

**TOWN OF UNIONVILLE  
MINUTES OF BOARD OF ADJUSTMENT MEETING**

The Town of Unionville Board of Adjustment held its regular meeting on Monday, August 17, 2009 at 7:00 p.m. in Town Hall, 1102 Unionville Church Road, Monroe, NC. All board members were present. Attorney Shawna Collins was also present.

Chairman Ken Brown established that a quorum was present, and called the meeting to order by welcoming everyone.

Everyone stood and recited the Pledge of Allegiance to the American flag, after which Robert Croutch led the prayer of invocation.

Upon motion duly made by Randy Baucom, seconded by Edd Little, the Board unanimously approved minutes of the July 13, 2009 special meeting.

Town Clerk Sonya Gaddy administered the oaths to Mrs. Jana Finn and Mr. Ron Rushing.

Chairman Ken Brown asked if anyone had a conflict of interest in this case. No one replied.

Mrs. Finn introduced Appeal A-09-01, and appeal filed by Ron Rushing for parcel number 08-231-008L off Friendly Baptist Church Road. Mr. Rushing is appealing the Land Use Administrator's decision to deny a three-stall horse barn for an accessory structure. The property is zoned RA-40, and is surrounded by vacant and residential lots. Mrs. Finn referred to an aerial view of the property, which she distributed to the Board. In the way of background information, Mrs. Finn stated that a permit application was faxed to her Centralina Council of Governments office on July 2, 2009 with a request to build a 1,320 square-foot three-stall horse barn. She spoke with the applicant, his daughter and Mr. Rushing. A house will not be constructed for many years, if at all; therefore, she could not approve the accessory structure permit. The Town's Land Use Ordinance defines an accessory use/structure as "A use or structure that exists on the same lot with the principal use or structure and is customarily subordinate to or incidental to the principal use". Since there is no principal structure or residential home on the property, a permit could not be approved, as the barn would become the primary structure. Also, according to Section 150 Accessory Uses in the Land Use Ordinance states, "the keeping of horses is to be considered an accessory use with specific setback provisions required". The official appeal by Mr. Rushing is in your packet. The reason for his appeal is based on verbal approval from Centralina Council of Governments in January, 2009, although there were no specific permits submitted for review at that time. The burden of information is back on Mr. Rushing, who will speak later. Mrs. Finn considers that this would open the door for other applicants to submit appeals and set an important precedent for any other applications to come in under accessory use. If

approved, it would make it difficult for the Land Use Administrator. Although this is a 6-acre tract, several tracts in the town are one acre of land, and can have one horse. It is important for the decision-making process if her decision is overturned and the reasons it would be overturned. Mr. Rushing and Mr. Payvar, the property owner, are both here to speak and answer questions.

Mr. Ron Rushing addressed the Board. He distributed a map of the property and explained what they did. He was contacted about a year ago by the owners of this property, April and Brent Collins, to present them with a plan of development. They went through the process with a local engineer and surveyor, and worked closely with Centralina Council of Governments' Annette Lawing, who was the contact at the time in October or November, 2008. As far as the map goes, to develop the 43-acre property, they came up with nine individual parcels. He distributed a plat showing what they did. It shows the orientation of Friendly Baptist Church Road and the church. Sandy Carriker borders this property. There are six family building lots on one-acre tracts. You must have water and sewer or well and septic in Union County. The three pieces of acreage equal roughly 20 acres, 7 acres and 6 acres. The last of December, he had a call from the present owner of the six-acre property, Mr. Richard Payvar, who is in attendance. He was looking for acreage for his daughter, who had lost her husband and had two small daughters who were into horseback riding, and looking for some acreage to build a horse barn. On page three of the information, early on Mr. Payvar gave a rendering of the barn, which is the exact set of blueprints that Mr. Rushing priced for building the barn. Mr. Rushing approved the plan on February 4, 2009. He explained several things to take into consideration to put the barn on the piece of property—a designated drain field if there is no sewer. Since there is no sewer, he showed the site for the drain field in the septic system and repair area. Mr. Rushing explained how far away the well would have to be from the house and barn. Union County has setbacks for accessory structure, detached barns, etc. They vary slightly from the house—they are 40 feet front and back and 15 feet on the sides. An accessory structure is closer. This barn must be 50 feet from the property line, and 30 feet from the primary residence. Mr. Rushing showed Mr. Payvar the best place for the barn from a resale and investment standpoint. Mr. Rushing asked if his daughter plans to build a house and Mr. Payvar said not at the present time, but maybe in the future. Mr. Rushing then went to the Union County inspection department and spoke with Barry Griffin and got setbacks for the barn, trying to cover himself to give accurate information to Mr. Payvar. Then he contacted COG in January and spoke with either Nadine or Annette—he is speaking from memory of six months ago, and said that she told him there is no exact language in the Land Use Ordinance that specifically covered what he was talking about. He was told some of the same things that Mrs. Finn told him for an accessory building, but nothing that would clearly tell him that he couldn't put a barn on the property without a house at this time. If he had the exact timeframe, he would give it to you, but he doesn't. He doesn't think it should be any problem to build a barn on that property. If this is not consistent, please tell him. At this time, he had two offers to come in, and he had the property listed. The second offer was from his own customer and he inquired about buying the lot and Mr. Rushing building a

house for him on the property. When this situation exists, you advise both parties that there is a second offer and give each the opportunity to modify their offer and present those offers to the owner, which is what he did. Mr. Payvar was successful because he offered cash. Both offers were for the full asking price. He thinks it's worth noting that the second offer would have been list, sell and a house to build. He was satisfied that he had covered his bases and had what he needed. His mistake was that he did not get anything in writing. He feels bad for Mr. Payvar that he can't do what he intended to do. Mr. Rushing admits that he created this situation because he didn't get anything in writing. Although the point that it would be setting a precedent has credence, he is asking the Board to take into consideration that it doesn't make sense to build a barn on a one-acre property with water and septic. A barn is not cost-effective. He's been in real estate 20 years, and Mary for 26 years, and they've never sold a one-acre lot to build a barn on. These are the facts to the best of his recollection.

Commissioner Randy Baucom made inquiry as to where the barn would be located. Mr. Rushing showed him on the plat map, and stated that it is 50 feet from the property line, 250 feet from the closest house and 30 feet from the well. Commissioner Baucom also asked if there were any plans to build on it. Mr. Rushing stated that there are no plans at this time to build on it. Mr. Payvar was clear about that from the beginning, although he may do it sometime.

Mrs. Finn addressed the Board, and stated that on page 2 in her packet, an accessory use structure is defined in the Land Use Ordinance as "a use or structure that exists on the same lot as a principal structure and is customarily subordinate to or incidental to the principal use".

Mrs. Finn also addressed some points based on the discussion by the applicant. She clarified that the setbacks Mr. Rushing referred to were for Unionville, not Union County, although they are the same. She had a conversation with Union County, and they still do inspections for setbacks, etc. After talking to Centralina COG staff, the realtor or the owner did not request anything in writing. Mrs. Finn did not have any conversations with the applicant or Mr. Rushing prior to receiving the request at her office, which is typical. She was not made aware of conversations until the permit application was put on her desk. It's unfortunate that there is some miscommunication. She asks for people to get a letter from her as Land Use Administrator. Another option is a text amendment on this issue that could be submitted to the Town as far as size of property by looking at barns as the primary structures that the applicant could apply for. This could be spelled out very plainly and specifically.

Mr. Rushing stated that he gave the wrong source of setbacks from the notes he made in Mr. Payvar's folder. He may have gotten the information from the county or from COG, nevertheless, they were the right setbacks. Again, he created a bad situation for a customer with good intentions. He's doing what he can to try to help out now. He did not get the contract to build the barn, by the way. He offered to make the application

for Mr. Payvar, whether he built the barn or not, as a service. Even when you try to do everything the right, you can make mistakes. He's not trying to save a contract for the barn. Commissioner Randy Baucom stated that maybe Mr. Rushing could build Mr. Payvar a house.

There being no other comments, Chairman Brown closed the public hearing portion of the meeting.

Commissioner Randy Baucom stated that he's not against Mr. Payvar having a barn, and it looks like a nice barn, however, the Land Use Ordinance states that he needs a principle structure, and he has a hang-up about this. He wonders how this would affect other property values down the road with just a barn there. He thinks it's fine if there's a dwelling tied to it.

Mr. Rushing stated that Lot #9, which is a 20-acre parcel on the back of the property shares the flood zone with lot #7, and there is currently a horse operation on it now with fencing being installed on the adjoining property, therefore, there are pastures and horses on the adjoining property.

Chairman Brown agreed with Commissioner Baucom, and stated that the Board needs to act.

Commissioner Crutch made inquiry as to how close the nearest dwelling presently is. Mr. Rushing stated that it is approximately 600 feet away. He showed where it was on the drawing and pointed out where the barn is proposed to be. He stated that there are two structures 500-600 feet away.

Upon motion duly made by Randy Baucom, seconded by Robert Crutch, the Board unanimously agreed to uphold Land Use Administrator Jana Finn's decision to deny the permit to build a barn on the property without a primary structure.

There being no other business, and upon motion duly made by Edd Little, seconded by Randy Baucom, the Board unanimously adjourned the meeting.

Respectfully submitted,

Approved as to form:

Sonya W. Gaddy  
Board Secretary

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Shawna D. Collins, Board Attorney