



**TOWN OF WEDDINGTON
SPECIAL MEETING
BOARD OF ADJUSTMENT
WEDDINGTON TOWN HALL
1924 WEDDINGTON ROAD
WEDDINGTON, NC 28104
MONDAY FEBRUARY 26, 2024 6:00 P.M.
AGENDA**

1. Open the Meeting
2. Determination of a Quorum
3. Approval of the December 18, 2023 Board of Adjustment Minutes
4. Consideration of Application for Variance requesting a variance from Section D-703E, Lot and Building Standards Table, of the Town of Weddington Unified Development Ordinance for Parcel # 06069142 located at 4009 Whisperwood Court in Weddington NC.
5. Adjournment



**TOWN OF WEDDINGTON
SPECIAL MEETING
BOARD OF ADJUSTMENT
WEDDINGTON TOWN HALL
MONDAY, DECEMBER 18, 2023 5:00 P.M.
MINUTES
PAGE 1 OF 6**

1. Open the Meeting

Chairman Howard called the meeting to order at 5:00 p.m.

2. Determination of a Quorum

Quorum was determined with

Staff: Town Administrator/Clerk Karen Dewey, Town Planner Robert Tefft (via phone), Admin Assistant/Deputy Clerk Debbie Coram, Town Board of Adjustment Attorney Frank Corigliano

Visitors: John Bauersfeld, Lydia Bauersfeld, Laney Bauersfeld, Christine Bauersfeld

3. Approval of the September 25, 2023 Board of Adjustment Minutes

Motion: Board member Mittal made a motion to approve the September 25, 2023 Board of Adjustment Minutes as presented.

Second: Board member Faulk

Vote: The motion passed with a unanimous vote.

4. Consideration of Request for Variance from Unified Development Ordinance Section D-917D(M), Supplemental Requirements-Accessory Uses and Structures for property owned by John and Christine Bauersfeld located at 2006 Seth Drive (property id # 06072355)

Chairman Howard opened the evidentiary hearing for the request for variance by John and Christine Bauersfeld from Unified Development Ordinance Section d-917D (m), Supplemental Requirements – Accessory Uses and Structures for the property located at 2006 Seth Drive.

Chairman Howard: This is an evidentiary quasi-judicial hearing. A vote of 4/5 majority of the Board is required to grant a variance.

Mr. Corigliano administered the oath to the applicants, John and Christine Bauersfeld, and administered the oath to the applicant's representative, and the Town Planner, Robert Tefft, over the phone.

Chairman Howard polled each board member to disclose any potential partiality or conflict of interest to the case. No board member had a conflict of interest.

Mr. Tefft presented the staff report:

The subject parcel is 0.347 acres (15,137 SF) and is located on the west side of cul-de-sac for Seth Drive within the Canisteo subdivision (Lot 11). The parcel consists of a newly constructed single-family residence which was completed earlier this year. On November 13, 2023, the applicant applied for a Zoning Variance to reduce the minimum required side yard setback from 15 feet to 7 feet for the construction of a new swimming pool. The request also includes a request to reduce the minimum required setback for a pool deck from 5 feet to 2.5 feet. The requested reduction for the pool deck is the maximum allowable; however, the requested reduction for the pool exceeds the maximum reduction allowed (7.5 feet).

It should be noted that between the approval of the Canisteo Subdivision and the proposal to construct the pool/ deck associated with the subject application, the Town's Unified Development Ordinance (UDO) was amended to modify the setbacks requirements applicable to pools/ decks. Prior to the adoption of Ordinance No. 2023-02 on March 13, 2023, the requirement was written as follows:

Accessory uses or structures, well houses, and swimming pools shall be located no closer than the setback for the principal building or 15 feet to any side or rear lot line whichever is less. Well houses shall be allowed in any yard.

It should also be noted that while the minimum side setback for a principal structure in the R-CD at the time of approval for Canisteo was 5 feet, the subdivision was approved with a side setback of 15 feet. This larger setback is recorded on the Final Plat for the subdivision. As such, in this instance, there is no difference between the current and prior versions of the UDO with regard to the minimum required side setback for the pool.

Chairman Howard: Are there any questions from the Board for Robert? Hearing none, we will ask the Applicant to address the board.

Mr. Bauersfeld addressed the Board:

We bought the house in July, and in moving we intended to buy a home where we could install a pool. The shape of the property is such that when the design team looked at it with the setbacks and the shape of the yard is like a pie shape. The requirements squeeze us into this finite box. It just isn't possible without going into the setback on the back of the property. Our neighbors have pools, it's very common to have a pool. We think that in this setting we won't be disturbing our neighbors and the HOA has approved the design of the pool.

Ms. Bauersfeld: And for long term sale of the house. Being in the south, having a pool increases the value of our home. No pool could turn away potential buyers.

Board member Faulk: Have you spoken with the neighbors on your right? Are they okay with it?
Mr. Bauersfeld: We haven't spoken directly but have exchanged greetings. The zoning sign has been in our yard and all the neighbors know we're putting in a pool.

Board member Faulk: Has the town heard from any neighbors?
Ms. Dewey: I have not heard from anybody, Robert?
Mr. Tefft: I have not heard anything.

Board member Manning: What is the structure in back corner?
Ms. Bauersfeld: That is a playground from the old owner that has been removed.

Board member Mittal: Have you thought about changing the size of the pool?
Mr. Bauersfeld: The size is long and narrow, a modern approach. Shrinking the length would reduce the safety of the depth. There is a constraint with that.
Board member Mittal: Have you thought about a design with a different shape?
Mr. Bauersfeld: We looked at standard shapes. It doesn't fit in the space. The 7.5 feet, the maximum amount for the variance, we could probably do that.

Board member Faulk: What is length and width of pool?
Mr. Bauersfeld: 17 x 36 with a spa.

Chairman Howard: Do we have any historical information in this community with any granted variances.
Mr. Tefft: None that I am aware of.

Board member Mittal: I am looking for designated setbacks. Is the side setback for the house 12 feet?
Mr. Tefft: It looks like that is what it says on the survey. This home was permitted before I came to the town.

Ron Linn with Anthony and Silvan Pools introduced himself. Mr. Corigliano swore in Mr. Linn.
Mr. Linn: I was just going to offer a suggestion. That might help if we could slide the location of the pool and encroach the rear setback by 2 feet so there's a 13-foot set back and get the pool farther away from the side property line. We will just slide the pool down a little further and it would free up space on the side setback and encroach into the rear making it from 15-feet to 13-feet and moving it further from the left side.

Chairman Howard: What are your thoughts on the 7.5-foot setback versus the 7-foot.
Mr. Linn. We can make that work, the 7.5 ft.

Board member Mittal: For the patio. Less than 5-feet. Moving pool would change that setback.
Mr. Linn: Yes. We can work with that limit.

Board member Faulk: So, what is the actual variance request? For pool setback on side yard or the rear?

Mr. Corigliano: As it is now, the request is for only the side yard. If they slide the pool, it'll be for the rear and the side.

Board member Faulk: And we can do all that in this meeting?

Mr. Corigliano: We can if we change their request during the meeting. It's over the max right now and cannot be granted at 7 feet.

Chairman Howard: Are you willing to amend your variance application?

Mr. Bauersfeld: Yes.

Chairman Howard: The pool will slide to the right, no closer than 13 feet to property line and at least 8 feet from the left side property line. Reduce the deck size to meet the requirements. Any discussion on that? Robert, the applicant is going to amend their application. Did you catch it all? Can we get your opinion?

Mr. Tefft: I'm not to provide recommendation, but it seems to fit what is allowable if that is the direction the board wants to take.

Chairman Howard: Do you see any concerns with the amendment to their application?

Mr. Tefft: No concerns.

Mr. Corigliano: I just want to make it clear that it is the Applicant's proposal to move the pool and amend the applicant, not the Board's

Chairman Howard: The applicant has amended the application during the hearing. I will close the evidentiary hearing.

UDO Section D-705(D), Variances.

When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the Board of Adjustment shall vary any of the provisions of the zoning regulation upon a showing of all the following:

- a. *The hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.*

Board member Faulk: Can the pool be put in without the variance?

Chairman Howard: Hardship appears to be from the strict application when you draw the lines, is that correct?

Board member Faulk: My two cents. Is there a better plan? They get 5 feet to decking. And it's a matter of sliding the pool correctly. I might be overthinking this, as a surveyor. Has this been done to see if it fits? It looks like it's being superimposed on foundation survey.

Mr. Linn: We tried to change the design. The result was a very small pool. We did work to try to reshape the pool to fit, it became difficult.

Board member Faulk: I want it unequivocal that it does not fit. I hesitate to be on board without a good basis of information. Are we pushing it over to give them what they need to build?

Chairman Howard: The Board will base the decision on what has been presented.

Mr. Corigliano: Are you questioning measurements on what is submitted and what is actual?

Board member Faulk: The survey gives a scaled image. If it had lines with setbacks drawn to make it fit, the pool decking would look different. The statement of fact is this is what he wants, but can he make it fit? It could possibly fit under the strict application of the code. It just doesn't look like they want it.

Board member Faulk: Are we able to grant a variance on what is submitted? Will the applicant bring a survey in and show it doesn't fit and stay within the requirements?

Motion: Board member Manning made a motion that the hardship will result from the strict application of the regulation.
Second: Board member Faulk
Vote: The motion passed with a unanimous vote.

- b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.*

Chairman Howard: Are there conditions peculiar to the property that create a hardship?

Mr. Corigliano: The applicant did say the shape of the property was a hardship.

Board member Faulk: I agree with that.

Motion: Board member Jarrell made a motion that the hardship exists due to conditions peculiar to the property, like the shape of the parcel.
Second: Board member Faulk
Vote: The motion passed with a unanimous vote.

- c. 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.*

Chairman Howard: The Applicant purchased the property and that is not a self-created hardship.

- Motion:** Board member Manning made a motion that the hardship did not result from actions of the homeowner/applicant and there was no self-created hardship.
- Second:** Board member Mittal
- Vote:** The motion passed with a unanimous vote.

d. 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.

Chairman Howard: We are in agreement on this.

Board member Faulk: I don't have a problem meeting with this. The variance is consistent with the spirit of the ordinance.

- Motion:** Board member Faulk made a motion that the requested variance is consistent with the spirit, purpose and intent of the regulation.
- Second:** Board member Jarrell
- Vote:** The motion passed with a unanimous vote.

- Motion:** Board member Manning made a motion to approve the request for a variance from Unified Development Ordinance Section D-917D(M), Supplemental Requirements-Accessory Uses and Structures for property owned by John and Christine Bauersfeld located at 2006 Seth Drive (property id # 06072355) as amended by the applicant and with the condition that a sealed site plan showing a minimum 8-foot side and minimum 13-foot rear setbacks and the pool deck cannot be closer than 5 feet to the property line.
- Second:** Board member Faulk
- Vote:** The motion passed with a unanimous vote.

5. Adjournment

- Motion:** Board member Mittal made a motion to adjourn the December 18, 2023 Special Board of Adjustment Meeting at 5:54 p.m.
- Second:** Board member Faulk
- Vote:** The motion passed with a unanimous vote.

Approved: _____



TO: Board of Adjustment

FROM: Robert G. Tefft, CNU-A, Town Planner

DATE: February 26, 2024

SUBJECT: Application by William and Brannon Howie, requesting a variance from Section D-703(E), Lot and Building Standards Table, of the Town of Weddington Unified Development Ordinance for parcel located at 4009 Whisperwood Court (TM #06069142).

APPLICATION INFORMATION:

SUBMITTAL DATE: February 13, 2024

APPLICANT: William and Brannon Howie

PROPERTY LOCATION: 4009 Whisperwood Court

PARCEL ID#: 06069142

LAND USE: Traditional Residential

ZONING: R-40 Single-Family District (R-40)

BACKGROUND:

The subject parcel is 2.72 acres (15,137 SF) and is located on the west side of Whisperwood Court within Section 2 of the Wedgewood subdivision (Lot 56). The parcel currently consists of a single-family residence constructed in 1991 and an accessory shed at the rear of the parcel. On February 13, 2024, the applicants applied for a Zoning Variance to reduce the minimum required side yard setback from 15 feet to 11 feet for the construction of a two-story, 2,492 square foot addition to the existing dwelling. The addition would include a two-car garage and storage on the main floor, and a recreation room with kitchen and full bathroom on the second floor.

It should be noted that while the proposed survey/ plot plan notes that this structure is a “Proposed ADU” the structure will not function as an accessory dwelling unit as per the UDO and will not be an accessory structure as it will be attached to the existing structure by means of a covered walkway. Accordingly, as per UDO Section D-917D(M)(1)(f), the structure “shall be considered a part of the principal structure and shall be subject to those same setback and height requirements as the principal structure.”

RELATION TO THE UNIFIED DEVELOPMENT ORDINANCE:

UDO Section D-703(E), Lot and Building Standards Table.

E. Lot and Building Standards Table. Table 2, Lot and Building Standards, establishes the lot and building standards for each zoning district. In the event of a conflict between the standard yard/setback requirements set forth in the Dimensional Requirements Table and any yard/setback requirements specific to a particular use as set forth in Section D-917D, the use-specific requirement shall control.

TABLE 2, LOT AND BUILDING STANDARDS							
Zoning District	Minimum Lot Size (sq. ft.)	Minimum Lot Width (ft.)	Minimum Setbacks (ft.)			Maximum Height (ft.)	Maximum Floor Area Ratio
			Front	Side	Rear		
R-40	40,000	120	50 (res.) 75 (other)	15 25 (corner)	40	35	N/A

UDO Section D-705(D), Variances.

1. When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the Board of Adjustment shall vary any of the provisions of the zoning regulation upon a showing of all the following:
 - a. The hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
 - c. 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.
 - d. 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.
2. No change in permitted uses may be authorized by variance.
3. Additionally, no variances shall be granted by the Board of Adjustment for the following:
 - a. Setbacks for signs and areas and/or height of signs.
 - b. Setbacks for Essential Services, Class III.

4. No variance for setbacks shall be granted which allows the applicant to reduce the applicable setback by more than 50 percent.
 5. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.
 6. Any order of the Board of Adjustment in granting a variance shall expire if a zoning permit, or certificate of occupancy for such use if a zoning permit is not required, has not been obtained within one year from the date of the decision.
 7. The Board of Adjustment shall hold a hearing on all complete applications no later than 40 days after the application has been filed with the zoning administrator unless consented to by the applicant.
-
-

ATTACHMENTS:

- Application
- Proposed Plot Plan
- Zoning Map

TOWN OF WEDDINGTON
Zoning Variance Application

This application is required for all variance applications. Completed applications along with all associated submittal requirements, must be submitted via the Town's Self-Service Permitting Portal.

No application shall be considered complete unless accompanied by the application fee in the amount of \$715.00. An additional fee to cover necessary public notification costs shall also be required prior to the application being heard before the Board of Adjustment. In addition to these fees and application, the following items shall also be required:

- A scaled survey drawn by, and certified as correct, a surveyor or engineer registered in the State of North Carolina, which shows property dimensions, boundaries, and existing and proposed building/additions; and illustrates the variance requested.
- A map clearly showing the subject property and all contiguous property on either side and all property across the street or public right-of-way from the subject property.

It is the responsibility of the applicant to submit complete and correct information. Incomplete or incorrect information may invalidate your application. The applicant, by filing this application, agrees to comply with all applicable requirements of the Unified Development Ordinance.

APPLICANT INFORMATION

Name: William and Brannon Howie

Mailing Address: 4009 Whisperwood Ct, Matthews, NC 28104

Phone Number: 704-254-7599 Email: brannonfhowie@gmail.com

PROPERTY OWNER INFORMATION *(if different from applicant)*

Name: _____

Mailing Address: _____

Phone Number: _____ Email: _____

SUBJECT PROPERTY INFORMATION

Location: Wedgewood Neighborhood, Lot 56

Parcel Number: 06069142

Existing Zoning: R-40

Use of Property: Residential

VARIANCE INFORMATION

1. What Section(s) of the UDO would that variance be from?

Section D-703. Zoning Districts and Permitted Uses, E. Lot and Building Standards Table
Minimum 15 foot Side Setback

2. What is the reason for the variance?

To build proposed structure in a location that avoids existing septic tank, minimizes encroachment on septic drain lines,
avoids FEMA flood zone, maintains mature tree canopy, maintains pervious surface, limits impact on neighbors view shed

3. If the variance is granted, how is it proposed that the property will be used?

Parking, storage, rec room

4. What improvements have been (will be) constructed on the property?

Attached structure with parking, storage, rec room

5. Per UDO Section D-705D(1), when unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the Board of Adjustment shall vary any of the provisions of the zoning regulation upon a showing of all the following:

- a. The hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

Applicant would suffer hardship as strict application of the regulation relative to lot shape, dimension,
location of dwelling and topography would require the proposed structure to be built too close to existing
septic tank and septic lines. On survey OF & BF indicates septic tank and septic field.

- b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

A hardship exists due to lot dimensions, location of septic tank and septic tank lines (indicated by OF & BF on survey), topography, FEMA flood zone, and location of dwelling on the lot which are all peculiar to this property.

- c. 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.

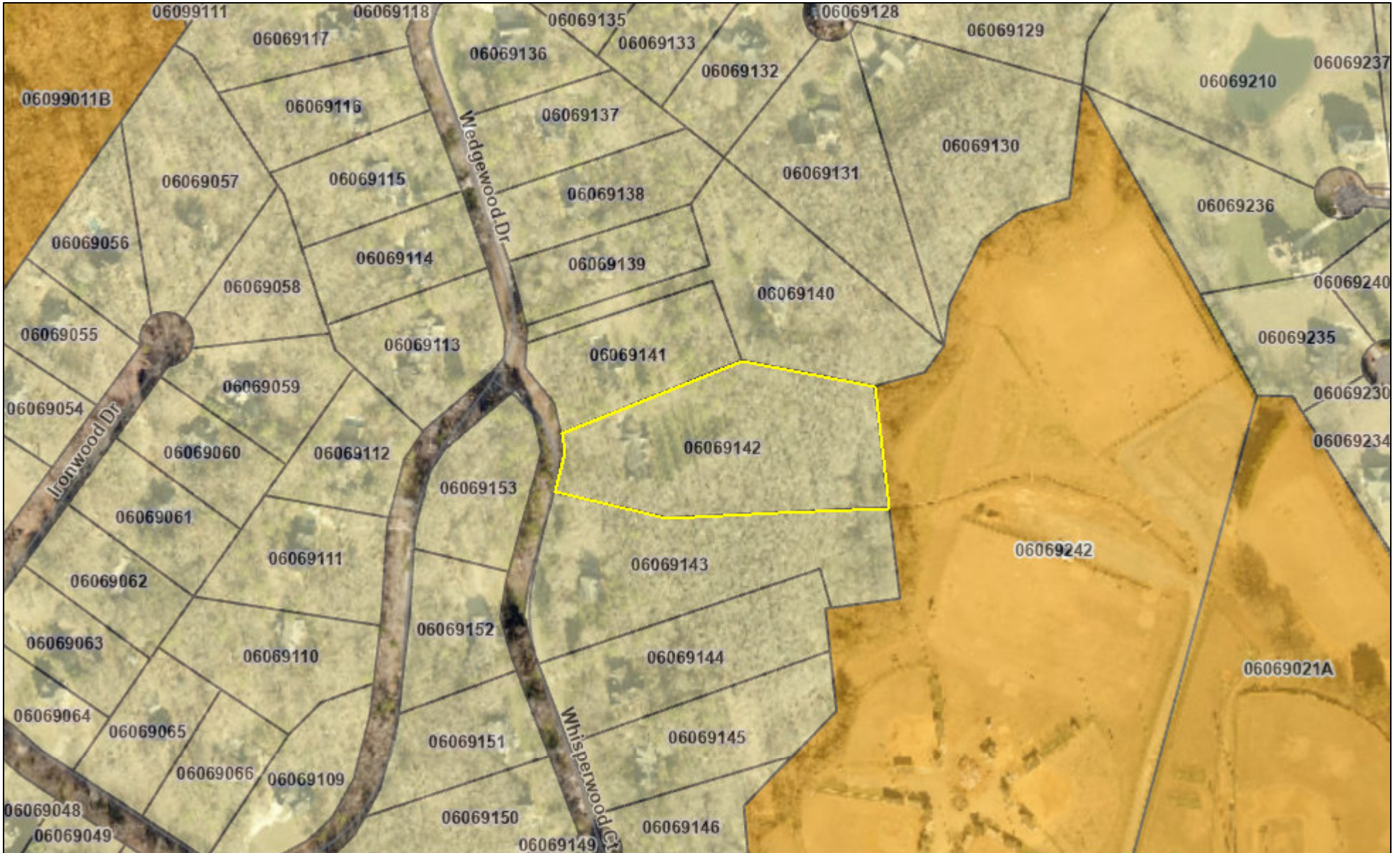
Confirmed. The hardship did not result from actions taken by the applicant/property owner. Hardship is a result of lot dimensions, location of septic tank and septic drain lines relative to dwelling, topography, mature trees/tree canopy, and FEMA flood zone, none of which property owner/applicant determined.

- d. 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.

Correct. Reducing the side setback by 4', from 15' to 11', to accommodate the location of the structure will not affect public safety. Variance will allow structure to be placed so that pervious surface, mature tree canopy, and view shed of abutting property/neighbor will be preserved.

6. Per UDO Section D-705D(2), no change in permitted uses may be authorized by variance.
7. Per UDO Section D-705D(3), no variances shall be granted by the Board of Adjustment for the following:
- a. Setbacks for signs and areas and/or height of signs.
 - b. Setbacks for Essential Services, Class III.
8. Per UDO Section D-705D(4), no variance for setbacks shall be granted which allows the applicant to reduce the applicable setback by more than 50 percent.
9. Per UDO Section D-705D(5), appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.
10. Per UDO Section D-705D(6), any order of the Board of Adjustment in granting a variance shall expire if a zoning permit, or certificate of occupancy for such use if a zoning permit is not required, has not been obtained within one year from the date of the decision.

Howie Variance

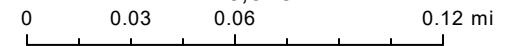


February 19, 2024

Weddington Zoning

	B1 (CD)		ED		R-40D		R-CD		Downtown Overlay
	B2 (CD)		MX		R-60		RE		Conditional Zoning
			R-40		R-80				

1:3,518



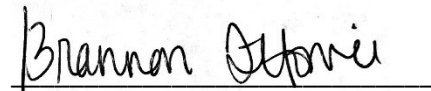
Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

2/21/2024

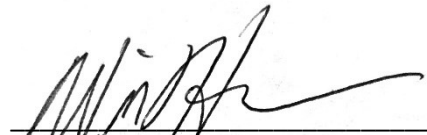
Mr. Frank Corigliano,

We understand and accept that the Planner, Robert Tefft, will be attending and giving testimony remotely at the Board of Adjustment Variance Hearing on Monday, February 26, 2024.

Sincerely,



Brannon Howie



William Howie