

**MINUTES OF THE MINT HILL BOARD OF ADJUSTMENT**  
**August 29<sup>th</sup>, 2016**

The Mint Hill Board of Adjustment met in regular session on Monday, August 29<sup>th</sup>, 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  
ETJ Members: Debi Powell and David Tirey  
Absent: Bobby Reynolds  
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 June 27<sup>th</sup>, 2016 Regular Meeting:** Upon the motion of Mr. Rentschler, seconded by Mrs. Hood, the Board unanimously approved the minutes of the June 27<sup>th</sup>, 2016 Board of Adjustment regular meeting.

**Reports of Committees, Members and Staff:** Mr. Breedlove stated, I have given you a memo for training. The quick and easy option is to use the modules provided by the School of Government and we can have a meeting to go through those.

**Old Business:** None.

**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.**

*Mr. Isenhour asked the applicant and Mr. Breedlove 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. Earnhardt and Mr. Breedlove.

Mr. Breedlove stated, the initial request was for a 10' reduction on the front setback and 10' for the rear and now it has been changed to 20' reduction on the rear. Instead of going

40' to 30' on the back they are asking for it down to 20'. We sent out the updated letters to adjacent property owners in plenty of time to meet State requirements.

Mr. Earnhardt said, there are a couple of reasons for the request of the variance. First, the lot is landlocked. You can see from the presentation that there is an easement so the variance would not impose on any street. The shape of the lot itself decreases from the back to the front so it limits where we can put the house. The second issue is the slope of the lot. The slope on the back is more dramatic. There is a large oak tree that is 100+ years old and we don't want to impact that tree. The tree sits about 38' off the property line so if we put the driveway where it should be it would run over the roots of that tree. Therefore, moving the house an extra 10' back would prevent that. The Hickory Grove softball fields are behind the lot. Most of the trees are along the front and then behind the lot it is non-residential. The house goes in one spot. We want the house to face North South because we own the other lot next to this one that we can't build on.

*Mr. Tirey asked, you showed the wooded lot and it appeared to be a house on the screen. As I look at this picture, is Orrview to the left or right?* Mr. Earnhardt said, left.

*Mr. Weslake asked, is your driveway being squeezed between the other two driveways?* Mr. Earnhardt said, no. Ours will be to the north side of 7832.

*Mr. Rentschler asked, what is the brick wall on the drawing?* Mr. Earnhardt said, the previous owner of the property had intended to build a garage. So it is a brick foundation.

*Mr. Weslake asked, this lot is which one on the slide here?* Mr. Earnhardt said, there is a utility easement on the lot.

*Mr. Weslake asked, the front yard of your parcel is facing Orrview?* Mr. Breedlove said, from the setback standpoint, yes.

*Mr. Weslake asked, have you been shown different house designs that would fit into the setbacks?* Mr. Earnhardt said, we have. We wanted to stick with the ranch layout since it went with other surrounding houses.

*Mr. Weslake said, but there are other designs.*

*Mr. Isenhour asked, what is the slope?* Mr. Earnhardt said, it is approximately six feet.

*Mr. Weslake asked, have you looked at combining the two parcels?* Mr. Earnhardt said, it won't help because the slope continues to go down. We only purchased that lot so that someone wouldn't come put a trailer on it.

*Mr. Tirey asked, is the lot to the other side of you a buildable lot?* Mr. Earnhardt said, that lot is not for sale.

*Mr. Rentschler asked, on the right of way isn't there a width requirement?* Mr. Breedlove said, no, only the 15' easement.

*Mr. Rentschler said, part of your argument is to save the oak tree, but wouldn't you just be taking down another? Mr. Earnhardt said, no we aren't taking down any of those large trees.*

*Mr. Rentschler asked, does the house face north? Mr. Earnhardt said, it faces north south. It's not traditional.*

*Mr. Isenhour asked, which way is north south? Mr. Earnhardt said, it is facing the empty lot.*

*Mr. Weslake asked, is Hickory Grove softball fields zoned residential? Mr. Breedlove said, yes, but there is no residential use.*

*Mr. Rentschler said, Staff did not offer an opinion. I'm going to ask a question. Normally the setbacks are used off of road frontage for right of ways. Since this lot is landlocked, where does this variance fall? Mr. Breedlove said, there is no road frontage. Where the front is for a setback you would still assume the front is Orrview. If someone created a new landlocked parcel they could also choose where to point the house. Where the house points is not regulated by us.*

*Mr. Tirey asked, the side of his house is considered the front for setback purposes? Mr. Breedlove stated, yes.*

*Mr. Isenhour asked, do you have any plans for the other lot? Mr. Earnhardt said, we would make it a yard.*

*Mr. Isenhour said, our variance tonight is to decide 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.*

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

*Mr. Weslake said, the hardships are not due to the application of the ordinance. There are options for other architectural designs that would fit the property.*

*Mrs. Hood said, I agree.*

*Mr. Isenhour said, due to the slope of the lot unnecessary hardships would result.*

*Mrs. Powell said, unnecessary hardships would result from the strict application of the ordinance based on the shape of the lot, slope, location of large trees and no reasonable use could be made of the property without reducing the setback lines.*

*Mr. Rentschler said, I agree with Mr. Weslake.*

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

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

*Mr. Tirey said, I do believe a hardship would result with the drop off of slope. The big hardship is that the lot is landlocked.*

*Mr. Rentschler said, I agree.*

*Mrs. Powell said, the hardship results from conditions that are peculiar to the property such as the location, size and topography all factor into making this property peculiar in nature which is not the result of the neighborhood or general public.*

*Mrs. Hood said, I think there are other options and land available.*

*Mr. Weslake said, the hardship isn't a result of the property. There are a few issues, but I think with the proper design something could be worked.*

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

*Mr. Weslake said, the hardship is caused by the applicant. I think you should have your house design in mind before purchasing the property.*

*Mrs. Hood said, I agree.*

*Mr. Isenhour said, I disagree. Once you get a surveyor out and they shed light on some of the issues you encounter due to the lot size and topography that is not a result of the applicant.*

*Mrs. Powell said, I want to emphasize the sentence on this page says, 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. I believe that negates what their argument is. The applicant is not responsible for the large trees or the decrease from north to south.*

*Mr. Rentschler said, I agree with Mr. Weslake.*

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

**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, I believe it is consistent.*

*Mr. Rentschler said, I disagree. I think there are other options.*

*Mrs. Powell said,*

*Mr. Isenhour said, I agree.*

*Mrs. Hood said, I disagree. The ballfield may not always be there.*

*Mr. Weslake said, the 20' setback reduction encroaches on the ballfield and does not leave enough of a buffer.*

**Mrs. Powell said, in regards to Variance Request #V16-6, filed by William and Victoria Earnhardt, for property located at 7842 Orrview Road, Tax Parcel Number 137-041-17; requesting a variance to Section 6.1 Table 2: Dimensional Requirements; to reduce the minimum 50' front setback by 10' and the 40' rear setback by 20'; I make a motion to approve this variance for the following reasons: Unnecessary hardships would result front the strict application of the ordinance. Without a variance the property owner could not make reasonable use of their property because of the shape and slope of the lot, and the number of large mature trees. 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 combination of large mature trees, grade drop of property and its decreasing south to north dimensions that were not change or self-created. A variance would be consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured. And due to the unique location and topography of this lot and taking into consideration a sports complex abuts the rear of this property a variance would have no negative impact and substantial justice would be achieved. Mr. Tirey seconded the motion and Mr. Isenhour asked for a vote. Mr. Weslake, Mrs. Hood and Mr. Rentschler disagreed. Mr. Isenhour, Mrs. Powell and Mr. Tirey agree with the motion. Needing a vote of six in support of the motion, the motion does not carry and the variance is denied.

**Other Business:** None

**Adjournment:** Upon the motion of Mr. Rentschler, seconded by Mr. Tirey, and unanimously agreed upon, Chairman Isenhour adjourned the meeting at 7:10 p.m.

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Candice Everhart  
Program Support Assistant