

MINUTES OF THE MINT HILL BOARD OF ADJUSTMENT
June 26, 2017

The Mint Hill Board of Adjustment met in regular session on Monday, June 26th, 2017 at 6:30 p.m. in the John M. McEwen Assembly Room, Mint Hill Town Hall.

ATTENDANCE

Vice Chairman: June Hood

Members: Michael Weslake, Ronald Rentschler, Bobby Reynolds and Todd Fisher

ETJ Members: Debi Powell and David Tirey

Absent: Gary Isenhour

Town Planner: Chris Breedlove

Clerk to the Board: Candice Everhart

CALL TO ORDER

Vice Chairman Hood 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 22, 2017 Regular Meeting: Upon the motion of Mr. Reynolds, seconded by Mr. Rentschler, the Board unanimously approved the minutes of the May 22nd, 2017 Board of Adjustment regular meeting.

Reports of Committees, Members and Staff: None.

Old Business:

- A. Variance Request #V17-1, Filed by Suzanne Wolf, Property Located at 7200 Apple Creek Drive, Tax Parcel #135-366-06:** *Mrs. Hood 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, the applicant is requesting a variance from the 10' minimum distance requirement which applies to all detached accessory structures. The front, by ordinance, would be Apple Creek Drive and their side yard is Apple Way. Nothing can go in the front yard. On the Apple Way Court side, it is a 25' setback and the side along where they wish to place the shed is a 15' setback. Another thing to keep in mind is there is a storm drainage easement along the side as well as the rear. I will let the applicant come up and talk now.

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. I am not

infringing on my neighbors, I'm infringing on my own property. We've gone over this every way we can think of and cannot come up with another solution as to where to place the shed. We have a business permit to run our business out of the shed. It would be a huge financial burden if we had to move it. I think it looks appealing and like its part of the house. None of my neighbors have complained to me about it.

Mr. Fisher asked, was it a building permit issue or size? Mrs. Wolf said, I was told I didn't have to get a permit from Mecklenburg County because it's a 12'x12'.

Mr. Breedlove said, Mecklenburg County doesn't require a permit for 12x12, but Mint Hill does require a Zoning Permit.

Mr. Fisher asked, is the shed on a permanent foundation? No it is not. It was built on the property, said Mrs. Wolf.

Mr. Fisher asked, is it on concrete? Yes, but it isn't attached to the slab, it has skids to pick it up, said Mrs. Wolf.

Mr. Fisher asked, Chris are you able to speak to the ordinance in reference to the 10'? Mr. Breedlove said, it was written a while ago I believe and was probably put in place as a safety protocol in case of a fire or something.

Mr. Rentschler asked, what was the size of the prior shed? Mrs. Wolf said, it was 8'x8'.

Mr. Fisher asked, is there room at the rear of the lot to accommodate the shed? Mr. Breedlove said, from a setback standpoint yes, but I believe it is heavily wooded and they would have to cut down a lot of trees. It also slopes and the water runs down back there towards the drainage easement.

Mrs. Wolf said, our neighbor cemented his whole back yard and so all of the water runs off of his to our back yard as well. That runs to Erwin Creek and makes the conditions very wet in our lower back yard.

Mr. Fisher asked, is there a stream buffer? Mr. Breedlove said, no it is the drainage easement only.

Mrs. Powell asked, how would the Town address the Home Occupation Permit part of this because if everyone wanted to go get a shed and run a business out of it would be a concern to me. Mr. Breedlove said, the shed could be for lawn mowers or anything else. It doesn't matter what the shed is being used for, it's more a concern for us because of the setbacks and separation distance.

Mr. Tirey asked, would you have stayed at your business in Town if you knew this was going to be an issue? Mrs. Wolf said, I would not because the building is falling apart. There was no central heating or air and there were beginning to be skylights where they weren't supposed to be. I don't blame the owners for not investing in it, because they would really like to sell the land.

Mrs. Powell said, how do we approve this without setting a precedence? Mr. Breedlove said, I get that question a lot with this board and Planning Board as well. It's all about the details of the lot, the topography, shape, which way it faces or sits and so on.

Mrs. Hood said, we can move into the fact finding if there are no further questions.

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

Mr. Weslake said, hardships would result because of the positioning of the house on the lot along with the setbacks and easements.

Mr. Reynolds said, unnecessary hardships would result by requiring relocation which is nearly impossible.

Mr. Fisher said, hardships would result due to the shed already being erected and a prior shed had been in the location before.

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

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

Mr. Rentschler said, I disagree. There was a smaller shed there before and they could've done the same.

Mr. Tirey said, unnecessary hardships would result due to previous statements as well as potential loss of business and investment.

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

Mr. Weslake said, the hardship is a result from conditions peculiar to the property due to the shed only being able to be placed in the back but the slope and water is an issue.

Mr. Reynolds said, the hardship results due to topography.

Mr. Fisher said, I agree and I will add the drainage easement.

Mrs. Hood said, I agree.

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

Mr. Rentschler said, the hardship results from the applicant. I believe the shed could've been placed somewhere else.

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

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 actions taken by the property owner. The hardship is a result of the contractor placing the shed in the setback without verifying or obtaining a zoning permit.

Mr. Reynolds said, it was not a result of the applicant or property owner, but it is a result of unusual topography.

Mr. Fisher said, the hardship is a result of the applicant not obtaining the proper permits.

Mrs. Hood said, the hardship is a result of being misinformed about needing a permit depending on the size of the shed.

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

Mr. Rentschler said, the hardship is due to the applicant not properly following the code.

Mr. Tirey said, I don't think it was the applicant's actions, but should've done more research on the required permitting for the shed.

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 variance requested is consistent with the spirit, purpose and intent of the ordinance such that public safety is secured and substantial justice is achieved because the shed doesn't present a public safety issue, doesn't infringe on the neighbors and has been built to blend in with the house.

Mr. Reynolds said, the requested variance is consistent by allowing the shed to remain and be used as the owner intends.

Mr. Fisher said, the intent of the ordinance is not clear, but I don't see a safety issue with the way the shed has been constructed.

Mrs. Hood said, the requested variance is consistent and public safety is achieved.

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

Mr. Rentschler said, I agree that public safety is secured, but substantial justice is not achieved.

Mr. Tirey said, I believe the variance is consistent with the ordinance.

Mr. Reynolds made a favorable motion to grant Variance request #V17-1, filed by Suzanne Wolf for property located at 7200 Apple Creek Drive, Tax Parcel #135-366-06 due to the fact that unnecessary hardships would result from the strict application of the ordinance, hardships result from conditions that are peculiar to the property and not by actions taken by the applicant or property owner and that substantial justice would be achieved. Mr. Weslake seconded the motion and the motion went to a vote. Mrs. Hood, Mrs. Powell and Mr. Tirey were in favor of the motion. Mr. Fisher and Mr. Reynolds Rentschler were opposed to the motion, therefore the motion did not carry and the variance was denied.

New Business:

- A. Variance Request #V17-3 Filed by Donald Scott Harder and Annette Carol Harder for property located at 970 Ben Black Road, Tax Parcel Number 139-431-14:** *Mrs. Hood 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. Harder.

Mr. Breedlove said, the applicant had a detached garage built here in 2015 and the side setback is 20'. They found out while trying to sell the property recently that the survey for the perspective buyer that the garage goes into that side setback. It is

encroaching by about eighteen inches. They did pull all of the appropriate permits from the county and the county didn't measure the setbacks.

Mr. Weslake asked, what year was the house built? Mr. Harder said, it was built in 2006. The garage is actually an attached garage to clarify the earlier statement. What's going on here is that we contracted with a licensed contractor and in the agreement it stated he was to follow all proper permits and obtain all licenses, which he didn't is what we've come to find out. We can't obtain title insurance in order to sell our house because of this.

Mrs. Powell asked, would you have any issue with it being 18' instead of 15'? Mr. Harder said, it doesn't matter as long as it's in compliance. I just put 15' because it's an easy number.

Mr. Weslake asked, is there a house on lot four? Mr. Harder said, the man bails hay twice a year there.

Mrs. Hood said, we can move into the fact finding if there are no further questions.

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

Mr. Weslake said, hardships would result due to the fact the structure has been in place for two years and the owner can't sell the house.

Mr. Reynolds said, hardships would result by not allowing the garage to remain.

Mr. Fisher said, hardships would result due to the contractor not following the process they were supposed to in order to obtain permits.

Mrs. Hood said, I agree.

Mrs. Powell said, unnecessary hardships would result from the strict application of the ordinance because it would be unreasonable for this small infraction prevent the sale of this property.

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. Weslake said, hardships result from the shape of the lot and the placement of the garage.

Mr. Reynolds said, the hardship results from the way the home sits on the lot in a peculiar shape.

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

Mrs. Hood said, I agree also.

Mrs. Powell said, the hardship results from conditions peculiar to the property, such as location, size or topography because the front corner is out of compliance only on the garage.

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

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

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, the contractor placed the garage within the setback.

Mr. Reynolds said, it was not a result of the applicant or property owner, but was a contractors error.

Mr. Fisher said, the hardship didn't result from actions taken by the property owner because they did follow proper processes.

Mrs. Hood said, I agree.

Mrs. Powell said, the hardship did not result from actions taken by the applicant or property owner, but is due the licensed builder's mistake that wasn't caught by multiple inspections and an approved permit was received.

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. Weslake said, the variance is consistent with the spirit, purpose and intent because the eighteen inches the garage extends is minor and there are no public safety issues.

Mr. Reynolds said, the variance is consistent with the spirit, purpose and intent of the ordinance by allowing the property to be titled as it sits.

Mr. Fisher said, the variance is consistent with the spirit, purpose and intent of the ordinance with the minor encroachment does not detract from the side yard setback.

Mrs. Hood said, I agree.

Mrs. Powell 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 amount of footage needed to bring the garage into compliance is minimal and would not affect the spirit and purpose of the ordinance or affect the public safety.

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

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

Mrs. Powell made a motion to approve Variance Request #V17-3, filed by Donald Scott Harder and Annette Carol Harder for property located at 970 Ben Black Road, Tax Parcel #139-431-14, for the following reasons: Unnecessary hardships would result from the strict application of the Ordinance. Without a variance, the property owner could not make reasonable use, such as the sale of their property. 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 because of the positioning of the house in relationship to the property line allows most of the garage to stay within the 20' setback and the miscalculation in building and placement of the garage falls on the contractor and inspectors, not the applicants. This small of a variance would be consistent with the spirit, purpose and

intent of the Ordinance, such that public safety is secured and substantial justice would be achieved. 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, Vice Chairman Hood adjourned the meeting at 7:24 p.m.

Candice Hawkins
Program Support Assistant