehensive Plan once again. So, for the record the applicant has failed to meet the requirements of your Zoning Ordinance and the evidentiary requirements necessary to have the variance approved." Curtis Lee said, "160D 703 Zoning District subsection C, that's title uniformity within district, that's the citation for that, just for the record."

Chairman Jones said, "With that being said, I'm now looking on finding number four. The proposed lot size and dimensions do not meet the spirit, purpose, or intent of the Town of Pine Level Zoning

Ordinance has been met or unmet. I need a motion from the floor of this board." Cecelia Joyner made a motion that finding number four was unmet and Greg Johnson seconded the motion. Berry Godwin of Pine Level said, "In the spirit of what's being said, I think Curtis said that in the future, if the zoning was changed and the density for downtown did come about and it was in the ordinance. There's a potential that it could be in the future but based on your findings of what he says here, and I think that's what we have to deal with okay." With no other comments from the board, Chairman Jones called for a vote by roll call. The following board members voted for the motion: Terry Rains, Berry Godwin, Faye Starling, Cecelia Joyner, Tonia Hill, Tammy Register, and Greg Johnson.

Finding number four: The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

Judgement- Finding number four was unmet.

Chairman Jones said, "With that being said, just so that everyone knows in this room, the four conditions that had to be gone over, we were instructed basically by our legal to go over all four no matter what. Actually, the rule of thumb, well the rule is for this if any one of the four are not met then it's not approved. We were instructed to go ahead and do all four just so if any appeals or so forth from Superior Court coming back toward us. That we did in fact go over and discuss all four, so with that being said and done. The judgement of the Board of Adjustment is the variance request has been denied for that lot. I would like to thank everybody for your patience, your time, your thought, and the order and matter in which everyone has held and conducted themselves in this proceeding. With that, I ask for a motion to adjourn the Board of Adjustment." Berry Godwin made a motion to adjourn, and Greg Johnson seconded the motion. The motion was carried by unanimous vote.

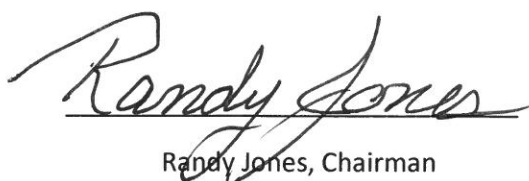
REVIEW DRAFT OF COMPREHENSIVE LAND USE PLAN/ PLANNED UNIT DEVELOPMENTS (PUDs)

Chairman Jones called to reconvene the Planning Board meeting and move onto item number three on the agenda, the review draft of Comprehensive Land Use Plan. Scottie Hayes stated that Mr. Lee had a video that he wished to show to the Planning Board that goes along with both the Comprehensive Land Use Plan and PUDs. After the video, the Planning Board had a brief conversation about the contents of the video and how it could apply to the Town. After some discussion, Greg Johnson asked if the Planning Board could accept a motion tonight to remove PUDs and Chairman Jones stated that the board is currently in a meeting so that wouldn't be denied. Greg Johnson made a motion to request the Town Council to remove Planned Unit Developments (PUDs) from our ordinances and it was seconded by Faye Starling. Chairman Jones asked for a vote by raise of hand and all, but one raised their hand for the motion. The opposing vote was Cecelia Joyner. Chairman Jones stated that a recommendation will be sent to the Town Board at their next meeting.

MEETING ADJOURNED

There being no further business to discuss, Trenton Broadwell made a motion to adjourn. Tonia Hill seconded the motion. Motion passed by unanimous vote. The meeting adjourned at 8:40 p.m.


Ashley Willoughby, Administrative Assistant


Randy Jones, Chairman

