

**BOARD OF
ADJUSTMENT
OCTOBER 3, 2023
5:00 PM**



**BRYANT H. WOMACK
BUILDING
40 COURTHOUSE ST.
COLUMBUS, NC 28756**

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1. Call to Order
 2. Approval of Agenda
 3. Approval of Minutes from July 11, 2023
 4. Special Use Permit Request - Gabe & Jame Temple - Docket No. 2023-02 (SU)
 5. Other Business
 6. Public Comments
 7. Adjournment

BOARD OF ADJUSTMENT

July 11, 2023 - 5:00 PM

Bryant H. Womack Building

40 Courthouse Street

Columbus, NC 28722

MINUTES

Members Present: Frank Monterisi (Chair), Paul Weidman, Lisa Krolak, Michael Axelrod, Chris Jones.

Alternate Members: Adrienne Reilly, Libby Morris

Staff Present: Cathy Ruth: (County Planner), Chelsea Allen (Secretary), Sarah Zoellers (GIS Specialist), Jana Berg (County Attorney)

Public: Janice Jameson, Jonathan Jameson, Lora Baker, Tanya Walls

1. Call to Order

Frank Monterisi called the meeting to order at 5:04 pm.

2. Approval of Agenda

Approval of agenda was not notated.

3. Approval of Minutes from September 20, 2022

Frank Monterisi noted the minutes from September 20, 2022's meeting were not yet prepared for approval. He stated item number three on the agenda needed revision to reflect the minutes from September 20, 2022 will be approved at the next scheduled meeting.

4. 2023-01- (VA) Hidden River, P61-173, Lot 5, Appaloosa Lane Variance

Present to testify on behalf of the applicant: Jonathan Jameson, Lora Baker, Tanya Walls

Present to testify in opposition of the applicant: None

Frank Monterisi read an overview of the Board of Adjustment's procedures, expectations, and responsibilities for evidentiary hearings and the four requirements to obtain a variance. He asked the Board if there were any ex-parte communications or relationships with the applicant to be disclosed.

Lisa Krolak stated she had used the services of Feagan Law Firm in the past but did not think it would affect her ability to be impartial while hearing this variance request.

There were no further ex-parte disclosures from the Board.

Frank Monterisi stated the Board is ready to proceed with an application for the

Jameson Variance.

Frank Monterisi swore in Cathy Ruth (County Planner), Jonathan Jameson (Applicant/Petitioner), Lora Baker (Jonathan Jameson's Attorney), Tanya Walls (Realtor, North Group Real Estate), Jana Berg (County Attorney)

Cathy Ruth requested the staff report packet and the PowerPoint presentation be entered into evidence. Frank Monterisi accepted the staff report packet as Zoning Administrator #1, (ZA-1) and the PowerPoint presentation as Zoning Administrator #2, (ZA-2).

The staff report packet labeled Zoning Administrator #1, (ZA-1) contains the following exhibits:

- Exhibit XA consists of the General Application Form and narrative submitted by Attorney Lora Baker on behalf of Jonathan and Janice Jameson.
- Exhibit XB consists of the zoning permit/application and receipt of \$100.
- Exhibit XC consists of the recorded deed in the Register of Deeds Office dated September 9, 1999, Book 257, Page 1656.
- Exhibit XD consists of the recorded plat in the Register of Deeds Office dated February 16, 1982, Book A254, Page 233.
- Exhibit XE consists of the Polk County Property Card tax record for P61-173.
- Exhibit XF consists of Polk County Geographic Information System (GIS) map, P61-173.
- Exhibit XG consists Google Map of parcel area.
- Exhibit XH consists of the Polk County GIS map of P61-173 with flood layer.
- Exhibit XI consists of P61-173 and surrounding parcels' zoning and current uses from the Polk County GIS site.
- Exhibit XJ consists of the signed and notarized Affidavit of Mailing of notice of public hearing to adjacent property owners, property owner, and applicant; including map of adjacent property parcels and addresses.
- Exhibit XK consists of the signed and notarized Affidavit of Posting of notice of public and photos of posted signs.
- Exhibit XL consists of pictures taken by staff of the parcel.

Cathy Ruth went over the PowerPoint for the Board:

- Exhibit XF consists of Polk County Geographic Information System (GIS) map, P61-173.
- Exhibit XG consists of Google Map of parcel area.
- Exhibit XH.1 consists of the Polk County GIS map of P61-173 with 100 year flood layer.
- Exhibit XH..2 consists of the Polk County GIS map of P61-173 with 500 year flood

layer.

- Exhibit XI.1 consists of P61-173 and surrounding parcels' zoning districts from the Polk County GIS site.
- Exhibit XI.2 consists of P61-173 and the surrounding property uses from the Polk County tax cards.
- Exhibit XK.2 consists of the sign posting locations
- Exhibit XK.3 consists of photo of sign posted by staff at the corner of Appaloosa Lane and River Road.
- Exhibit XK.4 consists of site photo of the first of two signs posted on Appaloosa Lane in front of parcel P61-173 on right side of road while facing towards River Road.
- Exhibit XK.5 consists of site photo of the first of two signs posted on Appaloosa Lane in front of parcel P61-173 on left side of road while facing towards the cul-de-sac at the end of Appaloosa Lane.
- Exhibit XL.1 consists of site photo of the first of two signs posted on Appaloosa Lane in front of parcel P61-173 on right side of road while facing towards River Road with GIS aerial reference point.
- Exhibit XL.2 consists of site photo facing the left portion of the front of the property line with GIS aerial reference point.
- Exhibit XL.3 consists of site photo middle portion of the front of the property line with GIS aerial reference point.
- Exhibit XL.4 consists of site photo of parcel across the gravel road from P61-173
- Exhibit XL.5 consists of site photo showing the left side of Appaloosa Lane while facing River Road.
- Exhibit XL.6 consists of site photo showing the left side of Appaloosa Lane while facing toward the end of Appaloosa Lane/cul-de-sac with a GIS aerial reference point.
- Exhibit XL.7 consists of site photo taken of left portion of front property line with GIS aerial reference point.
- Exhibit XL.8 consists of site photo showing another viewpoint of the parcel across the road from P61-173 with GIS aerial reference point.
- Exhibit XL.9 consists of site photo showing a view of Appaloosa Lane facing the end/cul-de-sac from mid way in front of parcel P61-173 with GIS aerial reference point.
- Exhibit XL.10 consists of site photo showing the first of two signs posted on Appaloosa Lane while facing the cul-de-sac at the end of the road with a GIS aerial reference point.
- Exhibit XL.11 consists of site photo showing the existing residence adjacent to P61-173 with a GIS aerial reference point.
- Exhibit XL.12 consists of site photo showing sign posted at corner of Appaloosa Lane and River Road with a GIS aerial reference point.
- Exhibit XL.13 consists of site photo showing right hand view of River Road when standing at beginning of Appaloosa Lane with a GIS aerial reference point.
- Exhibit XL.14 consists of site photo showing the view straight across River Road while standing at beginning of Appaloosa Lane with a GIS aerial reference point.
- Exhibit XL.15 consists of site photo showing a view of Appaloosa Lane facing toward the cul-de-sac while standing on River Road with GIS aerial

reference point.

Cathy Ruth stated attorney Lora Baker in representation of Mr. and Mrs. Jameson contacted the Planning office in May of 2023 and requested information about a variance for a property located at lot 5, Appaloosa Lane, Tryon, NC, 28782. Ms. Baker was provided records of previous variance requests from the docket, Polk County Zoning Ordinance, Variance of Polk County Handout, an application, and the Polk County Board of Adjustment Rules of Procedure for Quasi-Judicial proceedings. The Jameson's are asking for a variance for the minimum buildable lot and the side setback requirement. There are three houses built in the subdivision currently, one at the beginning of Appaloosa Lane and the other two closer to the end near the cul-de-sac. P61-173 contains 100 year special flood hazard area, 500-year floodplain, and floodway. Nothing could be built in the floodway, there are extensive requirements that must be met in order to build in the 100-year special flood hazard area, where the risk of flooding is 1% annually. It is permitted to build within the 500-year flood plain where the likelihood of a flood is 0.2 percent annual chance. The surrounding property uses were shown to the board as mostly vacant or residential. One parcel had a garage addition and storage shed on the tax card which was most likely farm related.

Cathy Ruth asked that the Polk County Zoning Ordinance be entered into evidence.

Frank Monterisi accepted into evidence the Polk County Zoning Ordinance as Zoning Administrator #3, (ZA-3).

Cathy Ruth noted on the next to the last slide, page 26 of the Polk County Zoning Ordinance showing the different zoning districts with their dimensional requirements, an error was made in the section highlighted, RE-2. She explained it should've been highlighted on the district labeled RE-5. Parcel P61-173 is located in the RE-5 zoning district which has a minimum lot size of five acres and a minimum setback distance of 50' for front, rear, and sides.

Cathy Ruth referenced Section 8.3 Nonconforming Lots of Record, of the Polk County Zoning Ordinance, page 30. She explained the parcel was located in the Hidden River Subdivision which was approved during the 1980's and the lot was subdivided before RE-5 went into effect which was accompanied with five acre minimum lot sizes and 50' setbacks on all sides.

Frank Monterisi asked if the parcel was a non conforming lot of record why was this included in the variance application and when were the three existing residences constructed.

Cathy Ruth stated that was up to the attorney to include that request in the application, the build dates for the existing three residences could be found on the corresponding tax cards. She stated Lora Baker would be able to address those questions further.

Lora Baker agreed to address those questions during her presentation.

Michael Axelrod asked what the parcel was zoned prior.

Cathy Ruth said prior it was zoned RE-2 briefly but before that it was unzoned.

Frank Monterisi stated the area is commonly known as part of Hunting County and asked if they had been notified along with the Pacolet Area Conservancy (PAC) who owns six adjacent lots to P61-173. Who was currently in charge of the Pacolet Area Conservancy?

Lisa Krolak stated Kieran Roe, who is based out of Hendersonville, North Carolina.

Cathy Ruth said they had been notified by mail and informed the Board there was an Affidavit of Mailings included in their packets.

There were no further questions from the Board.

Lora Baker, Attorney, Feagan Law Office, approached the Board to testify and requested her packet to be entered into evidence. Frank Monterisi accepted the packet into evidence as Applicant #1, (AP-1).

Mrs. Baker began her examination of Tanya Walls, realtor, with North Group Real Estate.

- Ms. Baker: Please state your name for the record.
- Ms. Walls: Tanya Walls.
- Ms. Baker: And what do you do for a living?
- Ms. Walls: I am a realtor.
- Ms. Baker: Have you been working with the petitioners?
- Ms. Walls: I have.
- Ms. Baker: Regarding lot 5, in Hidden River Subdivision?
- Ms. Walls: I have.
- Ms. Baker: Have you in fact listed the property?
- Ms. Walls: I have.
- Ms. Baker: And actively engaged in selling it?
- Ms. Walls: I have.
- Ms. Baker: How long ago was it listed?
- Ms. Walls: Its got to be coming up on over a year at least.
- Ms. Baker: Have you had any inquiries about the property?
- Ms. Walls: Many.
- Ms. Baker: Have you had any firm offers?
- Ms. Walls: No. We don't get past the question and answer period.
- Ms. Baker: Is it part of your responsibility as a realtor to disclose things such as side setbacks?
- Ms. Walls: Material facts, yes, anything that would impact their decision on buying the property.
- Ms. Baker: Are you familiar with the lot size for lot 5?
- Ms. Walls: 0.7 acres.
- Ms. Baker: I am showing you a packet that was just presented to the Board. Is this the survey, the plat that is listed on the very first page, is that

a fair and accurate depiction of the Hidden River Subdivision?

- Ms. Walls: Yes.
- Ms. Baker: The shaded areas, very poorly shaded areas on the plat, can you tell what those are?
- Ms. Walls: Those are Pacolet Conservatory Land.
- Ms. Baker: The triangles and the square?
- Ms. Walls: Preexisting homes there.
- Ms. Baker: If you could turn over to the second page. Have you had a chance to review this exhibit?
- Ms. Walls: I have.
- Ms. Baker: Is this a fair and accurate summary of the lots and the ownership and lot size?
- Miss Walls: To my knowledge, yes.
- Ms. Baker: Have you had an occasion to do a summary search in the GIS and the community to see who the neighbors are?
- Ms. Walls: Yes.
- Ms. Baker: We saw a diagram earlier showing two lots in the subdivision which are across the road, River Road and they showed to be in Multiple Use as opposed to RE-5. Is that what you saw?
- Ms. Walls: Yes.
- Ms. Baker: Would you say those are a bit of a different characteristic than the other lots in the subdivision?
- Ms. Walls: Absolutely, they also sit wide rather than deep, substantially difference on both those lots.
- Ms. Baker: Over from the plat on the second page, can you tell me does that appear to be a Polk county tax record? And who is that for?
- Ms. Walls: Burnette Community Development.
- Ms. Baker: Is that lot 4 directly next to lot 5 that we have talked about here today?
- Ms. Walls: Yes.
- Ms. Baker: Does it give you information on when that property was constructed?
- Ms. Walls: 1993
- Ms. Baker: Can I have you switch pages, one more, does this appear to be a deed from Polk County Register of Deeds?
- Ms. Walls: Yes.
- Ms. Baker: Who is it deeded to?
- Ms. Walls: James C. Catterton
- Ms. Baker: What is the date on that deed?
- Ms. Walls: July 28, 1997.
- Ms. Baker: If you can go to the next document, one more page, does this appear to be a Polk County deed?
- Ms. Walls: Yes.
- Ms. Baker: To whom is that deeded?
- Ms. Walls: James Catterton to McEntire
- Ms. Baker: Is Ms. McEntire the current owner of the property out on Green River?
- Ms. Walls: Yes.
- Ms. Baker: Does this appear to be a Polk County tax card?
- Ms. Baker: I am sorry. Can ya'll hear me? My voice doesn't carry very well

- but if you can't, let me know and I can try to speak a bit louder.
- Ms. Baker: Does that show the year that there was construction on that property?
 - Ms. Walls: Yes. 1998.
 - Frank Monterisi: Just one question. Which parcel is that in reference to?
 - Ms. Baker: I believe this is lot seven. If you go back to that list I believe its seven.
 - Frank Monterisi: Seven?
 - Ms. Baker: Yes.
 - Ms. Baker: The next item, does that appear to be a Polk County deed, who is that deeded to?
 - Ms. Walls: Fountain.
 - Ms. Baker: Next page, is that a Polk County tax card?
 - Ms. Walls: Yes.
 - Ms. Walls: Built 1991.
 - Ms. Baker: Flip over once more , you are doing a great job. Next, does that appear to be an amendment to those?
 - Ms. Walls: Yes,
 - Ms. Baker: One more, does that appear to be a judgment from Polk County, in 2001
 - Ms. Walls: Yes, It does.
 - Do you know who the petitioner was in that matter?
 - Ms. Walls: Evelyn Duke
 - Ms. Baker: Thank you, for identifying those documents for us.
 - Ms. Baker: Have you had a chance to review the restrictive covenants for Hidden River Subdivision?
 - Ms. Walls: Somewhat, yeah.
 - Ms. Baker: Is it your understanding that those covenants require single family residential purposes only?
 - Ms. Walls: Yes.
 - Ms. Baker: Is it also your understanding there are existing setback restrictions? Is that 20' from lot lines?
 - Ms. Walls: Yes.
 - Ms. Baker: With the amendment to the restrictive covenants is it your understanding that the minimum home square footage is 1000 feet?
 - Ms. Walls: Yes.
 - Ms. Baker: Do you believe based off your experience as a realtor, selling homes, selling lots, it is possible to build a home on that 0.7 acre lot with a 20' side setback?
 - Ms. Walls: I do.
 - Ms. Baker: Do you believe it is possible to build a home on that lot with a 50' setback?
 - Ms. Walls: I do not.
 - Ms. Baker: Is there already an existing requirement that there be 50' from the river on the back side of the lot?
 - Ms. Walls: Um, it is not an existing requirement it would be essentially when you go for septic on that lot, the health department is going to require that any septic be 50' off of any turn of that river. Wherever, whatever point of that river would be closest to the home, they will measure 50' back from that point on the river to keep the water safe, to be

50' off of that.

- Frank Monterisi: So no septic permit has been approved for that lot as of this date?
- Ms. Wall: No.
- Frank Monterisi: Why do you think something can be built at 20' but not 50'.
- Ms. Walls: When Cathy and I had discussed the lot, we took the measurements of the lot, the front of the lot is roughly 130' but includes a bend in the lot so its probably at uh, the middle of the lot is a bit shorter but when Cathy and I used the computer to draw those setbacks in it gave us approximately 24' to build.
- Frank Monterisi: Based on the site of the house?
- Ms. Walls: No, we took the setbacks and what we were left with was approximately a 24' building footprint.
- Paul Weidman: What is the size of the home? That is a distance. What is the size?
- Ms. Walls: The way we had calculated it by satisfying the setbacks our maximum house would be 24' wide.
- Lisa Krolak: Is that the setback or the house?
- Ms. Walls: The width of the house. The width of the house with the setbacks could be a maximum of 24'.
- Frank Monterisi: I think you might be confusing the 24' on the setbacks with the dimension of the house.
- Ms. Walls: With the setback of 50' on each side of the house that leaves 24' for the house, yes. And roughly that was computer, so it's not exact but its going to be somewhere in that ballpark.
- Ms. Baker: Given the plat that you reviewed previously with us, for all the lots that are South of River Road, all the ones that are in this RE-5, in the Hidden River Subdivision, if you remove those owned by the Pacolet Area Conservancy, and if you remove those those who currently have a house, a single family residence built on there, and you remove those previously granted a variance, what does that leave?
- Ms. Walls: Just Mr. Jameson's lot.
- Ms. Baker: Those are my questions for Ms. Walls, I don't know if the Board has any questions or not.

Board Questioning:

- Frank Monterisi: How would your questions refer to lot number 12 owned by Mr. Currie Trustee?
- Ms. Walls: I'm sorry, can you ask me the question again?
- Frank Monterisi: For her clarification in terms of the Pacolet Area Conservancy and the other lots there you said the only lot left would be the Jameson Lot?
- Ms. Walls: Yes, Lot 12 is the one that has already been granted a variance through the court case referenced in the packet.
- Frank Monterisi: Do you know what variance that lot was granted related to lot size or setbacks?
- Ms. Walls: My understanding is they have no setbacks.
- Frank Monterisi: No setback requirements?
- Ms. Walls: Right.

- Ms. Baker: The copy of that judgment is at the very back of that packet.
- Frank Monterisi: What real estate office do you work for?
- Ms. Walls: North Group Real Estate.
- Ms. Walls: I live locally here in Polk.
- Lisa Krolak: Do you know what the setbacks are on the house adjacent to lot 5, lot 4?
- Ms. Walls: I can tell you we haven't measured but it is very close to the lot line shared to John's current lot, maybe 15'. If you zoom in you can really see where the wooded area starts and the mowing stops, its very close, its very pushed to the side of that lot, on one hand you can easily satisfy it on one side but you're close to the other lot line.
- Lisa Krolak: Thank you.
- Frank Monterisi: From the front property line can you estimate the distance to the river?
- Ms. Walls: 187.2 ' is what the plat says.
- Frank Monterisi: Just to clarify in my own mind three existing houses were built prior to RE-5 zoning, is that true?
- Ms. Walls: Cathy, do you know when RE-5 zoning was implemented?
- Frank Monterisi: Early 2000's.
- Ms. Walls: Then yes, they were all built in the 1990's.
- Frank Monterisi: There was no zoning in effect at that time. Prior to that time.
- Ms. Baker: I believe RE-2 may have been in effect.
- Cathy Ruth: RE-2 has been in effect since 1996.

Cathy Ruth asked to enter into evidence an internal docket that contained the dates of when different zoning districts and changes came into effect. showing the history of zoning in Polk County and the timeline each came into effect. Frank Monterisi accepted the document into evidence as Zoning Administrator #4, (ZA-4).

Cathy Ruth asked to submit into evidence a copy of the initial file that was referenced earlier regarding the previous case for the variance previously granted in Hidden River Subdivision.

Frank Monterisi accepted it into evidence as Zoning Administrator #5, (ZA-5), Cathy Ruth explained the file contained information on the variance which was granted for three parcels in that area back in 2000 and the early 1990's which Ms. Baker referenced in her earlier testimony.

- Michael Axelrod- So these variances were granted at one time? For certain lots in the subdivision.
- Lisa Krolak: Lots 14, 9, 15 and 12.
- Michael Axelrod: So, lot 12 is the only one that is still vacant and the others are owned by PAC?
- Ms. Baker: Or already built upon, yeah.
- Frank Monterisi: Please give the Board a few moments to digest the additional evidence.
- Lisa Krolak: So, of those four lots, three of them right now are owned by PAC? And only that one lot 12 is still open?
- Michael Axelrod: That is what it looked like to me.
- Chris Jones: So, other than the zoning issue is there actually any other

opposition to this?

- Frank Monterisi: No one is here that I can see. And that really has no effect on this matter. This is not a zoning issue, this is a setback issue.
- Michael Axelrod: Are they applying for a variance from the side setbacks, which setbacks are talking about?
- Frank Monterisi: That's what I asked initially, why is there a request for a variance from the five acre minimum buildable lot size to 0.7 acre lot size when in my mind this was predetermined as grandfathered in when the RE-5, Hunting Country Subdivisions went through with the five acre minimum. This was a pre-existing lot size, the 0.7 acres, so even if it was subdivided before the Hunting Country had the five acre lot minimum it was grandfathered in as being conforming.
- Michael Axelrod: Right, but I am asking about the setbacks.
- Frank Monterisi: There are two things they are asking for and I don't understand the first one but the second request is for the setback requirement. The minimum setback is 50' feet on all sides and the only size of house they can construct is a 24' wide house
- Michael Axelrod: But my question was this the side setbacks or the front and rear setbacks? Which setbacks are we addressing?
- Frank Monterisi: We are going to get there in a second.
- Paul Weidman: Cathy, is the expert on this. Can you tell us what the county building setback requirements are for the front, rear, and sides of this lot?
- Cathy Ruth: For that parcel it is 50' all the way around.
- Paul Weidman: 50' on each?
- Cathy Ruth: Yes, 50' on each side in RE-5.
- Michael Axelrod: Still my question is what setback variance are they asking for? Regarding the setback requirements?
- Frank Monterisi: They are asking for 30' from what I can understand. from a 50' they are asking to be granted a 20' side setback.
- Michael Axelrod: On all four sides?
- Frank Monterisi: I don't know if they need it front and back, I asked the distance front and back and they responded 187.2'. I don't know if there is a request for front to back but from side to side.
- Michael Axelrod: That's my question. I would like an answer to it.
- Ms. Baker: That's correct. We are asking for a side setback variance. We would like to be able to build on the 0.7 acres even though its a five acre district. Ideally, in a perfect world we would ask for there to be no side setback requirement but if one needs to be put in then we would ask for a 20' side setback.
- Ms. Walls: If I may speak to this matter, I do have a background in building, prior to moving to North Carolina I was a custom builder, so side setbacks yes, 20', and really like she said it would be great to have even less but we were going off of what was in the old covenants and trying to be as giving as we could. The front, I think it could be made do. The difficulty comes when we don't know what someone will be building and there is not a set plan picked out right now. I personally believe that some lightening of the front setbacks would also be beneficial.
- Michael Axelrod: Then you would have to come back for another variance.
- Frank Monterisi: And that is not requested at this point. Can you describe

topography of the lot?

- Ms. Walls: It is sloping down to the river. If you could look at where the house next door is, pretty much that is a similar building path for that lot as well. It does fall off pretty dramatically towards the river, you will probably see someone who wants a two story with a walk out basement or I should say a one story with a walk out basement.
- Paul Weidman: And that house next door does not have a 50' setback in front of it?
- Ms. Wall: Yes.
- Frank Monterisi: But that house was constructed in such a time when no setbacks were required.
- Michael Axelrod: There were deed and covenants, there were deed restrictions, so when the house was built there were some requirements.
- Ms. Baker: Just not county requirements.
- Frank Monterisi: Not with the county requirements.
- Ms. Walls: It is my understanding only the other property owners in there could bring the issue if someone built and was not within the required setbacks, it would be up to the other homeowners to bring some type of action against them.
- Lisa Krolak: Set back from the river, is there a special setback from the waterway, is it 50'?
- Ms. Walls: Well, Cathy says it is 50' all around, The back setback is not an issue because when you do your septic it needs to flow downhill and the septic will be behind the house. The septic can't be closer than 50' from the river so there is really no way we are going to need that area back there, plus it's in a flood zone, well partially. So, we are not concerned at all dealing with the back line.
- Frank Monterisi: Any other questions for Ms. Walls?
- Ms. Baker: If I could ask the witness one more question before we excuse her.
- Frank Monterisi: Yes.
- Ms. Baker: How difficult has it been for you in listing this property to find a purchaser?
- Ms. Walls: So, when I get inquires the first question they're going to ask is what type of restrictions there are. As a realtor, it is either another realtor or a potential buyer that I am talking to and as soon as I say the county has RE-5. Then they ask what is RE-5, and I have to explain to them, no short term rentals and I explain the setbacks. Then they ask what they can build there and when I reveal the conversation I had with Cathy, something that is approximately 24', I lose them. No one wants a tiny home, that is a river front property, and we priced it very well. Land is selling pretty rapidly and there is not a comparable river front property around here and we can't get past the setbacks and the zoning and no one interested wants to build a 24' wide house. And to be that restrictive, if you want to build your getaway or your retirement home, anything you want within a 24' footprint, we just lose them.
- Ms. Baker: Thank you, Ms. Walls.
- Ms. Walls: You're Welcome.

Ms. Baker called Jonathan Jameson to testify before the Board.

- Ms. Baker: Please state your name for the record.
- Mr. Jameson: Jonathan Jameson.
- Ms. Baker: Are you the current owner of the property located at lot 5, Hidden River Subdivision?
- Mr. Jameson: I am.
- Ms. Baker: The lot is approximately 0.7 acres?
- Mr. Jameson: Yes.
- Ms. Baker: Did you file the petition to request a variance in this matter?
- Mr. Jameson: Yes.
- Ms. Baker: Why did you file that petition?
- Mr. Jameson: The ability to either build on it or sell it. And based on certain circumstances I decided to sell it.
- Ms. Baker: And have you been able to sell with the current circumstances?
- Mr. Jameson: No, I have not.
- Ms. Baker: Do the restrictive covenants require you to build 20' from the lot line? Is that possible?
- Mr. Jameson: At 20'?
- Ms. Baker: Yes.
- Mr. Jameson: I believe it is.
- Ms. Baker: Is it possible for you to build 50' from the lot lines?
- Mr. Jameson: No.
- Ms. Baker: Are you asking for a similar variance that has already been granted to some of your neighbors?
- Mr. Jameson: I am.
- Lisa Krolak: I am sorry, can you repeat your question?
- Ms. Baker: If he is asking for a similar variance to what has been previously granted.
- Lisa: And his answer was yes?
- Ms. Baker: Yes.
- Lisa Krolak: Thank you.
- Ms. Baker: Those are my questions, I wanted you to hear from the lot owner and if you have any questions for him about the lot or making use of the lot.
- Frank Monterisi: Is there any engineering that will let us know that nothing can be built on this lot with the current setbacks? (Partially, unintelligible)
- Mr. Jameson: Yes, I did consult Southland Rock homes, I had a design selected. When I had a builder come out and look at it, he said John, you're not really going to be able to build anything on this lot based on these side setbacks unless you want a tiny home. Mr. Jameson replied, "No, I don't want a tiny home". And that was 4 years ago, and by the way I did own for over 20 years the cabin on lot 4 and lived in it. I love the river and loved the location.
- Lisa Krolak - I am getting lost in all the paperwork, what is the setback within the housing covenants for that subdivision?
- Ms. Baker: The side setbacks for the restrictive covenants of the POA are 20'.
- Lisa Krolak: 50'?
- Ms. Baker: 20'.

- Lisa Krolak: Thank you.
- Frank Monterisi: What was your question, Lisa?
- Lisa Krolak: What were the setbacks from the restrictive covenants.
- Michael Axelrod: When the court granted the variance for lot 12 was that only for the lots size and it did not address the setbacks, the side setbacks?
- Ms. Baker: That is correct. And it's my understanding they were in RE-2 at that point, Ms. Ruth?
- Cathy Ruth: All I have is that same record you all are looking at I don't have any any knowledge outside of the record.
- Any other questions for Mr. Jameson?
- Michael Axelrod: Can you just clarify your intentions for this variance is to sell the property and not to be build upon it.
- Mr. Jameson: Yes, the circumstances have changed so we are not going to be able to build on it.
- Ms. Baker: Any other questions for Mr. Jameson?
- Ms. Baker: That would conclude my questions for this witness at this time. I would like to make a closing statement at the appropriate time.
- Frank Monterisi: Please give the Board a few minutes to digest what has come before us at this point and maybe some of the other Board members can clarify, as I am a little confused as to your last question as far as the setbacks?
- Lisa Krolak: Sure, they have this tiny 0.7 acre lot and the subdivision was built that way. What did they expect people to build a house using 20' setbacks?
- Frank Monterisi: So, you are saying when the subdivision went through the setback requirement was 20' at that time?
- Lisa Krolak: No, the housing, their was apparently wasn't any restriction by the county but the people that developed this put the houses in with 20' setbacks.
- Frank Monterisi: On the deed.
- Lisa Krolak: On the deed.
- Jana Berg: On the restrictive covenants.
- Frank Monterisi: But not as far as the county is concerned.
- Frank Monterisi: Just to clarify one other thing, at this particular point in time you are not requesting a front setback, you are only requesting the side setbacks?
- Ms. Baker: Our petition was for a side setback requirement of 20' and that 0.7 acres is an adequate buildable lot size.
- Frank Monterisi: Does anyone else have any other questions for Ms. Baker or Mr. Jameson at this time?
- Ms. Baker: Included in the documents Ms. Ruth previously gave you, I am sure you saw it before you even came in tonight, I have a memorandum of sorts going through the elements required for you to consider and determine whether or not to grant a variance. I would say at the outset, these elements have been considered at least twice before in regards to this community, Mr. Catterton was a prior lot owner, he came before the Board, he was granted a variance in regards to the lot size. Then several years later back in 2000 the ZBA heard a request for four lots in that subdivision asking to be able to build in a smaller lot. You can see from

the plats these are small lots, its not an option. Unfortunately its not an option for Mr. Jameson to buy a neighboring lot to combine with his own and build upon. You heard previously from him he originally wanted to build a cabin similar to what's next door to him but wasn't able to do so because of setback requirements. This lot has been on the market for quite some time and even though they've had a lot of interested parties which would mean to me that they'd probably sell it if the setback requirements were different but they haven't been able to because nobody wants to buy a lot they can't build on. So, I would ask you to take that in consideration. This lot is a bit different than the remaining lots of the subdivision primarily because, as you can see from the exhibit I provided. Besides Mr. Jameson's lot, all the other lots south of River Road, are either owned by the Pacolet Area Conservancy where they're not worried about building or they already have a home on there so they are not worried about building, or they have previously been granted a variance. So he's kind of the odd man out in that subdivision. He's the only one that can't really make adequate use of his land. It's not because he did anything to cause that problem, just because he's not able to build because of the setbacks, I believe. I'm sure RE-5 makes great sense for a lot of equestrian estates, and equestrian communities, but maybe not this one because the lot size is just not large enough. It's not large enough. So, I do believe an undue hardship will result from a strict application of this ordinance and I believe this hardship results from conditions that are peculiar to the property that did not result from Mr. Jameson or anything he's done personally to make that case. His lot size is different in circumstance to other lots in the area because no one else needs the variance. He's kind of the last one standing needing some help. He of course did not take any actions that would cause his lot size to be reduced and or to have issues with a side setback requirement. I do believe the variance is consistent with the spirit, purpose, and intent of the ordinance so that public safety is secured, and substantial justice is achieved. I mean, I think the fact that you know that there have been prior applicants for the courts now, on at least Mr. Catterton's case that you know a variance was necessary that would help with the health safety morals and welfare. I don't think the welfare of the county has changed much since Mr. Catterton's variance was granted and we're just simply asking that a Polk County resident be able to make use of his land and in the current situation he's not able to do so. So, if you would consider finding that he is able to build on that .70 acres even though it's not five acres and with that 20' as opposed to a 50' side setback, we'd be most appreciative. Thank you.

- Frank Monterisi: One other question here, do you know how PAC feels about this?
- Ms. Baker: I don't. I did ask Mr. Jameson if they approached him and he said they did not.
- Chris Jones: So, do you have any idea what the intention is? On Lot Six? What can they do with that?
- Lisa Krolak: That belongs to PAC.
- Frank Monterisi: That is my understanding too.
- Chris Jones: Yeah that piece. What can they do with that?

- Ms. Baker: That kind of property they kind of keep in a similar situation is my understanding, I know you're not supposed to build on it. Sometimes they have parks and trails on conservation lands.
- Ms. Walls: Trails occasionally but I wouldn't say sandwiched between essentially two residential lots, it's substantially supposed to go undisturbed.
- Frank Monterisi: Any other evidence that needs to be brought before this matter? That brings us to the end of the evidential portion of this hearing.

After a short discussion the Board decided to continue the deliberation portion of the hearing instead of postponing and took a brief adjournment.

Frank Monterisi reconvened the hearing after a 15 minute recess. The Board began deliberation on each of the individual requirements for granting a variance.

Frank Monterisi: I'll go with the elements to be considered and the conclusion and we can vote individually on each one. Number one is unnecessary hardships would result from the strict application of the ordinance. Anyone want to go first?

Paul Weidman: Well, yeah, the testimony was that the owner can't build except a tiny house and that those building restrictions have prevented the ability to sell the property.

Frank Monterisi: So, your vote is?

Paul Weidman: Yes, the requirement of section one was met.

Michael Axelrod: Frank, are we deliberating? or aren't we discussing this before we vote on it?

Frank Monterisi; I think we'll discuss it as we go through each individual conclusion.

Jana Berg: I mean that's fine if y'all can decide whether or not it's necessary for them to get a variance for the non-conforming lot, whether or not it's grandfathered in under the nonconforming lot according to our ordinance.

Paul Weidman: Section 8.3 where it says that a prior nonconforming lot of record does not have to be held to the size restrictions.

Frank Monterisi: So, let's just have a broad vote on that so that we can move on to the second variance request.

Jana Berg: That a variance isn't necessary for a lot size. I mean if that's what your decision is.

Frank Monterisi: It is my opinion that since that is a lot we've grandfathered in prior to no variances required for the construction on a lot. It is a substandard but pre-approved lot. I think there is no variances required for that particular portion.

Paul Weidman: And as a supporting fact, Section 8.3.

Frank Monterisi: Yes, Section 8.3.

Frank Monterisi: So just for the record we have Paul saying that he has an affirmative vote that it doesn't meet the conditions considered in element number one.

Michael Axelrod: Can you reiterate what you said Paul?

Paul Weidman: I found that the requirements of section one have been met. There is an unnecessary hardship and I base that on the findings that the owner has been unable to sell the property, he can't build or except a tiny house, and

that those restrictions if applied would place this property owner in a singular hardship compared to the other lots in the subdivision.

Michael Axelrod: And you're addressing strictly the side setbacks?

Frank Monterisi: No.

Paul Weidman: No, I am addressing requirement number one for the granting of a variance.

Lisa Krolak: Right now, we're just voting if a variance is applicable and then we will talk about the setbacks if they're required after we go through these four and decide that a variance is needed.

Frank Monterisi: No. The application that's before us is requesting that the setbacks be changed for this particular lot from 50' to 20'. With that in mind if we are to adhere to strict application to the 50' side setback then Paul is saying that it is an unusable lot. Is that what I understand? He is implying that with the 20' permitted setback, the lot becomes unusable.

Michael Axelrod: With respect to item number one, unnecessary hardship would result from the strict application of the ordinance and with respect to the side setbacks. I affirm that this would be an unnecessary hardship to apply the 50' setback.

Frank Monterisi: So, you are affirming that an unnecessary hardship would result if we had a strict application of the side setbacks?

Michael Axelrod: Correct.

Frank Monterisi: So that also is an affirmative vote.

Lisa Krolak: I also affirm and agree with Paul for the same reasons.

Chris Jones: I affirm for the same reasons.

Frank Monterisi: And I also agree with that as well. So, we have item number one with five in favor and zero against.

Frank Monterisi: Number two, hardship would result from conditions that are peculiar to the property such as location size or topography. Hardships resulting in personal circumstances as well as hardships resulting from conditions that are common to the neighborhood and the general public may not be the basis for granting a variance. Paul, can I ask you to start again?

Paul Weidman: Sure. I think the hardship results solely from the small size of the property and one of the documents that was introduced in here I think shows that something like 75% roughly of all the properties in that area share the same characteristic so, I find that it meets the requirements of Section Two.

Frank: Based on the commonality is that what you're saying?

Paul Weidman: One of the exhibits was a list of lot sizes in that area along with their lot sizes.

Lisa Krolak: Applicant #1, (AP-1).

Paul Weidman: Yes, so exhibit Applicant #1, (AP-1), shows one of the seventeen properties listed there. There are six that exceed one acre in size. So, 11 of the 17 lots are less than one acre in size, and this hardship, and the variance request, this hardship, results solely from that small lot size.

Frank Monterisi: If I'm reading that element correctly. It says that those common to the neighborhood or the general public may not be the basis for granting a variance. Are you saying that because that's even less than what is the common lot size in the area creates that hardship?

Paul Weidman: No, I'm really pointing that toward the first sentence about hardship resulting from conditions peculiar to the property of such location, size,

or topography and that the small lot size is what drives the variance requests.

Lisa Krolak: Regardless of the other lots, right? It's just that lot, it is too small?

Paul Weidman: That is what I had asked Jana for guidance.

Frank Monterisi: So, just to clarify, you're saying voting that it meets the requirements because of the small lot size and determining the necessity for the variance in order to make it able to be built upon.

Paul Weidman: That is correct.

Michael Axelrod: I visited the property today and I walked around the area and I have a hard time imagining any kind of house being built there, but there are houses. There's one next door and down the road a couple of lots, just to try to put it in perspective. You know, it doesn't seem and this is maybe going outside of where I should be but this property probably shouldn't have been in the RE-5 zoning district in my humble opinion. If it had been zoned Multiple Use like the adjacent properties then the side setbacks in the Multiple Use zoning district is only 15'. So, the subdivision was approved originally, and some houses were built based on the 20' setback of the restrictive covenants. I agree, with that from looking at it and seeing the dimensions of the size of the property that the hardship would result in not being able to build a reasonable size residence if the 50' setback was imposed. I agree with Paul that the hardship is resulting from primarily the size of the lot.

Jana Berg: And would you go on to say that the original plat doesn't meet the current zoning requirements?

Michael Axelrod: Yes, the original plat absolutely does not meet the current zoning requirements in my opinion.

Lisa Krolak: Yes, and I also agree with Paul and Mike's conclusions.

Chris Jones: I agree. I'd also like to say in addition the difficulty the current side setbacks of 50' creates an undue hardship for him to try and move the property.

Frank Monterisi: The marketability?

Chris Jones: Yes. Difficulty of the marketability without the variance being requested.

Frank Monterisi: I had a little bit of a different take on this particular one. Also, having gone out and visited the property and looking at its proximity to the river. I'm glad that the information that was presented dealt with 100-year flood plain and 500-year floodplains. I believe the elevation of that property is sufficient enough to negate all of that. The fact that we as a board have little control over whether a septic permit would be approved on that property or not makes no difference as far as what our decision would be whether we approve a variance making it buildable or not. When it goes before the Polk County Board of Health to apply for a septic permit because of its proximity to the River or the setback, whatever it might be really has no bearing on this particular Board. I believe that the conditions are common to the neighborhood as Jana mentioned before. If we do not issue this everyone else in the area has been granted a variance before.

Although we ought to look at the individual facts separately or individual evidence for each particular case separately I think it would create an undue hardship if a strict application of the resulted from this particular property. So, I will also give it a yes vote. That it would result in unnecessary hardship but not as a result of the conditions because the conditions are common to that area. All the lots in that area have a sloping down towards the river and whether it's 0.7 acres or 0.69 acres, we have some lots that were built on that are smaller in

dimension than this particular one. I don't agree that the lot sizes is a situation, but I do agree with the commonality of what has been presented. So, I vote yes but strictly based on the commonality of the lots that are in that area. So basically, I'm speaking similarly to what Paul has already said and I agree with those conditions, although I didn't necessarily agree with what Michael had to say. Again, that's a five in favor, zero against.

Frank Monterisi: Condition number three the hardships did not resolve from the acting to taken by the applicant or the property owner the active purchasing property with knowledge that certain characteristics exist that may justify the granting of the variance shall not be regarded as a self-created hardship. I'll start with this. There was no evidence that the applicant did anything for or against the property to create this hardship. It is what it is. It's a sub-standard lot grandfathered in and the zoning restrictions came by as a result of that and the applicant had nothing to do with those dimensions. So, I will vote yes in favor that there was no evidence presented to the applicant did anything to that lot as some of the other instances that we dealt with and had presented before this board.

Chris Jones: I would find the same way and agree with that. In addition to that from what I've heard the applicant once he sold the first house, I think the usage of the land probably changed for him at that point. That's when the circumstances changed.

Frank Monterisi: That's a good point.

Lisa Krolak: I agree with your conclusion and vote yes.

Michael Axelrod: I agree. The testimony established the owner has taken no action to change the property or create a smaller lot size. That supports the finding that the hardship did not result from actions taken.

Frank Monterisi: For item number three we have five in favor and zero against.

Frank Monterisi: Our final condition is the requested variance is consistent with the spirit, purpose and intent of the ordinance such as public safety is secured and substantial justice is achieved.

Paul Weidman: So the testimony was that the requested variance was for the same as previously granted to neighboring property owners and the map demonstrated that its effect if the variance is granted is contained within a neighborhood of already existing of non-conforming lots of record. So, I think it meets the spirit and purpose of for the variance.

Michael Axelrod: I'll go next and I agree.

Paul Weidman: It is consistent with the surrounding area in the spirit from what was presented?

Chris Jones: Same here. I agree one hundred percent.

Michael. I agree with the conclusions.

Lisa Krolak: I agree with the conclusions.

Frank Monterisi: So as far as the conclusions a variance is granted as far as the setbacks from a 50" side setback to a 20' side setback on both sides of the property.

Jana Berg: And I would ask for a statement that having found the applicant should be granted a variance from the dimensional requirements from 50' to 20' feet that it is not necessary to grant them a variance for the minimum buildable lot size in the RE – 5 zoning district and the lot now meets the requirements of

Section 8.3.

Paul Weidman: You could state it positively as having found or having determined, having granted the setback variance, the lot not meets the dimensional and use requirements required under section 8.3.

Frank Monterisi: Okay, the variance is granted. No variance is required for the other. It'll take a couple of weeks or so before this is completed and once I sign it, it will go into effect. Anyone that needs to appeal has thirty days from that time to appeal the decision.

5. Other Business

Frank Monterisi asked if there was any other business to address before the board. There was none.

6. Public Comments

None.

7. Adjournment

A motion was made by Michael Axelrod, seconded by Chris Jones. The meeting adjourned at 7:11pm.

