



## **Board of Adjustment Regular Meeting**

**December 19, 2023**

### **Call to order**

Chair Greg Gardner called the Board of Adjustment regular meeting to order at 1:01 p.m.

### **I. Roll Call**

#### **Board Members Present:**

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

#### **Absent:**

Mr. Al Joyner  
Mrs. Kimberly Sayles, 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 December 19, 2023 Board of Adjustment meeting was reviewed. **Mr. Gurney made a motion to approve agenda, as presented. Mr. Hardy seconded. All voted in favor.**

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

The minutes from the November 28, 2023 Board meeting were reviewed. **Mr. Gardner made a motion to approve the November 28, 2023 meeting minutes, as presented. Mr. Gurney 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. ***New commercial building Special Use Permit application review and public hearing: SUP2023003 regarding WSRM, LLC application for new commercial building to be used as cabinet shop.***

The following individuals were sworn in:

Richard Carpenter, Development and Environmental Review Specialist  
Frank Butera, Applicant  
Melvin Owensby, Adjacent Property Owner

Mr. Owensby stated that he would need to be recused because he is the adjacent property owner. Mr. Gardner made a motion to recuse Mr. Owensby. Mr. Gurney seconded and all voted in favor.

There was no other challenges for cause or ex-parte communication

Specialist Carpenter referred board members to packet materials. The Board's role was highlighted by Town staff. It was detailed that parking standards are met. There is no drawn buffers at this time for the neighboring residential use. There is no ingress and egress off Snug Harbor. Specialist Carpenter explained that there is criteria that must be met for commercial uses. It was detailed that a lot of issues should have been addressed under the former owner, but there is no documents to support that the Town discussed these requirements with the former owner when they purchased the property. Specialist Carpenter explained that compliances are met, but due to the change of use the applicant must do up fits to meet commercial use requirements. Specialist Carpenter explained that frontage is required to have means of ingress and egress, and because it is Commercial General (CG) it only has one ingress/egress and having one on Snug Harbor would require a variance. It was added that buffers are being discussed. Specialist Carpenter provided information that details required buffers adjacent to residential use. Specialist Carpenter noted that the Board can choose to modify requirements. Specialist Carpenter added that if the Board believes that the existing site has sufficient buffering, they can decide that but staff believes that there is no buffer. It was noted that the applicant has agreed to meet all requirements and has been working with staff. There has been no negative comments received. Mr. Gurney asked if they are prepared to add a buffer if needed and Specialist Carpenter answered yes. Specialist

Carpenter noted that the new use is a cabinet shop and possible other mixed uses. Mr. Hardy asked if these uses are code compliant and Specialist Carpenter answered yes. Specialist Carpenter noted that code is sparse for these kinds of establishments, but the only issue would be to lose ingress and egress off of Snug Harbor. Chair Gardner asked what would need to be done to get the Snug Harbor ingress and egress and Specialist Carpenter said the applicant could apply for a variance. Specialist Carpenter detailed that the lack of buffer would also require a variance. Director Williams added that there was a phone call that came in from a neighbor that had questions, and there was another business owner who had emailed and expressed concern about competition. Mr. Windfeldt explained that he has background with cabinetry and asked about dust collection on a commercial level and Specialist Carpenter said that would be handled through Fire Chief Dustin Waycaster and County building code. Specialist Carpenter added that Community Development would address any sort of exterior device through the noise ordinance. Specialist Carpenter stated that Chief Waycaster and the County do not have any concerns. Mr. Windfeldt asked about storage of toxic chemicals and Specialist Carpenter answered that this would also be addressed by Chief Waycaster and the County building inspectors. Mr. Windfeldt asked about circulation of large trucks and Specialist Carpenter said that is a concern of his but noted that the applicant has expressed that it will not be an issue. Specialist Carpenter added that he does not yet have a traffic flow plan.

Mr. Butera, 135 Neighborly Drive, explained that he has a shop now that uses dust collections, but he is not going to do any large work in the new building and will focus on assembling and not manufacturing. Mr. Butera further explained that he is looking to downsize his current shop and he wants to own his own shop because he currently rents. It was noted that it will be a mixed use business. Mr. Butera detailed that it will be a pre-fab building but will have wood structure on the outside. Mr. Gurney asked about the trucks issue and Mr. Butera explained that he usually picks up materials himself and that he does not think there will be issues with deliveries. Mr. Hardy asked what his vehicle is that he uses to do so and Mr. Butera answered a 14 ft. box truck that will be parked on the side. Chair Gardner explained that the applicant's current site does not have a back entrance. It was noted that a fork lift should be able to fit. Mr. Butera noted that has a flammable locker in which any flammables would be placed. Mr. Butera stated that the building will be well insulated and there should not be any issues with noise. Mr. Gurney asked if he Mr. Butera is fine with installed a buffer if necessary and Mr. Butera answered yes.

Specialist Carpenter noted that the Zoning and Planning Board has approved the architectural design standards.

Specialist Carpenter noted that the Board was provided with comments from Fire Chief Dustin Waycaster.

Mr. Owensby, 1808 Memorial Highway, explained that he owns the adjacent property and that when he purchased his home it was residential and then was changed to commercial general. Mr. Owensby explained that he obtained a live/work permit in the past and he is using his property as both commercial and residential. Mr. Owensby has spoken with the applicant. It was detailed that there is a shared driveway that Mr. Owensby and the former owner had an agreement about. Mr. Owensby added that it was a gas station, he gave the store a 4 foot easement, but it got deeded to the store without his knowing and then when the former owner purchased the property, Mr. Owensby got his 4 foot easement back. Mr. Owensby explained that he has been warned twice about backing out into the highway from his property, so he uses the paved driveway for ingress and egress for him and for his business dump truck. Mr. Owensby asked that Board give relieve to not bust up the driveway to allow for a buffer. It was noted that the applicant would prefer to not have a buffer because it would cut off ingress and egress from applicant and Mr. Owensby. Mr. Owensby asked that the Board grant that the buffer leave the paved driveway as is, like it has been since the 1980s. Mr. Owensby explained that the buffer should not be required because he also uses his property as a commercial use, not just residential.

Specialist Carpenter displayed a map GIS and explained the placement of the driveway in question and where the buffer would need to be. It was noted that a buffer against uses and a buffer for traffic delimitation are both needed, and that the driveway is impacted either way. Specialist Carpenter noted that the Board could waive or modify the buffer if they determine that there is sufficient buffering on site now. It was noted that the road buffer strip would block the driveway and that this is required for all commercial properties on Memorial Highway. Mr. Owensby noted that if the board grants this to where the buffer is not required, on his side there is two large hickory trees which would act as the buffer between the two properties and would not impact the driveway. Specialist Carpenter reiterated that road buffer would require a variance if they did not want one. It was discussed that the applicant will apply for a variance for that and for the Snug Harbor ingress and egress during the January meeting. It was noted that the special use permit could be approved and then a variance could be applied for. Mr. Owensby noted that the hickory tree nuts have damaged him and his wife's cars multiple times and that the former owner worked with him to park in an area where that can be avoided. Mr. Owensby expressed that he does not want to lose a piece of his property and make it useless altogether. Specialist Carpenter noted the 8 ft. buffer requirement. Chair Gardner noted that the trees could be a natural buffer and Specialist Carpenter explained that this would not be sufficient to function as an 8 ft. buffer, which is why the variance would be the best route to take. Specialist Carpenter noted that approval of the special use permit would be needed today to be conditional for sewer, which is in process but has not been approved, and is out of the Town's purview.

Commissioner DiOrio asked if he needs two variances. Specialist Carpenter answered yes, if he wants Snug Harbor ingress and egress and the street buffer. It was noted that the Board could determine that commercial trumps the residential use of Mr. Owensby's property, so the other buffer would not be required which would set precedence, but there are not many cases of this. Specialist Carpenter explained that the justification for this is that there is a form of vegetative screening and it is a hybrid live-work unit, not strictly residential. Specialist Carpenter noted that even if the buffer is excused, the applicant would have to get a variance in the future.

Mr. Owensby noted that he never asked the Town to zone his property CG, but he is taking advantage of it. Mr. Owensby added that he has lived here all his life and he is using his property to make a living. Mr. Hardy asked if Mr. Owensby would cut down the trees if the Board determines that the trees are a sufficient buffer and Mr. Owensby answered no.

The applicant noted that in the packet, he had Odom Engineering show the new sewer tied in with the current. Mr. Butera further noted that this is just waiting for approval from NCDEQ.

Another adjacent neighbor was sworn in. Ed Warniky, 125 Snug Harbor Circle, expressed that he has a few concerns. Mr. Warniky expressed that there is a lot that goes into the property and there is a good amount of traffic. Mr. Warniky also expressed concern with the sewer and other elements that are going into it. Mr. Warniky stated that other neighbors have concerns as well, but have not communicated them. It was noted that there is other commercial property for sell across the street. Mr. Warniky explained that he is concerned about cabinet shop and more concerned about the future charging stations due to safety. Mr. Warniky noted that he is not sure what the board takes into account, but would like to express concerns and know more. Chair Gardner noted that a decision will be made today and all adjacent properties were notified and could have expressed their concerns, but did not. Mr. Warniky expressed concerns about dust and AC. Mr. Warniky added that he is worried that other possible uses could cause other issues like trespassing on Snug Harbor. Mr. Warniky concluded that he hopes that concerns can be addressed and that he thinks that they should be considered.

Chair Gardner closed the hearing and the Board went into deliberation.

Mr. Gurney expressed that the applicant should apply for variances rather than the Board establishing conditions today. Mr. Windfeldt noted that there is the street buffer and that property lines are crossed. Chair Gardner expressed that the biggest issue is the street buffer. Board members discussed that it is zoned commercial. Mr. Hardy

expressed that he cannot imagine that traffic will be any more of any issue than it was previously.

**Mr. Windfeldt made a motion to approve SUP2023003 regarding WSRM, LLC application for new commercial building to be used as cabinet shop, as outlined in the materials presented, with the condition of considering that the side regulations are adequate. Mr. Gurney seconded. All voted in favor.**

Chair Gardner explained to the applicant that they will need to apply for a variance for the street buffer.

***B. Variance Requests: ZV2023021 and ZV2023022 regarding Dewayne Deese's request for reduction of street front, lake front and side setbacks at two undeveloped, non-conforming parcels at corner of Tryon Bay Circle and Memorial Highway.***

Mr. Gurney reiterated the quasi-judicial hearing process.

The following individuals were sworn in:

Richard Carpenter, Development and Environmental Review Specialist  
Dwayne Deese, Applicant  
Shay Zemin, 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:

**RE:               ZV-2023021**

Dwayne Deese is seeking a variance to construct a dwelling. The property is addressed as 0 Tryon Bay Circle, Lake Lure, NC (Parcel #1653096) and is in the Residential/Office (R-4) 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. However, 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) Applicant is proposing one single family dwelling on the .06ac lot adjacent to the waters of Lake Lure.
- 3) Per the application, the owner is seeking a variance for the street front setback, lake front setback, and one side setback.
- 4) The street front setback may be averaged and could be resolved prior to the hearing.
- 5) Trout buffer waiver is approved by NCDEQ.
- 6) The site is considered a steep slope, and the applicant has obtained a geotechnical report for construction.
- 7) No land disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land disturbing activity. Applicant has agreed to an alternative landscape plan to mitigate loss of tree canopy.
- 8) The applicants have requested:

Required Setback	Required Setback	Requested Setback
Street Front	35'	8' (May avg.)
Lake Front Setback	35'	15'
Side Setback	10'	9'10"

**Staff Analysis:**

Staff determined that the site is sandwiched between two front setbacks and has a slope steeper than 30%. The street front setback may be averaged based on adjacent dwellings and may be resolved prior to the hearing. Applicant has agreed to an enhanced re-planting plan between the dwelling and seawall to offset loss of tree canopy. If approved, staff recommend adding the re-planting plan as a condition of approval.

**RE: ZV-2023022**

Dwayne Deese is seeking a variance to construct a dwelling. The property is addressed as 0 Tryon Bay Circle, Lake Lure, NC (Parcel #1653095) and is in the Residential/Office (R-4) 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. However, 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) Applicant is proposing one single family dwelling on the ~.06ac lot adjacent to the waters of Lake Lure.
- 3) Per the application, the owner is seeking a variance for the street front setback and lake front setback.
- 4) The street front setback may be averaged and could be resolved prior to the hearing.
- 5) Trout buffer waiver is approved by NCDEQ.
- 6) The site is considered a steep slope, and the applicant has obtained a geotechnical report for construction.
- 7) No land disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land disturbing activity. Applicant has agreed to an alternative landscape plan to mitigate loss of tree canopy.
- 8) The applicants have requested:

Required Setback	Required Setback	Requested Setback
Street Front	35'	8' (May avg.)
Lake Front Setback	35'	15'



**Staff Analysis:**

Staff determined that the site is sandwiched between two front setbacks and has a slope steeper than 30%. The street front setback may be averaged based on adjacent dwellings and may be resolved prior to the hearing. Applicant has agreed to an enhanced re-planting plan, in addition to saving some existing trees, between the dwelling and seawall to offset loss of tree canopy. If approved, staff recommend adding the re-planting plan as a condition of approval.

Specialist Carpenter explained that there is no real vegetative concerns, parking issues have been addressed, and there are no safety concern. It was noted that the street front setback is a moot point and that 2 inches on the side is minimal. Specialist Carpenter noted that Board has all pertinent information, but additional details are available by request that will be more for building code.

Chair Gardner asked if there will be sufficient room for parking and staging and the applicant answered yes. It was noted that there may be temporary road blockages, but these happen all the time and can be handled through appropriate channels. Mr. Gurney asked if there was any communication from neighbors and it was answered that Director Williams spoke with the adjacent property owners who had questions, but did not express any concerns. It was also noted that property owners who live across the road were present at the meeting, these neighbors were sworn in.

The residents from 191 Tryon Bay Circle explained that they live on the same street as the property in this case. Mr. Gurney noted that they do not have standing since they are not the adjacent neighbors. Specialist Carpenter noted that if there are concerns with traffic on the road, they are dealt with frequently and there is procedures to communicate and manage road blockages. Specialist Carpenter noted they have one of the wider points for parking and staging on Tryon Bay. Specialist Carpenter noted that there is also an application process for road closures with multiple players involved. Specialist Carpenter noted that staff has not had any issues with road blockages in the past.

Dwayne Deeth, owner of lots 1 and 2, and Shay Zemin, architect with Cluck Design explained that Mr. Deeth wanted to live in one lot and have a space for family members to stay on the other lot. It was detailed that there has been a lot of planning and Mr. Deeth has met with Stan Aiken to ensure that correct processes were taking place. Mr. Deeth expressed that he is happy with the design and that Cluck is a large firm that has done credible work. It was noted that the design is geo-style. Mr. Deeth explained that the street is 19 ft. wide and the adjacent house is 13 ft., so there is room to park and stage.

Mr. Gurney expressed that he likes the design. Mr. Windfeldt agreed and noted the importance of relying on the geo-tech report. Specialist Carpenter noted that this was a concern of the owner's and it has been discussed with NCDOT. Mr. Deeth stated that two test pits will need to be completed, but it is likely that bedrock will be hit. Specialist Carpenter said it has to be certified that geo-tech recommendations were conformed to.

Mr. Gurney closed the hearing and deliberation began.

Board members expressed that they did not have any concerns. Mr. Owensby stated that it will be an improvement to the property. Mr. Gurney reminded the Board that there will be conditions regarding re-planting.

Mr. Gurney re-opened the hearing. Specialist Carpenter explained that he would recommend also requiring the re-planting to mitigate canopy loss.

Mr. Gurney re-closed the hearing.

**Mr. Gardner made a motion to approve Variance Requests ZV2023021 and ZV2023022 regarding Dewayne Deese's request for reduction of street front, lake front and side setbacks at two undeveloped, non-conforming parcels at corner of Tryon Bay Circle and Memorial Highway, with condition that applicant makes additional re-plantings as discussed with staff. Mr. Owensby seconded and all voted in favor.**

***C. Approval of 2024 BOA and LSAB Meeting Schedules***

**Mr. Gurney made a motion to approve the 2024 Board of Adjustment and Lake Structure Appeals Board Meeting Schedules. Mr. Owensby seconded and all voted in favor. The meeting schedules were approved as follows:**

**2024**  
**BOARD OF ADJUSTMENT / LAKE STRUCTURE APPEALS BOARDS**  
**REGULAR MEETING SCHEDULE**

FILING DEADLINE (21 DAYS OR MORE PRIOR TO MEETING)	LETTER'S MAILED TO ADJACENT PROPERTY OWNERS  (14 DAYS PRIOR TO MEETING)	PUBLIC NOTICE <i>NEWSPAPER</i> PUBLICATION DATE (CUPs ONLY) <i>MUST BE SUBMITTED 2 DAYS PRIOR TO PUBLICATION DATE</i>	PACKETS MAILED  (BOARD MEMBERS, & LIAISON)	MEETING  DATE**
January 2	January 9	January 10	January 16	January 23
February 6	February 13	February 14	February 20	February 27
March 5	March 12	March 13	March 19	March 26
April 2	April 9	April 10	April 16	April 23
May 2	May 15	May 15	May 21	May 28
June 4	June 11	June 12	June 18	June 25
July 2	July 9	July 10	July 16	July 23
August 6	August 13	August 14	August 20	August 27
September 3	September 10	September 11	September 17	September 24
October 1	October 8	October 9	October 15	October 22
November 5	November 12	November 13	November 19	November 26
November 26	December 3	December 4	December 10	December 17

\*\*ALL BOARD OF ADJUSTMENT MEETINGS ARE AT 1:00 P.M. UNTIL FURTHER NOTICE

\*\*ALL LAKE STRUCTURE APPEALS BOARD MEETINGS ARE AT 1:30 P.M. UNTIL FURTHER NOTICE


**VII. December Department Report**


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

**VIII. Adjournment**

Chair Gardner asked for a motion to adjourn the Board of Adjustment regular meeting at 2:38 p.m. Mr. Windfeldt made motion to adjourn and Mr. Gurney seconded. All members voted in favor.

ATTEST:

  
 Olivia Stewman, Town Clerk

  
 Greg Gardner, Chair