



## **Board of Adjustment Regular Meeting**

**February 28, 2023**

### **Call to order**

Chair Neil 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. Greg Gardner  
Mr. Al Joyner  
Mr. Melvin Owensby  
Mrs. Kimberly Sayles, Alternate  
Mr. Mark Windfeldt, Alternate

#### **Absent:**

Mr. Rick Spruill, Alternate

#### **Town Council Members and Town Representatives present:**

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

### **II. Approval of Agenda**

The agenda for the February 28, 2023 Board of Adjustment meeting was reviewed. **Mr. Al Joyner made a motion to approve agenda, as presented. Mr. Wyn Hardy seconded. All voted in favor.**

### **III. Approval of Minutes**

The minutes from the December 20, 2022 Board meeting were reviewed. **Mr. Melvin Owensby made a motion to approve the December 20, 2022 meeting minutes, as presented. Mr. Greg Gardner seconded and all voted in favor.**

**IV. Public Comments**

There were no comments from the public.

**V. Old Business**

**A. Board Membership and Elections**

Commissioner David DiOrio announced that Council appointed Wyn Hardy to serve on the Board for a term of one year and Kimberly Sayles to serve on the board for a three year term.

It was explained that Board elections this year will be determined by each member emailing Commissioner DiOrio with a nomination for the chair position of two board members, Commissioner DiOrio will create a ballot based on nominations, and Board members will respond to an email containing the ballot with a vote for their first and second choices listed ballot. Chair Gurney asked if alternates may be nominated and Commissioner DiOrio answered yes.

**VI. New Business**

**A. Review Zoning Variance Request #2023001 for 35' reduction of the lakefront yard setback for rebuild of existing house. Property address: 404 Burnt Ridge.**

Chair Gurney explained the hearing process.

Development and Environmental Review Specialist Richard Carpenter and Community Development Director Michael Williams were sworn in.

Specialist Carpenter explained that the request is to remove the one story block home, there may be issues with the foundation, and the applicants would like to raise the house completely and somewhat demolish the foundation and reinforce it with steel. Specialist Carpenter expanded that the request includes a 100 percent reduction to setback requirements. It was noted that it would be non-conforming if moved it or remove, because the property would lose your protective status and could only be put back as conforming or as an access structure. It was also noted that a structure from an existing roofline or foundation would be allowed. Specialist Carpenter noted that the property would lose a 1-2 ft. overhang. Specialist Carpenter reviewed house design and noted that the elevation will be configured differently than the existing. Specialist Carpenter expressed that the best case scenario would be for the house to be moved back and to provide more of a buffer from the trout buffer. It was determined that there may be an easement involved that limits how far back the structure could be moved.

Mr. Hardy asked if moving the structure back would satisfy all other requirements and Specialist Carpenter noted that it would be difficult to move the house without a variance, and a new house would require an entire new design that the requestor did not pursue. Mr. Joyner asked if the existing foundation and the existing overhang comply and Specialist Carpenter answered yes. Mr. Joyner asked if they had gutters before and Specialist Carpenter could not recall and noted an as-built survey would need to confirm and ensure that they line up with the seawall. Mr. Joyner asked if the carport would meet zoning requirement and Specialist Carpenter said yes, the only thing it may not meet is the lake front yard setback. Specialist Carpenter reviewed where the carport and retaining wall would be located. Mr. Joyner asked if the house and the carport should be reviewed separately and Specialist Carpenter explained that the carport is currently in compliance and the only element that is not is the house overhang. Specialist Carpenter explained that ordinances note if a structure is over a line and it modified or rebuilt, it needs to be made conforming. Mr. Gurney asked if the all other requested elements are the same as the existing footprint and Specialist Carpenter expressed that he believes so. Specialist Carpenter noted the contractors could start from a clean slate if the variance is granted. Mr. Joyner asked if the request is for no restrictions and Specialist Carpenter said yes, in terms of the lakefront setback. It was noted that the contractor cannot put non-conforming elements if the current structure is removed from the existing location. Mr. Gardner asked why the entire structure would not be moved and Specialist Carpenter noted that he is unsure but if it is moved, it may still be in the setback but less egregious. Director Williams noted that the existing structure is already in the encroachment line and trout buffer. The Board discussed that the request involves modifying the foundation. Director Williams reviewed the location. Board members discussed that even if the variance is granted, the applicant would likely have to apply for another variance request. Mr. Joyner asked if the overhang is serving gutter purposes and Specialist Carpenter expressed that he thinks that is correct. Director Williams expressed issues with the ordinance and how it is written.

Specialist Carpenter noted that if the variance is granted, the whole plan could be amended. Mr. Joyner asked why the Board could not grant a variance based on specific plans and Specialist Carpenter noted that Zoning cannot determine the design of the structure. Mr. Joyner asked if the Board could grant a variance within the measurements presented.

Specialist Carpenter noted that he had experienced similar cases and suggested that if an issue is uniform to the community it should be handled with an ordinance text amendment. Specialist Carpenter noted an example is adding language for lake front setback encroachments, such as these structures can be removed and repaired but must be replaced in 12 months from the time of permitting.

Mr. Joyner asked if the whole property would be included in the setback variance if it is granted and Specialist Carpenter answered yes. Mr. Joyner expressed concern. Specialist Carpenter expressed that this is a generalized problem and that an amendment would be specific to certain setbacks. Mr. Joyner asked if the Board could grant a specific perimeter of the requestor or if granting the variance would be all-or-nothing. Specialist Carpenter said that he has authority to grant certain measurements, but is unsure if only certain elements can be granted a variance. Mr. Gardner expressed concern with uncertainties and fixing the foundation. Specialist Carpenter noted that it is possible that the Town could challenge the property owner on the trout buffer instead of the setback.

Mr. Gurney asked how much it would delay the process if the Board recommended a text amendment to the Zoning and Planning Board and Specialist Carpenter noted at least 30 to 60 days. Mr. Owensby asked if the process could still be taken to the zoning and planning board without delaying this specific process if it were to be granted. Specialist Carpenter noted that if the board finds the issue to be general to the community, then it should likely be granted and could be taken to the Zoning and Planning Board for a text amendment at a future date. Mr. Joyner asked if there had been many similar cases or if it is only likely that many could occur and Specialist Carpenter noted that there is potential that many could occur and that he had experienced four similar cases during his tenure with the Town.

Specialist Carpenter noted that the requested hearing can be continued to allow time to speak with the Town Attorney about any uncertainties.

Commissioner DiOrio explained that contractors have approached the Town with a request to discuss issues with ordinances and that the Board's opinions would be beneficial, but expressed that he would hesitate to defer this to this type of protocol moving forward.

Mr. Owensby suggested the Board could continue the hearing for a specific amount of days to discuss questions with the Town attorney and allow the contractor the opportunity to attend.

Mrs. Kimberly Sayles asked if the board specify a percentage or footage limit to be at 0 setback and Chair Gurney answered that would likely be another question for the Town Attorney.

Mr. Mark Windfeldt asked if the Board could deny the request and ask the applicant to re-apply with a more refined request. Specialist Carpenter noted that could be an option.

Mr. Joyner expressed that if approving the variance is carte blanche, he would not be in favor of granting it, but he would be in favor of granting a conditional variance. Mr. Gardner expressed that a conditional would leave the issue of open interpretation and Mr. Joyner commended that the Board would need to make the conditional variance very specific, if allowed.

Specialist Carpenter noted that a continuance would save the property owner from having to re-apply and re-pay for a new request. Board discussed continuous. Director Williams noted that regardless of which route to take in moving or rebuilding the home, there will have to be a variance involved.

Specialist Carpenter explained that many municipalities allow removal of non-conforming structures, but find that they must be built in the same location and there is often a time limit to re-build. Specialist Carpenter recommended that this issue be in the generalized category.

Mr. Al Joyner made a motion to continue the hearing at the March regular meeting in order to ask for feedback from the Town attorney regarding legalities and to allow the applicant the opportunity to speak with the Town about alternative options. The Board discussed possible options with granting the request and text amendments. Chair Gurney asked if the Board could ask the applicant for a variance based on a re-design and Specialist Carpenter said yes. Mr. Gardner seconded Mr. Joyner's motion and all voted in favor.

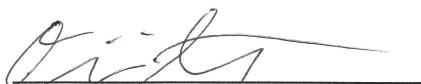
**VII. February Department Report**

Director Williams provided the Board with a department report for the month of February. Director Williams explained that he had just spoken with consultant for the cell tower contractor and the State Historic Preservation Office and that the project is making progress. Director Williams Introduced Community Development Administrative Support Specialist Kim Martin.

**VIII. Adjournment**

Chair Gurney asked for a motion to adjourn the Board of Adjustment regular meeting at 2:01 p.m. Mr. Owensby made motion to adjourn and Mr. Hardy seconded. All members voted in favor.

ATTEST:

  
Olivia Stewman, Town Clerk

  
Neil Gurney, Board Chair