

**Minutes of the Meeting of the
Board of Adjustment**

**Tuesday, July 27, 2021
1:00 p.m.**

This meeting was held in Council Chambers

The Chairman opened the meeting at 1:01pm

ROLL CALL

Present **Melvin Owensby, Chairman
Neil Gurney, Vice Chairman
Greg Gardner, Board Member
Wyn Hardy, Board Member
Al Joyner, Board Member
Kimberly Sayles, Alternate
Scott Doster, Alternate**

**Absent: Betty Ross, Alternate
Patrick Bryant, Council Liaison**

**Also Present: Mike Williams, Assistant Community Development Director
Sha'Linda Pruitt, Recording Secretary**

APPROVAL OF THE AGENDA

Chairman Owensby asked for a motion to approve the agenda. Mr. Hardy gave the motion, Mr. Gurney gave the second. All voted in favor.

APPROVAL OF THE MINUTES

Chairman Owensby asked for a motion to approve the agenda. Mr. Hardy made a motion to approve the agenda and Mr. Gardner made the second. All voted in favor.

OLD BUSINESS

None

NEW BUSINESS

- A. ZV2021002, a variance to reduce the minimum lot area from 10,000sf to 1,742.4sf (a reduction of 8,257.6sf); and to reduce the minimum front (street) yard from 35' from center of road to 17' (a reduction of 18'); and to reduce the minimum front (lake) yard from 35' from the water edge to 0' (a reduction of 35'), in order to build a single family home on a .04 acre non-conforming lot of record with existing boathouse and docks. Property is owned by Sean and Allison Krivatch at 435 Holmes Road (Parcel #232585) and located in the Residential 1 zone.

All parties were sworn in including Vincent Wiegman, Sean and Allison Krivatch who wished to testify. Staff was sworn in. The town Attorney was out of town and could not attend.

The Vice Chairman asked if anyone has any ex-parte communications with the applicants?

Mr. Joyner stated that he knew Mrs. Krivatch very well and were friends and that he also knew the original owner well as such he will recuse himself. Kimberly Sayles was asked to be seated as an alternate. No other board member had any previous discussions concerning this case. The applicant did not wish to present to challenge.

Staff began presentations.

Vincent Weigman (Weigman Architecture) is requesting variances on behalf of his clients/property owners, Sean and Allison Krivatch, to enable them to build a single family home on their .04 acre (1,742.4SF) non-conforming lot of record. The property is addressed as 435 Holmes Road, Lake Lure, NC (Parcel #232585) and is located in the Residential 1 Zoning District.

Additional Information for the Board:

- 1) Per §92.088, the board of adjustments is able to grant a variance to the zoning regulations in the case of unnecessary hardship. The decision to grant a variance requires substantial justification and the Zoning Regulations provide specific guidance for determining what constitutes an unnecessary hardship. A copy of section §92.088 is being provided with this memo.
- 2) The applicant has provided a complete application for this use. There has been no other documentation requested or deemed necessary to process this application.
- 3) The applicant is requesting a variance for a reduction of the required 10,000SF minimum lot area to 1,742.4SF, for a variance of 8,257.6SF

- 4) The applicant is requesting a variance for a reduction of the required 35' minimum front (street) yard setback to 17', for a variance of 18'.
- 5) The applicant is requesting a variance for a reduction of the 35' required minimum front (lake) yard setback to 0', for a variance of 35'.
- 6) The single family home is proposed within the NC DEQ mandated 25' trout buffer but the applicant has applied to DEQ, and been approved, for the encroachment into the buffer zone.
- 7) The parcel currently includes a newly remodeled boathouse with a finished "dry room" and docks. Parking is currently on the side of the road.

Mr. Gurney asked if there were any concerns from neighbors. Mr. Williams reported that the concerns that were expressed were in relation to the size of the lot seeing that it is very steep.

The Chairman opened the floor for the applicant to begin presenting

Vincent Wiegman began the presentation. This is going to be a very small home on a small lot. The green space was a concern for some. We had to go through the state for the runoff water and we are going to be addressing the issues with erosion. It is a steep lot so they would also need a sea wall to stop the erosion.

The shape of the lot could not be helped by the owners which is why they are seeking a variance.

Mr. Wiegman pointed out that they have a civil engineer in place to aid in the erosion control.

Mr. Owensby asked where will the parking be located?

Mr. Wiegman replied he parking will be located where it currently is in place, we will just be replacing the telephone poles with the edge of the house

Mr. Gardner asked whether the telephone poles are working or not?

Mr. Wiegman replied that the poles no longer work.

Mr. Wiegman stated that the construction will be limiting the overhang to catch the run off of water. The reality is these lots were platted pre-regulations.

Mr. Gardner asked what the applicants intent were for the property, would this be their permanent home or do they have any intentions of using it as a vacation rental?

Mr. & Mrs. Krivatch answered that their current home is in Asheville. They intend for this to be a weekend getaway for just the two of them.

Ms. Sayles asked what is the over sq footage of their proposed home?

Mr. Wiegman answered 1,742sf. It will be a very small home. A kitchen living room and a bed room, the lower levels would be down in the floodplain.

Mr. Gurney asked if it was zoned as residential.

Mr. Williams stated that the area was in fact been zoned residential. They

Mr. Gurney asked about what the use for the boat house is now.

Mrs. Krivatch stated that currently drive down for the day and go back home by the evening.

Mr. Owensby asked if this case has already been presented to the Zoning and Planning Board?

Mr. Williams stated no

Mr. Hardy asked to speak more about the green space in front of the lake front. Have both the lake front yard is the lake front solely for access to the boat house. Was their house originally two different lots?

Mr. Wiegman there were originally 9 lots that were divided and this is the last of that section.

Ms. Sayles asked how long have you owned the property here?

We lived in 30 years in the Virgin Island. We still have property there and we have never rented it out either so we have no plans of renting out this new property.

Mr. Hardy asked did you recently remodel the property.

Mr. Krivatch answered yes that the docks were their prior to their purchase but they did add some modifications.

Mr. Gurney asked is whether there is sewer attached?

Mr. Krivatch answered that the engineering has been put in place to tap into the new sewer system.

The Chairman closed the case for deliberations.

FINDING THE FACTS

The discussion ensued with the board over the following points:

- A. Unnecessary hardships would result from the strict application of the regulations.
- B. The hardships result from conditions that are peculiar to the property, such as location, size, or topography of the property.
- C. The hardship did not result from actions taken by the applicant.
- D. The requested variance is consistent with the spirit, purpose, and intent of the regulations; will secure public safety and welfare; and will preserve substantial justice.

Mr. Gardner stated that the property owners should have taken into account that this may not fit into the spirit of the regulations. It would be hard to prove that this case meets all of the points to grant the variance. Will this create a precedent for future houses to come and make similar request? It was purchases as a non-conforming lot so the burden is on the purchaser.

DECISION

With regard to Case Number ZV-2021002, the Board moves to find that the applicants have not demonstrated that unnecessary hardships exist as per the following testimony. The variance is rejected due to insufficient evidence to fit the request. Mr. Gurney made the motion and the second was made by Mr. Gardner. All voted in favor.

Mr. Krivatch stated that we will reapply with the guidance suggested by the board today.

- B. Introduce new Development and Environmental Review Specialist, Rick Carpenter

Mr. Carpenter introduced himself

Adjournment

Adjournment

The Chairman asked for a motion to adjourn. Mr. Gardner gave the motion and Mr. Hardy gave the second.

The meeting ended at 1:59pm

ATTEST:


Sha'Linda Pruitt, Recording Secretary


Melvin Owensby, Chairman