



Board of Adjustment Regular Meeting

August 23, 2022

Call to order

Chairman Gurney called the Board of Adjustment regular meeting to order at 1:00 p.m.

I. Roll Call

Board Members Present:

Mr. Neil Gurney, Chairman
Mr. Wyn Hardy, Vice Chairman
Mr. Melvin Owensby
Mr. Greg Gardner
Mrs. Kimberly Sayles, Alternate Serving on Board
Mr. Mark Windfeldt, Alternate
Mr. Rick Spruill, Alternate

Absent:

Mr. Al Joyner

Town Council Members and Town Representatives present:

Commissioner David DiOrio, Council Liaison
Michael Williams, Community Development Director
Richard Carpenter, Development and Environmental Review Specialist

II. Approval of Agenda

The agenda for the August 23, 2022 Board Meeting was reviewed. **Vice Chairman Wyn Hardy moved to approve the agenda, as presented. Mr. Greg Gardner seconded. All present members voted in favor.**

III. Approval of Minutes

The minutes from the June 28, 2022 Board Meeting were Reviewed. Board members noted that Mr. Rick Spruill should be listed as present for that meeting and various

errors were found regarding who made motions and seconds. Community Development Director Michael Williams and Town Clerk Olivia Stewman will make necessary edits. Mr. Melvin Owensby made a motion to approve the June 28, 2022 meeting minutes, as amended. Mr. Hardy seconded and all voted in favor.

IV. Public Comments

There were no comments from the public.

V. Old Business

There was no old business to discuss.

VI. New Business

A. Zoning Variance #2022005: request for variance to keep stairs that were rebuilt as an encroachment into the street front yard. Property address: 2367 Buffalo Shoals Road.

Board Chairman Neil Gurney explained the quasi-judicial process and detailed that swearing in would be necessary for any testimonies.

Development and Environmental Review Specialist Richard Carpenter and 2367 Buffalo Shoals Road homeowner David Edgerton were sworn in.

Mr. Gurney confirmed that no Board members were required to recuse themselves.

Specialist Carpenter explained that Mr. Edgerton is unsure of the distance between the stairs and encroachments and expressed that he is concerned that if a variance is granted, it will be based on inaccurate information. Specialist Carpenter noted that because of the uncertainty, Mr. Edgerton has requested to postpone his hearing until the September Board of Adjustment meeting.

Mrs. Kimberly Sayles made a motion to postpone the hearing for Zoning Variance #2022005 until the September meeting. Mr. Owensby seconded and all voted in favor.

B. Zoning Variance #2022006: request for 3.17' reduction of the side yard setback for a house that was built within the 10' side yard setback. Property address: 139 Pier Point Drive.

Mr. Hardy led the hearing for Zoning Variance #2022006.

Mr. Hardy asked if anyone would like to swear in to give a testimony.

Specialist Carpenter and Mr. Jake Johnson were sworn in.

No board members were required to recuse themselves.

Specialist Carpenter provided the Board with background information and noted that this parcel has been addressed at a previous meetings. Specialist Carpenter detailed that a side yard setback was in violation and that the main issue emerged after a survey of a northern property that was granted a Certificate of Occupancy (CO) that revealed that the southern property is not within the setback. Specialist Carpenter provided the board with a site plan which was approved by the Town, but was not followed by the contractor. Mr. Gurney asked how much of the side yard was in the setback Specialist Carpenter answered that the rear corner behind the meter base to the corner up to the top are in the setback.

It was discussed that options to fix the setback issue are cutting off the portion of the structure within the setback or shifting the structure to a location within compliance. Specialist Carpenter expressed that the applicant does not want to pursue either option and has asked for another chance at being granted a variance.

Mr. Gurney asked if any neighboring property owners had commented. Director Williams was sworn in and noted that neighboring property owners were notified of the variance request and could have attended the hearing to express concern, but did not.

Specialist Carpenter, Director Williams, and Board members held further discussion on the structure in violation.

Mr. Johnson presented on behalf of the landowner and expressed that his understanding is that the minimum lot width should be 100 ft., and that the original developer purchased various lots and that this specific lot did not meet specific width requirements. Mr. Hardy asked if this was based on the developers plan and Mr. Johnson stated that it was to his knowledge.

Mr. Johnson expressed concerns with the structural integrity and property values if the structure is shifted. Mr. Johnson also expressed that if the building were to be shifted, it would be too close to the other structure and would look unappealing. Mr. Johnson stated that if structure was built within the 100 ft. lot as originally planned, it would have been within regulation.

Mr. Hardy noted that it is the responsibility of the property owner and developer to know the logistics of their property.

Mr. Johnson reiterated his concerns with moving the structure.

Mr. Hardy asked if the parcel is illegal at the top point if it is 90 ft. instead of 100 ft. and Director Williams noted that it is not illegal, but it is non-conforming.

Mr. Gardner asked for verification that it was built incorrectly and against code, regardless of the original plan, and went against the submitted sight plan. It was confirmed that this is correct.

Mr. Owensby asked that if the owner of the site plan and builder would be liable for any public safety issues and noted that if that were taken into consideration to begin with, there would be no public safety or liability issues. Mr. Gardner asked if the company hired to shift the structure would have any guaranteed liability if any issues immerge in moving it. Mr. Johnson expressed uncertainty as to whether or not a CO granted after the shifting of the structure will qualify as a material fact. Mr. Hardy explained the seller guarantee.

Mr. Hardy mentioned that the past two months the notice of hearing sign had been removed after the Town had placed them per state requirement.

Specialist Carpenter provided the board with the survey, which was submitted to the Town after the as-built, and explained details. Mr. Gurney asked if the structure would be in compliance if the same person owned both the northern and southern lots and Specialist Carpenter answered no no. Mr. Carpenter noted that a variance could be requested for either lot, but the variance for northern lot would have to be requested by the new owners of the property.

Specialist Carpenter explained that he had spoken with one of the Rutherford County building inspectors who stated that either cutting off a portion of the structure or moving the structure would require engineering oversight in order for a CO to be granted.

Mr. Gurney asked if Specialist Carpenter had spoken with the new residents on the northern property and he had not. Mr. Johnson noted that he has heard second-hand that northern property owners have expressed no issues.

Mr. Hardy closed the public portion of the hearing and the Board began deliberating.

Mr. Gardner expressed that he has had continuous issues with the entire project, as there have been various violations. Mr. Owensby agreed.

Mrs. Sayles expressed concern regarding Mr. Johnson's mentions regarding the possibility of decreasing property values or safety issues and noted that this would result in hardship regardless of who is liable. Mr. Gurney also expressed concerns in regard to shifting the structure. Mr. Gurney noted that his main concern was if the new property owner had issues with the structure.

Mr. Hardy questioned if a resolution could be to put other options on hold and have someone would inquire with the northern buyer if they would be willing to alter property line.

Director noted that there must be 100 ft. between building sites and that if the property line were altered to provide more footage for the southern lot the result would be non-compliance with both the southern and northern properties.

Mr. Gurney expressed that he feels that this variance would be better than moving the home and that he would like written support from the property owner who Mr. Johnson claimed to have had no issues. Mrs. Sayles agreed.

Mr. Hardy noted that during the initial meeting, a deciding factor to not grant a variance was whether or not all four criteria hardships were in place and that the responsibility of the Board is to uphold regulations.

It was noted that a written letter signed by the other property owner would be beneficial before making a decision. Mr. Gurney recommended that the hearing be continued at the September meeting. Mrs. Sayles expressed support for continuing the hearing. There was Board consensus to continue the hearing at the September Board meeting.

Mr. Gurney made a motion for a continuance of the hearing at the September meeting to review further evidence. Mr. Gardner seconded and all voted in favor.

It was noted that Mrs. Sayles, Alternate, should remain seated on the board to hear and vote on this case when it is continued. If the Board would like to change this, it would need to be done by motion.

VII. August Department Report

Director Williams provided the Board with a department report.

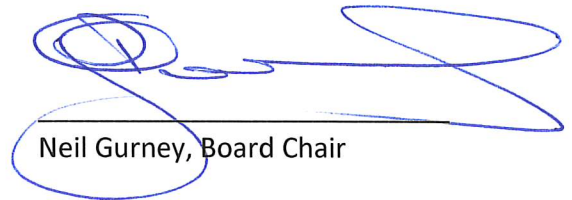
VIII. Adjournment

Chairman Gurney asked for a motion to adjourn the Board of Adjustment regular meeting at 2:29 p.m. Mr. Owensby made motion to adjourn and Mrs. Sayles seconded. All members voted in favor.

ATTEST:



Olivia Stewman, Town Clerk



Neil Gurney, Board Chair