

MINUTES OF THE MINT HILL BOARD OF ADJUSTMENT
October 28, 2019

The Mint Hill Board of Adjustment met in regular meeting session on Monday, October 28, 2019 at 6:50 p.m. in the John M. McEwen Assembly Room, Mint Hill Town Hall.

ATTENDANCE

Chairman: Gary Isenhour
Members: Michael Weslake, Ronald Rentschler
ETJ Members: Debi Powell and David Tirey
Alternate: Todd Fisher
Absent Member: Bobby Reynolds and June Hood
Town Planner: Nathan Farber
Clerk to the Board: Cassie Crutchfield

CALL TO ORDER

Chairman Isenhour called the meeting to order at 6:50 p.m., declared a quorum present and the meeting duly constituted to carry on business.

ORDER OF BUSINESS

Approval of Minutes of September 12, 2018 Called Meeting: Upon the motion of Mr. Reynolds, seconded by Chairman Isenhour the Board unanimously approved the minutes of the September 12, 2018 called meeting.

Reports of Committees, Members and Staff: None.

Old Business: None.

New Business:

A. **Discussion and Decision on Variance Request #V19-1, Filed by Kathryn Rohera, was requesting a variance to increase the size of the accessory structures to be greater than the size of the primary structure, located at 6732 Wilgrove Mint Hill Rd, Tax Parcel #137-076-10:** The following individuals were sworn in and spoke in conjunction with V19-1: Town Planner Nathan Farber and Kathryn Rohera. Town Planner Farber asked Ms. Rohera to present her case.

Ms. Rohera stated she had owned a recreational vehicle (RV) rental business since 2015. Prior to 2015, the business had been located at 6724 Wilgrove Mint Hill Road. In 2016, they purchased the location at 6732 Wilgrove Mint Hill Road with the intent to combine the two parcels. The cost of the vehicles had increased exponentially. They had 39 units on their lot; out of those 39 units, 3 of them cost between \$250,000 to \$500,000 a unit. They had several smaller and medium sized units. Zoning regulations limited accessory structure size to the square footage of the principal use. In this case, that size would be 1,255 sq. ft. which equated to a single garage for one RV. The proposed variance was to increase the accessory use to 3,300 sq. ft. to allow a structure large enough to protect four of their top units. As a business owner, it was hard to get the high-end units because of the increased insurance cost required to unprotected vehicle storage. Daily maintenance and wear and tear were very costly on these units too.

Mr. Tirey asked the square size of the structure? Ms. Rohera said the structure they were requesting for would be 66 by 50 ft single story. Mr. Tirey asked if it would be used primarily as a storage unit? Ms. Rohera said yes. Mr. Tirey asked where would they place structure? Ms. Rohera said they were placing the structure at 6732 Wilgrove Mint Hill behind the fence.

Mr. Weslake asked if the accessory structure was to be connected to the building, would it still be considered an accessory structure? Town Planner Farber said no, it would be an attachment to the home. Mr. Weslake asked if the structure had a backdoor. Ms. Rohera said yes. Mr. Weslake said if Ms. Rohera connected the structure to the office building, it would not be considered an accessory structure; he asked if the applicant had considered that option. Ms. Rohera said yes, however; they do not have plans to connect it. Mr. Weslake asked if there were any issues connecting the structure to the building. Ms. Rohera said there was an added cost if they connected the accessory structure to their office building. They would like for the structure to be a self-standing accessory. Mr. Rentschler asked Staff, to clarify, if the accessory building was attached to the residence building would Ms. Rohera still need a variance? Town Planner Farber stated Ms. Rohera may be stopped when it the permitting application was submitted. There would be extra steps necessary and she would have to build the addition to code. Chairperson Isenhour asked if Ms. Rohera would need a variance if she used a pole building? Town Planner Farber said if the pole building was attached to the home...Chairperson Isenhour interrupted and asked what if it was detached? Town Planner Farber said if the building was detached then it would be an accessory structure and would still need a variance. Mr. Tirey asked the distance from the main structure to where they were requesting to put the new structure? Ms. Rohera said the distance between the two was 15 ft. Mr. Weslake said there were codes for an accessory structure and codes that applied to the building. Town Planner Farber said yes, there were codes. Mr. Weslake asked if the applicant could build something while following the NC codes? Mr. Rentschler said agreed. Mr. Fisher asked if the structure would be fully enclosed? Ms. Rohera said yes. Mr. Rentschler asked if the RV's that they were being stored on the property were or the customers or owned by the business? Ms. Rohera said both, they had a couple of RV's that were owned by them and they had two consignment owners that had their RV's on the owner's lot. Mr. Tirey asked if the consignments were for sale or rent? Ms. Rohera said they were only rental.

Hearing no further questions, Chairman Isenhour asked the Board to move into the fact-finding portion of the case.

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

Mr. Tirey stated hardship would result from the application of ordinance. It would limit the business owner from growing their business, protecting their inventory and possibility succeeding any further in their business.

Mr. Rentschler agreed.

Ms. Powell stated unnecessary hardships would result from the strict application of the ordinance. Without a variance the commercial property would not have the means to protect their high value inventory from the elements, therefore; causing unnecessary hardships.

Chairperson Isenhour agreed with Ms. Powell.

Mr. Weslake stated hardship would result from the application of the variance. Hardship as a result of the ordinance restrictions that create hardship for the business operators.

Mr. Fisher agreed.

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

Mr. Tirey stated the hardship would not be resolved due to the location or size. It was relatively large and flat. The hardship was due to the building or structure they wanted to build was larger than the main structure. The hardship was strictly caused by the ordinance.

Mr. Rentschler agreed.

Ms. Powell stated the hardship resulted from conditions that were peculiar to the property due to residence being converted into an RV rental business. The building was smaller than a typical commercial business operation which was inadvertently limiting the accessory structure size.

Chairperson Isenhour, Mr. Weslake, and Mr. Fisher agreed with Ms. Powell.

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

Mr. Tirey stated the hardship was not a result from any actions taken by the property owner.

Mr. Rentschler agreed.

Ms. Powell stated the hardship was not a result from any actions taken by the property owner. The hardship resulted from the conversion of a house into an RV rental business 26 years ago and should not have to be required to meet the strict accessory storage guidelines since this area now looked like a business district.

Chairperson Isenhour, Mr. Weslake, and Mr. Fisher agreed with Ms. Powell.

The requested variance was consistent with the spirit, purpose and intent of the ordinance such that public safety was secured and substantial justice is achieved.

Mr. Tirey stated the variance was consistent with the spirit, purpose and intent of the ordinance such that public safety was secured and substantial justice was achieved. The variance would allow protection for the inventory and would have no adverse impact.

Mr. Rentschler, Ms. Powell, Chairperson Isenhour, Mr. Weslake and Mr. Fisher agreed.

Upon the motion of Ms. Powell, seconded by Mr. Rentschler, the Mint Hill Board of Adjustment voted unanimously to grant Variance Request #V19-1, Filed by Kathryn Rohera, Property Located 6732 Wilgrove Mint Hill Road, Tax Parcel #137-076-10 from Section 6.9.7 to increase the size of the accessory structures to be greater than the size of the primary structure for the following reasons:

1. **Unnecessary hardships would result from the strict application of the Ordinance by subjecting this commercial property to residential standards.**
2. **The hardship results from conditions that are peculiar in that the residence was converted into a business rental 26 years ago and a storage structure has become necessary for the protection of high valued inventory.**
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 in that the property is not in typical residential neighborhood.**
4. **The structure remains storage only.**

The Board unanimously voted (6-0) to grant Variance Request #V19-1, Filed by Kathryn Rohera, Property Located 6732 Wilgrove Mint Hill Road, Tax Parcel #137-076-10 from Section 6.9.7 to increase the size of the accessory structures to be greater than the size of the primary structure.

B. Discussion and Decision on Variance Request #V19-2, Filed by Alexey Nazaruk, was requesting a variance to be able to build a new home in the rear of the property, while two existing accessory structures remain in the front yard, located at 7544 Davis Rd, Tax Parcel #137-042-10: The following individuals were sworn in and spoke in conjunction with V19-2: Town Planner Nathan Farber and Alexey Nazaruk. Town Planner Farber asked Mr. Nazaruk to present his case.

Mr. Nazaruk stated he was representing his parents because they did not speak English. The Nazaruk's purchased the two-and-a-half-acre lot and then the lot was subdivided. The front house was a half-acre lot that his brother owned. They would like a variance to be able to build a new house on their property with an existing front yard accessory structure. It stated in the ordinance if a new house was being built, there could not be any accessory structures in front of the house. There were two accessory buildings on the map. The accessory building #1, would be demolished either upon completion of the new house or sooner if the Town required. They requested accessory building #2 to remain and they would build in the back part of the two-acre lot. Removing all existing structures would come with a steep cost. Also, if they need to build a two-story home in front of accessory building #2, the power line would need to be moved. Their request was to take down accessory building #1 and to build a house behind accessory building #2.

Mr. Rentschler asked Mr. Nazaruk to show the Board where the two accessory buildings were located on the map. Mr. Rentschler asked what accessory building #2 used for? Mr. Nazaruk said he believed it was a mother-in-law suite with pre-existing property. It was divided and not classified as a house. Mr. Rentschler asked what the other small buildings were along the side of accessory building #2? Mr. Nazaruk said one of the structures was a shed that stored chopped wood and the other one was a pad. He did not know what the pad was used for; the pad was there before his parents bought the house. Mr. Tirey asked if he planned to build the new structure towards the back-property line? Mr. Nazaruk said yes. Mr.

Rentschler asked Staff if they know the measurement off of Davis Road where property access came in? Mr. Rentschler said based on the map Mr. Nazaruk provided, they planned on putting in a driveway. Was the driveway wide enough for the easement of the driveway on both sides of the property lines as it should be? Mr. Town Planner Farber said yes, the easement itself was 15 ft. Ms. Powell asked if it was an existing driveway? Mr. Nazaruk said yes, there was an asphalt driveway that went to the back of the property. Ms. Powell asked what accessory structure they were wanting to keep? Mr. Nazaruk said accessory structure #2. Ms. Powell asked if the small buildings along the side of accessory building #2 were accessory structures? Town Planner Farber said they would not consider the pad as being an accessory structure. Ms. Powell stated accessory structure #2 looked like a house. Town Planner Farber said he did not know how to tell if what it would be classified as since it was a pre-existing structure. Ms. Powell asked if people were living in there now because there were cars parked around the structure. One of the Board members asked if there was someone currently living in accessory structure #2 now? Mr. Nazaruk said yes, it was a mother-in-law suite. Mr. Tirey asked if accessory structure #2 would stay in place once the other house was built? Mr. Nazaruk said yes. Mr. Weslake asked what the intent was of keeping the accessory structure #2? Was there someone that was going to occupy it? Mr. Nazaruk said yes. Ms. Powell said they were going to have two houses on one lot with 2 acres. Mr. Rentschler asked the sq. ft. of accessory building #2? Mr. Nazaruk said 500 sq. ft. with a second floor. Mr. Fisher asked if Mr. Nazaruk's brother owned the house that fronted Davis Road? Mr. Nazaruk said yes. Mr. Fisher asked, given that the two properties were within the same family, would it be possible to recombine parcels and subdivide it in a different way so that the accessory structure would be on the front lot? Mr. Nazaruk said the ordinance said if a house was being built without rural frontage, it would need to have two-acres. It was subdivided in a weird shape to meet the two-acre requirement. Mr. Rentschler asked Staff if there was more to the Memo from 6.9.7.A.11.A Section C. regarding the rear and side setbacks? Town Planner Farber was looking for the Memo when Chairperson Isenhour asked if the Memo from 6.7.A.11.A was for a garage only or for any structure? Town Planner Farber said the new accessory structure was described as a garage. Mr. Rentschler said it was not a garage and because it was a dwelling that it changed what they were looking at regarding the variance. Mr. Weslake asked if it was ten ft from the new accessory structure to the property line? Mr. Rentschler said the garage would have to be moved either to the back-entry garage or a side entry off the house. It could not be the way it was drawn on the map. Town Planner Farber said the new accessory structure could not be built...Mr. Rentschler said right, the garage was in the front of the property. Mr. Nazaruk said the map indicated 10 ft., but it was actually 20 ft. That was a mistake they needed to correct. Mr. Rentschler said they could not have a garage in the front of their house. Mr. Nazaruk said it was only a sketch. The main issue was if they could build the accessory structure or not. Mr. Rentschler stated the accessory building #2 was not an accessory building, but actually a residence. It changed what the Board was looking at regarding the variance because there was currently a residence on the property. Mr. Nazaruk wanted to build another house on the back side of the accessory structure #2. He was not sure if the ordinance would allow them to build another house. Town Planner Farber said if Mr. Nazaruk wanted to have an accessory structure that was 900 sq. ft. or less, they technically could have a family member live within it. The code said the accessory building could not be in front of the house. Mr. Weslake asked the sq. ft. of the accessory structure #2? Mr. Nazaruk said there was a white porch in front of the building. Mr. Rentschler asked if it was a covered porch? Mr. Nazaruk said it was a covered patio. Town Planner Farber showed the Board the accessory structure #2; was 1,300 sq. ft. He said if they had two-acres, they could have a garage that was larger than 900 sq. ft. It would need to be approved by Staff beforehand. Mr. Rentschler asked based on the variance request, was the Board to be considering it to be a garage type area of 900 sq. ft. to give approval to build a house on the backside of the two acres? If it was actually a residence, then the variance request needed

to be either withdrawn or redone under different parameters and brought back. Town Planner said yes. Mr. Rentschler said it was up to Mr. Nazaruk, if he wanted to withdraw the application and bring it back to the Board with changes made. Mr. Tirey suggested Mr. Nazaruk get with his family members and demolish the accessory structure #2 and consider building the house with the garage in the proper location. Mr. Rentschler said it seems as though Mr. Nazaruk wanted to keep the accessory structure #2. Mr. Nazaruk said it would be costly to remove the two structures. Ms. Powell asked Staff, if Mr. Nazaruk withdrew, would he get his money back. Town Planner Farber said no. Mr. Rentschler said Mr. Nazaruk should go back and look at the ordinance to see what he could do. Town Planner Farber said Staff saw this as their only option and the other option was to tear down both structures. Mr. Nazaruk said he would go forward with his request. Ms. Powell asked if a single-story house could be built under the utility lines? Mr. Rentschler said the power lines were behind the accessory structure #1. Mr. Nazaruk would need to demolish the accessory structure 1 and 2 in order to build a house. Mr. Nazaruk said the power line was between accessory structure 1 and 2.

Hearing no further questions, Chairman Isenhour asked the Board to move into the fact-finding portion of the case.

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

Mr. Tirey stated hardship would result from the application of ordinance. Mr. Nazaruk would not be able to build a new house on the two-acre site due to the accessory structures, the potentially situation with the power lines, with the setbacks and ordinance.

Mr. Rentschler, Ms. Powell and Chairperson Isenhour agreed.

Mr. Weslake stated hardship was not a result from the application of the variance. It was a result of the existing residential structure that was currently located on the same parcel.

Mr. Fisher agreed.

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

Mr. Tirey stated there was a hardship due to the peculiar to the property, the shape, size and pre-existing structures.

Mr. Rentschler agreed.

Ms. Powell stated the hardship conditions were not peculiar to the property; the hardship because the applicant wanted to keep both structures

Chairperson Isenhour agreed with Mr. Rentschler.

Mr. Weslake agreed with Ms. Powell.

Mr. Fisher said there was a hardship due to the peculiar shape of the lot; however, he believed the hardship could be overcome by means other than granting the variance.

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

Mr. Tirey stated the hardship was not a result from any actions taken by the property owner.

Mr. Rentschler agreed. The hardship was caused by the existing buildings that were on the property to begin with.

Ms. Powell stated the hardship did result from any actions taken by the property owner. The hardship of the two accessory structures was a choice the applicant had made.

Chairperson Isenhour, Mr. Weslake, and Mr. Fisher agreed with Ms. Powell.

The requested variance was consistent with the spirit, purpose and intent of the ordinance such that public safety was secured and substantial justice was achieved.

Mr. Rentschler stated the variance was not consistent with the spirit, purpose and intent of the ordinance such that public safety was not secured and substantial justice was not achieved. As a result of the two existing structures already located on the property, the variance was changed completely.

Ms. Powell, Chairperson Isenhour, Mr. Weslake, Mr. Tirey and Mr. Fisher agreed.

Upon the motion of Ms. Powell, seconded by Mr. Rentschler, the Mint Hill Board of Adjustment voted unanimously to denied Variance Request #V19-2, Filed by Alexey Nazaruk, Property Located 7544 Davis Road, Tax Parcel #137-042-10 from Section 6.9.7 to build a new home in the rear of the property, while two existing accessory structures remain in the front yard was denied for the following reasons:

- 1. Unnecessary hardships would not result from the strict application of the ordinance in that a house could be built on the 2 acres and/or both accessory structures could be removed.**
- 2. The hardship results from conditions that are not peculiar and results from actions taken by the applicant in that they choose to not place the house in front of the accessory structure or remove the structures so they can build in the rear of the lot.**
- 3. A variance would not be consistent with the spirit, purpose and intent of the ordinance, such that public safety was secured, and substantial justice was achieved by allowing this one residence to have accessory structures in front of their residence when everyone else was not allowed.**

The Board voted unanimously (6-0) to deny Variance Request #V19-2, Variance Request #V19-2, Filed by Alexey Nazaruk, Property Located 7544 Davis Road, Tax Parcel #137-042-10 from Section 6.9.7 to build a new home in the rear of the property, while two existing accessory structures remain in the front yard.

Other Business: None

Adjournment: Upon the motion of Mr. Rentschler, seconded by Chairperson Isenhour, and unanimously agreed upon, Chairperson Isenhour adjourned the meeting at 7:39 p.m.

Cassie Crutchfield
Program Support Assistant