

**MINUTES OF THE MINT HILL BOARD OF ADJUSTMENT  
JUNE 28, 2021**

The Mint Hill Board of Adjustment met in regular session on Monday, June 28, 2021 at 6:30 p.m. in the Assembly Room, Mint Hill Town Hall.

**ATTENDANCE**

Chairman: Gary Isenhour  
Members: Todd Fisher, Bill Mathers, Bobby Reynolds, and Michael Weslake  
ETJ Members: Debi Powell  
Town Planner: Nathan Farber  
Clerk to the Board: Savanna Ocasio  
Commissioner: Mike Cochran  
Absent: David Tirey and Ronald Rentschler  
Town Attorney: Kevin Bringewatt

**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 January 25, 2021 Regular Meeting:** Upon the motion of Chairman Isenhour, seconded by Mr. Reynolds, the Board unanimously approved the minutes of the January 25, 2021 regular meeting.

**Reports of Committees, Members and Staff:** None.

**Old Business:** None.

**New Business:**

**A. Variance Request #V21-02, Filed by Enza Pilla, Property Located at 13605 Fairington Oaks Drive, Tax Parcel #192-212-56, 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 #V21-02: Town Planner Farber, Ms. Pilla, Mr. Garcia, and Mrs. McCloud. 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 13605 Fairington Oaks Drive, Tax Parcel 192-212-56. The applicant is asking that an addition to her home encroach into the current required 20' setback. She states that it will encroach by 4 feet and 11 inches. All other requirements will be met.

Mr. Garcia, 13605 Fairington Oaks Drive, introduced himself and the requested Variance. He was before the Board to request an addition be made by attaching a garage to their home. Mr. Garcia and Ms. Pilla recently moved from New York to Fairington Oaks in Mint Hill and were not made aware that an attached garage was not allowed. The purpose of the intended garage would be for parking their car and storing Mr. Garcia's work equipment. Mr. Garcia referred to the site plan and stated the house was set one way, but the property lines were set a different way. He stated if approved, the garage would encroach 4 feet and 11 inches into the 20-foot required setback. Mr. Garcia asked the Board to approve his Variance request as it was an essential need to his business and the only neighbor this would affect had no concerns.

Mrs. McCloud, 13615 Fairington Oaks Drive, stated she was the neighbor to the right, so the encroachment would be closest to her property line. Mrs. McCloud said she had no concerns and Ms. Pilla and Mr. Garcia had been wonderful neighbors.

Mr. Weslake asked Mr. Garcia if the Board could review the site plan Mr. Garcia provided.

Mr. Fisher asked if this lot had public water and sewer. Ms. Pilla stated they had public water and a septic tank.

Mr. Mathers stated he had several questions and asked the applicant to be patient with him. He explained he had been in the real estate business for over 40 years. Mr. Mathers explained the recorded deed stated Ms. Pilla closed on the home in November. When purchasing a home, it was the realtor's job to go through all paperwork and information with the buyer. He asked how long it was before Ms. Pilla found out about the Ordinance. Ms. Pilla stated when looking for a house in Mint Hill, they specifically told their realtor what they wanted/did not want. She stated for example, if a home did not include a garage, they would need to add a garage. If the home did not include a swimming pool, they wanted to be able to install a pool. Ms. Pilla stated with her realtor knowing all of this, she did not mention there was a 20' side setback. She stated the original plans they drew up with the architectural seal was for a two-car garage, leaving 5 feet between the properties which would have never been approved, so they shrunk it down to the smallest they could go. Mr. Mathers asked when the house was purchased, was Ms. Pilla's realtor also her buyer's agent. Ms. Pilla said yes. Mr. Mathers asked if Ms. Pilla signed a Buyer Agency Agreement. Ms. Pilla said yes. Mr. Mathers stated in the real estate business, unfortunately, there were a lot of realtors that did not tell the buyer what they needed to know. He stated there were a lot of things which indicated Ms. Pilla should have known about the attachment not being allowed prior to purchasing the home. Ms. Pilla stated she honestly did not know. Mr. Mathers stated he had a few documents he wanted to discuss with Ms. Pilla so she could be aware of what to look for when signing contracts. Each Board member and Ms. Pilla received the following documents: an Exclusive Buyer Agency Agreement, a Professional Services Disclosure and Election, and the MLS listing of the home. Mr. Mathers asked if a survey was done on the property when purchased. Ms. Pilla said a survey was done. Mr. Mathers said he could not find anything in the tax records of a recorded survey. He asked if Ms. Pilla remembered signing an Exclusive Buyer Agency Agreement with her realtor. Ms. Pilla said yes. Mr. Mathers began going through the documents and spoke on the following highlighted sections that he felt pertained to Ms. Pilla:

- Buyer acknowledges receipt of a sample copy of a Professional Services Disclosure and Election form for review purposes.
- Buyer or Buyer's agents or representatives, at Buyer's expense, shall be entitled to conduct all desired tests, surveys, appraisals, investigations, examinations, and inspections of the Property as Buyer deems appropriate.
- Buyer's agents, representative, closing attorney or lender true and accurate copies of the following items affecting the Property, including any amendments: Declaration and Restrictive Covenants, Rules and Regulations, Articles of Incorporation, By laws of the owner's association.

Mr. Mathers stated Ms. Pilla should have received those copies from her agent. Ms. Pilla said she did not receive them. Mr. Mathers stated in the listing itself, bylaws and HOA information were not listed. With it not being there, it was Ms. Pilla's agent's responsibility to provide that information to her before buying the house. Mr. Mathers asked Ms. Pilla if she was familiar with the Professional Services Disclosure and Election documents. Ms. Pilla said she was not. Mr. Mathers said this document was a requirement in North Carolina and a lot of real estate agents do not do it. He reiterated not finding a survey listed and said Ms. Pilla's attorney did not record it. He stated the only survey they could find for Ms. Pilla's property was the original, done by the builder years ago. Mr. Mathers referred to the MLS listing document and stated an HOA was required in Fairington Oaks, another reason Ms. Pilla's real estate agent should have given her copies of these documents. He mentioned this to emphasize Ms. Pilla should have known this information before purchasing the home. Ms. Pilla said the 20' side setback was not enforced by the HOA; it was the Town of Mint Hills Ordinance. Mr. Mathers understood and said Ms. Pilla should have had access to all of these documents in her decision making. Ms. Pilla stated they did their due diligence and would have done things differently having known this information. Mr. Mathers stated he was not suggesting Ms. Pilla knew, he was just explaining to her that in the real estate business, some realtors do the wrong things and he wanted Ms. Pilla to be aware of the fact she should have known.

Mr. Weslake asked if putting the garage on the back side of the house was an option. Ms. Pilla stated that was not possible due to her pool in the backyard.

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 as the applicant had no other options to build a garage except as an attached structure since their HOA rules and covenants limit all accessory structures to 200 sq ft.*

*Mr. Mathers, Mr. Fisher, Chairman Isenhour, Mr. Reynolds, and Mr. Weslake agreed with Mrs. Powell.*

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

*Mr. Weslake stated the hardship resulted from conditions that were peculiar to the property, such as location, size, or topography, due to the irregular shape of the lot along with home placement.*

*Mr. Reynolds stated the hardship resulted from conditions that were peculiar to the property, such as location, size, or topography, due to the shape of the lot.*

*Chairman Isenhour, Mr. Fisher, and Mr. Mathers agreed with Mr. Reynolds.*

*Mrs. Powell stated the hardship resulted from conditions that were peculiar to the property, such as location, size, or topography. Specifically, being the property line and the house not being in alignment causes the rear of the proposed garage to extend over the 20' side setback by 4'11".*

**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 created with the placement of the home when it was originally constructed, not being in alignment with the property line.*

*Mr. Mathers, Mr. Fisher, Chairman Isenhour, Mr. Reynolds, and Mr. Weslake 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.**

*Mr. Weslake 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 the homeowners to build the additional garage.*

*Mr. Reynolds, Chairman Isenhour, Mr. Fisher, and Mr. Mathers agreed with Mr. Weslake.*

*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. A variance allowing the rear section of the garage to encroach within the 20' side setback line by 4' 11" would allow this homeowner to have an attached garage like other properties within the neighborhood and would have no negative impact on the appearance of the neighborhood.*

**Mrs. Powell made a motion to approve Variance Request #V21-02, filed by Enza Pilla, for property located at 13605 Fairington Oaks Drive, being Tax Parcel number 192-212-56, requesting a variance to Section 6.1 Building Lot Standards and Dimensional Requirements, requesting an encroachment into the side setback. Mrs. Powell 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 as the applicant has no other options for a garage except as an attached structure since HOA Rules and Covenants limit all accessory structures to 200 sq ft and the addition will meet all requirements of Section 6.1, except the rear section of the addition.**
- 2. The hardship results from conditions that were peculiar to the property specifically being the property line and house were out of alignment causing the proposed garage addition to extend over the 20 ft side setback by 4' and 11".**
- 3. The hardship did not result from actions taken by the applicant but results from the placement of the home when it was originally constructed not being in alignment with the property line.**
- 4. The Variance was a minimum one that will make possible the reasonable use of land and would be consistent with the spirit, purpose, and intent of the Ordinance and preserve its spirit. It would have no negative impact on the neighborhood and public**

**safety will be secure. And it provides substantial justice for the homeowner to have an attached garage like other properties within the neighborhood.**

**Mr. Reynolds seconded the motion, and the Variance was unanimously approved. The vote was 6-0.**

**Other Business:** None.

**Adjournment:** Upon the motion of Mr. Reynolds, seconded by Mrs. Powell, and unanimously agreed upon, Chairman Isenhour adjourned the meeting at 6:59 p.m.

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Savanna Ocasio  
Program Support Assistant