



Board of Adjustment Regular Meeting

March 28, 2023

Call to order

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

I. Roll Call

Board Members Present:

Mr. Greg Gardner, Chair
Mr. Wyn Hardy
Mr. Melvin Owensby
Mr. Al Joyner
Mrs. Kimberly Sayles, Alternate (serving)
Mr. Rick Spruill, Alternate (serving first case)

Absent:

Mr. Mark Windfeldt, Alternate
Mr. Neil Gurney, Vice Chair

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 March 28, 2023 Board of Adjustment meeting was reviewed. Mr. Greg Gardner noted that the agenda is dated March 28, 2022 and needs to be changed to March 28, 2023. **Mr. Gardner made a motion to approve agenda, as amended. Mrs. Kimberly Sayles seconded. All voted in favor.**

III. Approval of Minutes

The minutes from the February 28, 2022 Board meeting were reviewed. **Mr. Melvin Owensby made a motion to approve the February 28, 2022 meeting minutes, as presented. Mr. 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 the election resulted in Mr. Greg Gardner being elected as Board Chair and Mr. Neil Gurney being elected as Board Vice Chair.

B. ZV2023001 by Marathon Builders for Eymeric & Laura Darsch, 404 Burnt Ridge Road, requesting 35' variance from 35' lake front yard setback. Continued from February 28 hearing.

Mr. Wyn Hardy explained the role of the Board and the hearing process.

The Following Individuals were sworn in:

Town Development and Environmental Review Specialist Richard Carpenter
Jonathan Hinkle
Tisha Dedmon
Will Rucker

There were no conflicts of interest.

Specialist Carpenter explained that this case is a continuance from the February meeting and summarized the discussions that had taken place at the February meeting.

It was noted that staff had spoken to the Town Attorney and it was determined that the Board can grant a variance based on conditions. Staff recommended that if the variance is granted, the Board should set the condition that it is granted for the existing foundation and not the entire property. Specialist Carpenter verified that the overhang would be considered a part of the existing foundation.

Mr. Hinkle also noted that other location options for the building were reviewed and that no other locations would be doable without disturbances.

Mrs. Sayles expressed that her questions from the last meeting had been answered.

Mr. Hinkle questioned why the overhang required a variance. It was noted that the variance would just be for the existing footprint and not the entire property.

Specialist Carpenter reiterated that the Board can specify conditions in their motion.

Chair Gardner closed the case and the board entered into deliberation.

Mr. Owensby expressed that he had no concerns. Board members agreed.

Mr. Gardner reviewed the variance checklist with Board members.

1. Extraordinary or exceptional conditions

Board members discussed that there are location and topography exceptions.

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

Board members agreed that granting the variance would not supply special privileges.

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

Board members determined that literal interpretation of the provisions of the chapter would deprive the applicant of rights commonly enjoyed by other residents in the district.

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

Board members determined that the 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. Special circumstances that are not the result of the actions of the applicant

Board members discussed that special circumstances include location and topography of the existing property.

Mr. Hardy made a motion to grant ZV2023001 by Marathon Builders for Eymeric & Laura Darsch, 404 Burnt Ridge Road, requesting 35' variance from 35' lake front yard setback with the condition of the roof overhang acceptance and that the variance is within the footprint of the property. A second was made and the motion carried unanimously.

VI. New Business

A. ZV2023002 by Will Rucker for Don Dedmon, Jr, 346 Chalet Drive, requesting 12' variance from 35' front yard setback.

Mr. Joyner reviewed the case. All witnesses were previously sworn in.

There were no conflicts of interest.

Specialist Carpenter explained that the property is located off of Chalet Drive and that there is an encroachment in relation to a front deck. Specialist Carpenter detailed that the applicant requested to expand the deck which is not permissible by administration. Specialist Carpenter reviewed the property footprint and details of the requested expansion. It was noted that the property owner would also like an addition of a roof overhang, which would be within the requested variance location.

Chair Gardner asked if there was any issues with the previous access structure and Specialist Carpenter answered that there were not and that it was in compliance.

It was noted that the County building code department had discovered this issue and deferred it to the Town.

Mr. Owensby asked if staff had a recommendation. Specialist Carpenter answered no.

Mr. Will Rucker explained he is the contractor for the property and that the requested deck is behind a retaining wall and fence. Mr. Rucker noted that when he went to obtain a permit from the County, he was not informed that a permit was required from the Town for zoning and that he had been informed of this if it were applicable in the past. Mr. Rucker apologized and explained that construction had stopped until a Board decision could be made.

Mr. Hardy asked for additional details regarding the requested expansion and Mr. Rucker explained that the extension would connect an existing walkway to the existing deck.

Board members and Mr. Rucker discussed parking details.

Mr. Owensby asked Ms. Tisha Dedmon if there is a reason why the deck must be widened. Ms. Dedmon explained that the existing deck was very narrow, there was railing on both sides, a small door, and when the glass door was opened the railing was invasive and tight and there was no overhead to block. Ms. Dedmon added that she thinks an extended deck would be nicer and more accessible and connected to the side deck.

Specialist Carpenter noted that if the board granted the variance at 23 ft., they would have to remove a portion of their overhang, which would be difficult. It was also noted that the Board could grant the variance with the condition that it is only granted within proposed boundary.

Mr. Joyner closed the hearing and the board entered into deliberation.

Chair Gardner expressed that his opinion is that he did not see any significant issues with the request. Mr. Hardy agreed and noted that their request is logical. Mr. Owensby also agreed. Mrs. Sayles expressed that the proposed variance would make for a more functional deck.

Mr. Joyner and the board reviewed the variance checklist.

1. Extraordinary or exceptional conditions

Board members expressed that extraordinary or exceptional conditions include preexisting topography.

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

Board members found that there were no special privileges.

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

Board members determined that the literal interpretation of the provisions of the chapter would deprive the applicant of rights commonly enjoyed by other residents in the district.

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

Board members determined that the 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. Special circumstances that are not the result of the actions of the applicant

Board members determined that there are special circumstances that are not the result of actions of the applicant.

Chair Gardner made a motion to grant ZV2023002 by Will Rucker for Don Dedmon, Jr, 346 Chalet Drive, requesting 12' variance from 35' front yard setback based on the submitted drawings with the permit and the overhang which is final as built in the survey. Mr. Hardy seconded and all voted in favor.

B. SUP2023001 by George Whitmer for KML Investments, LLC, for special use permit approval of a commercial accessory storage building at 2556 Memorial Highway.

There were no conflicts of interest.

Community Development Director Michael Williams explained that the request is for a storage building to be constructed near the existing Hickory Nut Gorge Outreach. Director Williams expanded that the ABC Store is being relocated to the Outreach and that the storage building will be needed to house materials from the Outreach. Director Williams detailed that Town ordinance requires that any new commercially zoned structure must be accompanied by a special use permit. Director Williams noted that the Zoning and Planning Board had reviewed the proposed structure and that it was determined that it would abide by the Town's standards for architectural review. Director Williams reviewed the property and requested location for the structure. It was noted that the structure would be 12 x 27. Director Williams stated that the request structure had passed through the development review committee with the fire marshal, police, and building inspector and that the only comment was that the structure must be at least 10 ft. away from any buildings and any electrical elements will require permitting. Director Williams detailed that the structure will be 12 ft. away from any buildings. It was noted that the structure will be facing the road.

Director Williams explained that the Board of Adjustment must determine if the structure meets Town codes.

Mr. Owensby asked if any trees located in the existing planter would be removed and Director Williams said he would need to ask the applicant.

Board members and Director Williams discussed details and it was noted that the structure would be an accessory building, but must be reviewed like any other structure in a commercial district.

Mr. George Whitmer was sworn in.

Director Williams asked Mr. Whitmer if the trees and the planter would remain and Mr. Whitmer answered that it is undecided at this point. Chair Gardner expressed that he would like the planter and trees to remain, if possible.

Mr. Owensby asked Mr. Whitmer about the choice of location of the structure and Mr. Whitmer explained that the chosen location is appropriate because it would not require any setback variances or merging of adjacent properties. Mr. Whitmer added that the structure could not be placed behind existing buildings because there is not sufficient space.

Chair Gardner closed the case and the Board deliberated.

There were no concerns expressed by Board members.

Mr. Joyner made a motion to grant SUP2023001 by George Whitmer for KML Investments, LLC, for special use permit approval of a commercial accessory storage building at 2556 Memorial Highway. Mrs. Sayles seconded and all voted in favor.

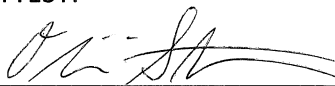
VII. March Department Report

Director Williams provided the Board with a department report for the month of March. Director Williams explained that he had discussions with the parties involved in the cell tower about it moving forward with the construction. Director Williams reported that there is now an understanding between the AT&T and the State Historic Preservation Office (SHPO) on how to move forward with meeting SHPO's historic bridge information requirement. Director Williams expanded that AT&T is excited that the project is making progress, but the bad news is that AT&T had the project shifted in calendar year and that it may not be done until the first quarter of next calendar year. Director Williams ensured that the cell tower is moving forward regardless. Commissioner DiOrio asked if there is a final design for the tower and Director Williams answered that it would be a monopole with external antennas.


VIII. Adjournment

Chair Gardner asked for a motion to adjourn the Board of Adjustment regular meeting at 2:16 p.m. Mrs. Sayles made motion to adjourn and Mr. Hardy seconded. All members voted in favor.

ATTEST:



Olivia Stewman, Town Clerk



Greg Gardner, Board Chair