

**MINUTES OF THE MINT HILL BOARD OF ADJUSTMENT
AUGUST 24, 2020**

The Mint Hill Board of Adjustment met in regular session on Monday, August 24, 2020 at 6:30 p.m. in the John M. McEwen Assembly Room, Mint Hill Town Hall.

ATTENDANCE

Chairman: Gary Isenhour

Members: Bill Mathers, Ronald Rentschler, Bobby Reynolds and Michael Weslake

ETJ Members: Debi Powell and David Tirey

Town Planner: Nathan Farber

Clerk to the Board: Savanna Ocasio

Commissioner: Mike Cochrane

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 the October 28, 2019 Regular Meeting: Upon the motion of Mr. Reynolds, seconded by Mr. Rentschler, the Board unanimously approved the minutes of the October 28, 2019 regular meeting.

Reports of Committees, Members and Staff: None.

Old Business: None.

New Business:

Mrs. June Hood resigned her position, therefore the Board needed to nominate a Vice-Chairperson. Upon the motion of Chairman Isenhour, the Board agreed by consensus to appoint Mr. Rentschler as Vice-Chairperson.

- A. Variance Request #V20-1 Filed by Jeffrey A Hoffman, Property Located at 12911 Lawyers Road, Tax Parcel #197-021-05, from Section 6.9.7 (A)(1) of the Mint Hill Unified Development Ordinance:** The following individuals were sworn in and spoke in conjunction with #V20-1: Town Planner Nathan Farber and Mr. Hoffman. Mr. Farber submitted the following memo to the Board:

The applicant is requesting a variance from Section 6.9.7(1) of the Mint Hill Unified Development Ordinance, for property located at 12911 Lawyers Rd, Tax Parcel 197-021-05. The applicant is asking that a 2,250 sq. ft. accessory structure be permitted on his lot with an existing 1,500 sq. ft. family barn, even though the primary structure is 2,900 sq. ft.

Generally, accessory structures are limited to not exceed the square footage of the primary structure. The applicant would like to not have to destroy the historical family barn. The size of the new structure would otherwise be allowed because of the applicants 3.6-acre lot.

6.9.7.A.1

A. Minor uses or structures which are necessary to the operation or the enjoyment of a permitted principal use and are appropriate, incidental and subordinate to any such uses, shall be permitted in all as an accessory use, subject to the following:

- 1. Such accessory uses or structures shall be permitted only on the same lot as the principle permitted use. The total square footage of all accessory structures combined shall be less than the square footage of the principal structure.*

Chairman Isenhour asked if all of the adjoining property owners had been notified and whether there had been any response with them. Both, Town Planner Farber and Mr. Hoffman said yes. Town Planner Farber stated the applicant Mr. Hoffman had been waiting for this since March but due to COVID, it was delayed. Town Planner Farber asked Mr. Hoffman to come up and speak.

Mr. Hoffman lived at the property, 12911 Lawyers Road. This property was a part of the Griffin Homestead. The Hoffman's purchased this property from Jan Griffin which was the son of Buford Griffin. Mr. Hoffman's mother in law, Elaine Sustar, lived next door. This property had been within eyesight of the Griffin family for a while. The original Homestead was demolished at some point; in 1969, Buford built the current residence. The barn was built somewhere between 1910-1915. The property was 3.6-acres and the existing home was 2,900 sq. ft. Mr. Hoffman stated he was looking to build a garage. It seemed a little large, 45 by 50 was 2,250 sq. ft. but in his time during the military, moving around, the many places he had seen, if you opened a garage there was nothing but stuff. He wanted to have a garage where he could park his car and still put his stuff inside the garage. He came up with the plan to build a garage last summer. His dilemma, right now, was the current Ordinance stated if you had more than two acres, you were limited to a square footage no larger than the current house. So, if you had a small house, you could not have any kind of building exceeding the total sq. ft. of the house. He understood the reason for the Ordinance but there was a lot of property there he could not use if he could not build on it. One of the issues with the old house was there was not much storage in it so he would like to, at some point, build a garage. Mr. Hoffman contacted Town Planner Farber about his plans last summer. He had been working on this plan and had spoken with Billy Kiser. Mr. Kiser had recently built a detached garage and told him he was limited to 900 sq. ft. When Mr. Hoffman had contacted Town Planner Farber, he asked him about Mr. Kiser's case, and Town Planner Farber said it was true. He asked if there was an acre limitation. Town Planner Farber said yes. At that point, Mr. Hoffman discovered if he had more than two acres, he could build a garage. He did not know at that time, there was a limit. That was how he got to this point. Mr. Hoffman was hoping the Board would consider his request. He said, regardless of how the Board voted on it, they may, at some point want to consider a text change. We all paid our taxes; he would be taxed on this garage which would be a benefit to Mint Hill. Mr. Hoffman thanked the Board for listening; he appreciated their time and hoped for a good outcome.

Mrs. Powell asked Town Planner Farber, if the 3.6-acres could later be sold and split up. Town

Planner Farber said yes, it could be. Mrs. Powell asked if the Board approved this request, later the property could be one less acre. Mr. Hoffman explained if the land were to be sold, the garage would still be on the line sharing the property. The way the land was laid out and locked in, it was not made to be sold. Town Planner Farber stated where his house was, in relation to the width of the property, it would be hard to ever subdivide; but he was sure it was possible.

Mr. Weslake asked if he had considered attaching the garage to the existing house. Mr. Hoffman stated it had been discussed, the issue he ran into was the way the house was laid out internally. If there was a way he could attach it and not screw up the lay out of the house, he would. The back part of the house was a sunroom the previous owner added on; to the right of that was a carport. He was limited to where he could put it. If he put it to the right side, then the house was incredibly long on one end and he would have to have his driveway go all the way around. This had all been discussed. Mr. Weslake stated attaching it would solve the problem. Mr. Hoffman said he was aware. Mr. Weslake asked if he had considered a walkway to the garage. Mr. Hoffman stated based on how this variance turned out, that may be an option. His options were to tear down the barn, which he did not want to do, make the garage smaller, or attach it to the garage. He did not go down the path of how to make it attached, but it was an option. Right now, he was going to try to go back 55 feet so he would have enough driveway in the front to use the carport and have a place to park in front of the garage. He was not sure how he could do that if he attached it. Mr. Weslake asked how many feet were between the existing house and the garage door. Mr. Hoffman stated in the drawing from the house to where he wanted to put the garage, it was 55 ft.; so maybe 20 ft. to the left and then just a short driveway going in.

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.

Mrs. Powell said unnecessary hardships would result from the strict application of the Ordinance because the size of their 3.6-acre lot made the hardship unnecessary.

Mr. Weslake said he does not find a problem with it. He does not think there was a hardship resulting from his condition. The owner had other options.

Mr. Mathers said he did not find any hardships at all because of the size of the property.

Mr. Reynolds said unnecessary hardships would result from the strict application of the Ordinance by not letting this property to be improved on as he wanted.

Chairman Isenhour and Mr. Rentschler agreed with Mr. Reynolds.

Mr. Tirey said there would be hardship due to the strict application for various reasons. One, being the size of the lot, 3.6-acres. There was a barn built at the turn of the century. It did not need to be torn down just so the square footage could match up.

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

Mrs. Powell said the hardship resulted from conditions that were peculiar. The hardship was the size of the lot, allowing plenty of space for the planned detached garage as well as allowing the historical barn to remain.

Mr. Weslake said the hardship does not result from conditions that were peculiar to the property, he had other options as to location how the building could be connected to the house.

Mr. Mathers said outside of the hardship of the size of the lot, he had no other questions.

Mr. Reynolds said the hardship resulted from conditions that were peculiar to the property by its size and shape.

Chairman Isenhour said the hardship resulted from conditions that was peculiar to the property such as location size, the property was not to be developed it was 3.6-acres in size.

Mr. Rentschler and Mr. Tirey agreed with Mrs. Powell.

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

Mrs. Powell said the hardship did not result from actions taken by the applicant or the property owner. The hardship was the historical barn built between 1910-1915 that appeared to be in good condition and should not be the reason to prevent the applicant from building an additional accessory structure that complimented the existing principle structure.

Mr. Weslake said the hardship was the result from actions taken by the applicant, like he said before, the owner has other options.

Mr. Mathers, Chairman Isenhour, and Mr. Rentschler agreed with Mrs. Powell.

Mr. Reynolds said the hardship did not result from actions taken by the applicant but was the result of an existing old barn on site.

Mr. Tirey said the hardship was not a result of the owner, the property had been in the family since before the 1900's and the existing barn had been built 70 years prior to the existing house.

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.

Mrs. Powell said the requested variance was consistent with the spirit, purpose, and intent of the Ordinance. The 3.6-acre size of the property would allow this variance to be consistent with the spirit, purpose, and intent.

Mr. Weslake said the requested variance was not consistent with the spirit, purpose, and intent of the Ordinance. It had no effect on public safety but did have an effect of substantial justice as he had other options.

Mr. Mathers said I agree with Mrs. Powell.

Mr. Reynolds said 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 by allowing this property be improved with a much neater looking shed or garage be built on it.

Chairman Isenhour and Mr. Rentschler agreed with Mr. Reynolds.

Mr. Tirey said yes, the variance requested was consistent with the spirit, purpose, and intent of the Ordinance such that the public safety was secured. If this property were on a smaller lot, closer to Town, this would be a different scenario. The variance should be allowed based on 3.6-acre parcel.

Mrs. Powell made a motion to approve Variance Request #V20-1, filed by Jeffrey A. Hoffman, for property located at 12911 Lawyers Road, being Tax Parcel Number 197-021-05; requesting a variance to Section 6.9.7 A.1 to increase the size of the accessory structures to be greater than the size of the primary structure, to approve this variance for the following reasons:

- 1. Unnecessary hardships would result from the strict application of the Ordinance by subjecting this larger size lot of 3.6 acre to adhere to the Ordinance and only allow the detached garage if the historical barn is removed.**

2. **The hardship results from conditions that are peculiar in that the historical barn structure was built early 1900's and still in good condition and size of the lot allows for additional structures and increased footage.**
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 3.6-acre lot allows for additional structures and increased footage.**

Mr. Reynolds seconded the motion and the Board approved Variance Request #V20-1, filed by Jeffrey A. Hoffman, for property located at 12911 Lawyers Road, being Tax Parcel Number 197-021-05; requesting a variance to Section 6.9.7 A.1 to increase the size of the accessory structures to be greater than the size of the primary structure. The vote was as follows: Agreed: Gary Isenhour, Bill Mathers, Debi K. Powell, Ronald Rentschler, Bobby Reynolds, and David A. Tirey. Disagreed: Michael Weslake.

- B. Variance Request #V20-2 Filed by Francis and Mary Mowitz, Property Located at 8509 Aspen Court, Tax Parcel #139-282-17, from Section 6.1 Building Lot Standards and Dimensional Requirements of the Mint Hill Unified Development Ordinance:** The following individuals were sworn in and spoke in conjunction with #V20-2: Town Planner Nathan Farber and Mr. Mowitz. Mr. Farber submitted the following memo to the Board:

The applicant is requesting a variance from Section 6.1 *Building Lot Standards and Dimensional Requirements* of the Mint Hill Unified Development Ordinance, for property located at 8509 Aspen Court, Tax Parcel 139-282-17. The applicant is asking that an addition to his home encroach into the current required 20' side setback. He states that 42 sq. ft. of the addition will encroach into the side setback.

Mr. Mowitz lived at the property, 8509 Aspen Court. Mr. Mowitz stated he was here before the Board tonight seeking a small variance to encroach into the existing 20-foot side yard setback. He would like to build a structure that was 10 ft. wide by 20 ft. deep which would be adjacent to his existing two-car garage. It was on the left-hand side of the garage, he asked the Board to look at the survey, the variance was a very small portion of the encroachment. The building would be encroached into the setback, starting about 7 feet in the front and as it went back to about 11 or 12 feet, it went to zero-foot encroachment. So, the encroachment, rough calculation was about 25% of the square footage he was going to build so he was going to build 200 square ft. The encroachment was roughly 41 square feet, so it was a little less than 25%. The neighborhood was new, his house was built in 2016. He was the 6th house in the neighborhood, there were now 50 homes. Pretty much everyone had between .75 quarters of an acre and 1.1 acre; roughly half the houses in the neighborhood had a 3-car garage. This would be consistent with other houses in the neighborhood, it would look like a 3-car garage, but it would not have a garage door. This was going to be built as a workshop, he planned on retiring next year and had a couple of old classic cars in his garage and had no room to move. The garages built with these houses were very small, 20 by 20. His was actually 19 ½ by 19 ½ so he did not even get the 20 by 20. He had no room to move around and would like to build a workshop where he could move all his tools into the workshop and then he would have just the cars in the garage. Everything he did would match the existing house as far as materials and colors. It was going to be built by a certified North Carolina

contractor. He was asking approval of the Board to encroach into this side yard setback by a very small amount. The distance between the homes was, the house to his right was probably about 150 yards away, and the house to his left where he planned to build this addition, was 60-70 yards away. It was not like the houses were all jammed together, and he was building something right in their face. Mr. Hoffman asked if the Board had any questions, he would be happy to answer.

Mr. Tirey asked, on the front of the workshop it would be 10 by 20, once you get beyond 7 ft. that was the part which was going to encroach into the setback. Mr. Mowitz stated once he got beyond 3 ft. it would encroach by 7 ft. Mr. Tirey asked how far length wise until he would be outside of the encroachment. Mr. Mowitz said about 12 ½ ft. So, a little more than half the distance was in the encroachment and a little more than half the width, but the total was less than 25% of the entire structure. Mr. Tirey asked and there was no way there was any kind of design that would fit inside the encroachment. Mr. Mowitz said it would be almost useless to build it because the shape would be very odd and strange, the cost to do it would be prohibitive. Mr. Mowitz stated he checked into that with his contractor and he said it would be quite expensive because of the different shapes and angles; the roofline would have to be custom joist.

Chairman Isenhour asked if only 42 square ft. would be into the encroachment. Mr. Mowitz said yes, 42 out of 200; a little less than 25%.

Mr. Rentschler asked if this subdivision had a Homeowners Association (HOA). Mr. Mowitz said yes, they did. Mr. Rentschler asked if he had to run his plans through the HOA for approval. Mr. Mowitz said we had to run the elevations and the survey by them. Mr. Rentschler asked if they had been approved by the HOA. Mr. Mowitz said we had been approved.

Mrs. Powell asked if the adjacent neighbor to the left had responded to the Town. Town Planner Farber said the neighbor did call, he said he had no issues with it and was happy the applicant was asking for a variance.

Mr. Reynolds asked if all these homes were on well and septic. Mr. Mowitz said they were. Mr. Reynolds asked if that was the reason you cannot put it on the right. Mr. Mowitz said he was correct. Mr. Mowitz stated when they purchased the home, they asked for a three-car garage and were told it could not be built because they could not move the home any further to the right because of the well. Even if he could put a detached garage, he would have no way of getting a car to it because you cannot pave over a wellfield. Our HOA does not allow any attached buildings whether it was a shed or a garage, they were not allowed.

Mr. Weslake asked if he was going to tie the new structure into the existing roofline on the house. Mr. Mowitz said no, it would be lower than the roofline. Mr. Weslake asked if there was any reason why he cannot shift that back if it was going to be lower to get it out of the setback. Mr. Mowitz stated there were windows along the side of the house and if he shifted it back, he would lose the windows that were bringing light into the house. Mr. Weslake asked how far back did his windows start on that side. Mr. Mowitz said they started just behind where the rear wall was on the survey the Board had in front of them. On the new structure, it started just behind that. We went to that window by about 8 inches forward just to keep those windows in place. Mr. Weslake asked where the windows were in the house. Mr. Mowitz said it was their master bed and bathroom.

Mr. Mathers asked if there would be a garage door entrance. Mr. Mowitz stated there would be no garage doors at all, just some windows. The entrance to this workshop would be a regular doorway from the inside of his existing garage.

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.

Mrs. Powell said the unnecessary hardships would result from the strict application of the Ordinance. It would be unnecessary for this small encroachment to prevent the building of the addition.

Mr. Weslake said the unnecessary hardships would result from the strict application of the Ordinance due to his limited ability to place this garage on the property in another location.

Mr. Mathers agreed, there would be an unnecessary hardship because of the location.

Mr. Reynolds said unnecessary hardship would result from the strict application of the Ordinance by not allowing an addition of this small amount to be added onto the home.

Chairman Isenhour and Mr. Rentschler agreed with Mr. Reynolds.

Mr. Tirey said there would be a hardship due to the strict application due to the small encroachment, and to the setback.

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

Mrs. Powell said the hardship resulted from conditions that was peculiar to the property, such as location, size, or topography. The hardship was the CCR's did not allow detached structures limiting the applicant's options.

Mr. Weslake said the hardship was a result from conditions that was peculiar to the property due to the shape of the lot on the East side giving it a strange angle.

Mr. Mathers said the hardship does result from conditions that was peculiar, both from the CCR's and then also the location of where the property was.

Mr. Reynolds said the hardship resulted from conditions that was peculiar to the property such as location, size, or topography. The location of the existing home sitting on the lot was creating this hardship.

Chairman Isenhour agreed with Mr. Reynolds.

Mr. Rentschler and Mr. Tirey agreed with Mrs. Powell.

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

Mrs. Powell said the hardship did not result from actions taken by the applicant or the property owner. The angle of the property increasing into a much wider backyard limited the available space in the front section of the property which causes the small encroachment to be needed.

Mr. Weslake, Mr. Mathers, Mr. Reynolds, Chairman Isenhour, Mr. Rentschler, and Mr. Tirey agreed 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.

Mrs. Powell said 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. Denying this small encroachment would be a substantial injustice and the public safety would be secured.

Mr. Weslake, Mr. Mathers, Mr. Rentschler agreed with Mrs. Powell.

Mr. Reynolds said 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 by allowing this small encroachment to be built.

Chairman Isenhour agreed with Mr. Reynolds.

Mr. Tirey said the requested variance was consistent with the spirit, purpose, and intent of the Ordinance such that public safety and justice was achieved also these plans had been approved by his HOA and there are no neighbors here complaining.

Mrs. Powell made a motion to approve Variance Request #V20-2, filed by Francis and Mary Mowitz, for property located at 8509 Aspen Court, being Tax Parcel Number 139-282-17; requesting a variance to Section 6.1 Building Lot Standards and Dimensional Requirements to encroach into the current required 20' side setback, to approve this variance for the following reasons:

- 1. Unnecessary hardships would result from the strict application of the Ordinance by not allowing this small encroachment.**
- 2. The hardship results from conditions that are peculiar in that this is the only location on the property available because of the HOA CCR's not allowing detached structures.**
- 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 encroachment is small.**

Mr. Reynolds seconded the motion and the Board unanimously approved Variance Request #V20-2, filed by Francis and Mary Mowitz, for property located at 8509 Aspen Court, being Tax Parcel Number 139-282-17; requesting a variance to Section 6.1 Building Lot Standards and Dimensional Requirements to encroach into the current required 20' side setback. The vote was 7-0; the variance was 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 7:14 p.m.

Savanna Ocasio
Program Support Assistant