



Board of Adjustment Regular Meeting

July 25, 2023

Call to order

Board Chair Greg Gardner called the Board of Adjustment regular meeting to order at 1:02 p.m.

I. Roll Call

Board Members Present:

Mr. Greg Gardner, Chair
Mr. Neil Gurney, Vice Chair
Mr. Wyn Hardy
Mr. Melvin Owensby
Mrs. Kimberly Sayles, Alternate
Mr. Mark Windfeldt, Alternate (Serving)

Absent:

Mr. Al Joyner

Town Council Members and Town Representatives present:

Michael Williams, Community Development Director
Richard Carpenter, Development and Environmental Review Specialist
Kimberly Martin, Community Development Administrative Support Specialist
Commissioner David DiOrio, Council Liaison
Commissioner Scott Doster, Observer

II. Approval of Agenda

The agenda for the July 25, 2023 Board of Adjustment meeting was reviewed. **Mr. Neil Gurney made a motion to approve agenda, as presented. Mr. Mark Windfeldt seconded. All voted in favor.**

III. Approval of Minutes

The minutes from the June 27, 2023 Board meeting were reviewed. **Mr. Wyn Hardy made a motion to approve the June 27, 2023 meeting minutes, as presented. Mr. Melvin Owensby 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

Chair Gardner explained the quasi-judicial hearing process and rules.

A. *Variance Request: ZV2023008 regarding 120 Basswood Drive to reduce minimum lake front yard setback variance to allow replacement of a non-conforming deck that was previously removed.*

The following individuals were sworn in:

Michael Williams, Community Development Director
Richard Carpenter, Development and Environmental Review Specialist
Elizabeth Harris, Property Owner
Walter Dena, with Property Owner

There were no challenges for cause or ex-parte communication.

Development and Environmental Review Specialist Richard Carpenter explained that the site is located off of the water, it is non-conforming, and there is currently no deck. Specialist Carpenter further explained that earlier in the year, he was contacted by a contractor seeking a zoning permit for demolition and relayed to the contractor that building more than a 4 ft. access structure would require a variance, so the contractor obtained a demolition permit and the property owner is now seeking a variance for a 13 x 39 ft. deck. It was noted that it is steep, close to the water, baring and not good for growth. Specialist Carpenter noted while there are hardships, he questioned whether or not the variance requested is the minimum necessary. It was explained that the former deck was 12 x 34 ft. per the tax department, but applicant says that it was the same as the dimensions being requested. Mr. Owensby asked if the part removed was already in the trout buffer and Specialist Carpenter answered yes and noted that it is not a functional riparian buffer and does not interfere with state requirements. Mr. Windfeldt asked if the stairway in the photo is going towards the deck the property owner showed the board an additional photo. Mr. Windfeldt asked if it is a sewer pipe visible in the photo and Specialist Carpenter answered yes. Mr. Windfeldt asked if there will be any remediation to fix the visible sewer pipe and Specialist Carpenter explained that the deck would cover the pipe as required by building code. Mr. Windfeldt noted that the true dimensions are not known without a survey. Specialist Carpenter noted that the board could vote to approve the variance based on the proposed footprint, and an as-

built survey will confirm prior to permitting. Mr. Gardner noted that if the board approved it, the property owners could build it based on the board's approval. Specialist Carpenter noted that any conditions can be included in a variance request, as long as it is reasonable to the request.

Elizabeth Harris, homeowner, explained that some of the boards on the former deck were perishing and it was not her intent to demolish the entire former deck, but the contractor recommended the full demolition. Ms. Harris also noted that the lack of a deck is a safety issue and that she is requested that a new deck be constructed with the same dimensions as the former deck. Mr. Windfeldt asked if either of the dimensions would cover the pipe and Ms. Harris answered yes.

Walter Dena, party associated with the property owner, noted that he would recommended that a variance be granted with the originally submitted dimensions because it would allow access to the fire pit while maintaining safety.

Mr. Owensby asked what would be the maximum size of deck that the applicant could construct without a variance and Specialist Carpenter answered 4 ft. in width and noted that length could possibly go the full 39 ft. without a variance. Board members discussed that those dimensions would not be functional. Mr. Owensby asked what the maximum size would be to get to access the fire pit and Specialist Carpenter estimated based on the drawings submitted. Mr. Windfeldt asked if the Board are approving what the applicant requested. Specialist Carpenter explained that the Board could change it what is granted and noted that all parties can motion. It was noted that neighbors expressed support for the request.

The testimony was closed and the Board began deliberation.

Board members reviewed the following criteria:

1. Are there extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district?

The Board determined that the slope would be an extraordinary or exceptional condition to the piece of property that are not applicable to other lands or structures in the same district.

2. Will granting the variance requested confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located?

The Board determined that granting the variance would not grant the applicant any special privileges that are denied to other residents of the district in which the property is located.

3. Would a literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located?

The Board determined that a literal interpretation of the provisions of the chapter would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.

4. Will the requested variance will be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or to the general welfare?

The Board determined that the requested variance will be in harmony with the purpose and intent of the chapter and will not be injurious to the neighborhood or to the general welfare.

5. Are the special circumstances the result of the actions of the applicant? What are any special circumstances due to?

The Board determined there are no special circumstances that are the result of the actions of the applicant.

6. Is the variance requested is the minimum necessary for the proposed use of the land, building or structure?

The Board noted that this was previously discussed.

Mr. Gurney made a motion to grant Variance Request: ZV2023008 regarding 120 Basswood Drive to reduce minimum lake front yard setback variance to allow replacement of a non-conforming deck that was previously removed with the dimensions of 13 ft. by 39 ft. dimensions. Mr. Gardner seconded. All voted in favor.

B. Variance Request: ZV2023009 regarding 252 Thomas Drive to reduce minimum lakefront yard and street front yard setbacks to allow for the replacement of existing with a larger SFD (Single Family Dwelling).

The following individuals were sworn in:

Michael Williams, Community Development Director

Richard Carpenter, Development and Environmental Review Specialist
Vince Wegman, Project Architect

There were no challenges for cause or ex-parte communication.

Specialist Carpenter displayed the site plan and detailed the property information. Specialist Carpenter noted that the corner is unbuildable and there is not much room on the lakefront setback side either. It was mentioned that the house was built in the 1950s. Specialist Carpenter detailed that it is 13 ft. into the lakefront and 30 ft. from road front. Mr. Owensby asked if it was non-conforming before and Specialist Carpenter answered yes. Specialist Carpenter noted that the add-on is building vertically rather than horizontally. Specialist Carpenter displayed the pre-existing patio and noted the layout of the house is the same, but it will be larger in height. Staff noted that hardships could be topography and size. Specialist Carpenter explained that strict enforcement of the ordinances would make the lot unbuildable and it would be difficult to build a new house on it today. Specialist Carpenter noted that it is still out of the trout buffer and that the trout buffer should not be an issue. Mr. Windfeldt asked what the variances the applicant is seeking and Specialist Carpenter answered 13 ft. lakefront and 35 ft. street front. Mr. Windfeldt asked if the street front variance would cause a public safety issue and Specialist Carpenter noted that it is a private road with little traffic and would not interfere with public safety access. Mr. Gurney asked if the new house is being built in the same footprint as the existing and Specialist Carpenter said approximately. Specialist Carpenter noted that they are increasing non-conformity to an extent, but mostly building vertically. It was discussed that the public safety issue is with the house location, not the footprint. Mr. Hardy asked if there was any feedback from neighbors and Specialist Carpenter answered no. Specialist Carpenter noted that staff does not want to see a house go any closer to the setback, but it is already there and it does not appear that it is going to go any closer based on submitted plans. Mr. Windfeldt noted that if it were a blank slate today, the town may not approve any of the homes on that road.

Mr. Vince Wegman showed where an emergency truck was parked. It was noted that the fire boat can access the property. Mr. Gurney asked if it is being built in the same footprint and Mr. Wegman showed that one corner will be slightly closer to the setback. Mr. Hardy asked about the overhang and Mr. Wegman noted that the overhang would be about the same, as well. It was noted that if there was one less home, the road would be classified as a driveway. Mr. Gardner asked if this is a new homeowner and Mr. Wegman answered that the property been in the family for a while. Mr. Gurney asked if it is any closer to the lakefront setback and Mr. Wegman answered that it will be the same as it is now. Mr. Wegman noted that they are trying to stay out of the trout buffer.

The testimony was closed and the Board began deliberation.

Mr. Gardner noted that the footprint is about the same, many hardships that are not self-inflicted. Mr. Gurney agreed. Mr. Hardy expressed that it will be improved with the new construction. Mr. Owensby explained that mobile homes used to be allowed, which is why a lot of lots constructed on are non-conforming.

Board members reviewed the following criteria:

1. Are there extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district?

The Board determined that there are various extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.

2. Will granting the variance requested confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located?

The Board determined that granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.

3. Would a literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located?

The Board determined a literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.

4. Will the requested variance will be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or to the general welfare?

The Board determined the requested variance will be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or to the general welfare.

5. Are the special circumstances the result of the actions of the applicant? What are any special circumstances due to?

The Board determined there are not any special circumstances the result of the actions of the applicant.

6. Is the variance requested is the minimum necessary for the proposed use of the land, building or structure?

The Board determined the variance requested is the minimum necessary for the proposed use of the land, building or structure.

Mr. Gardner made a motion to grant Variance Request: ZV2023009 regarding 252 Thomas Drive to reduce minimum lakefront yard and street front yard setbacks to allow for the replacement of existing with a larger SFD (Single Family Dwelling). Mr. Hardy seconded and all voted in favor.

C. *Variance Request: ZV2023010 regarding 305 Holmes Road to reduce minimum lakefront yard and side yard setbacks to allow building a new deck.*

The following individuals were sworn in:

Michael Williams, Community Development Director
Richard Carpenter, Development and Environmental Review Specialist
Nicholas Velardo, Property Owner

There were no challenges for cause or ex-parte communication.

Specialist Carpenter noted that this is a project that has been ongoing and Odom Engineering has been working with the property owner and contractor to make modifications and improvements to the home. Specialist Carpenter noted that they have active permits to build, but it is on hold for the request of 1 ft. off of side setback and 11 ft. lake front setback. Mr. Nicolas Velardo, property owner, displayed a photo and explained that there are stairs that will go down and a minimal walkway to go to the lake house, and the deck would allow direct access. Specialist Carpenter displayed a visual site plan. Mr. Owensby asked if it would be interfering with the trout buffer and Specialist Carpenter answered yes and noted that it was before as well. Specialist Carpenter noted that new vegetation may need to be planted and it would have to be approved by NCDEQ. Mr. Gardner asked how big the landing was with the permitted stairs and Specialist Carpenter said it cannot exceed 48 x 48. Specialist Carpenter noted that he cannot determine a hardship based on the application. Mr. Gurney asked what they would have to do if the variance is not approve and Specialist Carpenter noted that they would have to stick to the permitted plan. Mr. Hardy asked Specialist Carpenter to

display what had been approved and Specialist Carpenter noted that the site plan does not show what was approved, only what is being requested.

Mr. Velardo explained that this had been a yearlong process and that his original intent was to remove the stairs, move the land back, build a seawall, and rebuild stairs as was. Mr. Velardo expanded that Odom Engineering had determined that the replacing the stairs as was would not be doable because they would block the boathouse entrance. It was noted that there was not retention wall before, but when one had to be built without rebuilding the stairs, the property owner felt that there might be safety issues. Board members discussed and continued review of the photos provided. Board members questioned if a variance is necessary or if the stairs could be rebuilt using permitted dimensions.

The testimony was closed and the Board began deliberation.

Board members reviewed the following criteria:

1. Are there extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district?

Mr. Windfeldt expressed that this reminds him of a past case with the 4 ft. stairs and that while it is questionable that a hardship exists, he is not sure if there is a reason not to grant it.

The Board determined that there are not extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.

2. Will granting the variance requested confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located?

Mr. Owensby expressed that he thinks granting the variance requested confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located. Board members concurred.

3. Would a literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located?

The Board determined that a literal interpretation of the provisions of this chapter would not deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.

4. Will the requested variance will be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or to the general welfare?

The Board determined requested variance would not be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or to the general welfare.

5. Are the special circumstances the result of the actions of the applicant? What are any special circumstances due to?

The Board remained undecided as to whether or not there were special circumstances the result of the actions of the applicant.

6. Is the variance requested is the minimum necessary for the proposed use of the land, building or structure?

The Board questioned whether or not the variance requested is the minimum necessary for the proposed use of the land, building or structure.

Mr. Hardy made a motion to reopen the hearing. Mr. Owensby seconded and all voted in favor.

Specialist Carpenter asked Mr. Velardo why the stairs cannot be re-structured. Mr. Velardo noted that the option was presented by the engineer and no other alternatives presented. Specialist Carpenter questioned if topography and height might be why the engineers only presented one option. Specialist Carpenter recalled an elevation difference and noted that it is a very short span. Mr. Velardo noted that the engineers said that it had to be the minimal impact possible. Specialist Carpenter explained that Mr. Velardo previously discussed conveniences, but in his experience on height there may be topography height hardships. Mr. Gardner asked about continuing the case until the next meeting, so Odom Engineering can provide additional information. The applicant and Board discussed. Board members expressed that there is likely a reasonable permitted alternative solution. Director Williams recommended continuing the case if needed.

The case was re-closed.

Mr. Gardner made a motion to continue the case in order to allow Odom Engineering to provide additional information. Mr. Gurney seconded and all voted in favor.

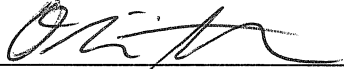
VII. July Department Report

Director Williams provided the Board with a department report for the month of July.

VIII. Adjournment

Chair Gardner asked for a motion to adjourn the Board of Adjustment regular meeting at 1:55 p.m. Mr. Hardy made motion to adjourn and Mr. Gurney seconded. All members voted in favor.

ATTEST:



Olivia Stewman, Town Clerk



Greg Gardner, Board Chair