



CURRITUCK COUNTY
BOARD OF ADJUSTMENT REGULAR MEETING
July 10, 2014

REGULAR MEETING

The Currituck County Board of Adjustment met on July 10, 2014 at 7:00 p.m. in the Historic Currituck County Courthouse. The following members were present: Cameron Tabor, Vivian Simpson, C. Shay Balance, Donna McCloud, and Theresa Dozier. Michael Painter and David Palmer were not present. Brad Schuler, Planner; Stacey Smith, Code Enforcement Officer/Board of Adjustment Clerk; and Ben Gallop, Board of Adjustment Attorney; were also present.

A quorum has been met with 3 regular members and 2 alternate members.

Item 3: DAVID & CATHERINE ZATLOUKAL: Variance request to allow for property to be filled higher than the maximum permitted by the Unified Development Ordinance (UDO), and to not implement adequate stormwater practices as required. The property is located at 680 Wild Cherry Court, The Currituck Club in Corolla.

Brad Schuler, Mike Strader, and Catherine Zatloukal appeared in front of the board to be sworn in.

Brad Schuler, Planner presented the following case:

To: Board of Adjustment
From: Brad Schuler, Planner I
Date: December 31, 2013
Subject: BOA 13- Zatloukal - Variance

David & Catherine Zatloukal are requesting a variance to allow for property to be filled higher than the maximum permitted by the Unified Development Ordinance (UDO), and to not implement adequate stormwater practices as required. The property is located at 680 Wild Cherry Court, The Currituck Club, in Corolla.

Section 7.3.4.C, Fill and Other Land Disturbance Requirements, states:

- “3. A lot shall be not be filled or graded higher than the average adjacent grade of the first 30 feet of adjoining property. Through approval of an alternative stormwater plan in accordance with Section 7.3.5.B.3, Additional Fill or Land Disturbance Activities, the following exceptions are permitted:

- (c) *In the Outer Banks Stormwater Management Zone when fill is required to raise the lot elevation to the regulatory flood protection elevation, not to exceed a maximum of three feet."*

Section 7.3.5, Alternative Stormwater Plans, further states:

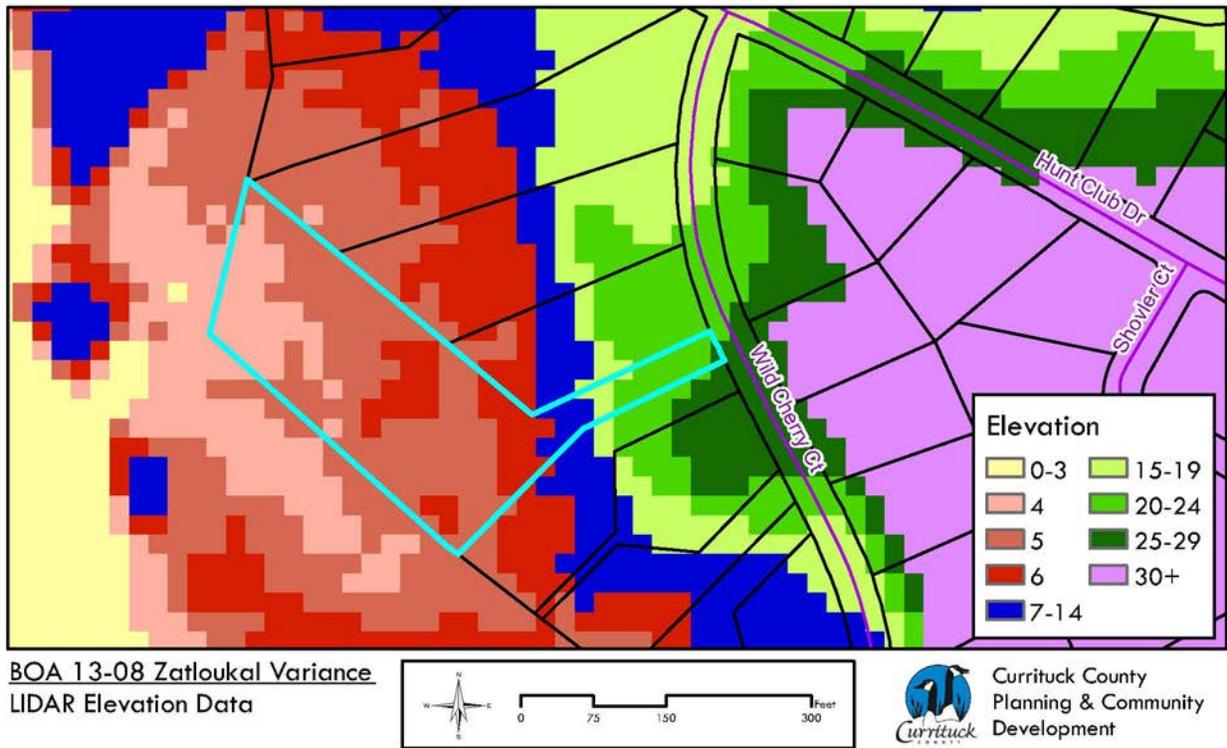
"B. Allowable Deviations

- (3) *A lot may be filled or graded higher than the average adjacent grade of the first 30 feet of adjoining property or to improve drainage for performance of stormwater management devices, provided adequate stormwater practices are implemented to capture and infiltrate stormwater runoff from all impervious surfaces from the first four inches of rain from any rainfall event."*

Background

The buildable area of the Zatloukals' property is much lower than the surrounding lots. The existing grade at the proposed house foot print is approximately 5 to 6 feet (above mean sea level). The lot to the southeast contains a single family dwelling at an elevation of 9.5', and the vacant lots to the east contain buildable areas of around 20' in elevation.

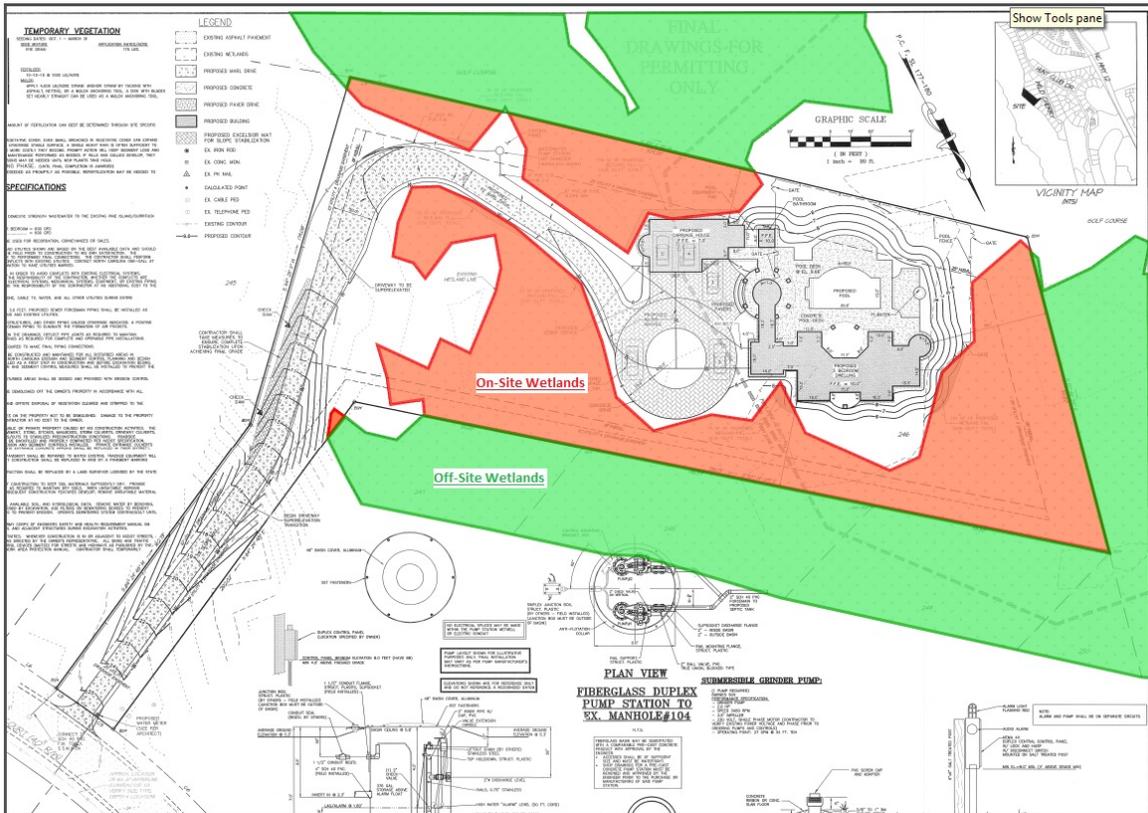
Below is a map showing LIDAR elevations of the area. LIDAR, similar to radar, uses light to measure to elevations. The data shown in the map was obtained in the mid-2000s and shows approximate elevations.



There are also a good portion of wetlands in and around the property. Specifically, the property contains 26,111 square feet of wetlands, or 40% of the lot area. In the buildable area (the area

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not containing the “pole” or “pan handle” of the property), the percentage of wetlands is approximately 45%. Below is a site plan highlighting the wetlands in and around the property:



Finally, the proposed single family dwelling is located within the AE flood zone with a Base Flood Elevation (BFE) of 5’ and a regulatory flood elevation of 6’. The UDO allows for the lot to be filled to 6’ through an alternative stormwater plan. The alternative stormwater plan would require adequate stormwater practices be implemented to capture and infiltrate stormwater runoff from all impervious surfaces from the first four inches of rain from any rainfall event.

Please note the application and memo from the county engineer incorrectly state AE 6’ and regulatory flood elevation of 7’.

Zatloukals’ Request

The Zatloukals’ are requesting a variance from Section 7.3.4, Stormwater Management Standards, and Section 7.3.5, Alternative Stormwater Plans, to allow for the property to filled higher than the 6’ maximum the UDO allows, and to do so without providing adequate stormwater practices. The proposed fill would establish a finished floor elevation (FFE) of the dwelling to be at 10’.

The application states that the existing conditions, very low surroundings, and amount of wetlands within the buildable area warrant raising the FFE further to prevent potential flooding. Also, the applicant’s engineer, Michael Strader, states that the existing wetlands serve as a recharge area and flood mitigation measure, and that they already provide for stromwater management and

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treatment of runoff naturally. Therefore, grading of infiltration basins to treat a four inch rain event would be unnecessary land disturbance.

Variance Criteria

The purpose of a variance is to allow certain deviations from the dimensional standards of the UDO (such as height, yard setback, lot coverage, or similar numerical standards) when the landowner demonstrates that, owing to special circumstances or conditions beyond the landowner's control (such as topographical conditions, narrowness, shallowness, or shape of a specific parcel of land), a literal application of the standards would result in undue and unique hardship to the landowner and the deviation would not be contrary to the public interest.

A variance shall be approved on a finding the applicant demonstrates all of the following standards are met:

- (1) The alleged hardship is suffered by the applicant as a result of the application of this Ordinance;
- (2) The hardship relates to the applicant's land, such as location, size, or topography, rather than personal circumstances;
- (3) The hardship is unique, or nearly so, rather than one shared by many surrounding properties;
- (4) The hardship is not the result of the applicant's own actions; and
- (5) The variance will not authorize the initiation of a nonconforming use of land.

The following factors do not constitute sufficient grounds for approval of a variance:

- (1) A request for a particular use that is expressly, or by inference, prohibited in the zoning district;
- (2) Hardships resulting from factors other than application of standards of this Ordinance;
- (3) The fact that land or a structure may be utilized more profitably or be more marketable with a variance;
- (4) The citing of other nonconforming or conforming uses of land or structures in the same or other zoning districts; or
- (5) Financial hardship.

Staff Recommendation

Below are staff's suggested findings and recommendation.

- (1) The alleged hardship is suffered by the applicant as a result of the application of this Ordinance;
Suggested finding: The alleged hardship is suffered by the applicant is a result of the application of this Ordinance. The UDO allows for the property to be filled to a maximum of 6' provided adequate stormwater practices are implemented.
- (2) The hardship relates to the applicant's land, such as location, size, or topography, rather than personal circumstances;

Suggested finding: The hardship **does** relate to the applicant's land, specifically with the location/amount of wetlands, and low grade compared to surrounding properties.

- (3) The hardship is unique, or nearly so, rather than one shared by many surrounding properties;

Suggested finding: The hardship **is** unique, or nearly so, rather than one shared by many surrounding properties. The amount/location of wetlands, and low grade of the property compared to the surrounding lots is unique.

- (4) The hardship is not the result of the applicant's own actions; and

Suggested finding: The hardship is **not** the result of the applicant's own actions. The applicant has not knowingly or unknowingly violated the ordinance.

- (6) The variance will not authorize the initiation of a nonconforming use of land.

Suggested finding: The variance will **not** authorize the initiation of a nonconforming use of land.

The County Engineer, Eric Weatherly, also reviewed the variance application and provided his comments in an attached memo. Mr. Weatherly finds the variance application acceptable based on the following conclusions:

1. The proposed fill will not have a flooding impact to the neighbors with possible exception of the fairway to the south. The lot to the east is greater than 100' from the proposed fill in question and is at the same relative elevation as the proposed lot fill. All other neighbors are much higher than the proposed fill.
2. Requiring the lot to manage a 4" rain event to capture runoff from the fill will not provide any benefits. Runoff from the fill area will drain to existing wetlands which serve as a recharge area and flood mitigation measure. I would not recommend disturbance to these areas. Any runoff from the lot is directed across the driveway toward the fairway to the south.
3. The engineers have made modifications to the proposed driveway to prevent runoff from the driveway onto the neighbor and erosion control measures were added to provide additional stabilization due to concerns of the steep grades.

Staff is recommending **approval** of this application with the following conditions:

1. The property may be filled to establish a building pad at a maximum elevation of 9.5' (NAVD 1988).
2. The site must be built in accordance with the plans included in the variance application. Minor deviations may be permitted by staff that do not substantially modify the amount of fill, impervious surface, or stormwater/erosion control measures.

The County submits the following attachments:

1. Attachment 1: Variance application including:
 - a. Attachment 2: 36" x 24" site plan of the proposed development.
 - b. Attachment 3: Elevations of the proposed single-family dwelling.

2. Attachment 4: Memo from Eric Weatherly, County Engineer.
3. Attachment 5: Sections 7.3.4, Stormwater Management Standards, & 7.3.5, Alternative Stormwater Plans, of the UDO.

DISCUSSION

Mr. Tabor asked if the wetlands would be affected.

Mr. Schuler stated they have obtained the permits from the state to fill the wetlands.

Mrs. Zatloukal stated the they understand that we need to be a good neighbor and we have been working with our neighbors and The Currituck Club Golf Course and the HOA and they are comfortable with what we are doing as we are taking the run off to the north to the wetlands.

Mrs. Dozier asked if she had written documentation stated that the HOA had approved their site and construction plans.

Mrs. Zatloukal state that they had just met with the HOA and didn't have anything in writing at this time.

Mr. Michael Strader stated that he was here to answer any technical questions the board may have.

Mr. Gallop asked Mr. Strader if he prepared the plans, and if he is licensed in the state of North Carolina.

Mr. Strader stated he did prepare the plans and he is licensed by the state of North Carolina.

Mr. Dozier closed the public hearing.

ACTION

Mr. Tabor motioned to approve with the condition by the county and the findings of fact, Mr. Balance 2nd the motion and the motion passed unanimously.

ANNOUNCEMENTS

Mr. Schuler stated that there are no announcements at this time.

ADJOURNMENT

There being no further business to discuss, Mr. Tabor motioned for adjournment. Mrs. McCloud 2nd the motion and the motion passed unanimously. The meeting adjourned at 7:18 pm.

Respectfully Submitted,

Stacey Smith

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Stacey Smith
Code Enforcement Officer/BOA Clerk

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