

**MINUTES OF PLANNING BOARD OF ADJUSTMENTS MEETING  
OF THE  
TOWN OF STALLINGS, NORTH CAROLINA**

The Planning Board of the Town of Stallings met for their regularly scheduled meeting on June 21, 2022, at 7:30 pm. The meeting was held at the Stallings Government Center, 321 Stallings Road, Stallings, NC 28106.

Planning Board of Adjustments members present: Chairman Bob Koehler, Vice Chairwoman Laurie Wojtowicz, David Barnes, and Jacqueline Wilson.

Planning Board of Adjustments members absent: Ryan Awaldt

Staff members present: Max Hsiang, Planning Director; Mary McCall, Deputy Town Clerk and Mac McCarley, Town Planning Attorney.

1. Call to Order

Chairman Koehler called the meeting to order at 7:22 pm, immediately following the Planning Board Meeting.

2. Approval of Minutes – November 16, 2021

Vice Chairwoman Wojtowicz made a motion to approve the minutes for the meeting of November 16, 2021. The motion was approved unanimously after a second from Board Member Wilson.

3. V22.05.01 – A variance at 1092 Callonwood Dr., PID#07144004E to request relief from Article 2.13-7(B) of the Stallings Development Ordinance.

- a. 2.13-7 (B) Swimming Pools - Located a minimum of fifteen (15') feet from any property line

Chairman Koehler stated that this item will be heard as a quasi-judicial matter and the Chair and Town's Land Use Attorney will describe the process.

Attorney McCarley qualified the Board from any disqualifying interests with the following questions.

- Does any member of the Board have a fixed opinion prior to this hearing that is not susceptible to change?
- Has any member of the Board had communications about this matter before tonight's hearing?
- Does any member of the Board have a close familial, business, or other associational relationship with a person affected by this application?

- Does any member of the Board have a financial interest in the outcome of the matter?

Attorney McCarley addressed the applicants and they verbally confirmed they had no disqualifying concerns with the Board. Attorney McCarley advised the applicants that they could defer the hearing to another date because only four of the five board members were present, and the vote would require a unanimous vote. The applicants declined to defer the hearing and asked to proceed.

Chairman Koehler opened the public hearing for the application for a variance and read the following instructions to the Board.

- All parties who intend to give testimony or present evidence of any sort, pro or con, must complete the Oath Form and be sworn in by the Clerk to the Board.
- A staff member will briefly explain the Zoning Ordinance provisions at issue in this Hearing.
- The Board may question the staff member, and then the Applicant will be given an opportunity to question the staff member.
- The Applicant (and the Applicant's representative, if they have one) will present their case for why they believe they are entitled to receive the Variance for which they have applied. The burden of proof to establish each element of the requirements in state law and the Town's Zoning Ordinance is on the Applicant.
- The Board and the Town Staff may question the Applicant and each of the Applicant's witnesses.
- At the conclusion of the Applicant's presentation, anyone else who has standing may present sworn testimony in support of the application.
- At the conclusion of all testimony in favor of the application, anyone with standing wishing to present sworn testimony in opposition to the application or to ask questions of the Applicant may present their testimony or evidence.
- The Applicant may present evidence or closing argument in rebuttal to any testimony in opposition to the application or provide additional information based on questions raised if they so choose.
- At the close of all evidence and argument, the Chair will close the Hearing.

Attorney McCarley advised the applicant and board of the legal particulars of the hearing with the following declarations:

- After all evidence, testimony and argument has been presented the Board will review the matter, deliberate on the required findings of fact, and render a decision in the form of a motion to approve the variance, approve the variance with conditions, or deny the variance. This will be done without further comment from any party. The Board may elect to defer the decision.

- The public may remain present during the Board’s deliberations.
- All exhibits and physical evidence introduced at the Hearing must remain with the Town as part of the official record of the hearing. Do not introduce any photos, drawings, writings, or other physical evidence that you are not willing to part with. Please hand any exhibits or physical evidence to the Clerk who will mark it for inclusion in the record of this hearing. If the decision of the Board is not appealed to Superior Court, you may ask the Clerk for the return of your items.
- The Board is acting in a quasi-judicial capacity for purposes of this hearing and can only accept sworn testimony. While the Board will not specifically exclude hearsay evidence, it is given little or no weight in the Board’s decision.
- Appeal of any decision made by the Board on this Application is to Superior Court in Union County. Any aggrieved party with standing will have 30 days from the date of the Board’s written decision in which to appeal. To receive a written copy of the decision any party must file a written request with the Clerk to the Board or the Chair no later than 5 pm tomorrow.

Chairman Koehler began the hearing, gave opportunity for questions, and requested those giving testimony come forward to be sworn in.

Deputy Town Clerk McCall administered the oaths and retained the signed Oath form.

Planning Director Hsiang presented the variance application for 1092 Callonwood Drive submitted by Kevin and Elizabeth McGowan for relief from article 2.13-7(B) of the Stallings Development Ordinance, which stipulates fifteen-foot minimum distance from property line for swimming pools.

An additional variance request for waiver of the five’ distance required for any accessory structure in article 9.2-2 of the Stallings Development ordinance was also raised as a concern by Planning Director Hsiang, as the plans did not meet that requirement as well. Attorney McCarley advised that the additional variance request could be presented orally if necessary.

The applicants, Kevin and Elizabeth McGowan, presented the details of the request. Exhibit A, a site plan for the pool, was given to the board and described in detail to show the restraints caused by the ordinance stipulations regarding the septic grinder pump. The evidence as marked Exhibit A is attached to these minutes and therefore incorporated herein. The applicants also provided the Board with an approval letter for the plan from the Homeowner’s association marked as Exhibit B. The evidence as marked Exhibit B is attached to these minutes and therefore incorporated herein. The applicants testified that their neighbor was notified.

The pool designer, Mr. Ronald Linn with Anthony Sylvan Pools, explained that the design was the only way to place a pool on the lot and answered questions from the Board.

Chairman Koehler closed the public hearing.

Planning Director Hsiang read the following statement of justification that were motioned individually by the Board:

- **Unnecessary hardship would result from the strict application of the ordinance (Expense is NOT a valid hardship):** The property is 0.235 acres with a steep sloping backyard and right-side yard. There is a septic grinding pump located in the back yard closer to the house, which limits the location of the pool. The left side of the property only has 6.5 feet from the house to the next houses' property line. There are woods lining the back and right sides of the property. Without a variance, the applicants would be unable to build a pool on this property.

Vice Chairwoman Wojtowicz made the motion to approve the first statement of justification for V22.05.01. The motion was approved unanimously after a second from Board Member Wilson.

- **The hardship results from conditions that are peculiar to the property such as location, size or topography:** The property is unique in size and topography. The lot is a smaller lot with steep sloping back and right-side yard and a septic grinding pump located in the back yard. Past the back property line is woods. There will not be any new construction past the rear property line into the woods. The topography and location of the septic grinder pump limits the area where a pool can be located.

Board Member Wilson made the motion to approve the second statement of justification for V22.05.01. The motion was approved unanimously after a second from Board Member Barnes.

- **The hardship did not result from actions taken by the applicant or the property owner:** The house was built on a smaller lot with sloping back and right-side yards. There is only 6.5 feet on the left side of the property. The setbacks limit the size of our yard where a pool could be built along with the location of the septic pump. The topography and location of the grinder pump were as shown in the pictures presented by the applicant when the applicant purchased the property.

Chairman Koehler made the motion to approve the third statement of justification for V22.05.01. The motion was approved unanimously after a second from Board Member Wilson.

- **The requested variance is consistent with the spirit, purpose, and intent of the ordinance: such that public safety is secured, and substantial justice is achieved:** The pool location will not interfere with any other property, nor will it interfere with any sightlines. Our neighborhood does not have a community pool and will not have one in the future. There have been no changes in the property since we purchased it in 2018. We are not changing the use of the property. The next-door neighbor was notified but was not present at this hearing to object or present evidence.

Chairman Koehler made the motion to approve the fourth statement of justification for V22.05.01. The motion was approved unanimously after a second from Board Member Wilson.

Chairman Koehler made the motion to grant the variance V22.05.01. The motion was approved unanimously after a second from Board Member Wilson.

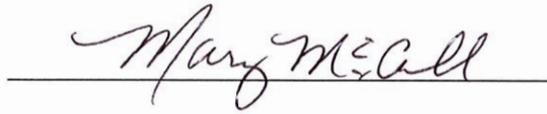
4. Adjournment

Vice Chairwoman Laurie Wojtowicz made the motion for adjournment. The motion was approved unanimously after a second from Board Member Wilson.

The meeting adjourned at 8:04 pm.



Robert Koehler, Chairman



Mary McCall, Deputy Town Clerk

Exhibit A

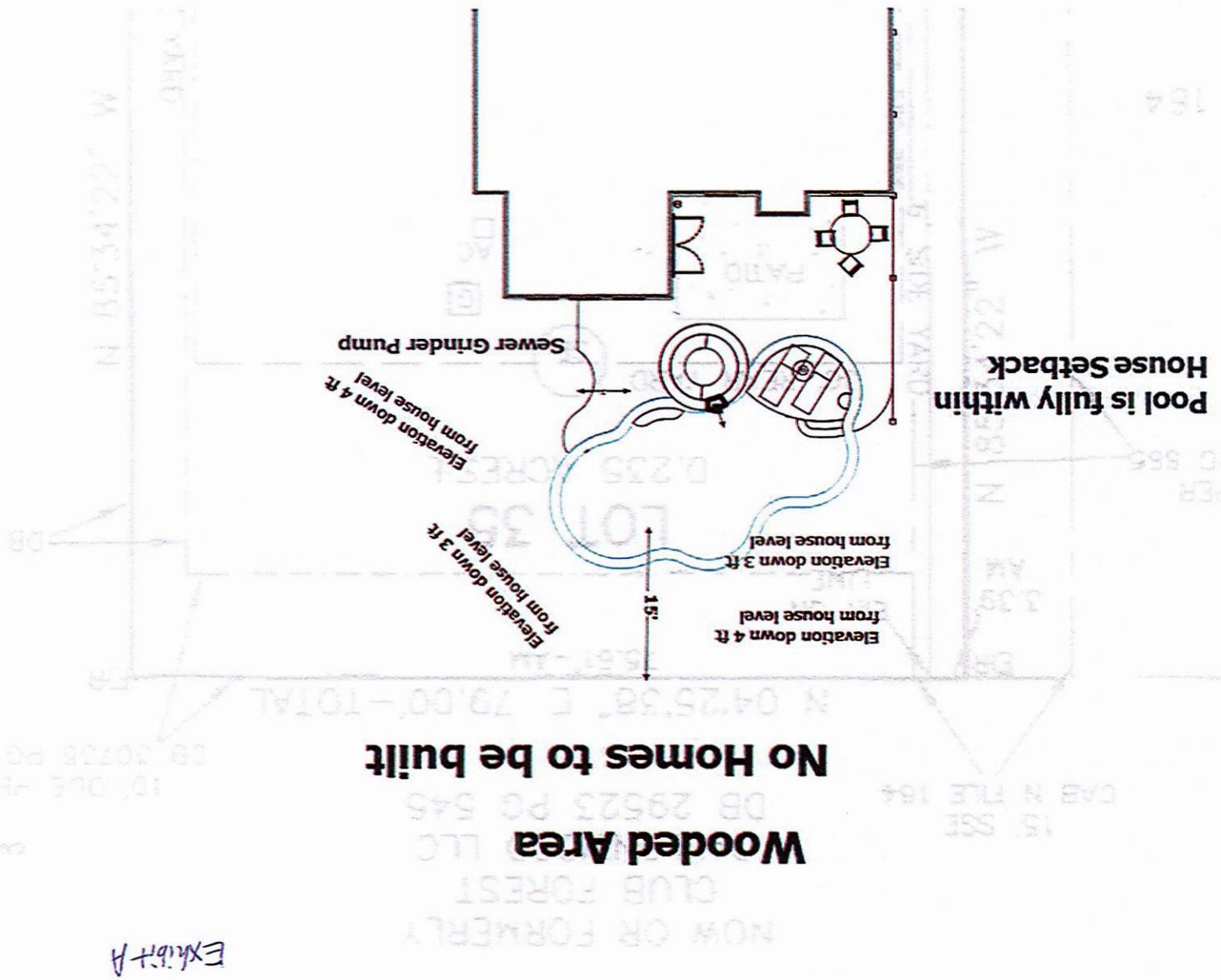


Exhibit B

Lismore Homeowner's Association, Inc.  
c/o AMS  
P.O. Box 38809  
Charlotte, NC 28278

June 6, 2022

Elizabeth Weatherly W. McGowan & Kevin J. McGowan  
1092 Callonwood Drive  
Matthews, NC 28105

Re: Recent Architectural Application Submission for 1092 Callonwood Drive

Dear Elizabeth Weatherly W. McGowan & Kevin J. McGowan,

I am writing on behalf of the Board of Directors and Architectural Control Committee for the Lismore Homeowner's Association, Inc. in regards to your recent architectural application submission. The Board has approved the below description and submitted architectural request to your home.

**Architectural Description:** Fence, in-ground pool, metal awning

**Stipulations to approval:**

Please keep this approval letter for your records with your other important home papers and should you sell your home make sure that it transfers to the new owner.

Thank you and should you have any questions please feel free to contact me us at [ams@amshoa.com](mailto:ams@amshoa.com).

With Kindest Regards,

Board of Directors  
Lismore Homeowner's Association, Inc.

Managed by Association Management Solutions  
P.O. Box 38809, Charlotte, NC 28278  
248 Latitude Lane, Suite 102, Lake Wylie, SC 29710  
4525 Park Road, Suite 103B, Charlotte, NC 28204  
Phone: 704-940-6100 or 803-831-7023 Fax: 803-831-7017 Email: [ams@amshoa.com](mailto:ams@amshoa.com) Website LiveChat: [www.amshoa.com](http://www.amshoa.com)