



## **Rowan County Zoning Board of Adjustment**

J. Newton Cohen, Sr. Rowan County Administration Building

130 W. Innes Street, Salisbury, N.C. 28144-4341

J. Newton Cohen, Sr. Meeting Room

**Thursday, August 19, 2021**

**5:30 p.m.**

**I. Call meeting to Order**

**Vice Chair Harrill**

**II. Invocation and Pledge of Allegiance**

**Vice Chair Harrill**

**III. Determination of a Quorum**

**Vice Chair Harrill**

**Current ZBA Membership:** Mike Harrill; Keith Knight; David Miller; Sean Reid;  
Norman Ribelin **Alternate Members:** Cathy Griffin; Vacant Position.

**IV. Approval of Minutes from March 18, 2021**

**Vice Chair Harrill**

**V. Appointment of Clerk**

**Vice Chair Harrill**

The Clerk to the Zoning Board of Adjustment shall be appointed by the chairman of the Board to carry out the duties described in the attached excerpt from the ZBA's Rules of Procedure. Pam Ealey is recommended by Staff to serve in this capacity.

**VI. Oath of Office for ZBA Members**

**ZBA Clerk Pam Ealey**

Statutory changes effective July 1, 2021 now mandate members of appointed boards take an oath of office prior to serving in their capacity as a board member. The oath may be served by the Clerk to the ZBA.

**VII. Adoption of Agenda**

**Vice Chair Harrill**

**VIII. ZBA 02-21 Hearing**

**Ed Muire**

**Applicant:** Ken Harmer

**Owner:** Broadus J. Embler, III

**Location:** 5700 block of S. Main Street (S. US 29 HWY), Salisbury NC

**IX. Other Business**

**X. Adjournment**



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130 W. Innes Street, Salisbury, N.C. 28144-4341  
J. Newton Cohen, Sr. Meeting Room

### **Minutes of the Meeting Zoning Board of Adjustment March 18, 2021 5:30 PM**

#### **Members Present:**

Sean Reid – Chairman  
David Miller  
Cathy Griffin  
Norman Ribelin  
Keith Knight

#### **Staff Present:**

Ed Muire, Planning Director  
Shane Stewart, Assistant Planning Director  
Becky Bost, Clerk to the Board

#### **Others Present:**

Tony Basinger, Applicant

#### **1. Call Meeting to Order.**

Chairman Reid called the meeting to order at 5:30 PM.

#### **2. Invocation and Pledge of Allegiance.**

Board Member David Miller offered up the Invocation and Pledge of Allegiance.

#### **3. Determination of a Quorum.**

A quorum was established with 5 members present.

**Current Members:** Sean Reid; Mike Harrill; Keith Knight; David Miller; Norman Ribelin

**Alternate Members:** Cathy Griffin; Vacant Position

#### **4. Approval of the Minutes from October, 9, 2017.**

*A motion to approve the Minutes of the Meeting from October 9, 2017 was made by David Miller; seconded by Cathy Griffin; with all member in favor.*

#### **5. Election of Officers.**

Planning Director Ed Muire presided over the nomination for Chairman of the ZBA as is required at the first meeting of each year. Mr. Muire opened the floor for nominations.

*Current Chairman Sean Reid volunteered to serve as Chairman of the board. With no further nominations Keith Knight seconded the motion with all members in favor.*

Chairman Reid then opened the floor for nominations for Vice-Chairman. David Miller nominated Mike Harrill. *With no other nomination's, and by consensus all members were in favor of Mike Harrill as Vice-Chairman.*

**6. Adoption of the Agenda.**

Chairman Reid asked the board if there were any additional adjustment or deletions from the agenda; with none *Keith Knight made a motion to adopt the agenda as presented; seconded by Norman Ribelin with all members in favor.*

**7. Hearing for ZBA 01-21.**

Chairman Reid noted that ZBA 01-21 was a request by Tony Basinger seeking a setback reduction for a new home located at 135 Wesminster Court. He explained the case before the board was a quasi-judicial hearing and all parties who planned to present evidence or testimony in the case would need to be sworn in by the clerk. Anyone providing testimony would need to provide their name and address at the podium. Any and all material presented must also be given to the clerk and would become part of the record, no hearsay evidence is admissible.

Planning Director, Ed Muire of the Rowan County Planning and Development Departments was sworn in by the clerk. Mr. Muire began staffs report noting that Tony Basinger, owner of TAB Construction (applicant) had submitted a variance request on behalf of Zena Evans, Trustee of CPW Private Banking Express Trust (owner) for an approximate fifteen (15) foot reduction to the required fifty (50) foot front yard setback on Rowan County Tax Parcel 406B141 located at Wesminster Drive, Salisbury, NC.

A zoning permit was issued to TAB Construction on January 15, 2021 for construction of a single-family dwelling and a building permit and builder's electrical service. Based on inspection records, the initial footing inspection on 01/20/2021 failed due to presence of clay throughout the lot and the soil would require evaluation by a third party as to its suitability for foundation placement. Apparently, the home location was moved "forward" on the lot to suitable soil resulting in an encroachment into the front yard setback.

Mr. Muire noted at the time of this report, a soil evaluation / engineering report had not been presented to Staff for review or inclusion in the packet.

Mr. Muire continued his report by referencing the characteristics of the property. Tax Parcel 406B-141 is a .52 acre lot located on Wesminster Court within the Stafford Estates Subdivision off Old Concord Rd. The parcel has 150' of frontage along Wesminster Ct and is also 150' deep. The Stafford Estates Subdivision is zoned Residential Suburban (RS) which restricts uses to single family homes with setbacks measured at 50' front; 10' side yard; and 20' rear. In contrast, the subdivision's restrictive covenants have a setback of 40' front; 10' side; and 25' rear. The property is also served by municipal water and sewer service provided by Salisbury-Rowan Utilities. Wesminster Ct and other roads within the subdivision were

constructed to NCDOT subdivision road standards but have not been assumed by DOT for maintenance.

The Applicant, Tony Basinger of 2320 Providence Church Road was sworn in by the clerk and addressed the board. Basinger provided the board an engineered letter from Andrew Eller, PE, regarding his inspection of the footings and soil conditions at 135 Westminster Ct. Basinger referenced the creek at the back of the property and the PE letter as site constraints along with the 40 foot front setback allowed by the Stafford Estates development. Basinger cited the front setback variance approved in 2010 across the street and requested an approximate 15 foot front setback variance.

No other testimony was provided.

Chairman Reid directed board members to the required six (6) findings necessary to approve the variance request if 4/5 of the board agree to all each criteria.

**Criteria #1 – Unnecessary hardship would result from the strict application of the ordinance.** David Miller made a motion “Requiring the front setback to be observed would be an unnecessary hardship [based on testimony of Tony Basinger]” seconded by Keith Knight; motion passed 5-0.

**Criteria #2 – The hardship results from conditions that are peculiar to the property such as location, size, or topography.** Keith Knight made a motion “The hardship is a result of the property’s soil characteristics [based on the documentation provided by Andy Eller, PE]” seconded by Chairman Reid; motion passed 5-0.

**Criteria #3 - The hardship is not the result of the property owner or applicant's own actions.** Keith Knight made a motion “The hardship is not the result of the property owner’s actions” seconded by Norman Ribelin; motion passed 5-0.

**Criteria #4 - 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.** Chairman Reid made a motion “The use is consistent with the spirit of the ordinance and there was no opposition to the request” seconded by Cathy Griffin; motion passed 5-0.

**Criteria #5 - The variance will not result in a land use otherwise not permitted in the applicable zoning district nor authorize the extension of a nonconforming situation in violation of article VI, or other applicable provisions of this chapter.** Chairman Reid made a motion “The proposed residence is an allowed use in the zoning district” seconded by Keith Knight; motion passed 5-0.

**Criteria #6 - If applicable, the setback reduction is no more than fifty (50) percent of that required and the resulting setback is no less than five (5) feet from any property line or right-of-way.** Chairman Reid made a motion “The applicable setback reduction is no more than fifty percent (50%)” seconded by David Miller; motion passed 5-0.

David Miller made a motion to approve the approximate 15 foot front setback variance with no conditions seconded by Cathy Griffin; motion passed 5-0.

Keith Knight made a motion to adjourn seconded by Chairman Reid; motion passed 5-0.

Prepared by Becky Bost

Minutes approved: \_\_\_\_\_

**RULES OF PROCEDURE  
ZONING BOARD OF ADJUSTMENT  
Rowan County  
North Carolina**

**I. GENERAL RULES**

The Zoning Board of Adjustment shall be governed by the terms of Chapter 153A, Article 18, Part 3 of the General Statutes of North Carolina and by the Zoning Ordinance of Rowan County. All members of the Board shall thoroughly familiarize themselves with these laws.

**II. OFFICERS AND DUTIES**

**A. Chairman.** A chairman shall be elected by the full membership (including alternate members) of the Board of Adjustment from among its regular members. His term of office shall be one year and until his successor is elected, beginning on January 1, he shall be eligible for re-election. The chairman shall decide on all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the Board in session at the time. The chairman shall appoint any committees found necessary to investigate any matters before the Board.

**B. Vice Chairman.** A vice-chairman shall be elected by the Board from among its regular members in the same manner and for the same term as the chairman. He shall serve as acting chairman in the chairman's absence, and at such times he shall have the same powers and duties as the chairman.

**C. Clerk.** A clerk shall be appointed by the chairman of the Board, from outside its membership, to hold office during the term of the chairman and/or until a successor clerk has been appointed. The clerk shall be eligible for reappointment. The clerk, subject to the direction of the chairman and the Board, shall keep all records, shall conduct all correspondence of the Board, shall arrange for all public notices required to be given, shall notify members of pending meetings and their agenda, shall notify parties to cases before the Board of its decision on such cases, and shall generally supervise the clerical work of the Board. The clerk shall keep the minutes of every Board meeting in a permanent volume. The minutes shall show the record of all important facts pertaining to each meeting and hearing, every resolution acted on by the Board, and all votes of members of the Board on any resolution or on the final determination of any question, indicating the names of members who are absent or fail to vote. If the clerk is chosen from outside the Board's membership, he shall not be eligible to vote on any matter.

**III. MEMBERSHIP**

The Board of Adjustment shall consist of five [5] regular members and two [2] alternate members. Three [3] members shall reside in the County outside the extraterritorial jurisdiction of a municipality and the two remaining members may be from any location within the County. The two [2] alternates may reside at any location



## Rowan County Zoning Board of Adjustment

130W. Innes Street n Salisbury, NC 28144-4341

### STAFF REPORT

### ZBA 02-21

#### Request

Ken Harmer, (applicant) has submitted a variance application for property owned by Broadus J. Embler, III, requesting an approximate twenty (20) foot reduction to the required fifty (50) foot front yard setback on Rowan County Tax Parcel 480-039 located in the 5700 block of S. Main Street (S US 29 Hwy), Salisbury, NC.

#### Property Characteristics

Tax Parcel 480-039 is subject to one hundred (100) feet of the NC Railroad's two hundred (200) foot right-of-way corridor paralleling Main Street (US 29 Hwy). The resulting tract is 1.39 acres having seven hundred (700) feet of frontage along S. Main Street and eighty (80) feet of depth. Previous deed descriptions suggested this property (and others in the rail corridor) extended to the centerline of the rail track, but a renewed effort by the NC Railroad prior to the "double tracking" of the rail line in the 2000s reestablished its claim to the railroad right-of-way. As a result, many of the properties in the corridor had their acreages adjusted to reflect usable area for taxation purposes. In this case, it decreased from 2.857 acres to 1.39 acres (per Rowan County Tax Assessor).

The parcel is wooded, contains vegetative growth and is generally flat as it has no more than four (4) feet of surface elevation change. Rowan County tax records do not indicate any existing improvements on the property, but suggest there was a store on the property that was destroyed by fire in 1998.

The property is currently zoned Commercial, Business, Industrial (CBI) and also located within the Airport Zoning Overlay (AZO). Principal structure setbacks for the CBI district are 50' front (from the edge of road right-of-way) and 10' from side and rear property lines; accessory structure setbacks are 10' off the front (edge of R/W), side and rear property

lines. The AZO would limit structure heights to less than two-hundred forty (240') above the current surface elevation of the tract.

Municipal water service provided by Salisbury-Rowan Utilities is located on the opposite (west) side of S. Main Street, but sewer service is located east of the railroad near Town Creek at I-85 and Webb Rd. It is likely any development on the tract would rely on a septic tank system.

### **Conditions in the Vicinity**

The property is bordered to its north by Hot Shoppe gas station and its south by Bradshaw's Used Auto Sales. The northwest properties across S. Main consist of residential dwellings and directly across S. Main is the NC Highway Patrol and Division of Motor Vehicles complex. The rear (east) portion of the property is bounded by the NC Rail corridor.

### **Variance Standards**

Refer to the ZBA 02-21 application submitted by the applicant and his responses to the criteria for consideration of the setback variance request.





Rowan County Department of  
Planning & Development  
402 N. Main Street Ste 204  
Salisbury, NC 28144  
Phone (704) 216-8588  
Fax (704) 638-3130  
www.rowancountync.gov

Case # ZBA 02-21  
Date Filed 8.3.21  
Received By MEM  
Amount Paid \$200.00

Office Use Only

## VARIANCE APPLICATION

### OWNERSHIP INFORMATION:

Name: Broadus J. Embler, III

Signature: Broadus J Embler III

Phone: 336-687-0763

Email: \_\_\_\_\_

Address: 100 Shadow Valley Rd, High Point, NC, 27262

### APPLICANT / AGENT INFORMATION:

Name: Kenneth Harmer

Signature: \_\_\_\_\_

Phone: 704 235 8303

Email: Kens929@gmail.com

Address: 1520 Gold Knob Rd., Salisbury, NC 28146

### PROPERTY DETAILS:

Variance Requested on Property Located at: 0 S. Main Street, Salisbury

Tax Parcel: 480 039

Zoning District: \_\_\_\_\_

### TO THE ROWAN COUNTY ZONING BOARD OF ADJUSTMENT:

I Kenneth Harmer, hereby petition the Board of Adjustment for a **VARIANCE** from the provisions of the Rowan County zoning \_\_\_\_\_ Ordinance because, under the interpretation given to me by the Administrator\*, I am prohibited from using the parcel of land described above in a manner shown by the Plot Plan attached to this form. I request a variance from the following provisions of the ordinance (cite Section & Code req.):

Section 21-84, from the front set back 50' to 30'

### FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE:

The Board of Adjustment may grant a variance if it concludes that strict enforcement of this ordinance would result in unnecessary hardships for the applicant. The Zoning Board of Adjustment, in granting, shall ensure that the spirit of this ordinance is maintained, public welfare and safety ensured, and substantial justice done. In the following spaces, indicate the **facts** and **argument** you plan to render, in order to convince the Board, to properly determine that their conclusions or findings of fact are applicable.

- 1) Unnecessary hardship would result from the strict application of the ordinance. (It shall not be necessary to demonstrate that, in the absense of a variance, no reasonable use can be made of the property);

Due to the railroad right of way and the 50' front setback which leaves just under 18' for the building on the north. We also need adequate room to navigate around the buildings

- 2) The hardship results from conditions that are peculiar to the property such as location, size, or topography. (Hardships resulting from personal circumstances and / or conditions common to the neighborhood or general public may not be the basis for granting a variance);

Due to the railroad right of way and the 50' front setback which leaves just under 18' for the building on the north. We also need adequate room to navigate around the buildings

- 3) The hardship is not the result of the property owner or applicant's own actions. (The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self created hardship);

Due to the railroad right of way and the 50' front setback which leaves just under 18' for the building on the north. We also need adequate room to navigate around the buildings

- 4) 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;

Storage units are an allowed use in the CBI district. Most of the structures on the railroad side of S. Main street are set back less then 20' from the front property line



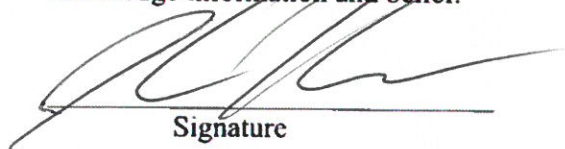
- 5) The variance will not result in a land use otherwise not permitted in the applicable zoning district nor authorize the extension of a nonconforming situation in violation of article VI, or other applicable provisions of this chapter;

No, its because storage units are an alloud use in that zoning district

- 6) If applicable, the setback reduction is no more than fifty (50) percent of that required and the resulting setback is no less than five (5) feet from any property line or right-of-way.

We don't need the full 50%. Accommodating for turning and navigating around the buildings.

I certify that all the information presented by me in this application is accurate to the best of my knowledge information and belief.

  
Signature

8/3/21  
Date

\* Includes administrators and enforcement officers with the Department of Planning and Development.

**OFFICIAL USE ONLY**

1. Signature of Coordinator: M. E. T. 2. ZBA Hearing: 8/19/21  
3. Notifications Mailed: 8/4/21 4. Property Posted: 8/5/21 5. ZBA Action: Approved \_\_\_\_\_  
Denied \_\_\_\_\_ 6. Date Applicant Notified: \_\_\_\_/\_\_\_\_/\_\_\_\_ 7. Date CMO Notified: \_\_\_\_/\_\_\_\_/\_\_\_\_