



## **Board of Adjustment Regular Meeting**

### **November 28, 2023**

#### **Call to order**

Chair Greg Gardner 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. Neil Gurney, Vice Chair  
Mr. Wyn Hardy  
Mr. Al Joyner  
Mr. Melvin Owensby  
Mrs. Kimberly Sayles, Alternate  
Mr. Mark Windfeldt, Alternate (arrived after roll call)

##### **Absent:**

##### **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 November 28, 2023 Board of Adjustment meeting was reviewed.  
**Mr. Neil Gurney made a motion to approve agenda, as presented. Mr. Al Joyner seconded. All voted in favor.**

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

The minutes from the October 24, 2023 Board meeting were reviewed. **Mr. Wyn Hardy made a motion to approve the September 26, 2023 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**

There was no old business to discuss.

VI. **New Business**

Chair Gardner provided an overview of the quasi-judicial hearing process and rules.

A. ***Variance Request: ZV2023019 regarding 133 Anchors Way to decrease the minimum lakefront yard and side yard setbacks to allow repair and enlargement of an existing deck***

The following individuals were sworn in:

Richard Carpenter, Development and Environmental Review Specialist  
Suzanne Young, Applicant

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

Development and Environmental Review Specialist Richard Carpenter presented the following information:

Edward & Suzanne Young are seeking a variance to re-build and expand an existing deck within the lake and street front setbacks. The property is addressed as 133 Anchors Way., Lake Lure, NC (Parcel #227411) and is in the Residential 1 (R-1) Zoning District.

**Additional Information for the Board:**

- 1) Per §36-70, Building Site Minimum Dimensional Standards, (C) For primary streets, the front yard setback shall be 40 feet from the centerline, but not closer than ten feet from any right-of-way line where such line exists. For secondary streets, the front yard setback shall be 35 feet from the centerline, but not closer than ten feet from any right-of-way line where such line exists. For lots which abut a lake, the lake side is also considered a front yard. In any zoning district, minimum setback from the lake is 35 feet measured from the shoreline.
- 2) Applicants are proposing to demolition an existing deck and re-build. This re-build would include a new addition.
- 3) Per the application, the property owners have not made any specific requests regarding any setback encroachment.

- 4) Per the ordinance, re-building the structures may be permissible if the engineer's report is substantiated by the Rutherford County Building inspector. However, the additions would not be permitted by right.
- 5) The submitted plans are not complete and do not illustrate specific requests and/or setbacks.

**Staff Analysis:**

Staff determined the applicant's hardship is based on deck size and functionality. This may not meet the criteria as-is. Site plan illustrates additional development on the lot but staff could not opine on this due to incomplete information.

Specialist Carpenter further explained that the extension creates a problem that did not previously exist and that the applicant wants to square it off for functionality and appearance. It is a non-conforming structure. Specialist Carpenter stated that it did not appear that it would create any hazards for the trout buffer, but the applicant would need a waiver if so. It was detailed that Specialist Carpenter thinks that the engineering statement requires that the deck be replaced, but the applicant wants to expand it during replacement. Mr. Joyner asked if the extension would place the deck over the lake and Specialist Carpenter answered no.

Mrs. Susanne Young explained that the structural engineer has stated that they need to replace the deck and that she wants to extend the new deck due to cost and aesthetic. Mrs. Young confirmed that the extension would not go over the lake and the deck would be more functional. Chair Gardner noted that it is still a good sized deck without the extension. Mr. Gurney asked if the applicant would be happy with the new deck without the extension and Mrs. Young explained that it would stop in the middle of the kitchen window and that she would prefer to not have the squared off deck. Mrs. Young noted that she spoke with a neighbor who did not express any issues, but could not get in contact with the other neighbor. It was noted that staff send out notices and that a neighbor contacted staff to get clarification as to what the notice entailed, but they did not express any concerns. Mrs. Young stated that the deck is going to be expensive to replace, so she wants to ensure that it looks nice. Specialist Carpenter recommended that Board should focus on hardship rather than personal convenience, and to require additional buffer or screening through vegetative enhancement if they decide to grant the variance.

The testimony was closed and deliberation began.

Mr. Hardy noted that regarding the addition of the deck, it is hard to see a hardship and it seems to be for aesthetic. Mr. Hardy noted that he took pictures of the side deck and does not have a problem with that and squaring it off makes sense. Mr. Owensby asked

Specialist Carpenter if the deck would still be in the buffer if the applicant replaced the deck as is. Specialist Carpenter explained that it will still be in the buffer at a minimal level because the house is likely in the side setback, but the extension would create a new disturbance. Mr. Gurney expressed that he does not see a hardship, but does not have an issue with the squaring off of the deck. Board members agreed and continued deliberation in regard to conditions.

Chair Gardner re-opened the case. Mrs. Young noted that she sees a lot of new construction on the lake and that the hardship is that the structure is already in the setbacks since it is non-conforming. Mrs. Young added that no views will be impeded and no problems will be caused for neighbors. Mrs. Young reiterated that she believes that the non-conforming lot status is a hardship. Mr. Gurney asked how long she has owned the property and she answered that she recently purchased it. Mr. Gurney asked if Mrs. Young knew it was non-conforming upon purchase and she said yes, but did not know the implications. Chair Gardner expressed that there are certain definitions to hardship and that he does not want to set a precedence by granting the variance. Mr. Hardy asked if the actual lot is non-conforming and Specialist Carpenter answered that he thinks that part of the structure is non-conforming, but topography does place limitations on what can be done on the property.

Chair Gardner re-closed the hearing and asked if there was any additional 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 there are no 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 would 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 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 that the requested variance will 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 determined that there are no special circumstances that are the resolute 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 that variance requested is not the minimum necessary for the proposed use of the land, building or structure.

**Mr. Hardy made a motion to grant the squaring off of the lake front yard, but to deny the side yard setbacks to the additional deck regarding Variance Request: ZV2023019 regarding 133 Anchors Way to decrease the minimum lakefront yard and side yard setbacks to allow repair and enlargement of an existing deck. Mr. Gurney seconded and all voted in favor.**

***B. Variance Request: ZV2023020 regarding The Shaded Crest Lodge at 1491 Memorial Highway decrease the minimum street front yard setback to allow improvements at the lodge facilities.***

The following individuals were sworn in:

Richard Carpenter, Development and Environmental Review Specialist  
Shaun Manus, Applicant  
Jody Bennett, Applicant

Vick Knight, architect

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

Specialist Carpenter provided a history in regarding to the property and presented the following information:

Shaun Manus & Jody Bennett are seeking a variance to build within the street front setback. The property is addressed as 1493 Memorial Highway, Lake Lure, NC (Parcel #1656577) and is in the Resort Residential (R-3) Zoning District.

**Additional Information for the Board:**

- 1) Per §36-70, Building Site Minimum Dimensional Standards, (C) For primary streets, the front yard setback shall be 40 feet from the centerline, but not closer than ten feet from any right-of-way line where such line exists. For secondary streets, the front yard setback shall be 35 feet from the centerline, but not closer than ten feet from any right-of-way line where such line exists.
- 2) Applicants are proposing to demolish existing structures and construct a gazebo and pool pavilion within the street front setback.
- 3) Due to the number of residential properties that must use Shaded Crest as a means of ingress/egress, the access is classified as a street. Additionally, the access is deeded as a street with a dedicated right-of-way.
- 4) Per the ordinance: Sec. 28-72. Private drives. No private drives shall serve more than one lot, except that driveways may be permitted to serve up to three residential lots provided each lot fronts a public or private street and after a determination by the subdivision administrator that reasonable access from the street to said lots cannot be achieved due to topography or natural features.
- 5) The applicants have requested a reduction to the required street front setback by 20'.

Required Setback	Required Setback	Requested Setback
Street Front	35'	15'

**Staff Analysis:**

Staff determined that access through the subject property is classified as a street with a dedicated right-of-way. Per the analysis of the submittal, staff do not find any evidence that topography requires encroachment. Shaded Crest does appear to not meet town

standards for roadway construction, but would be grandfathered and considered a legal non-conformity.

Chair Gardner asked if there is any house deeded to the parcels and it was noted that there is a house owned by the Shaded Crest owners and two lots are not a part of their property. Specialist Carpenter expanded on the driveway versus road regulations and explained that the street in reference is considered a road. Specialist Carpenter answered that the applicants are up-fitting the property and making improvements. Specialist Carpenter noted that there is some slope on site. Specialist Carpenter added that other parcels on the road could be developed, but for now the only users of the road would be the owners and lodge visitors. Specialist Carpenter noted that it would be difficult to expand the road with the topography. Mr. Hardy noted that as it now stands, the property already has structures that are within the 35 foot setback. Specialist Carpenter agreed and explained that the applicants could construct more lodging or dwellings under the current conditions, but they cannot construct an accessory structure which is what they are asking for.

Vick Knight, Knight Strategies, noted that he started working with the owners earlier in the year with refurbishing decks and cabins. It was detailed that the owners began envisioning what they would like to do with the property structures because when refurbishing began it became evident that there are structural issues and that the structures are not code compliant. Mr. Knight added that the owners have taken a holistic view of how to proceed with the property and have started to change the color scheme and modernizing the structures. Mr. Knight detailed the proposed architectural renderings. It was noted that the owners have been working with Town staff to obtain zoning permits. Mr. Knight noted the owners would like to place existing features in different variations and would like to replace some features with better quality materials. Mr. Knight expressed that the owners were shocked to find out that they were dealing with a road and not a driveway and that the road services the existing bed and breakfast and functions as a driveway. It was added that the owners were not aware of this issue when they purchased the property. It was detailed that the deeded right of way is 12.5 feet and that three of the existing cabins are well within the 35 ft. setback. Mr. Knight explained that he understands that because what is being proposed are accessories and not dwellings, the averages cannot be considered. Mr. Knight stated that the pavilion structures and sign are the two issues relative to the exiting site plan. Mr. Knight expressed that he believes that the hardships are as follows: the property has been operating as a bed and breakfast for 20 years, was developed as it was because of geographical limitations, the setback of 35 foot is not doing what it is intended to do for this property and the 15 foot setback would still be conforming with the side yard and rear yard setback, just not the street front yard setback. Mr. Knight noted that the owners are in contact with an owner of one of the two adjacent parcels. Chair Gardner asked where the existing pool is and it was noted that it is in front of the

cabins. Specialist Carpenter noted that an issue is that there is limited opportunity for development because of the shape, size, and slope of the property. Mr. Gurney asked if the road this is only used by Shaded Crest and Specialist Carpenter said yes. Specialist Carpenter explained that the street is deeded as a road, but former staff is assumed to have treated it like a driveway. Mr. Joyner asked who owns the road and Specialist Carpenter said the owners of the lodge own it, but the two adjacent property owners have an access easement. It was noted that there were no complaints from any neighboring properties. Specialist Carpenter noted that staff is not opposed to the request, but is concerned that hazards could be created if the adjacent properties are developed. Mr. Joyner asked if fire and safety have looked at this and Specialist Carpenter answered that they would.

Ms. Jodi Bennett noted that the main goal is to improve the existing elements of the property. Ms. Bennett expressed that she was unaware that it was considered a secondary roadway. It was detailed that Ms. Bennett and Mr. Manis are in conversation with the property owner of two of three of the other parcels and are interested in purchasing the properties, which would leave one parcel un-obtained. Ms. Bennett explained that they would like to provide existing amenities in a safer, code compliant, and more accessible way. Mr. Owensby asked the owners have any intentions of restricting the one un-obtained property if the other two lots are purchased. Ms. Bennett answered no and explained that it is a deed of access. Ms. Bennett noted that she and Mr. Manis have been maintaining the roadway for the properties that they do not own. Specialist Carpenter recommended that if the variance is granted, the board should require an emergency response turn around. Mr. Hardy asked if any of the proposed changes would impact emergency access and Mrs. Bennett answered no and that they are building on the existing footprint and the area on the property where there is currently room for vehicles to turn around will not be impacted. Mrs. Bennett noted that she is trying to add to the value of the Town. Chair Gardner asked if the turnaround and parking area is sufficient as is and Specialist Carpenter that he believes that it is, but he will speak with Fire Chief Dustin Waycaster.

Mr. Shaun Manis explained that they want to step away from Airbnb experience and to improve upon the environment that the original owners had intended. Mr. Manis added that the original owners were weary of who they sold it to and did not want to sell the property to land developers, but expressed that they felt confident when it was sold to Ms. Bennett and Mr. Manis. Mr. Manis expressed that people who have visited the Shaded Crest already want to return and that he wants to continue to provide this lodging opportunity. The testimony was closed and deliberation began.

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 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 slope, easement, and shape of property.

*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 would 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 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 that 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, as long as other property owners still have road access.

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

The Board determined that the special circumstances are not 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 that the variance requested is the minimum necessary for the proposed use of the land, building or structure.

Mr. Joyner noted that he would like to impose conditions that emergency access is not impacted.

**Mr. Joyner made a motion to grant Variance Request: ZV2023020 regarding The Shaded Crest Lodge at 1491 Memorial Highway decrease the minimum street front yard setback to allow improvements at the lodge facilities, with the condition that fire and safety approve that they can properly serve the area with the approved setback. Mr. Gurney seconded and all voted in favor.**

**C. *New commercial building Special Use Permit application review and public hearing: SUP2023002 regarding Flowering Bridge application for new commercial building to serve as their Education Center.***

Chair Gardner noted that there are still some permitting issues to be resolved, want to allow comments, but then continue this to allow issues to be resolved before making a ruling.

Mr. Hardy asked to be recused as the treasurer for the Lake Lure Flowering Bridge. Board members motioned to recuse Mr. Hardy, all voted in favor. Mr. Mark Windfeldt filled in Mr. Hardy's position.

The following individuals were sworn in:

Richard Carpenter, Development and Environmental Review Specialist  
Michael Williams, Community Development Director  
Kathy Tanner, Lake Lure Flowering Bridge (LLFB) Board Chair  
Eric Kunath, Contractor

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

Director Williams explained that this was previously reviewed by the board, but changes to plans had since occurred. Director Williams further explained that major changes are that it is a bit smaller and they now want to build a pre-manufactured building that will be finished by a contractor and engineer to meet requirements for that public space. Director Williams noted that this is a public hearing that has been advertised and the community is welcomed to speak. It was detailed that the Town owns the property and it is leased by the Lake Lure Flowering Bridge (LLFB) and that Town council will have final review. Director Williams explained that any new commercial building must obtain a special use permit, which must be approved by the Board. Director Williams displayed

the site plan and noted that the building is relocated, partially to allow for parking. Director Williams stated that the LLFB has worked with Kim Warner, PE, on a parking plan. It was noted that the Zoning and Planning Board reviewed design standards and recommended approval. It was also noted that the parking was deemed adequate but there are still issues with property on the town and the ability to meet building code. The Town's Project Manager, Michael Dydula, identified some issues. Community Development staff asked that the Board hear the LLFB, hear community input, and continue to the hearing until next month. Commissioner DiOrio noted that Council will want to see the layout and will have final say. Commissioner DiOrio also noted that Board will recommend to Council that the LLFB has met all requirements for the special use permit. Director Williams noted that a driveway permit was discussed at the Zoning and Planning Board meeting and the LLFB confirmed that this is not required per NCDOT. Director Williams stated that surveys have been obtained. Chair Gardner asked how many permits are still needed and Director Williams answered that the land disturbance, special use, zoning, sign permit, and sewer permit are still required and that the LLFB is working towards obtaining them all.

Mrs. Tanner, LLFB Board Chair, and the LLFB's contractor, Mr. Kunath, approached the Board. Mrs. Tanner explained that this project has been in progress for a couple of years. It was noted that staff has all applications in hand. It was also noted that Charlie Ellis contacted Odom Engineering who will be working on the sewer needs. Mrs. Tanner expressed that important things to note are that the engineer site plan from Kim Warner has been in progress for a year, the Zoning and Planning Board seemed happy with the design and floor plan of the building, and parking concerns are being addressed. Mrs. Tanner and Mr. Kunath explained that Carolina Solutions are privy to requirements and that their structures are built to code. Mr. Kunath explained that most of Carolina Properties' structures are residential, but they provide 100 lbs. per sq. ft. for commercial and 40 lbs. per sq. ft. for residential. Mr. Kunath noted that there will be a 2 x 6 wall for insulation value, a half inch OSB sheathing, and smart siding. Mr. Kunath stated that he will continue to meet with Carolina Properties to make sure all requirements are met. Mr. Kunath detailed that he is also working with the Rutherford County building code department. Mr. Kunath thanked the Board for their work. Mr. Joyner asked if the structure will be assembled on site and Mr. Kunath answered yes. Mr. Joyner asked if the only unanswered question is the tap in to the sewer system at this time and it was answered that this is the main remaining question, but the LLFB and Mr. Kunath are confident that Odom will resolve any issues related to this. Commissioner DiOrio noted that another aspect is that Asheville DEQ will need to issue a tap in permit because of moratorium, but expressed that he does not think they will have an issue with doing so. Mr. Joyner asked what kind of activities will take place at the building and Mrs. Tanner noted that it is an educational center, there will be various classes throughout the year, and there will be tours that are going to be accessible for all. Mrs. Tanner noted that the surveyor will be updating the survey soon. Mr. Joyner

thanked the LLFB for their ambition and value to the community. Director Williams noted that it is exciting to see and that there are LLFB volunteers in attendance. Director Williams added that the LLFB is addressing issues quickly and he feels confident about the project. Director Williams suggested continuing this item until next month to allow the LLFB to further resolve issues.

**Mr. Gurney made a motion to continue this item until to next month. Mr. Owensby seconded and all voted in favor.**


**VII. November Department Report**

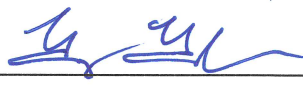
Director Williams provided the Board with a department report for the month of November.

**VIII. Adjournment**

**Chair Gardner asked for a motion to adjourn the Board of Adjustment regular meeting at 2:41 p.m. Mr. Joyner made motion to adjourn and Mr. Owensby seconded. All members voted in favor.**

ATTEST:

  
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Olivia Stewman, Town Clerk

  
\_\_\_\_\_  
Greg Gardner, Chair