



MEETING OF THE BOARD OF ADJUSTMENT
JANUARY 25, 2021
6:30 P.M.

1. CALL TO ORDER
2. ROLL CALL AND DECLARATION OF QUORUM
3. APPROVE MINUTES OF OCTOBER 26, 2020 REGULAR MEETING
4. REPORTS OF COMMITTEES, MEMBERS, AND STAFF
5. OLD BUSINESS
6. NEW BUSINESS
 - A. VARIANCE REQUEST #V20-5 FILED BY JACK AND BONNIE MUNDAY, PROPERTY LOCATED AT 10618 WILLIAMS ROAD, TAX PARCEL #139-101-08, FROM SECTION 6.1 BUILDING *LOT STANDARDS AND DIMENSIONAL REQUIREMENTS* OF THE MINT HILL UNIFIED DEVELOPMENT ORDINANCE.
7. OTHER BUSINESS
8. ADJOURNMENT

Savanna Ocasio
Program Support Assistant

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AGENDAS & MINUTES

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AGENDA & MINUTES

**MINUTES OF THE MINT HILL BOARD OF ADJUSTMENT
OCTOBER 26, 2020**

The Mint Hill Board of Adjustment met in regular session on Monday, October 26, 2020 at 6:30 p.m. in the John M. McEwen Assembly Room, Mint Hill Town Hall.

ATTENDANCE

Chairman: Gary Isenhour

Members: Todd Fisher, Bill Mathers, Ronald Rentschler, and Michael Weslake

ETJ Members: Debi Powell and David Tirey

Town Planner: Nathan Farber

Clerk to the Board: Savanna Ocasio

Commissioner: Mike Cochrane

Deputy Town Manager: Lee Bailey

Absent: Bobby Reynolds

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 August 24, 2020 Regular Meeting: Upon the motion of Ronald Rentschler, seconded by David Tirey, the Board unanimously approved the minutes of the August 24, 2020 regular meeting.

Reports of Committees, Members and Staff: Town Planner Farber referred to #V20-3, he stated the applicant Steve Onxley was originally representing the homeowner; however, Nathan George, the homeowner, would be speaking tonight. Town Planner Farber stated due to COVID, the speakers would be sworn in at the podium when they were prepared to speak. Town Planner Farber presented a quick Board of Adjustment refresher since there was a new member and the alternate member was present tonight. The refresher covered the following:

- The applicant must show all of the following: Unnecessary hardship would result from the strict application of the Ordinance, the hardship resulted from conditions that were peculiar to the property, and the hardship was not a self-created hardship. The applicant must also show the variance would be consistent with the intent of the Ordinance, would secure public safety, and achieve substantial justice.
- State Statue and UDO state: An affirmative finding for all of the four factors must be met prior to the variance being approved and each finding must be accompanied by one or more reasons, based on evidence heard at the hearing supporting the motion.

Old Business: None.

New Business:

A. Variance Request #V20-3 Filed by Steve Onxley, Property Located at 5200 Mintridge Road, Tax Parcel #195-032-01, from Section 6.1 Building Lot Standards and Dimensional Requirements of the Mint Hill Development Ordinance: The following individuals were sworn in and spoke in conjunction with #V20-3: Town Planner Farber and Nathan George. Town Planner 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 Mintridge Rd, Tax Parcel 195-032-01. The applicant is asking that an addition to his home encroach into the current required 25' side setback and 40' rear setback.

Nathan George lived at property located at 5200 Mintridge Road and would like to add a carport off the existing house, a covered entrance into the home, a new elderly bedroom, and the addition of a covered deck. Mr. George stated the house was originally built outside of the setback on one corner along with more than half of the deck. The existing deck was already half covered with a pergola. The applicant would extend the same look with a steel roof and a very similar look for the carport. Mr. George stated this initially started simply because they thought a covered deck would be nice. This past summer, when they realized where the setbacks were, they realized it might not be possible. At the same time, they began to design a garage apartment for his in-laws. They began to think about where they would park and other ideas, hence the growing project. Mr. George stated he would be happy to answer any questions.

Chairman Isenhour asked how many feet the new additions would encroach into the setback. Mr. George stated the existing deck was already in the setback, it would just be covered. He stated they were staying very close to the twenty-five-foot setback from the road, the side setback did extend back into the angled portion and was approximately eleven feet back. It looked like it would encroach seven feet seven inches into the setback.

Mr. Weslake asked if the measurement was taken from the house to the new carport. Mr. George said no, it would be from the existing driveway to the edge of the proposed new carport; that was the length of what would encroach into the setback. Mr. Weslake asked was there any reason to bring the carport out from the house, it looked like the applicant had an open or enclosed walkway coming from the existing garage to the new carport. Mr. George said correct. Mr. Weslake asked why the walkway was brought out so far. Mr. George stated they were trying to get as much light as possible into the apartment instead of covering it. He had asked his architect, Steve, about the walkway and said if they nixed that, they could have a shorter carport, encroach less, and get the vehicle completely covered. Mr. George stated it was under review in terms of design. He said his architect suggested the Board of Adjustment go ahead and hear the variance request; if approved the homeowner, and architect, could certainly build the shorter carport. Mr. Weslake agreed and stated the closer it was brought back to the house, the less it would hang over. Mr. George said correct.

Mr. Fisher asked if the Ordinance permitted a deck encroachment in the setback; was the fact that it was being covered causing the conflict? Town Planner Farber stated the deck could only

encroach by twenty percent. Mr. Fisher asked if the deck was allowed. Town Planner Farber said yes, if the deck did not encroach more than twenty percent.

Mr. Weslake asked if Staff researched an existing variance already on this property for the deck. Town Planner Farber stated he did not find any existing variances for the property. Mr. George said there was no variance for the deck, but he understood there was a variance for the corner of the house which was built into the setback originally. Mr. Weslake asked if there was a variance for the current house. Mr. George said yes, for the one corner of the garage, which was already located in the setback.

Mr. Tirey asked if the deck was built with the house or after the fact. Mr. George stated he did not know for sure; his best guess was after the house was built.

Mr. Rentschler asked if Mr. George was the original owner of the home. Mr. George said he was not; he purchased the home two years ago. Mr. Rentschler asked if there was a possibility there could have been a variance for this home. Town Planner Farber said there was no previous variance for the house in the Town records. Mr. Rentschler asked, if there was no variance, when did the rules change on the setbacks? Town Planner Farber stated the deck and terrace were built in 1986, the same year the house was built. Town Planner Farber did not know how the home was built, specifically if the other structures were built at the same time as the construction of the house. Mr. Weslake stated this was the reason he brought up the question of an existing variance. Town Planner Farber said there was no existing variance. Mr. George stated he assumed there was an existing variance because of the sales papers. Mr. Rentschler stated when the Town changed the Ordinance for the setbacks, this house should have been grandfathered. Mr. Rentschler asked when Mr. George bought the house two years ago, if it was identified that part of the house was in the setback to begin with? Mr. Rentschler asked how it got this far. Town Planner Farber stated he did not know, that would have had to be a misstep along the way somewhere back in the 1980's. Town Planner Farber said there had not been a permit pulled for the property since the house was constructed. Mr. Rentschler stated since the house and deck had been built, there had been no additional permits for anything else there.

Mr. Mathers asked if the applicant was made aware of the fact there was a setback problem. Mr. George said yes, which was why he suggested perhaps there was a variance. He stated as the sale went through, they saw the corner of the garage and about twelve feet of the deck were in the setback. Mr. Mathers asked if Mr. George had any problems obtaining title insurance when he bought the home because of the encroachment. Mr. George said no.

Mr. Fisher asked if the carport was intended for the parking of three vehicles. Mr. George stated that was their intent. Mr. Fisher stated it appeared the applicant could have two vehicles within the setback. Mr. George said correct. He stated the reason for the expansion was because they would be bringing his in-laws in whom could park an extra car and to try to make it look good. Mr. George said the reason for the extra entrance into part of the garage and entrance into the laundry room was to have a zero incline entrance for his in-laws and to raise the floor of the garage to have a zero incline entrance as well.

Mr. Fisher asked if the breezeway was fully covered. Mr. George stated it would be covered but not fully enclosed. Mr. Mathers asked if the breezeway was seven feet. Mr. George stated the portion of the carport extending beyond the existing driveway was seven feet because there was a 12:1 ratio. Mr. Mathers asked if that was done for any potential handicap situation in the future. Mr. George said yes, that was designed to accommodate a handicap entrance. He said that would not change if they got rid of the section where the carport was pulled off the house; if the carport went closer to the house it would still have the 12:1 incline.

Mr. Weslake asked would the homeowner still have enough room regarding length. Mr. George said there may not be space for three cars but there would be space to have a covered entrance.

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. The homeowners desire to create additional living space to meet their family's needs was reasonable and could not materialize without a variance, therefore causing a hardship.

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

Mr. Fisher disagreed; the plan could be slightly modified to comply with the setback requirements under the Ordinance.

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

Mr. Weslake said the hardship was a result for conditions that were peculiar to the property, the existing house and deck already were in the setback lines.

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

Mr. Fisher said the setback conditions on a property did present a constraint for the homeowner.

Mrs. Powell said the hardship resulted from conditions that were peculiar, she would agree with the applicant's statement, the existing location of the house limits their ability to expand their footprint.

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

Mr. Mathers agreed it did not result from his actions since he had only owned the home for two years and through the legal process of buying a home, he had title insurance and was also able to be aware of everything that was already there.

Mr. Fisher agreed no actions undertaken by the homeowner resulting in creation of the hardship.

Chairman Isenhour, Mr. Rentschler, and Mr. Tirey agree with Mr. Mathers.

Mrs. Powell said the hardship did not result from actions taken by the applicant or the property owner. The location of the house was inherited, limiting their ability to expand their home to accommodate elderly family members.

Mr. Weslake agreed with Mrs. Powell and Mr. Mathers.

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. Fisher disagreed that the variance was consistent with the spirit, purpose, and intent of the Ordinance which was to provide for consistent setbacks within the neighborhood.

Chairman Isenhour agreed 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 and Mr. Tirey agreed with Chairman Isenhour.

Mrs. Powell said the requested variance was consistent with the spirit, purpose, and intent of the Ordinance. A variance would not impact public safety and would be consistent with the intent of the Ordinance and that adjacent property would not be affected.

Mr. Weslake and Mr. Mathers agreed with Mrs. Powell.

Mrs. Powell made a motion to approve Variance Request #V20-3, filed by Steve Onxley, for property located at 5200 Mintridge Road, being Tax Parcel number 195-032-01, requesting a variance to section 6.1 Building Lot Standards and Dimensional Requirements, asking that an addition to his home encroach into the current required 25' side setback and 40' rear setback; she made a motion to approve the variance for the following reasons:

- 1. Unnecessary hardships would result from the strict application of the Ordinance in that it was reasonable and necessary to allow this additional living space to accommodate the needs of their elderly parents.**
- 2. The hardships resulted from conditions that are peculiar in that the existing location of the house limits their ability to expand their footprint and accommodate elderly family members.**
- 3. A variance would be consistent with the spirit, purpose, and intent of the Ordinance as adjacent property will suffer no ramifications and it would not impact public safety.**

Mr. Rentschler seconded the motion. Mr. Weslake stated he would like to amend the motion made by Mrs. Powell. Mr. Weslake did not want the carport in the 25' setback. Mrs. Powell opposed the amendment, so the variance was voted upon. The vote was as follows: Agreed: David Tirey, Ronald Rentschler, Gary Isenhour, Debi K. Powell, and Bill Mathers. Disagreed: Todd Fisher and Michael Weslake.

B. Variance Request #V20-4 Filed by Robert and Connie Ensley, Property Located at 6500 Long Road, Tax Parcel #197-211-10, from Section 6.1.2(b) Lot Design Standards of the Mint Hill Unified Development Ordinance: The following individuals were sworn in and spoke in conjunction with #V20-4: Town Planner Nathan Farber and Mr. and Mrs. Ensley. Town Planner Farber submitted the following memo to the Board:

The applicant is requesting a variance from Section 6.1.2(b) Lot Design Standards of the Mint Hill Unified Development Ordinance, for property located at 6510 Long Rd, Tax Parcel 197- 211-10. The applicant is asking to create lots that result in more than the maximum three access easements to lots without road frontage. Currently the applicant already has the maximum three access easements.

Keith and Connie Ensley lived at property located at 6510 Long Road; they inherited the land from Mrs. Ensley's parents. The property had been owned by the Ensley's since the 1960's. They raised

cows and had a tree farm on the property. The Ensley's and Mrs. Ensley's brother, Mr. Pharr, were left two acres each from their parents to build a home. Before their parents passed, they had expressed the desire to let the two grandsons build on the property. Mr. Ensley's nephew was living in the old house and his son wanted to build a home next to theirs. They would like the Board of Adjustment to grant an easement for two acres of land. The Ensley's stated 6510 Long Road was a large parcel, they had no other access than Long Road (the main road) which encompassed the parcel of the Ensley's parent's old home. Mr. Pharr now owned the previous home of his and Mrs. Ensley's parents. The Ensley's were asking to add one more easement so their son could build his home.

Chairman Isenhour asked if the Board was authorized to grant variances on easements. Mr. Rentschler explained they had considered an easement once before in Olde Sycamore which was located in both the Town of Mint Hill and in Union County.

Chairman Isenhour asked how many acres were included in the property they inherited. Mr. Ensley said 59.9 acres.

Mr. Fisher asked if there were three or four homes on the original parcel. Mr. Ensley stated three homes were located on the original parcel.

Mr. Ensley explained the location of each home as they reviewed the plat presented to the Board. He said their son would like to build his home right above their existing home. The Ensley's had no other access to this area; the home backed up to their tree farm and a church. Next to their property was Olde Sycamore golf course so they were landlocked.

Chairman Isenhour asked if the Board were to grant the easement, where would the lot come from and would the easement cross someone else's property. Mrs. Ensley said no, it was on their own property. Chairman Isenhour asked if the property owner needed an easement for their own property. Mr. and Mrs. Ensley said yes.

Town Planner Farber stated the variance was not the number of easements, it was the number of lots accessed by the easements. He said, right now, there were three lots so this would be the fourth lot.

Mrs. Powell stated she thought the applicant wanted two lots. Mr. Ensley said they needed the clarification as well. He stated the one house already had an easement; the road went by it. Mr. Ensley asked if that was an easement.

Mr. Mathers asked if their driveway would go right out to the easement which already existed. Mr. and Mrs. Ensley stated it was already there, it passed by all those houses and came down to theirs. They would cut from their easement, at the end, over to her brothers. Mr. Mathers asked if that was an extension of their current easement. Mr. and Mrs. Ensley said yes. Mr. Mathers said all of it was an extension, theoretically it would not be a separate new easement. Mr. Ensley said correct, the bank would require their son to have an easement to his home.

Chairman Isenhour asked Staff to clarify the easements and buildings on the lot. He asked if the applicant would have three houses on the parcel. Town Planner Farber said yes, if there were a fourth granted, they would be above the maximum number of allowed easements.

Mr. Rentschler asked if they were building two more houses on this property. Mr. Ensley said no, just one home. Mr. Rentschler asked what their nephew was going to do. Mrs. Ensley said he already had an existing house on the property. Mr. Rentschler said the applicant, her brother, and her nephew have one, and her son was going to build one next-door. Mr. Rentschler asked since they already had three easements off Long Road to that property, and their sons house, which was going to be adjacent to their lot, would come off the Ensley's easement to Long Road. Mr. and Mrs. Ensley said yes.

Chairman Isenhour asked Staff if the Board of Adjustment was really concerned about the number of houses built on that parcel of land. Mr. Rentschler stated the applicant already had three easements. Going to three properties, they were going to use the one easement from his property to his son's house, that was an extension off that easement so therefore, the applicant had not violated anything. Mr. Rentschler did not see where there was a problem with the Ordinance at this point.

Town Planner Farber read the Ordinance for clarification to the Board. Mr. Rentschler stated the Board was not creating another easement for road frontage; it was going to use an existing easement. He asked why this would come before the Board.

Deputy Town Manager Bailey stated he would like to shed light on the decision the Board of Adjustment was making. He stated there was a limit on the number of lots someone could access by a private easement. He said the reason for that was yes today, it was family; however, if those lots were created on a private easement and later sold, it may no longer be the son or relative. The Board could not base the question on if it were a family relative or a loved one. The question to be considered was to allow a fourth lot, which was in violation of the Ordinance. A property owner could have three on private easements. If a fourth one was approved, the applicant would be starting a minor subdivision and that would create the need to build public roads. If someone came to the Planning Board and said they would like to build five new lots, they would have to build a road to public road standards, which was why the number of lots were capped. He stated this was the history; he was not taking sides in any way shape or form. That was why the number on private easements was limited to three. If the Board of Adjustment did see a hardship and collectively agreed that a fourth one was in the spirit of the Ordinance, that was up to this Board. To a point someone might ask, well they were building a minor subdivision and got a variance. This was just information to consider. He stated again, he was not taking sides, he was just trying to frame it so the Board could understand. The Board was not granting an easement; they were granting another lot on an existing easement (not number of houses, not number of easements; it was a fourth lot which was not allowed by the Ordinance). The question the applicant was asking was can they jump over the three-lot maximum and go to four lots. The applicant would have to demonstrate the hardship or a reason why this should be permitted.

Mr. Tirey asked if the Board was still talking four lots in the middle of sixty-six acres. Deputy Town Manager Bailey said yes, if anyone came in and asked the Town to do four lots on sixty

acres, the Town would say yes they may, but they would have to provide public road access for every lot. Mr. Tirey asked why this was coming to the Board to make that decision. Mr. Tirey repeated his question. Deputy Town Manager stated the question to the Board was not to grant the subdivision, it was to grant a fourth lot on an easement. If granted, then the applicant would have to go and record the plot along with the variance through Planning Staff as a separate lot. Mr. Tirey stated he felt like Deputy Town Manager Bailey was pushing back on this personally pretty hard. Deputy Town Manager Bailey stated no, he was just trying to help the Board understand the request. The Board was discussing the number of houses and easements but that was not the question in front of the Board. He stated he was just trying to help the Board; he was trying to frame it for them. Mr. Tirey stated let us be honest, they could sell out and there could be 120 houses there. Deputy Town Manager Bailey stated yes, and they would be required to provide public roads. Mr. Tirey said he understood.

Mr. Rentschler asked if this was all one tax parcel. Mr. and Mrs. Ensley explained their tax parcel was 6500 Long Road, they have their own two acres, but they also own the other 59.9 acres. Mr. Rentschler asked if the homeowner had individual tax parcels for each residence located on the tax parcel in question. Mrs. Ensley said they paid their own tax bill for 6500 and 6510 Long Road which was the sixty acres.

Mr. Mathers asked if the Ensley's had two tax bills. Mrs. Ensley said yes. Mr. Mathers asked would they be deeding the two acres to their son and obtaining a tax parcel for that property. Mr. and Mrs. Ensley said yes, correct. Their nephew would also get the two acres where he lived in the existing house.

Mr. and Mrs. Ensley looked at the plat and explained to the Board the location of each home and easement on the property. Town Planner Farber stated each new lot would need its own fifteen-foot easement. Mr. Weslake stated he was having trouble finding the easement. He asked if they needed to have the easement documented on the plat because they were going through this and he did not know where the easement was located. He said they were talking about extending something that he could not see. Town Planner Farber stated there was no survey he could find through Mecklenburg County. Town Planner Farber stated he was going off what the applicant's attorney told him, there were three easements going through that lot currently.

Mr. and Mrs. Ensley said they have the original plat which showed the easement. Mr. Mathers asked, without the easement, if their son's property would be landlocked. Mrs. Ensley said correct, the whole 59.9 acres was landlocked, except for the easement.

Chairman Isenhour asked if the easement led to their house; to get to the pond it would come off their easement, so that would only be two houses off that easement, not three. Mr. and Mrs. Ensley said correct. Mr. Weslake clarified, so the house on Long Road did not belong to the applicants.

Mr. and Mrs. Ensley said correct. Mr. Weslake asked how they got to their house from Long Road. Mr. and Mrs. Ensley said down the easement.

The Board discussed the plat that was presented to them. Town Planner Farber emphasized the third easement that was to the large sixty-acre lot. He stated this was just a generalization that

Mecklenburg County put in, this was not an exact replica of each individual easement. Chairman Isenhour stated the plat did show the easement coming off Long Road back to Mr. Ensley's house and that was the only house he saw using that easement. He stated if he was wrong, to point it out to him where there was another house there. Town Planner Farber asked Chairman Isenhour if he was referring to the large lot. Chairman Isenhour said yes, off Long Road coming up to Mr. Ensley's house; that was the easement. If they put another house on that easement, that would be two houses. Chairman Isenhour asked if the Town allowed three houses on the easement. Town Planner Farber stated there could be no more than three lots created with easements and there were three easements going through that lot. By creating that new lot, there would be four easements.

Mr. Mathers asked Town Planner Farber where the third easement was located. Town Planner Farber said the third lot next to it accessed the sixty-acre lot. Mr. Mathers asked how many easements were on the property. Town Planner Farber stated there were three easements. Mr. Mathers repeated his question and asked where the third easement was. Town Planner Farber said, like he had said earlier, this was just a generalization of the easements. When discussing this variance, when he was contacted by the applicant's attorney, we asked the question of how many easements were going through the large lot. They said three, the easement shown on the right was two easements right next to each other. Mr. Mathers asked why there were two easements next to each other. Town Planner Farber stated because each lot had to have a fifteen-foot easement. Mr. Mathers asked if the Town were treating the first house from the road, it could have road frontage, they theoretically would not have to be on the easement. Mrs. Ensley said correct. Mr. Mathers stated the first house, in the front, should not affect the easement at all. Mr. Fisher said it did not use the easement, there were four lots total. Mr. Mathers stated okay, he was still looking at two easements and he had been doing this a long time.

Mr. Fisher asked what the minimum public street frontage required was under the Ordinance. Town Planner Farber said 125 feet was the minimum. Mr. Fisher asked was there no provision for a flag lot under the Ordinance.

Mr. Weslake asked was the applicant planning on running off the existing easement. Were they going around the property line? Mr. Ensley said yes.

Mr. Mathers asked were the easements going through their property at any point. Mr. Ensley said they had a gravel drive that they would incorporate, so when someone passed by, it would look like someone had a driveway. Mr. Mathers asked if part of the easement would go through their property a little bit. Mr. Ensley said maybe.

Chairman Isenhour asked if the house, which did not have an easement, could get an easement that came off of Long Road back to where their nephew was going to build the house. Mr. Ensley stated they did not own that specific property. Chairman Isenhour was referring to the house/property next to their easement. He stated the applicant had an easement coming toward their house and then there was a field of trees and then the house. He asked why the applicant could not have had an easement, come off two hundred feet, from their easement back down toward the other house if it was their property. Mrs. Ensley stated they owned fifty-nine acres. They had their own separate little two acres long before their parents passed away; when that happened, her parents gave the property to them.

Mr. Mathers asked if the Ensley's owned the house on the corner, did they have a legally binding agreement that said they could use the easement. Mrs. Ensley said yes, it was her mother's original house. Mr. Pharr, Mrs. Ensley's brother, now owned it.

Mrs. Powell asked if the applicant put four lots on this property, would it be considered a subdivision; what kind of road(s) would have to be built? Town Planner Farber said he was just referring to if the applicant wanted to go more than four, it would be a minor subdivision which would require public roads. Mrs. Powell stated the applicant was not putting more than four lots, though. Mrs. Ensley stated they thought they were supposed to get two but looking at the map, it said their nephew's home and the original house already had an easement. All they wanted was to dedicate those two parcels of land for their nephew and their son to be on their property. Mr. Ensley said the land was passed down to them. The wish from their Grandfather and Grandmother was they would be able to build a home. The Ensley's stated they were redoing their Will so this land would be passed down to their son and nephew.

Mr. Tirey asked Staff if they were saying anything beyond this; anymore building, anymore lots, would have to come in front of Town Planning. Town Planner Farber stated no, what Staff was talking about was the three easements. They had to have exclusive use for each dwelling so right now, there were three easements going through that large lot. Mr. Tirey asked if this variance were approved, everything beyond that, if they would have to come back in front of the Planning Board. Town Planner Farber said correct.

Mr. Weslake said technically, the applicant had the easement going to their house and the easement going to the big piece of property; those were the two easements. Both of those run through the lot which had access to Lawyers Road. He asked if the Board of Adjustment granted another easement, that would allow four easements on a house they do not own. Town Planner Farber said correct, he believed the lot was owned by Mr. Pharr. Mr. Weslake asked how they could approve it for their property if it was not approved for the first property on Long Road. Mr. Ensley stated he did not understand what Mr. Weslake was asking. Mr. Ensley explained there was the easement and it showed on the survey that the easement came behind that house. Mr. Weslake stated the applicant did not own the house that had frontage on Long Road, if the Board granted another easement, that would put four easements on that piece of property not owned by the applicant. Mr. Weslake asked how the Board of Adjustment would grant an easement for their property without granting an easement for the other property.

Mrs. Powell asked if the wrong people were here in front of the Board of Adjustment.

Mr. Mathers asked if the person that lived in the corner was Mrs. Ensley's brother. Mrs. Ensley said no, her brother owned the property, but he rented the house to another individual. Mr. Mathers asked if her brother would sign off on the easement. Mrs. Ensley said yes, her nephew was her brother's son. Mr. Mathers stated as long as the property owner, Mr. Pharr, signed off, there was no problem. Mr. Weslake stated the Board would need to have that sign off. Mr. Mathers said no, the attorney would take care of that, all the Board of Adjustment was doing was approving the variance. It was going to be up to the attorney to work out all the details. Town Planner Farber stated by approving the easement, if it were mutually agreed upon with her brother, it would be

allowed to go through. Mr. Weslake asked if the Board was basically giving a variance to a piece of property that they did not own on Long Road. Town Planner Farber stated yes, if Mr. Pharr agreed. Mrs. Ensley stated he did agree. Mr. Mathers stated the Board could always make their decision on the variance subject to him agreeing. Mr. Weslake stated he thought that needed to be done because he was not there, and the Board did not know if he would agree to it. Town Planner Farber stated he had spoken with Mr. Pharr and he agreed.

Mr. Tirey stated if Mr. Pharr disagreed, he would have received notification and would have had a right to be here at the meeting.

Mr. Fisher asked if the Ordinance permitted construction of a private street for access to subdivide a lot or on a public street. Town Planner Farber stated no.

Chairman Isenhour stated they did not solve the problem. He explained the applicant owned the land down to the next house. He stated it was okay to grant an easement back to where he wanted to build. The applicant owned the land, they could grant the easement and it was off Long Road; that would solve all of the problems. Town Planner Farber stated the problem was, there would be four easements.

Mr. Rentschler asked did the first house, on the left, have access off Long Road to that property. Mr. and Mrs. Ensley said yes. Mr. Rentschler said so it did not have an easement. The original house sitting next to that, on that property, had an easement that came in. The original easement was two easements. What the applicant was trying to do was put a third easement in for their son's house, next to their house. The nephew who was going to get the other piece of property already had an easement, so we were talking about three easements for three pieces of property: three separate homes. The way it existed, right now, the house down there on the left had access off Long Road, no easement. The house next to it, which was the original homestead, already had an easement off Long Road.

Mr. Weslake stated that easement went through the property on Long Road.

Mr. Rentschler stated it came off Long Road to the property and then there was a second easement that came to their existing home. What the applicant wanted to do was put in another easement for their son's home. The other easement, the nephew was going to get, expanded the two acres next to his father's home. The Board was only talking three easements with potentially three lots that were off the easements. Town Planner Farber said he was told by the Ensley's attorney there were three easements. Mr. Rentschler stated it appeared to be only two. Mr. Rentschler asked how the Board got to three easements. Town Planner Farber stated when he had spoken with the Ensley's to try and figure out how many easements were actually there, they told him they were going to contact their attorney and he would look through their documentation. Town Planner Farber was told by their attorney there were three easement lots. He stated this was not an actual easement on Polaris, this was just a line they drew to try to show where there were easements. The applicant did not make it look like there were two.

Chairman Isenhour asked, but the applicant could still put an easement off Long Road back to the pond. Between their easement and their homestead, there was a wooded area there. That would be one easement off two easements, the third easement would be by the corner.

Mr. Rentschler asked if the Board was basing this off what the attorney told the applicant, there were already three existing easements there. Town Planner Farber said yes. Mr. Rentschler said but when we look at it, Mrs. Ensley's brothers lot had access from Long Road. Mr. Rentschler asked if Mr. Pharr was 6500 Long Road. Mrs. Ensley said no, her brother was 6520 Long Road. Mr. Rentschler said then the home next to it was 6510, which was the original homestead, which had an easement to it off Long Road already. He stated what was before them, regardless of what the attorney said, showed only two easements right now: one to 6510 Long Road and one to their property. What the applicant wanted was for their son to add the third one to the two-acre lot. Their nephew, where they were going to expand the existing homestead and give him two acres, already had an easement to his property so the Board was only talking three easements with three properties, not four.

Mr. Weslake asked if they were saying it was basically two easements on one.

Mrs. Powell asked would that change the vote of the members of the Board if they were debating whether there was two or three; was it going to change the way they voted?

Mr. Rentschler stated it came down to the Ordinance; if there were four lots located on it then there could only be three easements on the property, was that what was being said? He stated that was not really the case because one was actually located on Long Road, so they only had two easements.

Mrs. Powell stated they were arguing with the Town who was presenting the variance request to be voted on by the Board. Mr. Tirey agreed with Mrs. Powell, the Board was being presented facts for them to decide on the variance.

Mr. Fisher asked if the Board was not to include the lot that was west of the pond.

Mr. Rentschler stated if the Board were going to approve the request, the Board needed to get a better clarification on the easements. Documents needed to show where it had been legally granted and if the applicant's lawyer said there were three easements out there, then the applicant needed to come up with the paperwork. The Board knew where the three easements were located with the drawings so they could properly handle the variance like they should. Deputy Town Manager Bailey stated he had not looked at any of this; the Planning Department was handling it. He could not comment on this case in any way shape or form, but he did think the applicant needed the recorded plats with the recorded easements so the Board could make a decision. Obviously, they were not going to have those tonight. He did not know where the ball got dropped, if the applicant did not turn it in or if Staff did not ask for it. Personally, his advice to the Board was they did not have enough information to make a decision tonight.

Mr. Rentschler made a motion to table variance #V20-4, to the next meeting. He asked the applicant to go back to their lawyer to locate the three easements, get the paperwork and proper

drawings so the Board could handle this situation for them. Mr. Ensley stated he had been talking to Town Planner Farber and stated they had the parent track; he asked if it had anything to do with this. Mr. Rentschler said no, owning the parent track would not make a difference. Mr. Ensley stated, the house his brother-in-law owned, they did not own. He asked if they had the other sixty acres, was that three easements off that sixty acres or how was that being counted. Mr. Rentschler stated based on what the applicant was explaining, if the Board of Adjustment, according to the Ordinance, were going to have more than three easements or more than three tax parcels on the property, it was considered a development that had to have public roads. He stated if the applicant did not do anything more than their house, their sons house, and their nephews house, he would say they were okay based on what the Ordinance was saying. If they expanded anywhere else, the applicant would have to look into putting in public roads. Mr. Ensley stated they were landlocked; they could not expand. He explained all the land around them was being developed but they did not have that option unless they bought the land. Mr. Rentschler stated if the applicant decided to develop their land into a housing project of some sort then the applicant would have to put public roads in. Mr. Ensley said correct, that was not the intent. That was not what their legacy was going to be.

Mr. Rentschler and Mr. Mathers reiterated the applicant needed to come forward another time with enough information for the Board to make a decision. Mr. Weslake suggested to Staff, investigate if the other property on Long Road needed a variance to do this.

Chairman Isenhour seconded the motion, made by Mr. Rentschler, to table this until further information was received. Chairman Isenhour stated the applicant would confer with Town Planner Farber to set up another meeting for the Board once the applicant had all the information; the Board would be able to make an informed decision at that time.

Mr. Ensley asked if the Board had any specific questions in addition to the easements. Mr. Rentschler stated the easements needed a drawing or survey that showed those easements to the property. Mr. Mathers stated their attorney would be able to pull up the actual easements and if they could, color code the drawing and have the attorney make sure they could see where each easement was located so the Board could understand. Also, have the attorney work something out with Mrs. Ensley's brother, Mr. Pharr, to make sure it would be fine. The Board agreed by consensus to table #V20-4 until a further date.

Other Business: None

Adjournment: Upon the motion of Mr. Rentschler, seconded by Chairman Isenhour, and unanimously agreed upon, Chairman Isenhour adjourned the meeting at 7:43 p.m.

Savanna Ocasio
Program Support Assistant

Memo

To: Board of Adjustment

From: Staff

Date: 1/07/2021

Re: Variance Request #V20-5, Filed by Jack and Bonnie Munday, Property Located at 10622 Williams Rd, Tax Parcel #139-101-08

Variance Request

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 10618 Williams Rd, Tax Parcel 139-101-08. The applicant is asking to subdivide the existing parcel into two lots to be served by well and septic systems. Based on the well and septic combination, the 40,000 SF minimum lot size and associated other dimension requirements apply. The applicant is requesting a reduction in the lot frontage to 119' for one of the lots in order to subdivide. All other requirements applicable will be met.

Type of Residential Dwelling	MINIMUM LOT DIMENSIONS				MINIMUM SETBACK IN FEET				MAX LOT COVERAGE	MAXIMUM HEIGHT	
	Lot Area in Square Feet	Lot Width at Minimum Setback	Lot Frontage Exception Cul-de-Sac	Lot Frontage on Cul-de-Sac	Front Yard Setback ⁽³⁾	Side Yard Setback Adjoining a Street	Side Yard Setback	Rear Yard Setback	Lot Coverage in Percent	Height in Stories	Height in Feet ⁽⁴⁾
Single-Family Detached ⁽¹⁾⁽²⁾	20,000	125	60	60	50	25	15	40	29	2	35
Single-Family Detached ⁽¹⁾⁽²⁾	30,000	130	70	70	60	30	20	40	20	2	35
Single-Family Detached ⁽¹⁾⁽²⁾	40,000	140	70	70	60	40	20	50	20	2	35

Please see enclosed application for more information.

VARIANCE
APPLICATION

Town of Mint Hill
Board of Adjustment
4430 Mint Hill Village Lane
Mint Hill, N.C. 28227
(704) 545-9726

Office Use Only	
Petition #:	<u>V20-05</u>
Date Filed:	<u>12/10/20</u>
Received By:	<u>NE</u>

Variance requested on property located at: 10622 Williams Rd, Mint Hill

Tax Parcel Number: 139 101 08 Zoning District: R

Describe variance being requested:

WITH TWO HOUSES ON THE PARCEL, WE ARE ASKING FOR A VARIANCE TO
Sub-Divide the parcel so each house would be deeded INDIVIDUALLY, WITH A
Combined road frontage of 259.97' on the existing parcel, I am requesting
the following,
- 10626 Williams Rd (built 1954 / 1,160 sq ft) would be surveyed to have
140' road frontage to include one acre.
- 10622 Williams Rd (built 1943 / 777 sq ft) would be granted A VARIANCE
to have 119.97' road frontage to include one acre, and the CONTINUANCE
of a 15' permanent easement for PARCEL # 139 101 41.

NOTES:

1. ADJACENT property owners Jeffrey MANGESS (10634 Williams Rd) AND EDWARD (VICTOR) ALUGOVY (10614 Williams Rd) were CONSULTED ABOUT the VARIANCE request, and would NOT be interested in SELLING a portion of their property to ease the burden of the 10622 road frontage.
2. I ALSO spoke with the Charlotte water engineering Dept to LEARN the closest water line to SAID properties is AT the intersection of ARLINGTON Church Rd AND Williams Rd. BECAUSE the distance EXCEEDS 1,000', they would NOT extend the water line to these properties. (Actual distance IS 3,168')

THE HARDSHIP RESULTS FROM CONDITIONS THAT ARE PECULIAR TO THE PROPERTY, SUCH AS LOCATION, SIZE OR TOPOGRAPHY. Hardship resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

The condition of the hardship is peculiar to the historical establishment of the road frontage (259.97') when the parcel was granted to a Williams family member in the 1940's.

THE HARDSHIP DID NOT RESULT FROM ACTIONS TAKEN BY THE APPLICANT OR THE PROPERTY OWNER. 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.

The hardship was established prior to the purchase of the property in 1996.

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.

In considering the historical establishment of the parcel's road frontage and when the houses were built, I would request the City of Mint Hill to find this variance request consistent with the spirit, purpose and intent of the ordinance for the land's use.



10622 Williams Rd



16626 Williams Road