

# DRAFT - MINUTES

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*Town of Garner*  
**Board of Adjustment**  
*Meeting Minutes*  
**December 17, 2009**

**I. Call to order**

Mr. Foster called to order the regular meeting of the Board of Adjustment at 7:30 pm on December 17, 2009 in the Town of Garner Council Meeting Room.

**II. Roll call**

The Secretary conducted a roll call.

The following members were present: Clint Ferrell, John Foster, Chairman, Jim Hunnicutt, John Jamison. The following member was absent: Jesse Jones, Inside Regular

Alternates: Mike Bowen, Inside Alternate and Tim Maloney, Outside Alternate

Five members were present per the UDO resulting in a quorum, Mr. Bowen, Inside Alternate will sit in place of Jesse Jones, Inside Regular member. Mr. Maloney, Outside Alternate was excused from the Board table for the hearing. The applicant was made aware that the Alternate Mr. Bowen will sit in place of Mr. Jones, Inside Regular member in order to meet the quorum requirements.

Mr. Bass introduced Jason Brown, Enforcement Planner who started with the Town in November and he will be the Board contact for future cases, meetings. Brad Bass, Director of Planning, David Bamford, Senior Planner and Jason Brown, Enforcement Planner representing the Planning Department.

**III. Election of Chair and Vice-Chair:**

Mr. Foster requested that a motion be made for Chairman of the Board of Adjustment. Mr. Hunnicutt made a motion to nominate Mr. Foster as Chairman. Mr. Bowen seconded the motion to nominate Mr. Foster as Chairman by a vote (4-0). Mr. Foster made a motion to nominate Mr. Jamison as Vice-Chairman. Mr. Hunnicutt seconded the motion to nominate Mr. Jamison as Vice-Chairman by a vote (4-0).

**IV. Approval of minutes from last meeting**

Mr. Hunnicutt made a motion to approve the minutes of August 28, 2008 as presented. Mr. Bowen seconded, and the motion to approve the minutes of August 28, 2008 as presented by a vote (5-0).

**V. Ex parte Communication Disclosure:**

Mr. Foster requested that any member disclose any ex parte communication or conflict of interest in the following proceedings. Mr. Foster noted that Mr. Spence, Sr. did introduce himself to the members outside prior to the meeting. Having no further disclosure, Mr. Foster requested the Secretary call the first case.

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### VI. Variance

**VARIANCE – A-09-01, 4213 Vesta Drive** – Wilbert Spence, Sr. is requesting a variance from Article 5, Section 5.4(B) Accessory Buildings and Uses in Residential District standards of the Town of Garner Unified Development Ordinance for Multi-Residential 1 (MR-1) zoning district that requires the side yard setback to be ten (10) feet. The applicant is specifically requesting to allow a carport to encroach approximately 7 feet into the side yard setback, reducing the required side yard setback to approximately 3 feet. The property is located at 4213 Vesta Drive and can be further identified as Wake County PIN **1701 36 6075**. Mr. David Bamford, Senior Planner for the Town of Garner presented the following facts:

1. The application is complete.
2. The property is zoned Multi-Residential 1 (MR-1).
3. The property is located at 4213 Vesta Drive, Raleigh, NC.
4. The proposed use is a permitted use in the Multi-Residential 1(MR-1) zoning district.
5. Mr. Spence filed a variance application on November 18, 2009, to seek relief from the 10-foot side setback requirement.
6. The applicant is requesting a variance of approximately 7 feet to allow a carport to be located within approximately 3 feet of the side property line.
7. The property was deeded to Mr. Spence, Sr. on June 20, 1991.
8. The public hearing yard sign was posted Tuesday, December 1, 2009.
9. The legal ads were published in the Garner Citizen and Garner News in the December 9 and December 9, 2009 editions.
10. Adjoining property owners were sent notification letters on December 4, 2009.

Mr. Hunnicutt inquired about Attachment F noticing an accessory structure on the property and noting that it appears this structure does not meet the necessary setbacks. Mr. Bamford stated that he was not aware of this structure until he performed the site visit to obtain photographs for the Board report. Mr. Hunnicutt inquired as to whether this meets the required setbacks. Mr. Bamford stated that he did not measure for the size and setbacks on the accessory building.

Mr. Foster inquired about the 'red-line' also on Attachment F as the proposed location for the carport. Mr. Foster inquired as to this 'red-line' including any additional concrete and supporting poles. Mr. Bamford stated it was his understanding that it would not require any additional concrete and was not certain about the support poles.

Mr. Foster inquired as to this structure being an "open-unenclosed" structure. Mr. Bamford stated that was Town's understanding to be used to park Mr. Spence's vehicle in a covered area.

Mr. Ferrell inquired about the support poles to be located beside the driveway in Attachment F, would there be sufficient room to place the poles, based on the depiction,

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it appears to be closer than the 7 feet being requested. Mr. Bamford stated that Attachment drawings are a general estimate, not a true survey measurement. Mr. Bamford stated that he drew the 'proposed' carport to the best of his knowledge provided by Mr. Spence's request of the location. Mr. Ferrell inquired about the dimensions of the carport and the available space between the home and the side lot line. Mr. Ferrell noted that the proposed carport is to be 12 feet and it appears that there is only 15 feet available, which would mean that the applicants request is for 8 feet with a 2 foot side yard setback. Mr. Bamford stated that it was his understanding that the carport was to fit over the existing concrete pad as well as the support poles.

Mr. Hunnicutt inquired about the manufacturers requirements of distance between structures. Mr. Bamford stated that he did not receive any other information from the manufacturer than what the applicant provided as a depicting of the proposed structure.

At this time, Mr. Foster inquired of the applicant if they would like to come forward to speak to the Board. Mr. Wilbert Spence, 4213 Vesta Drive, Raleigh, NC was sworn into speak to the Board. Mr. Spence stated the contractor will install the support poles so all the vehicle doors will be able to open and must be one feet from the bay window and the chimney. Mr. Ferrell inquired as to this distance resulting in a 2 foot side yard setback, Mr. Spence stated that was correct.

Mr. Foster inquired as to whether the carport was pre-fabricated or engineered onsite. Mr. Foster inquired about if additional concrete would have to be poured. Mr. Spence stated that there would be additional concrete but only for the support poles.

At this time, Mr. Foster inquired of the audience any proponents or opponents that would like to come forward to speak to the Board. Having none, Mr. Foster closed the public portion of the meeting. Mr. Foster instructed the members to review the application for completeness.

### **Board Discussion:**

Mr. Hunnicutt made a motion the application was complete as submitted. Mr. Bowen seconded the motion that the application was complete as submitted and carried by a vote (5-0).

Mr. Hunnicutt stated he understands a person wanting to improve the value of their property, but financial hardship or enhance is not a method for the Board to judge in making a decision to grant a variance for such an encroachment.

Mr. Foster stated the application was incorrect in that the actual amount of encroachment is for 8 feet leaving only a 2 foot side yard setback due to the bay window and the fireplace location.

Mr. Hunnicutt stated in a previous case before the Board had a similar situation and can use that case as a basis for this request. Mr. Hunnicutt stated that wanting to improve the property is not the justification to encroach to such an amount in that granting this it runs with the property and subsequent neighbors may or may not want a structure this

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close to their property. Mr. Hunnicutt stated his concern that this will be permanently attached to the concrete.

Mr. Ferrell inquired as to whether the Town received any letters or concerns from adjoining properties. Mr. Foster advised that the Town notifies adjacent property owners about the request and the meeting time. Mr. Ferrell noted that the adjoining properties seem to share the same situation with the size of the lots and where the driveways are located.

Mr. Bowen stated that this location is in an older area which when developed was held to older standards and to try to fit this structure onto a small lot. Mr. Bowen noted that the ordinance places the hardship on the property as does the size of the lot and the location of the driveway. Mr. Bowen noted that the request is not for a non-conforming situation or a use variance.

Mr. Hunnicutt stated that if placed in the rear yard would not present an issue with the setback but there is the existing non-permitted building that presently does not meet setbacks.

Mr. Foster stated that the application requested approximately 7 feet encroachment but upon actual request and statement by the applicant, the encroachment would result in approximately an 8 foot encroachment. Mr. Hunnicutt stated that a 7 foot encroachment is not reasonable nor would an 8 foot encroachment.

Having no further discussion, Mr. Foster inquired if the members were ready to make a motion. Mr. Hunnicutt made a motion the Final Decision to deny Variance **A-09-01, 4213 Vesta Drive** based on the facts do not support the tests and the arguments that the request is a hardship to allow such an encroachment. The properties surrounding this location do have similar driveway situations and small lots. Mr. Spence, Sr. can receive reasonable use of his property without the carport and will continue to receive reasonable use of the property. Mr. Hunnicutt stated the request exceeds a reasonable encroachment with no justification other than improvement to the value of the property. Mr. Hunnicutt noted the proposed request was inaccurate in that Mr. Spence's testimony he noted that the carport would have to be located one foot from the chimney and the bay window, thus reducing the side yard setback to approximately two feet with approximately an eight foot encroachment. Mr. Bowen seconded the motion on the Final Decision to deny Variance **A-09-01, 4213 Vesta Drive** does not support the tests the motion carried by a vote of (5-0). Mr. Foster advised the applicant that the Board's decision was to deny his request and that he has the right to appeal the Board's decision to the Superior Court.

### **VII. Adjournment**

Mr. Foster adjourned the meeting at 8:08 pm.

Minutes submitted by: Debby Connelly-Jones, Secretary to the Board of Adjustment