

MINUTES OF THE MINT HILL BOARD OF ADJUSTMENT
May 22nd, 2017

The Mint Hill Board of Adjustment met in regular session on Monday, May 22nd, 2017 at 6:30 p.m. in the John M. McEwen Assembly Room, Mint Hill Town Hall.

ATTENDANCE

Chairman: Gary Isenhour
Members: Michael Weslake, Ronald Rentschler and Bobby Reynolds
ETJ Members: Debi Powell and David Tirey
Absent: June Hood
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 February 27th, 2017 Regular Meeting: Upon the motion of Mr. Isenhour, seconded by Mr. Rentschler, the Board unanimously approved the minutes of the February 27th, 2017 Board of Adjustment regular meeting.

Reports of Committees, Members and Staff: None.

Old Business: None.

New Business:

- A. **Variance Request #V17-1, Filed by Suzanne Wolf, Property Located at 7200 Apple Creek Drive, Tax Parcel #135-366-06:** *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. Breedlove and Mrs. Wolf.

Mr. Breedlove said, we're talking about a shed and in the main provision of the Ordinance says there's a ten foot minimum separation requirement. The shed is three and a half feet at its closest point to the house. Our Code Enforcement Officer received a complaint and that's how we became aware of this. The property owner was not aware this was not in compliance with the Ordinance.

Mr. Isenhour asked, if we deny this then she has to take down the shed? Mr. Breedlove said, yes.

Suzanne Wolf of 7200 Apple Creek Drive stated, I bought the shed in Mecklenburg County and they told me as long as it was 12'x12' or less then I didn't need a permit. I took him at his word and I didn't do this out of any malice or anything. In reference to the photos this is how we painted the shed to match the house and make it very attractive. The reason for the location is due to a lot of factors. Our house is built on the corner, not facing the road. We have a circular driveway and our septic system as well as our drainage pipes are located in that circular area so we couldn't place the shed there. We can't move it to the side because we are exactly sixteen feet from our neighbor's property and we don't want to encroach on their property. To the other side our neighbors, the Algorez's, have cemented their whole back yard and so when it rains all of the water runs off into our back yard. It's also all downhill and full of trees. The side on Apple Way is our side yard, but our neighbor's front yard. We also had a shed in this same place for eighteen years prior with no issues and so we didn't realize we were doing anything wrong by replacing it with a new shed.

Mr. Weslake asked, is there an aerial view? Mr. Breedlove said, yes.

Mr. Isenhour asked Mrs. Wolf, they guy you spoke to said 12'x12' was fine? Mrs. Wolf said, yes.

Mrs. Powell asked, there is a silver metal shed that sits behind this shed, is it in a better position as far as a setback standpoint? Mr. Breedlove said, yes if it sits further away from the house than this shed.

Mrs. Powell asked, can the metal shed not be moved and this shed move backwards? Mrs. Wolf said, the metal shed is 8'x8' and this shed is 12'x12' so we couldn't push it any further back.

Mrs. Powell asked, can you attach it to the house? Mrs. Wolf said, I spoke with Margie about that. There is a living space downstairs therefore we're not able to attach it to the house. I also have a permit because I run a business out of the shed so it would create a hardship if I had to take it down because I would have to close my business.

Mr. Weslake asked, why can't you scoot it over? Mrs. Wolf said, I would encroach on my neighbor.

Mr. Tirey asked, what would be too narrow if the metal building was removed and this shed was pushed back? Mrs. Wolf said, it would push back into Irwin Creek and there is also a substantial drop-off.

Mrs. Powell said, the side on Apple Road Court. I would feel more comfortable giving a variance with the shed encroaching on that side than where it is now. Mrs. Wolf said, we would have to put a slab out there because it slopes down and they've laid cable and natural gas lines there.

Mr. Tirey asked, have you discussed any of this with the builder? Mrs. Wolf said no,

they hired an independent contractor who just came in and built it.

Mr. Breedlove said, to address the attachment question from earlier, I don't think that would be to standards with building codes.

Mrs. Powell asked, could you do a breezeway? Mr. Breedlove said, it would still be considered an accessory structure so it still needs to be ten feet away from the house.

Mr. Isenhour asked, are there any more questions?

Mr. Weslake said, I don't feel like I can make a fair decision to her right now because I would like to see this in person. I don't feel like the pictures do it justice. Can we table this until next month?

Mr. Breedlove said, I wouldn't recommend that. The School of Government has talked about other Towns in the State that have some similar cases and they've been thrown out. Generally it's not a good idea. If you are going to go out there I would suggest you take your own photos because you must have evidence in these types of cases.

Mr. Tirey said, I understand in your explanation is that towards the back it is unveled and boggy. Have you gotten a quote on if you did move it back? Mrs. Wolf said, I haven't because it's heavily treed and we would have to take down approximately twenty trees. I feel like that would cause more destruction than helping.

Mr. Breedlove said, also there is that easement for drainage and they can't block that.

Mr. Tirey made a motion to table the Variance Request #V17-1 Filed by Suzanne Wolf for property located at 7200 Apple Creek Drive, until next month to wait for a full Board to vote. Mrs. Powell seconded the motion and the Board unanimously agreed.

Mr. Isenhour stated the Variance Request #V17-1 will be deferred until June 26th, 2017.

B. Variance Request #V17-2 Filed by Teresa and John Alderman, Property Located at 4038 David Drive, Tax Parcel #195-012-10: *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. Breedlove and Mr. Alderman.

Mr. Breedlove said, the applicant can't meet the minimum width requirements and side street setbacks to subdivide the property. If the applicant receives the variance tonight then they can subdivide. This is the first step and if they receive the variance then they will have to get a surveyor to draw up a plat. Planning Board can't approve a variance to the minimum width requirement, area and side street setbacks. That is what

you will be approving or denying a variance on. The two lots would only be 20,000 square feet instead of the 30,000 we require and they need to reduce the side street setback from 30' to 25'.

Mr. Rentschler asked, were these originally two lots and do they have two tax I.D.'s?
Mr. Breedlove said, yes. This parcel number existed in a deed in 1965. Prior to 1965 it seems that this was in fact two lots.

Mr. John Alderman of 1221 Paddock Circle, Charlotte, NC stated, my wife and I inherited this land in 1992. Prior to that it belonged to the Hooks family who owned it since the 1800s. I researched this back through 1965 as far back as I could with Mecklenburg County. I couldn't find anything documenting when these were made back into a single lot. The lots were approximately 100'x200' and at the time the 30,000 square feet didn't exist. In a nutshell what's basically happened is that we have been approached to sell this lot but for it to be divided into two lots. They've already received the septic permits from Mecklenburg County to build a four bedroom house on each lot. That isn't the problem, the problem comes from needing the 30,000 square feet minimum lot size. They will have to look elsewhere for land to build two houses if they can't subdivide this. The Svets family gave me a good offer and I want to be able to maximize that value for them. What we're asking for tonight is based on the economic hardship for this family who has already spent a good amount of money they've spent on this dream to have their family all at one location.

Mr. Isenhour said, on this page I'm looking at it says the property shall be considered as two lots with the seal in 1965. Deeds are deeds and it doesn't matter when.
Mr. Alderman said, I wish it was that simple but I was told I can't go any further until we have a variance granted.

Mr. Rentschler said, if you look at all of the other lots near that property, they aren't in compliance. Two tax parcels that should be grandfathered in. Mr. Breedlove said, unfortunately the Ordinance isn't structured that way. Ultimately tax offices may have done all kinds of things. They could've said I want one tax bill instead of two. Counties couldn't zone until 1959 and then when Mint Hill came along we have different standards.

Mr. Isenhour said, we can move into the fact finding in there are no further questions.

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

Mr. Weslake said, yes the hardships result from the current parcel dimensions.

Mr. Reynolds said, yes the hardships result because they can't build homes on the lots as wished.

Mr. Isenhour said, unnecessary hardships result because it was two lots prior.

Mrs. Powell said, unnecessary hardships would result from the strict application of the ordinance because it's unreasonable to hold this lot to a higher standard than the surrounding lots.

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

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, no the hardship doesn't result from the property, but it results from the fact it was originally two lots.

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 due to public sewer to be unavailable because of the slope of the land away from Highway 51.

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

Mr. Reynolds said, I agree also.

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 is not a result of the applicant or property owner, but a result of the lot being one lot where it was two once.

Mr. Reynolds said, it was not a result of the applicant or property owner, but that the lots were originally designed as two and should stay that way.

Mr. Isenhour said, I agree.

Mrs. Powell said, the hardship did not result from actions taken by the applicant or property owner. These lots were inherited and a 1965 tax map showing the property divided into two residential lots, but never recorded.

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

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, yes the variance requested would be consistent asking that the two original lots be considered today as initially deeded and would be right in line with the other lots surrounding.

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 because other lots in this neighborhood are 20,000 square feet or less in area and 100' wide.

Mr. Isenhour said, I agree.

Mr. Reynolds said, the variance is consistent with the spirit and purpose and intent by allowing these lot sizes to allow the change and construction.

Mr. Weslake said, the requested variance is consistent with the spirit, purpose and intent because this will allow consistency with the surrounding lot sizes.

Mrs. Powell made a motion to approve Variance Request #V17-2, filed by Teresa and John Alderman for property located at 4038 David Drive, Tax Parcel number 195-012-10, for the following reasons: Unnecessary hardships would result from the strict application of the Ordinance in that the applicant could not make reasonable use of the property and it would be unreasonable to hold this lot to a higher standard than surrounding lots. The hardship results from conditions that are peculiar to the property in that the sloping down away from Highway 51 makes public sewer unavailable and causes the strip of land as is not to be rationally used. The hardship did not result from the actions taken by the applicant in that this property was deeded in 1965 into two lots, with a tax map showing the property originally divided into two residential lots #10 and #30, with the hardship being it was never recorded. A variance would be consistent with the spirit, purpose and intent of the Ordinance, and public safety would remain secure in that several other properties within this neighborhood are 20,000 square feet or less in area and 100 feet wide. Mr. Reynolds seconded the motion and the Board unanimously agreed. The variance has been granted.

Other Business: None

Adjournment: Upon the motion of Mr. Rentschler, seconded by Mr. Reynolds, and unanimously agreed upon, Chairman Isenhour adjourned the meeting at 7:35 p.m.

Candice Everhart
Program Support Assistant