



Town of Mint Hill

John M. McEwen Assembly Room
4430 Mint Hill Village Lane
Mint Hill, North Carolina 28227

Mint Hill Board of Adjustment Agenda

August 29th, 2016 at 6:30 p.m.

1. Call To Order
2. Roll Call and Declaration of Quorum
3. Approve Minutes of June 27th, 2016 Regular Meeting
4. Reports of Committees, Members, and Staff
5. Old Business
6. New Business
 - A. Discussion and Decision on Variance Request #V16-6, Filed by William and Victoria Earnhardt, for Property Located at 7842 Orrview Drive, Tax Parcel #137-041-17, from Section 6.1 Table 2: Dimensional Requirements of the Mint Hill Unified Development Ordinance.
7. Other Business
8. Adjournment

Candice Everhart
Program Support Assistant
August 22nd, 2016

Memo

To: Board of Adjustment
 From: Staff
 Date: 8/19/2016
 Re: Variance Request #V16-6, Filed by William & Victoria Earnhardt, for property located at 7842 Orrview Dr

Variance Request

The applicant is requesting a variance from Section 6.1 Table 2 Dimensional Requirements of the Mint Hill Unified Development Ordinance for property located at 7842 Orrview Dr, Tax Parcel number 137-041-17. The applicant is seeking to reduce the minimum 50 ft front setback by 10 ft and the minimum 40 ft rear setback by 20 feet. This would result in a 40 ft front setback and a 20 ft rear setback. The 15 ft side setback for the lot will be met and is not proposed to be reduced. The resulting setbacks would be as follows:

Current setbacks

50' front
 40' rear
 15' side

Requested setbacks

40' front
 20' rear
 15' side

Type of Residential Dwelling	MINIMUM LOT DIMENSIONS				MINIMUM SETBACK IN FEET				MAX LOT COVERAGE	MAXIMUM HEIGHT	
	Lot Area in Square Feet	Lot Width at Minimum Setback	Lot Frontage Exception Cul-de-Sac	Lot Frontage on Cul-de-Sac	Front Yard Setback ⁽³⁾	Side Yard Setback Adjoining a Street	Side Yard Setback	Rear Yard Setback	Lot Coverage in Percent	Height in Stories	Height in Feet ⁽⁴⁾
Single-Family Detached ⁽¹⁾⁽²⁾	20,000	125	60	60	50	<u>25</u>	<u>15</u>	40	<u>29</u>	2	35
Single-Family Detached ⁽¹⁾⁽²⁾	30,000	130	70	70	60	30	20	40	20	2	35
Single-Family Detached ⁽¹⁾⁽²⁾	40,000	140	70	70	60	40	20	50	20	2	35

Section 6.1 Table 2

Please see the enclosed application for further information.

VARIANCE
APPLICATION

Town of Mint Hill
Board of Adjustment
4430 Mint Hill Village Lane
Mint Hill, N.C. 28227
(704) 545-9726

Office Use Only	
Petition #:	<u>V16-6</u>
Date Filed:	<u>8/12/16</u>
Received By:	<u>CB</u>

(amendment to original
request filed on 7/28/16)

Variance requested on property located at: 7842 Orrview Dr, Mint Hill, NC

Tax Parcel Number: 13704117 Zoning District: R

Describe variance being requested:

We are requesting a variance to the existing set backs of 50ft off the front & 40 ft off the back. We are requesting new set backs to be 40ft. off the front, and 20 ft. off the back. There are a couple of reasons for the request: 1. The shape of the lot limits placement of the house. 2. We want to save as many trees as possible including a 100+ year old oak. 3. The

topography would reduce the slope from 6ft. to less than 4ft. 4. This would reduce the amount of concrete driveway and thus reduce impervious surface.

(Complete if Applicant is other than Property Owner)

William & Victoria Earnhardt

Name of Property Owner

Name of Applicant

2331 Heath Lake Dr

Address of Owner

Address of Applicant

Mint Hill, NC 28227

City, State, Zip

City, State, Zip

704-989-7890

Telephone Number

Telephone Number

bearnhardt64@gmail.com

E-Mail Address

E-Mail Address

[Handwritten Signature]

Signature of Property Owner

Signature of Applicant

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE:

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under the State Enabling Act, the Board is required to reach four conclusions as a prerequisite to the issuance of a variance: (1) that unnecessary hardships would result from the strict application of the Ordinance; (2) the hardship results from conditions that are peculiar to the property, such as location, size, or topography; (3) that the hardship did not result from actions taken by the applicant or the property owner and, (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.

In the spaces provided, indicate the facts that you intend to show and the arguments that you intend to make to convince the Board that it can properly reach these four required conclusions.

UNNECESSARY HARDSHIPS WOULD RESULT FROM THE STRICT APPLICATION OF THE ORDINANCE. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

Due to the ~~sp~~ shape of the lot the house will only fit in one specific spot. This is a problem ~~there~~ for several reasons.

1. The slope of the lot where the house would go.
2. The additional impervious surface required in order to run the driveway the additional distance.
3. The loss of several large trees vital to Mint Hills Heritage

THE HARDSHIP RESULTS FROM CONDITIONS THAT ARE PECULIAR TO THE PROPERTY, SUCH AS LOCATION, SIZE OR TOPOGRAPHY. Hardship resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

The topography of the lot creates a more than 6ft drop under existing setback requirements. In addition the lot ~~size~~ dimensions decrease moving south to north. By having more flexibility we are able to save several large trees including one specific oak that appears to be at least 100 years old.

THE HARDSHIP DID NOT RESULT FROM ACTIONS TAKEN BY THE APPLICANT OR THE PROPERTY OWNER. The act of purchasing property with knowledge that circumstances exist that may justify granting a variance shall not be regarded as a self-created hardship.

We purchased the lot less than 1 month ago and no changes have been made.

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.

Due to the unique location of the lot this variance will only have a positive impact on maintaining the spirit of Mint Hill.

MINUTES OF THE MINT HILL BOARD OF ADJUSTMENT
June 27th, 2016

The Mint Hill Board of Adjustment met in regular session on Monday, June 27th, 2016 at 6:30 p.m. in the John M. McEwen Assembly Room, Mint Hill Town Hall.

ATTENDANCE

Chairman: Gary Isenhour
Vice Chairman: June Hood
Members: Michael Weslake, Ronald Rentschler, Bobby Reynolds
ETJ Members: David Tirey
Absent: Debi Powell
Town Planner: Chris Breedlove
Commissioners: Mickey Ellington
Clerk to the Board: Candice Everhart

CALL TO ORDER

Chairman Isenhour called the meeting to order at 6:30 p.m., declared a quorum present and the meeting duly constituted to carry on business.

ORDER OF BUSINESS

Approval of Minutes of May 25th, 2016 Regular Meeting: Upon the motion of Mr. Reynolds, seconded by Mrs. Hood, the Board unanimously approved the minutes of the May 25th, 2015 Board of Adjustment regular meeting.

Reports of Committees, Members and Staff: None.

Old Business: None.

New Business:

- A. **Discussion and Decision on Variance Request #V16-4, Filed by Kevin Lehman for Property Located at 6906 Old Oak Lane, Tax Parcel #135-263-38, from Section 6.1 Table 2: Dimensional Requirements of the Mint Hill Unified Development Ordinance.**

Mr. Isenhour asked the applicant and Mr. Hoard to step forward and be sworn in. Do you swear or affirm that the testimony you are about to give is to the best of your knowledge so help you God? I do, stated Mr. Lehman and Mr. Breedlove.

Mr. Breedlove stated, the only thing I want to point out is the front setback is measured relative to public right of way. The building permit has been signed off by Mecklenburg County. The arrangement has since changed due to the setbacks required by us. They

signed off on 50', 15' and 30'. They plot map shows different setbacks of 40', 15' and 30' which should not have been signed off.

Mr. Lehman stated, I purchased this home through Ryland Homes in June 28, 2013. In December of 2012 I had signed a contract with them for this home, in which they built, however it was a track home. In the first couple of months after signing there was no work done. They told me there was an issue with the typography and needed to push the home back into the corner. Once they received all of the permits they started digging and pouring concrete. I was just an innocent bystander, excited to watch my home be built. We went to closing with the lawyer, surveyor and title insurance they provided. They had the documents that stated everything was appropriate and the drawing with the south lot line was 15' as the side yard, east lot at the 40' as rear yard, and west side was 50'. I wouldn't know that the house would be considered as Old Oak Lane being the front yard and the south lot line as the rear yard. Fast forward three years and I am needing to move to Hickory due to a job transfer and when I put my house on the market, the survey comes back with the south lot line being the 40' rear yard which puts me 10' into a setback issue. I am now unable to sell my house until we get this figured out.

Mr. Isenhour said, basically if I'm sitting here looking at this, the surveyor made the mistake of which way the front is facing.

Mr. Lehman said, yes. All of the houses are lined up the same way, but my house doesn't have the same address as theirs.

Mr. Isenhour asked, if for some reason this doesn't pass, is there any way to move the house?

Mr. Lehman said, I don't think they could due to the typography which was why they had to build it the way they did.

Mrs. Hood asked, does this pose any other problem in use or with the neighborhood?

Mr. Lehman said, no. After speaking with my neighbors about the issue, they have been accepting and said this causes them no inconvenience.

Mr. Tirey asked, when you purchased this I'm sure you thought this was all being done legally. At any time did anyone say there were setback issues?

Mr. Lehman said, no. In fact I have with me all of the papers that show exactly what I saw.

Mr. Tirey asked, there was in no way to your intent or fault?

Mr. Lehman said, no. I was a builder before I moved and I understand the permitting process so I didn't think there was any issues if the permits were approved.

Mr. Weslake asked, did you get a survey when you closed?

Mr. Lehman said, yes. I have copies of the ones I had received if you would all like to see.

Mr. Weslake said, the survey you got was 30' feet.

Mr. Lehman said, yes, but with a 15' side yard.

Mr. Rentschler asked, you indicated it was permitted through Mecklenburg County correct?

Mr. Breedlove said, Mint Hill staff never signed or looked at the permit. All we can assume is that Mecklenburg County made a mistake. Thirty foot doesn't exist in Green Meadows at all.

Mr. Tirey asked, was the approval correct?

Mr. Breedlove said, no. There was a mistake.

Mr. Jenkins, the president of the land surveying company that signed off on the survey that Mr. Lehman was presented at closing, said, when Ryland Homes sells to someone they come to us to draw a plot plan which they use to submit for permitting. When they called us about this, we began to look at this and realized we made a mistake on it. The lot had issues with topography as far as placing the house. After changing and twisting the house multiple ways we didn't realize the houses were going all the way out to Hay Meadow Lane. Mr. Lehman is here through no fault of his own. This is our mistake and we are responsible. We didn't do this intentionally to help Ryland get a leg up or anything, it was an honest mistake.

Mr. Tirey said, we appreciate you taking responsibility.

Mr. Isenhour said, our variance tonight is to decide on variance request Discussion and Decision on Variance Request #V16-4, Filed by Kevin Lehman for Property Located at 6906 Old Oak Lane, Tax Parcel #135-263-38, from Section 6.1 Table 2: Dimensional Requirements of the Mint Hill Unified Development Ordinance. If there are no further questions we will go into our Fact Findings section.

Unnecessary hardships would result from the strict application of the ordinance.

Mr. Tirey said, yes he has unnecessary hardships. He had no malice or ill-intent and he needs to sell his house and he can't.

Mr. Rentschler said, I agree.

Mrs. Isenhour said, I agree.

Mrs. Hood said, I agree.

Mr. Reynolds said, I agree.

Mr. Weslake said, I agree.

The hardship results from conditions that are peculiar to the property, such as location, size or topography.

Mr. Weslake said, the hardship results from the conditions that are peculiar such as the shape of the lot and the errors from the County and the surveyor.

Mr. Reynolds said, the hardships result from the conditions that are peculiar due to topography and the way the home is turned on the lot.

Mrs. Hood said, I agree.

Mr. Isenhour said, I agree.

Mr. Rentschler said, I agree with the previous statements.

Mr. Tirey said, the hardship results from the builder not getting proper permission and the house facing a different side than originally shown.

The hardship did not result from actions taken by the applicant or the property owner.

Mr. Tirey said, the hardship is a result of the house being illegally purchased and the applicant was never informed of an easement issue. Now when it is time for him to move on and he cannot. That is a hardship on the applicant.

Mr. Rentschler said, I agree.

Mr. Isenhour said, I agree.

Mrs. Hood said, I agree.

Mr. Reynolds said, the hardship did not result from actions by the applicant, but is an honest mistake.

Mr. Weslake said, I agree.

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.

Mr. Weslake said, the request for a variance is consistent with the spirit, purpose and intent of the ordinance such that public safety is secured and substantial justice is achieved.

Mr. Reynolds said, I agree.

Mrs. Hood said, I agree.

Mr. Isenhour said, I agree.

Mr. Rentschler said, I agree.

Mr. Tirey said, I agree.

Mr. Rentschler said, in regards to Variance request Decision on Variance Request #V16-4, Filed by Kevin Lehman for Property Located at 6906 Old Oak Lane, Tax Parcel #135-263-38, from Section 6.1 Table 2: Dimensional Requirements of the Mint Hill Unified Development Ordinance, I make a motion to approve this variance. Mr. Tirey seconded the motion and the Board unanimously agreed.

B. Discussion and Decision on Variance Request #V16-5, Filed by Essex Homes Southeast, Jeremy Smith, for Property Located at 4026, 4044 and 4058 Nottaway Place Drive, Tax Parcel #195-022-23, #195-022-24 and #195-022-25, from Section 6.1 Table 2 of the Mint Hill Unified Development Ordinance.

Mr. Breedlove said, the applicant is asking for the setback to be reduced from 60' to 50' in this phase of Belle Grove Manor.

Mr. Isenhour asked the applicant and Mr. Hoard to step forward and be sworn in. Do you swear or affirm that the testimony you are about to give is to the best of your knowledge so help you God? I do, stated Mr. Smith and Mr. Breedlove.

Mr. Brian Ecknam and Mr. Jeremy Smith introduced themselves.

Mr. Ecknam said, our developer did not develop phase two. Only three out of the twenty-three lots are we asking for the setback change due to topography and the slope of the land. We want to make this safer for families and the homeowners so we would like to fix this issue by having the ten foot reduction.

Mr. Smith said, I've provided you with a couple of examples on the first page that was recorded February 17th of this year. You will see the grading plan. This picture shows the slope of the back lots. That is looking down Nottaway Place Drive. The photo was taken to illustrate the area of issue. On lot 37 you can see how close it sets back to the easement

and stream. They didn't push it all the way back in order to keep the buffer there. Moving this to 50' shouldn't affect the aesthetics of the community, but it will make it much safer for the families living in these homes.

Mr. Ecknam said, it has been almost ten years since the purchase of this property. I think it is just erosion and weathering that has changed the lay of the land. We want to leave enough room for residents due to flood drainage and safety concerns.

Mr. Weslake asked, what is the 15' on lot 35?

Mr. Smith said, that is the 15' storm drain easement.

Mr. Weslake asked, what is the depth of the home?

Mr. Smith said, it is 50' on average.

Mr. Weslake said, I'm just thinking you have 181' between lot 35 and 36. If you take 60' off front it takes it down to 121'. Take 40' off the back and you're left with 81'. You would think that would leave plenty of room.

Mr. Smith said, on paper it looks like a slam dunk. Once you visit the site and look at the grading limits it's not feasible from a stormwater and safety standpoint. With the stream and the buffer in the rear you have to be cautious about that.

Mr. Weslake said, what is the difference in the front elevation of the home and 50' back?

Mr. Smith said, 50' back I would rather not guess, but the difference from the front to the back of the house you're looking at at least a 12' drop.

Mr. Weslake said, it looks like lot 37 doesn't look as severe.

Mr. Smith said, lot 36 and 37 are actually the most severe from our survey.

Mr. Tirey asked, how much space is there for the backyard?

Mr. Smith said, on paper it is between 30 to 40' dependent upon the house.

Mr. Isenhour asked, did they reduce the lot size to 20,000 square feet?

Mr. Ecknam said, the lot sizes are all still remaining 30,000 square feet, we didn't change those.

Mr. Rentschler asked, have you brought public sewer in yet?

Mr. Ecknam said, yes.

Mr. Rentschler said, basically these are 30,000 square foot lots with city sewer and water with 60' setback on all lots except for these three.

Mr. Breedlove said, correct. The variance comes into play because they are asking for only the three lots. If they asked for the entire phase to change that would be a planning board review.

Mr. Isenhour said, our variance tonight is to decide on variance request Discussion and Decision on Variance Request #V16-5, Filed by Essex Homes Southeast, Jeremy Smith, for Property Located at 4026, 4044 and 4058 Nottaway Place Drive, Tax Parcel #195-022-23, #195-022-24 and #195-022-25, from Section 6.1 Table 2 of the Mint Hill Unified Development Ordinance. If there are no further questions we will go into our Fact Findings section.

Unnecessary hardships would result from the strict application of the ordinance.

Mr. Weslake said, unnecessary hardships would result due to topography and the storm

drainage easement.

Mr. Reynolds said, unnecessary hardships would result by not allowing the homes to be placed properly for safety.

Mrs. Hood said, I agree.

Mr. Isenhour said, unnecessary hardships would result due to the stream and associated topography and grading concerns.

Mr. Rentschler said, I agree.

Mr. Tirey said, I agree.

The hardship results from conditions that are peculiar to the property, such as location, size or topography.

Mr. Tirey said, the hardship would result from the topography and the way the setback is now there would be an issue with storm drainage.

Mr. Rentschler said, I agree.

Mr. Isenhour said, I agree.

Mrs. Hood said, I agree.

Mr. Reynolds said, I agree.

Mr. Weslake said, I agree.

The hardship did not result from actions taken by the applicant or the property owner.

Mr. Weslake said, the hardship did not result from the property owner. It is a result of the topography.

Mr. Reynolds said, the hardship did not result from actions taken by the property owner.

Mrs. Hood said, I agree.

Mr. Isenhour said, I agree.

Mr. Rentschler said, I agree.

Mr. Tirey said, I agree.

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.

Mr. Tirey said, the variance is consistent with the spirit, purpose and intent of the ordinance such that public safety is secured and substantial justice is achieved. The public safety would not be met where the setback is now.

Mr. Rentschler said, I agree.

Mr. Isenhour said, I agree.

Mrs. Hood said, I agree.

Mr. Reynolds said, I agree.

Mr. Weslake said, I agree.

Mr. Rentschler said, in regards to Variance request Decision on Variance Request #V16-5, Filed by Essex Homes Southeast, Jeremy Smith, for Property Located at 4026, 4044 and 4058 Nottaway Place Drive, Tax Parcel #195-022-23, #195-022-24 and

#195-022-25, from Section 6.1 Table 2 of the Mint Hill Unified Development Ordinance, I make a motion to approve this variance. Mr. Reynolds seconded the motion and the Board unanimously agreed.

Other Business: None

Adjournment: Upon the motion of Mr. Reynolds, seconded by Mr. Rentschler, and unanimously agreed upon, Chairman Isenhour adjourned the meeting at 7:30 p.m.

Candice Everhart
Program Support Assistant