

MINUTES OF THE MINT HILL BOARD OF ADJUSTMENT
May 23rd, 2016

The Mint Hill Board of Adjustment met in regular session on Monday, May 23rd, 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: Debi Powell and David Tirey
Planning Director: John Hoard
Town Planner: Chris Breedlove
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 October 26th, 2015 Regular Meeting: Upon the motion of Mr. Reynolds, seconded by Mrs. Hood, the Board unanimously approved the minutes of the October 26th, 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 #V16-2, Filed by Melanie and Brandon Heffner for Property Located at 12119 Lawyers Road, Tax Parcel #19723123, from Section 6.1 Table 2: Dimensional Requirements for a Residential District:**

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. Heffner and Mr. Hoard.

Mr. Hoard stated, the applicant is asking for a variance to the lot size of 130' width. We make that measurement at the minimum setback line. This house there would be a 60' setback. If the applicants were to subdivide this property they would only have 100'. Therefore they are asking for the variance.

Mr. Isenhour said, I don't think we've dealt with a variance for 30'. Our ordinance states what it is, but most of our variances deal with two or three feet usually. Mr. Hoard said, I'm not sure that I've seen one with a lot width variance come before you.

Mrs. Powell asked, was the grandmother's house built under Mint Hill or Charlotte Mecklenburg County? Mr. Hoard said I'm not sure because it is an older house.

Mr. Tirey asked, is the property behind it ever going to be developed? Mr. Hoard said, it appears that next to it are single family lots.

Mr. Isenhour asked, where is the driveway coming from? Mr. Hoard said, it is on one of the first handouts you have that shows it coming from Lawyers Rd.

Mr. Rentschler asked, is the shaded area grandma's house? Mr. Hoard said, yes.

Mr. Rentschler asked, does the lot size in square foot meet the ordinance? Mr. Hoard said, yes.

Mr. Reynolds asked, are they using it for the driveway? Mr. Hoard said, yes.

Mr. Tirey asked, is the driveway going to connect to Lawyers Road? Mr. Heffner said, yes.

Mr. Isenhour asked the applicant if he would like to approach the podium.

Mr. Heffner said, the back of the property is a swim buffer so nobody can build back there.

Mr. Tirey asked, how long is the driveway going to be? Mr. Heffner said, I didn't get an exact measurement, but it would be a couple of hundred feet.

Mr. Tirey asked; have you spoke with adjoining property owners? Mr. Heffner said, my grandmother is one and the other person is renting.

Mr. Isenhour asked if there had been notification sent to adjoining property owners. Mr. Hoard said, yes we have sent letters as well as posted a variance sign.

Mr. Isenhour said, our variance tonight is to decide on variance request Discussion and Decision on Variance Request #V16-2, Filed by Melanie and Brandon Heffner for Property Located at 12119 Lawyers Road, Tax Parcel #19723123, from Section 6.1 Table 2: Dimensional Requirements for a Residential District. Are there any further questions? 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 subdividing the lot because of the odd shape.

Mr. Reynolds said, unnecessary hardships would result from the applicant not being able to build a structure.

Mrs. Hood said, I agree with the two previous statements.

Mr. Isenhour said, I agree with Mr. Reynolds.

Mrs. Powell said, unnecessary hardships would result from the strict application of the Ordinance in that without a variance the applicant could not make reasonable use of their property in building any residential structure.

Mr. Rentschler said, I agree with Mrs. Powell.

Mr. Tirey said, I also agree with Mrs. Powell.

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

Mr. Tirey said, the hardship on the location is the fact of the 100' driveway that can't be built within the guidelines of the variance.

Mr. Rentschler said, I agree with that.

Mrs. Powell said 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 hardship results from the shape of the lot at the 60' setback, while all other lot dimensions fall into compliance.

Mr. Isenhour said, I agree with Mrs. Powell.

Mrs. Hood said, I agree with the previous statements.

Mr. Reynolds said, the hardship results from conditions that are peculiar to the size, shape and location of the home on the lot.

Mr. Weslake said, I agree with Mr. Reynolds.

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

Mr. Weslake said, the hardship is not a result of the actions taken by the applicant. The hardship is the dimensions and the shape of the lot.

Mr. Reynolds said, the hardship did not result from actions taken by the applicant. It is due to peculiar lot shape and size.

Mrs. Hood said, I agree.

Mr. Isenhour said, I agree.

Mrs. Powell said, the hardship did not result from actions by the applicant or the property owner. The shaping of the lot size is out of the control of the applicants and in attempt to rectify the 30' shortage they tried to purchase land from adjacent property owners with a failed approach.

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 request for a variance is consistent due to the hardships in this case.

Mr. Rentschler said, I agree.

Mrs. Powell said, 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. Where the house will be built is far from the road at a location with a width of approximately 200 feet and would not interfere with future development in the area.

Mr. Isenhour said, I agree.

Mrs. Hood said, I agree.

Mr. Rentschler said, I agree.

Mr. Weslake said, I agree.

Mr. Weslake asked, are they locked into building the house in this location? Mr. Hoard said, no. The only thing in this variance is specific to the lot width unless you made a condition.

Mr. Weslake said, I would like to make a condition that the house be built in the back.

Mrs. Powell said, in regards to Variance request #V16-2, filed by Melanie and Brandon Heffner, for property located at 12119 Lawyers Road, being Tax Parcel Number 19723123; Zoned Mint Hill residential, requesting a variance from Section 6.1 Table 2: Dimensional Requirements for a Residential District for a 30 foot reduction of the minimum lot width requirement as measured at the 60 foot front setback, resulting in a lot width of 100 feet at the minimum setback; I make a motion to approve this variance for the following reasons: Unnecessary hardships would result from the strict application of the Ordinance in that without a variance the applicant could not make reasonable use of their property in building any residential structure. 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 hardship results from the shape of the lot at the 60 foot setback, while all other lot dimensions fall into compliance. 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 in that a variance would not adversely impact the abutting property owners; and the house will be built far from the road at a location with a width of approximately 200 feet and would not interfere with future development in the area, with the condition that the house must be built in the rear of the property as shown in Exhibit A.

B. Discussion and Decision on Variance Request #V16-3, Filed by Johan Boon for Property Located at 8501 Lochinvar Drive, Tax Parcel #139-271-87, from Section 6.9.2A 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. Boon and Mr. Hoard.

Mr. Hoard asked the applicant to speak about why he was requesting a variance and to answer questions from the Board.

Mr. Boon said, our fence is falling down and I have pictures if you would like to see them. It is a six foot fence and it is not quite doing the job. The main reason we are asking for the variance is because we want to put up an 8' echo fence. This fence will bring the decibel level down about twenty decibels. The neighbors have a truck and an SUV with loud engines and mufflers. We are only looking to put the fence up on one side of the property. It is going to set us back about \$10,000 so that's how important reclaiming our privacy is.

Mr. Isenhour asked, did you say the neighbors' house is higher than yours? Mr. Boon said, yes. They have a dog house in the back and you can almost see all of it over the fence.

Mr. Tirey asked, did you say the only side you're requesting is the one that separates you and your neighbors? Yes, answered Mr. Boon.

Mr. Isenhour asked, did you say there was a light that shines down? Mr. Boon said, yes. There is a flood light that makes it look like a sky light at night.

Mr. Weslake asked, what side are you putting the fence on? Mr. Boon said, the line you see between our house and the two vehicles that would be where the fence is going.

Mrs. Powell asked, how much taller is there house than yours because when I drove out there it doesn't seem like much from the road. Mr. Boon said, it's probably about three feet higher.

Mr. Tirey asked, is the fence going to be one height all along? Mr. Boon said it will follow a contour.

Mr. Weslake asked, what is the length of the fence? Mr. Boon said 176'. It will go all the way from about eight feet short of the telephone pole to the back of my property.

Mr. Tirey asked, do you run a business off your property? Mr. Boon said, yes it is Boon Tree Service.

Mrs. Powell asked, is the whole neighborhood in general sloping down? Mr. Boon said, three houses up toward Brief Road is the peak and the rest slopes down to the creek.

Mrs. Powell asked, have you thought of other noise barriers such as natural landscaping, oak trees, or a seven foot fence? Mr. Boon said, when they crank up the noise it has made the pictures rattle on our walls.

Mrs. Powell asked, this fence will stop that? Mr. Boon said, it will help. It's a two sided fence with an air space between.

Mr. Rentschler asked, how wide are the panels? Mr. Boon said, eight feet. They don't make this fence in anything but six and eight foot increments. There is no seven foot available.

Mr. Reynolds said, I would like to see what you are putting up. Mr. Boon gave the board a picture of the fence he had chosen.

Mr. Tirey asked, are you just replacing the existing fence? Mr. Boon said, we are extending it down the driveway toward the road, just shy of the phone pole.

Mr. Rentschler asked, is there a right of way distance on the front of the lot? Mr. Hoard said it's a sixty foot right of way.

Mrs. Powell asked, is there any way the eight foot can just be in the back and not along the driveway? Mr. Boon said, they crank it up in their driveway and I just want to stop that noise coming through.

Mr. Weslake asked, could the panels be cut to seven foot? Mr. Boon said, it is supposed to be a thirty year guarantee and indestructible so I think if I cut it that would jeopardize the warranty.

Mrs. Powell said, I sympathize with everything you're going through but so many people have that same problem. I'm having a hard time because in our finding of facts it states, hardships resulting from personal circumstances as well as hardships resulting from conditions that are common to the neighborhood or general public may not be the basis for granting a variance. If your neighborhood hears all of that noise too there is no reason for them also to want a variance. Mr. Boon said, our bedroom is right by that side. When we moved there that house was not built. Then they built that house and they put the driveway right next to our property line. I can't explain my situation much more and just hope for the best. We've been to court over the dogs and I've had to call the police over the noise. I feel like we would be better neighbors with the eight foot fence.

Mr. Weslake asked, are they owners or renters of the house? Mr. Boon said they are owners and have been there seventeen years.

Mr. Isenhour said, our variance tonight is to decide on variance request Discussion and Decision on Variance Request #V16-3, Filed by Johan Boon for property located at 8501 Lochinvar Drive, Tax Parcel #139-271-87, from Section 6.9.2A of the Mint Hill Unified Development Ordinance. Are there any further questions? 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 the hardship results from the flood lights and the noise and the fact that he can't get the fence in a seven foot fence.

Mr. Rentschler said, unnecessary hardship would not result. I see nothing different here

than with other property owners.

Mrs. Powell said, unnecessary hardships would not result from the strict application of the ordinance in that without a variance the applicant could install a seven foot fence and with the use of additional screening options such as natural landscaping ensure privacy and adequate screening of floodlights and sound barrier aide in reducing the hardship.

Mr. Isenhour said, there is unnecessary hardship because he can't get this sound barrier fence in a seven foot fence.

Mrs. Hood said, yes unnecessary hardships result from the strict application of the ordinance. The next door property is on a higher elevation than his and also the fence is not available in the seven foot dimension.

Mr. Reynolds said, unnecessary hardship would result by not allowing this man to live in peace and tranquility on his own lot.

Mr. Weslake said, unnecessary hardships would not result. The owner has other options such as natural landscaping also we have only seen one type of fence from a big box store. There are probably seven foot fences from a smaller company that specializes in this.

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

Mr. Weslake said, the hardship is not a result of these conditions. The hardship is a result of the size he has chosen.

Mr. Reynolds said, the hardship results from conditions due to the topography change.

Mrs. Hood said, I agree with Mr. Reynolds.

Mr. Isenhour said, I agree as well. Also, I believe the hardship is also produced by the neighbors with the loud noise and the lights shining in the bedroom.

Mrs. Powell said, the hardship does not result from conditions that are peculiar to the property, such as location, size or topography. I don't feel there is anything different in the topography of these two lots versus the other lots in the neighborhood. Stating in the finding of facts, hardships that result from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

Mr. Rentschler said, I agree with Mrs. Powell.

Mr. Tirey said, there may be some hardship from the topography, but the main hardship is the size of the fence.

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

Mr. Tirey said, no. There is no hardship as a result of the property owner.

Mr. Rentschler said, I agree.

Mrs. Powell said, the hardship does result from actions taken by the applicant or the property owner. The hardship results from the applicant wanting to exceed the seven foot height restriction when he could use other means to ensure privacy and sound buffer.

Mr. Isenhour said, I agree with Mr. Rentschler.

Mrs. Hood said, I agree the hardship does not result from the actions taken by the

applicant.

Mr. Reynolds said, the hardship does not result by actions taken by the applicant. It comes from a noisy neighbor.

Mr. Weslake said, the hardship does result by actions taken by the applicant. If he was installing a seven foot fence we would not even have to have the variance.

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 requested variance is not consistent. There is no bearing on public safety. I think that installing the eight foot fence would not be consistent with the ordinance.

Mr. Reynolds said, the requested variance is consistent and public safety is secured by allowing this fence to be constructed.

Mrs. Hood said, I agree that to grant this variance would be the just thing to do.

Mr. Isenhour said, I agree with the facts stated by Mr. Reynolds.

Mrs. Powell said, the requested variance is not consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured and substantial justice is achieved in that there is nothing unique about the lay of the land to justify one property owner receiving preferential treatment. As well as hardships that result from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

Mr. Rentschler said, I agree with Mrs. Powell.

Mr. Tirey said, I agree with Mrs. Powell.

Mrs. Powell said, in regards to Variance Request #V16-3, Filed by Johan Boon for Property Located at 8501 Lochinvar Drive, Tax Parcel #139-271-87, from Section 6.9.2A Fence and Wall Permitted to exceed the maximum fence height of seven feet by one foot; I make a motion to deny this variance for the following reasons: Unnecessary hardships would not result from the strict application of the ordinance in that without a variance the applicant could use natural landscaping to screen and provide additional sound barrier protection and would still be able to make reasonable use of their property. The hardship results from conditions that are not peculiar to the property in that here is nothing unique with the lay of this applicant's land. Hardships that result from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance would not be consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured and substantial justice is achieved in that there is nothing unique with the lay of the land to justify one property owner receiving preferential treatment. As well as hardships that result from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. Mr. Rentschler seconded the motion. Mr. Isenhour asked for the vote. Mr. Westlake agreed, Mr. Reynolds disagreed, Mrs. Hood disagreed, Mr. Isenhour disagreed, Mrs. Powell agreed, Mr. Rentschler agreed and Mr. Tirey agreed. The motion passed to deny Variance Request #V16-3.

C. Discussion and Decision on Updates for Board of Adjustment Rules and Procedures: Mr. Hoard said, we set this up to talk about at our last meeting because we had to give you at least a thirty day notice. This is based on legislation passed two years ago and we had to make some changes to our Ordinance that affected your Rules and Procedures. We are just addressing what was changed through legislation.

Mr. Rentschler made a motion to adopt the updates for the Board of Adjustment Rules and Procedures. Mr. Isenhour 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 7:25 p.m.

Candice Everhart
Program Support Assistant