



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 October 26th, 2015 at 6:30 p.m.

1. Call To Order
2. Roll Call and Declaration of Quorum
3. Approve Minutes of February 24th, 2014 Regular Meeting
4. Reports of Committees, Members, and Staff
5. Old Business
6. New Business
 - A. Discussion and Decision on Variance Request #V15-1, Filed by Timothy Brun for Property Located at 16300 Blackberry Hill Drive, Tax Parcel #139-173-26, to expand an existing accessory structure.
7. Other Business
8. Adjournment

Candice Everhart
Program Support Assistant
October 19th, 2015

MINUTES OF THE MINT HILL BOARD OF ADJUSTMENTS
February 24, 2014

The Mint Hill Board of Adjustments met in regular session on Monday, February 24, 2014 at 7:30 p.m. in the John M. McEwen Assembly Room, Mint Hill Town Hall.

Roll Call and Declaration of Quorum

Chairman Isenhour called the meeting to order at 7:30 p.m., ruled a quorum present and the meeting duly constituted to carry on business.

Chairman: Gary Isenhour

Members: June Hood, Ronald Rentschler and Bobby Reynolds

ETJ Members: Debi Powell and David Tirey

Alternate Member Serving: Charlie Burdick

Planner: John Hoard

Deputy Town Clerk: Doris Miller

Member Absent: Michael Weslake

Approval of Minutes of Regular Meeting of January 27, 2014: Upon the motion of Mr. Reynolds, seconded by Mrs. Hood and unanimously agreed, the minutes of the January 27, 2014 regular meeting were approved as presented.

Old Business:

A. Withdrawal of Variance Request #V-SO-13-1, Filed by Albert Thomas and Annie Alexander for Property Located at 12309 Bain School Road, Tax Parcels #197-051-01 and #197-051-19: Chairman Isenhour reported that the applicant for Variance Request #V-SO-13-1 had withdrawn their variance request for property located at 12309 Bain School Road.

New Business

A. Discussion and Decision on Variance Request #V14-1, Filed by R. D. Covington, Property Located at 7381 Olde Sycamore Drive, Tax Parcel #197-281-06 to Allow Concrete Swimming Pool Deck to be Expanded: Chairman Isenhour introduced Variance Request #V14-1 filed by R. D. Covington for property located at 7381 Olde Sycamore Drive and asked anyone wishing to speak regarding this application to be sworn in. John Hoard, Town Planner, Barry Misiak, 7717 Palmerfield Court, Mint Hill, N. C. 28227 and Chris King, 800 S. York Street, #3401, Gastonia, N. C. 28052 were sworn in by Chairman Isenhour.

Mr. Hoard provided background information (copy in file). Mecklenburg County tax records for Olde Sycamore indicated the club house, tennis court and pool were constructed in 1997. It appeared the pool and patio area were originally permitted to encroach into the 100 ft. setback along the southern property line. A site plan from 1997 had been reviewed by the Town Staff but there was no indication it had been approved. Mr. Hoard was uncertain if Staff had interpreted 7.2.25 C

differently, or if there was an oversight, but a 20 ft. setback was indicated on the southern property line and a 100 ft. setback was indicated for the western property line. The applicant wished to expand the patio area surrounding the pool to encroach 30 ft. into the required 100 ft. setback. Measurements were provided with a draft of their plans. Mr. Hoard asked that they be required to commit to these numbers because the application only said to encroach into the setback.

Chairman Isenhour inquired of Mr. Hoard if he meant the pool and patio encroaching or just the concrete patio area. Mr. Hoard said it was his understanding it would include everything relating to it, including the deck.

Mr. Chris King, with Swim Specialities, addressed the Board stating he did the lay-out for the Community Board. There was quite a bit of intrusion on the south side of the pool deck into the setback. They had not been able to determine whether the pool was built first or if it was built after the subdivision development. They were not sure if the developer shifted the houses closer to the pool deck after it was built. The blue outline on their plans indicated what they were trying to do on the deck. Basically, they were asking for another 30 feet on one side. They did not want to go any further south towards the two houses that were already there, but would like to use the other side which was a little flatter and the back side was pretty much cow pasture. There wasn't anything back there now.

Mr. Barry Misiak, representing the Olde Sycamore Homeowners Association, addressed the Board stating the applicant, R. D. Covington was out of the country and could not be there. He stated the reason they wanted to expand was because the subdivision had built out to 400 homes and the pool area got quite crowded at times during the summer. It was a little tight when they put chairs out there, especially when they had a special event. They wanted to be able to accommodate more lounge chairs and people to come enjoy the facility. It would be safer. They would put up a new fence around the whole thing and give them another exit out the back. Both exits are currently out front and this would give them better exits if there was a fire on the premises or in the club house. It could get really crowded with kids running around. The biggest thing they were looking for was to give people more space. They were not trying to expand toward the homes that were there, they were going the other way. There was no other land available in the community to build another pool.

Mr. Reynolds asked if the applicant would be willing to commit to the footprint they had presented. Mr. Misiak said, yes.

Mr. Tirey questioned if there would be a sidewalk out the back exit or would it only be used for emergencies. Mr. Misiak said it would probably be used for emergencies but they would probably put some kind of stones or sidewalks in, if they were required to do that.

Mr. Burdick asked if the homeowners were advised of these plans and had they received any objections. Mr. Misiak said everyone was sent a notice and a sign was placed there to let them know. To his knowledge they had not received any objections. Chairman Isenhour said Mrs. Miller had told him earlier that all the adjoining property owners had been notified. He felt if anyone had any objections they would have been at the meeting.

Mrs. Hood said she understood that it backed up to a cow pasture. Mr. Misiak pointed out on the plan where it said 70 ft. was where the fence and cow pasture were located.

Mr. Reynolds said he thought Mrs. Hood wanted to know who the adjacent owner was. Mr. Hoard said it was Jimmy Allen.

Mr. King addressed the Board again stating that the North Carolina Healthcare Code said that when a swimming pool is designed it is designed for one person per fifteen feet. When this pool was built, it was designed for 250 people to get in the pool at one time. The original footprint of the development was 100 homes. They now have 400 homes. If you work the numbers out, theoretically they could have five hundred people trying to cram into this small space. If the building were to catch fire, with the two exits it would be a safety hazzard with that many people trying to get out at one time. The additional exit gate would help in this situation. He felt there should have been additional land set aside to build another facility, but there had not been.

Mr. Tirey pointed out that part of the existing patio, an area about 20 ft. X 15 ft or 20 ft. X 20 ft. was being used for a kids splash zone. People could not sit in that area.

There being no further witnesses, Chairman Isenhour asked the Board to begin its fact-finding portion of the meeting using the "Four Conclusions" Checklist as follows:

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.* The decision to make this finding is based on the following facts:

Mr. Tirey: I think the one issue here is, they have already been allowed to encroach into the 100 ft. setback from the south side. What they are asking to expand is not going into any usable area now. I don't see any hardship in allowing the expansion the way it sits right there.

Mr. Rentschler: I would agree with Mr. Tirey.

Mrs. Powell: Unnecessary hardship would result from the strict application of the Ordinance. Without a variance residents could not make reasonable use of the pool area because of overcrowding.

Chairman Isenhour: I agree with Mrs. Powell.

Mrs. Hood: I agree.

Mr. Reynolds: I'm going to agree too, with Mrs. Powell.

Mr. Burdick: I agree.

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 decision to make this finding is based on the following facts:

Mr. Reynolds: The hardship results from conditions that are peculiar to the property such as its location, size or topography. That means the way this site is positioned, it deems a variance by allowing an encroachment of 30 ft. into the side to allow for use as they deem.

Mrs. Hood and Chairman Isenhour, Mrs. Powell, Mr. Rentschler, Mr. Tirey and Mr. Burdick agreed with Mr. Reynolds.

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.* The decision to make this finding is based on the following facts:

Mr. Tirey: You are talking about the hardship being the action of the property owner. This is a development. It looks like, at some time, the variance for the setback was established by Mint Hill back in 1997; however, somewhere along the line, it can or cannot be proved, they either did or did not allow the encroachment of the setback. I don't see how the association or the neighborhood now, where anybody is going to suffer a hardship by continuing to allow that setback.

Mr. Rentschler: I agree and would add that it was built by the developer in 1997. Then it was transferred to the homeowners association in about 2001, so they got it "as is," so to speak. Whatever had been granted had never been documented before.

Mrs. Powell: The hardship did not result from the actions of the applicant or the property owner. The original pool and recreation center was designed and constructed for the use of 100 homes. The developer did not design the facility for the number of homes that are now in the Olde Sycamore Subdivision.

Chairman Isenhour: I agree with Mrs. Powell, Mr. Rentschler and Mr. Tirey.

Mrs. Hood: I agree also.

Mr. Reynolds: The hardship did not result from the actions taken by the applicant or the property owner. It was done by a developer and given to an HOA.

Mr. Burdick: I would 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. The decision to make this finding is based on the following facts:

Mr. Tirey: If you are talking about public safety, the original area was built for housing of about 100 homes, currently it is at 400, and if you are talking about the spirit and purpose, by allowing the

situation the way it was, apparently it has been “grandfathered.” I don’t see where there are any issues or problems with allowing them to expand to allow more usage, more people and it will now be set for closer to 400 homes as opposed to the original 100.

Mr. Rentschler: I would agree and add that with the development of that property the original spec was for 100 homes and now there were 400 homes, that the pool area was probably undersized and not where it should have been at that point in time.

Mrs. Powell: The requested variance is consistent with the spirit, purpose and intent of the Ordinance such that public safety is secured based on the need for additional seating space to prevent over-crowding and to allow a third egress so that residents can exit in case of an emergency in a safe and orderly manner.

Chairman Isenhour: I agree with Mrs. Powell.

Mrs. Hood: I agree also.

Mr. Reynolds: 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 by allowing this use to continue as the owners wish.

Mr. Burdick: I agree with Mrs. Powell.

Chairman Isenhour concluded the “fact finding” portion of the meeting and called for a motion.

Mrs. Powell made a motion to approve Variance Request #V14-1 filed by R. D. Covington, on behalf of Olde Sycamore Homeowners Association, for property located at 7381 Olde Sycamore Drive, being Tax Parcel #197-281-06, requesting a variance to Section 7.2.25 C; to allow the patio area to encroach 30 ft. into the required 100 ft. setback on the western property line for the following reasons: (1) Unnecessary hardships would result from the strict application of the ordinance. Without a variance residents could not make reasonable use of the pool area because of overcrowding. (2) The hardship results from conditions that are peculiar to the property, as well as did not result from actions taken by the applicant, in that the pool was originally constructed for 100 homes and since then, three other phases have opened expanding the number of homes to 400 causing the pool deck to become overcrowded. The location and size of the property are major factors into why a variance is needed. (3) A variance would be consistent with the spirit, purpose and intent of the Ordinance such that public safety is secured and substantial justice is achieved. Public safety would be secured if the variance is granted because additional seating space is needed to prevent overcrowding and to allow a third egress so occupants can exit in case of an emergency in a safe and orderly manner. The motion was seconded by Mr. Reynolds and unanimously agreed upon by the Board. Chairman Isenhour stated the variance had been approved.

Other Business: Chairman Isenhour said it had been requested that the Board consider changing their regular meeting time from 7:30 p.m. to 6:30 p.m. This would need to be announced at least 30 days prior to the change.

Upon the motion of Mr. Rentschler, seconded by Mr. Tirey, and unanimously agreed, the Board voted to change their regular meeting time from 7:30 p.m. to 6:30 p.m. beginning with their April, 2014 meeting.

Adjournment: There being no further business to come before the Board, Chairman Isenhour adjourned the meeting at 8:00 p.m.

Doris H. Miller, CMC, Deputy Town Clerk