

..TITLE

Vote on a request to approve Joyce A. Remick, Trustee for a subdivision variance from the Subdivision Regulation, Section 7.4 B, (3), on parcel #70513 located off Andrews Store Road, SR-1528, to allow a sixth lot be served by a private easement.

..ABSTRACT

Action Requested:

Request by Joyce A. Remick, Trustee for a subdivision variance from the Subdivision Regulation, Section 7.4 B, (3), on parcel #70513 located off Andrews Store Road, SR-1528, to allow a sixth lot be served by a private easement.

Introduction & Background:

Zoning: R-1
Watershed: WSIV-PA / JLBA
Water: Private well
Sewer: Private septic system and repair area
Floodable: No

Parcel #70513 was created in 1996 as part of a major subdivision process to create 8 residential lots on 12 acres on the north side of S. R. 1728, Andrews Store Road in Baldwin Township. The Board of Commissioners approved Baldwin Farm Subdivision on 10/16/95 and the plat was recorded in 1996. See attachment # 2. The request that was before the Board in 1995 was to allow five (5) of the lots to be accessed by a private easement; two (2) lots to have direct state road frontage with their driveways off Andrews Store Road; and one (1) additional flag lot with ownership on Andrews Store Road. See Lots 1 – 8 on Plat Slide 96, Page 124, attachment # 2. As shown on the plat, Lots 1 and 2 were flag lots with each lot having 30 feet of ownership on Andrews Store Road. Lots 3, 5, & 6 were proposed to have a private easement over and across the two flag lots for ingress, egress, and installation of utilities. The private easement was proposed to serve five (5) lots, #'s 1, 2, 3, 5, & 6. Section 6.4 B (2) of the pre-2008 Subdivision Regulation stated “Three (3) subdivision lots may be allowed provided that every lot has frontage on a perpetual easement not less than thirty (30) feet in width that meets a public road”. The Developer requested to be allowed to provide access to five lots with a private easement since two of those lots were flag lots with ownership on Andrews Store Road. The Board of Commissioners approved the request with a condition that stated “Due to the increase in the number of lots served by the private easement, that ‘Baldwin Farm Road’ be improved to the county’s private road construction standards”. In 1995, the county private road standards required in part a 60 foot wide right of way; a 16 foot wide travel way, and 4 inches of crush and run stone. The Board did not require the lot sizes to meet the private road standards of a 3 acre minimum / 5 acre average. The developer built the road to the county private road standards and recorded a Declaration of Conditions and Restrictions of Easement, Baldwin Farm Subdivision in Deed Book 694, Page 244. Article IV of the Declaration stated in part “It is required that the road meet county standards for Private Roads”.

Staff does not know if the road has been maintained to the county private road standards.

Discussion & Analysis:

The request before the Board is for a variance from Section 7.4 B (3) which states in part “Up to four (4) subdivision lots may be allowed provided that every lot has frontage on a perpetual easement not less than thirty (30) feet in width that meets a public road. If additional subdivision lots are to be created and served by the easement, it shall be sixty (60) feet in width and meet other standards required unless a variance is granted.” See attachment 4 for the complete language.

The applicant is requesting to subdivide parcel #70513, Lot 2, and add one (1) additional lot on the easement. If approved, the easement will serve six (6) residential lots. In order for the Planning Board to recommend approval and for the Board of Commissioners to grant an approval for a variance, the four (4) finding must be made. The findings are as follows:

1.That there are special circumstances or conditions affecting said property such that the strict application of the provisions of this ordinance would deprive the applicant of the reasonable use of his/her land. In 1996 when the lot was created, the Subdivision Regulations allowed three (3) lots to be accessed by a private easement; however, the original developer was granted an approval to provide access to five (5) lots with a road improvement. The current Subdivision Regulation allows four (4) lots to be accessed by a private easement. Baldwin Farm Road already serves more lots than are allowed by the Subdivision Regulations, Section 7.4 B (3).

2.That the variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner. The applicant currently has use of their land as a residential lot. Staff has advised the applicant that as an alternative to subdivision, that it may be possible to construct an accessory dwelling unit on their property that does not exceed 1500 square feet of heated area as long as there is suitable soil for a septic system and repair area and the structure can meet required setbacks from property lines and from any stream buffer that may be on the property. Also, staff has told the applicant that if a separate easement can be obtained from an adjoining property owner that it may be possible to further subdivide the property with access to the new lot byway of the new easement.

3.That the circumstances giving rise to the need for the variance are peculiar to the parcel and are not generally characteristic of other parcels in the jurisdiction of this ordinance. There are other parcels of land in the county that are accessed by a private easement that cannot be further subdivided due to the number of lots already served by the easement.

4.That the granting of the variance will not be detrimental to the public health, safety and welfare or injurious to other property in the territory in which said property is situated. In January, 2014, the County adopted stricter standards of construction for

private easements serving more than one (1) lot in order to meet the requirements of the North Carolina Fire Code for emergency vehicle access. Attachment # 4 addresses the standards which require a compacted subgrade that will pass a proof roll with a fully loaded double axel dump truck or other equivalent weighted equipment (25-50 tons), 6 " ABC compacted to 90% modified proctor density, a turn-around and/or a pull-out for safe passage of emergency vehicles depending on the length of the easement and certification by a licensed engineer that the roadway meets the requirements. The stricter standards are to insure that emergency vehicles can access the lots for the health and safety of the public.

It is staff's opinion that the four findings cannot be made in order to grant the variance request.

The applicant has provided their responses to the four findings. See attachment # 1.

Previously, in 2008 the applicants filed a similar variance request to allow a 6th lot on the easement. In the application, the applicant states that they had been told that they could build a 1,000 square foot guest house on their property without subdividing. That option was not workable for the applicant, so a variance request was filed and the applicant applied for a riparian buffer review and an Environmental Health review to determine if there were suitable soils for an additional septic system and repair area. The applicant withdrew the variance request prior to review by the Planning Board. The 2008 variance request submitted by the applicant can be viewed on the Planning Department webpage at www.chathamnc.org Rezoning and Subdivision Cases, 2017.

This item was on the March 7, 2017 Planning Board agenda and discussion included whether the request met the standards for granting a variance. There was general agreement that if the request was recommended for approval that the currently adopted road standards would apply and could be cost prohibitive. There was also concern raised that a variance was previously granted for an additional lot in 1996 as part of the major subdivision approval. The Remick's indicated that their interest was to provide a lot for their daughter that she would own separately from their tract. One of the Planning Board members indicated that the Remick's could also draft their will to include the creation of a lot for their daughter, which is exempt from Subdivision Regulations. Based on concerns about the prior variance approval, provisions allowing for accessory dwellings, and provisions for exempt division of property by a will the Planning Board voted 7-1 to recommend denial of the variance.

Recommendation:

The Planning Department and Planning Board (by 7-1 vote) recommend denial of the variance request from the Subdivision Regulation, Section 7.4 B, (3), on parcel #70513 located off Andrews Store Road, SR-1528, to allow a sixth lot be served by a private easement.

If the Commissioners approve the variance request, staff recommends the following conditions:

1. That the private easement, Baldwin Farm Road, be upgraded from Andrews Store Road to the boundary of the new lot to meet the current construction standards in Section 7.2 D (3), Design and Construction Standards for Private Roads. See attachment # 4.

2. That the road improvements/construction be made prior to a building permit being issued on the new lot.

3. That the applicant provide an opinion prepared by an attorney that the recorded easement document allows for an additional lot or provide a copy of a recorded amendment to the Declaration of Conditions and Restrictions of Easement allowing for the additional lot.