



Board of Adjustment Regular Meeting

December 20, 2022

Call to order

Chair Neil Gurney called the Board of Adjustment regular meeting to order at 1:05 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. Rick Spruill, Alternate

Absent:

Mr. Mark Windfeldt, Alternate
Commissioner David DiOrio, Council Liaison

Town Council Members and Town Representatives present:

Commissioner Scott Doster, Council Liaison (filling in)
Michael Williams, Community Development Director
Richard Carpenter, Development and Environmental Review Specialist

II. Approval of Agenda

The agenda for the December 20th Board of Adjustment meeting was reviewed. **Vice Chair Wyn Hardy made a motion to approve agenda, as presented. Mr. Greg Gardner seconded. All voted in favor.**

III. Approval of Minutes

The minutes from the November 15, 2022 Board meeting were reviewed.

Mr. Al Joyner made a motion to approve the November 15, 2022 meeting minutes, as presented. Vice Chair 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. Review Zoning Variance Request #2022010 for 27' 5" Reduction of the Lakefront Setback for Rebuild of Existing House. Property Address: 1116 Memorial Hwy.

Chair Gurney explained the quasi-judicial hearing procedures. Chair Gurney also explained hardship criteria.

Chair Gurney asked for those to swear in.

Richard Carpenter, Town Development and Environmental Review Specialist

Mike Sheehan, Adjacent Property Owner

Jeff Hykin, Property Owner

Vic Knight, Landscape Architect

There were no conflicts of interest from board members or party members.

Development and Environmental Review Specialist Richard Carpenter explained that there is an existing developed, legal non-conforming structure that is grandfathered-in that the property owners would like to demolish and rebuild a structure that would be in the lakefront setback. Specialist Carpenter expanded that the applicant is seeking a 27'5" lake front setback variance. Specialist Carpenter mentioned the proposal is to reduce the lakefront setback from 35' to 7'7". Specialist Carpenter displayed the lot and property details, proposed plans, and explained. It was noted that there is an easement associate with power lines, which prohibits the rebuilding of a structure in a further-back location. Specialist Carpenter also noted that the property owner would need a trout buffer from North Carolina Department of Environmental Quality before obtaining a permit from the Town.

Mr. Joyner asked the height of the proposed structure. Specialist Carpenter answered 39' on higher end and within the 35' average limit between high and low side. Chair Gurney asked if the existing structure meets setbacks and Specialist Carpenter answered that the existing structure meets all setbacks. Vice Chair Hardy asked if it is street level and Specialist Carpenter noted that it would drop significantly. Mr. Joyner asked what the setback of the property is to the neighboring property and Specialist Carpenter was unsure but noted that house is on the seawall. The neighboring property was compared to the variance request property.

Jeff Hykin, property owner, noted that the property was his father-in-law's and that he had bought it a couple of years ago and expressed concerns with the existing structure. Mr. Hykin noted that he had gotten a survey completed and an engineer (Gentry) to take 13 core soil samples. Mr. Hykin expanded that it was found that the majority of the property is fill and there have been issues with the house sinking and shifting due to instability of the soil. Mr. Hykin noted that Gentry recommended 20' to 30' micro-piles every 30" to build off of, which would require the demolition of the existing structure. Mr. Hykin noted that he had spoken to Mitchell Anderson, who had referenced Section 36-216(d)(1) of the Code of Ordinances regarding enlargement and alterations to non-conforming structures. Mr. Hykin discussed structural design with the Rutherford County Engineer, Kim Warner, and the landscape architect, Vic Knight. It was noted that there would be better access to the site by adding retaining wall, which would allow off-street parking and increase safety and accessibility. Mr. Hykin noted that the existing structure is built low and it would not be possible to build a new structure at that elevation.

Vice Chair Hardy asked if Mr. Hykin was aware of the soil conditions prior to buying the property. Mr. Hykin answered that he was aware that the house was sinking, but did not realize that it was 13 feet of fill or about the need for micro-piles. Vice Chair Hardy asked what Mr. Hykin's plans were when transferring the deed. Mr. Hykin answered that he did not have a plan, but was interested in the property for the purpose of keeping it owned by family. Mr. Hykin mentioned that the property is on septic and that he is trying to address problems with septic in coordination with the proposed variance request.

Mr. Owensby asked if the structure will be a permanent residency and Mr. Hykin answered no. Chair Gurney asked if the proposed 7'7" is current setback and the owner answered yes. Mr. Gardner asked staff if the property owner is asking for an expansion of a non-conformance and Specialist Carpenter answered that it would be if it were built on the same footprint as the existing structure.

Vice Chair Hardy asked if the neighboring property owner, Mr. Mike Sheehan, supported this. Mr. Sheehan explained he is not a full time resident, but knows the history of the property. Mr. Sheehan mentioned that the structure is on a seawall, so his property is at a higher elevation and many surveys had been completed. Mr. Sheehan explained that since he is a part time resident, he just recently found out about the variance request and spoke with the property owner and did as much research as he could. Mr. Sheehan questioned parking situation and expressed concerns regarding what will happen while construction is in progress. Mr. Sheehan noted he is not against property owner rebuilding if granted the variance, but would like questions answered regarding driveway, parking, and sewer. Mr. Sheehan reiterated that he is not objecting to it, he just does not feel fully informed.

Vic Knight, landscape architect, noted that issue with parking and the construction sequence is that there is currently on-street parking that is failing because of soil issues, and that the property owner is proposing a parking elevation of 10 ft. below the road. Mr. Knight noted that the property owner hopes to work with North Carolina Department of Environmental Quality to obtain the trout/vegetative buffer. Mr. Knight explained that from a construction standpoint, he would demolish the existing house. Mr. Knight also noted that North Carolina Department of Transportation is working on street issues, and is proposing a concrete wall to stage materials and parking, sequencing parking in midst of construction, and stage materials. Vice Chair Hardy asked if there are setback concerns with parking location and Mr. Knight answered no. Mr. Joyner asked if the parking is more pertinent than the requested variance and Specialist Carpenter answered yes, but it will be addressed later. Mr. Knight noted that the property owner is currently working with Odom Engineering to tap into a sewer line. Commissioner Doster noted that within the next few years, the Town hopes that the property will have a lateral/sewer line that the property can hook into. Community Development Director Michael Williams noted that this is just for the requested variance, and other permitting would need to be done that the board is not addressing at this time. Vice Chair Hardy cited the staff analysis and asked if the minimum size of the proposed structure still applicable. Specialist Carpenter noted that he would look at this criterion in reference to the projection towards the setback instead of the overall square footage.

Mr. Joyner asked if the side setbacks are an issue and Specialist Carpenter answered that they are not, the only issues is the lakefront setback.

Chair Gurney closed the hearing at 1:45 p.m.

Mr. Owensby asked Chair Gurney if the Board could review the statements of the applicant one-by-one and Chair Gurney answered yes.

1. Extraordinary or exceptional conditions

Mr. Owensby noted that the adjacent neighbor had been denied a variance in the past and Mr. Gardner noted that it is not relevant to the ongoing case. Mr. Joyner noted that the board does not know the adjacent neighbor's details and cannot go back to look, case-by-case.

2. Granting the variance will not confer upon the applicant any special privileges that are denied to other residents of the district

Vice Chair Hardy noted that the proposed structure is consistent with neighboring property in respect to special privileges. Mr. Joyner expressed that his perspective is that the owner is being pro-active, and the condition of the soil will demolish the existing structure regardless and would pose a hardship. Mr. Joyner also noted that it is not being moved closer to the 7'7", and that no other variances are being requested. Chair Gurney agreed. Mr. Gardner noted that the hardship was created by nature, not by property owner. Mr. Gardner also expressed that it would be an improvement for the owner and the town because of road sinking. Mr. Joyner agreed.

3. Literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other residents in the district

Chair Gurney reiterated soil and setback issues.

4. The 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

It was noted that the parking situation would be safer with proposed plans. Mr. Gardner expressed that current parking situation could be a safety hazard.

5. Special circumstances that are not the result of the actions of the application

There was Board consensus that this request is not a result of a self-created hardship.

Mr. Gardner made a motion to grant Zoning Variance Request #2022010. Mr. Joyner seconded. Motion carried 4-1 with Mr. Owensby voting against granting the variance.

VII. December Department Report

Director Williams provided the Board with a department report for the month of December. Director Williams noted that the mobile food vendor ordinance was passed

and explained the details of the ordinance. Director Williams reported that zoning permits have remained steady. Director Williams also reported that the cell tower is moving forward and approval was finally granted from State Preservation. Director Williams added that he expects the cell tower to be completed in late 2023. Director Williams noted he and Specialist Carpenter had attended a training workshop at NC State regarding a sediment and erosion program which the Town is part of and more time should be spent in the field keeping sediment and erosion plans in-line. Chair Gurney asked about the status of an additional staff member and Director Williams answered that recruitment is in progress.

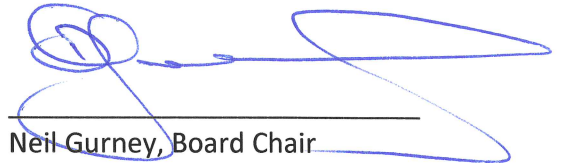
VIII. Adjournment

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

ATTEST:

A handwritten signature in black ink, appearing to read "Olivia Stewman", written over a horizontal line.

Olivia Stewman, Town Clerk

A handwritten signature in blue ink, appearing to read "Neil Gurney", written over a horizontal line.

Neil Gurney, Board Chair