



Board of Adjustment Regular Meeting

October 24, 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
Mrs. Kimberly Sayles, Alternate (Serving)

Absent:

Mr. Al Joyner
Mr. Mark Windfeldt, 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 October 24, 2023 Board of Adjustment meeting was reviewed. **Mr. Owensby made a motion to approve agenda, as presented. Mr. Gurney seconded. All voted in favor.**

III. Approval of Minutes

It was noted that the case regarding Koken should state "is for a triangle deck."

The minutes from the September 26, 2023 Board meeting were reviewed. **Mr. Melvin Owensby made a motion to approve the September 26, 2023 meeting minutes, as amended. Chair 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: ZV2023015 regarding 182 Hummingbird Cove to reduce the minimum street front yard setback by 6' to allow a 15' addition to the front of the existing house.*

The following individuals were sworn in:

Richard Carpenter, Development and Environmental Review Specialist
Michael Steel, Applicant

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

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

Lisa & Michael Steele are seeking a variance to expand their home into the street front setback. The property is addressed as 182 Hummingbird Cove, Lake Lure, NC (Parcel #217390,217391) and is in the Residential 1 (R-1) Zoning District.

Additional Information for the Board:

- 1) Per §36-70, Building Site Minimum Dimensional Standards(b) The lot width at the building site minimum dimensional requirements shall not apply to existing lots of record as of the effective date of the ordinance from which this chapter is derived. For any residential lot, lot width at street line shall be not less than 35 feet.
- 2) Subject property is surrounded entirely by front setbacks.
- 3) Property is currently two parcels. Applicant has proposed re-combining if variance is approved.
- 4) The submitted plans illustrate an encroachment into the street front yard by approximately 6'.

Setback Type	Code Requirement	Variance Request
Street Front	35'	29' (Reduction of 6')

Staff Position: Staff recommend that the board require the two properties be recombined if the variance is granted.

Mr. Gurney asked what the applicants are constructing and Specialist Carpenter said that he does not have any other documentations, but they should just be constructing an addition to the existing A-frame structure. Mr. Gurney asked if there were any comments from neighbors and Specialist Carpenter answered no. Mrs. Kimberly Sayles noted that the land is slopped in a ditch slightly and is sitting in a hole. Mr. Gardner expressed that there seem to be special circumstances. Specialist Carpenter noted that the property owner has been communicating with staff throughout the process.

Mr. Steele, 182 Hummingbird Cove, provided two pictures of the house and an outline with caution tape showing exactly where it would be extended (Attachment A). Mr. Steele noted that he does not want to change the original lines of the house and that he wants it to look the same, but his family is growing and he would like extra space. Mr. Steele added that he would like to take the existing frame and expand it. Mr. Owensby asked that the photos be added into the record. Mrs. Sayles asked if the roofline would remain as existing and Mr. Steel answered yes. Mr. Owensby asked if Mr. Steele has any issues with combining the properties if this is variance is granted. Mr. Steele explained that he already has a surveyor, Don McEntire, and contractor to combine the properties if the variance is granted.

The testimony was closed and deliberation began.

Mr. Owensby noted that the structure is surrounded by the three roads and front yards. Mr. Owensby added that Mr. Steel is willing to combine the two together. Mrs. Sayles expressed that she likes that the structure not flat to the road. Mr. Owensby expressed that he has no issue granting this variance.

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 including the three roads surrounding the structure.

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 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.

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

The Board determined there are special circumstances that are not the results 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.

Mrs. Sayles made a motion to grant Variance Request: ZV2023015 regarding 182 Hummingbird Cove to reduce the minimum street front yard setback by 6' to allow a 15' addition to the front of the existing house, with the condition that the sites are combined. Mr. Gurney seconded and all voted in favor.

Specialist Carpenter informed Mr. Steele that he has six months to obtain the zoning permit.

- B. Variance Request: ZV2023016 regarding O Buffalo Creek (Rumbling Bald Resort maintenance area at Buffalo Creek Rd and end of West Lake Drive South) to receive a variance from Section 36-231(d) of the Zoning Ordinance to allow a chain link fence in a street front yard.**

The following individuals were sworn in:

Richard Carpenter, Development and Environmental Review Specialist
Liz Geary, Fairfield Mountain POA

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

Specialist Carpenter presented the following information:

Liz Geary, on behalf of Fairfield Mountains POA, is seeking a variance to construct a chain link fence in the street front yard of a residentially zoned property. The property is addressed as 0 Buffalo Creek Rd., Lake Lure, NC (Parcel #1618029) and is in the Residential 3 (R-3) Zoning District.

Additional Information for the Board:

- 1) Per §36-231, Fences, Walls and Hedges(d) Chain link fencing, chicken wire, hardware cloth, and other woven or mesh products are not permitted in required street front yards of any district.
- 2) Fairfield is seeking to replace fencing with a chain link fence. However, chain link fencing is not permitted within the street front setback.
- 3) Applicant is seeking an exemption from the ordinance requirement.

Staff Position: Staff recommend that the board review hardship versus personal convenience or preference for a more lenient standard. Per the state standards, there must be extraordinary and/or exceptional conditions pertaining to the property in question. Staff have not discovered any such condition and do not support this request.

Specialist Carpenter expressed that he does not believe that there are any hardships, but requested that the board determine if there are any or if there is a need for a more lenient text amendment. An email was provided in the packets with further clarifications. Specialist Carpenter displayed the application and site plan. Chair Gardner

asked what is on the site now and it was answered that there is currently no fence. Specialist Carpenter reiterated that there are alternative designs and Mr. Hardy asked what kind. Specialist Carpenter answered slats and open fencing. Mr. Hardy asked if a privacy fence would be permitted and Specialist Carpenter answered that a shadow box could be. Specialist Carpenter noted that the chain link alternatives may be more difficult and costly. Specialist Carpenter noted that in the email, Rumbling Bald expresses that they consider themselves as commercial or Government Use, but the area is zoned residential. Specialist Carpenter noted that if the Board found hardships, he would not recommend any approvals without alternative vegetative screening. Specialist Carpenter noted that they do have two front setbacks.

Liz Geary, Director of Community Management at Rumbling Bald 112 Mountains Blvd., noted that the maintenance area is hub for storage. It was also noted that there is an existing side gate that is only opened for fire trucks and larger vehicles. Ms. Geary explained that the row of trees that were originally installed are evergreens and Rumbling Bald was asked to provide additional screening. It was added that Rumbling Bald did not want to remove the trees, so they agreed to install fencing. Ms. Geary explained that wood fencing would be difficult to sustain in the area. It was detailed that the POA parking lot is located there and they are requesting fencing for the front yard. Ms. Geary noted that a plastic insert that weaves through the mesh would be used if the chain link is approved. Ms. Geary explained the fencing would be a black coated 6 ft. chain link fence with black wind screen on the inside of the tree line. Ms. Geary noted that if needed, she has photos of the area. Mr. Hardy asked how Ms. Geary would describe any hardships. Ms. Geary noted that R3 zoning is mixed use, is commercial in nature, and the property in reference is very small and it would be behind the trees. Ms. Geary expressed that she does not think that is the intent of the ordinance. Mr. Hardy noted that the hardship seems to be appearance only. Ms. Geary stated that appearance is a factor, but Rumbling Bald is struggling to find a way to appropriately screen that would meet the current ordinance standards. Ms. Geary expressed that Rumbling Bald is open to other options, but have not found one that would meet all elements of the ordinance. Mr. Owensby asked if Rumbling Bald has noticed the fencing at Marathon Builders and Specialist Carpenter explained that the Marathon property is zoned Commercial General and that type of fencing is allowed there. Specialist Carpenter reiterated that he recommends vegetative screening. Mr. Hardy noted that 6 ft. is the max height for any fencing. Specialist Carpenter stated that open fencing can be 8 ft. in height. Specialist Carpenter noted that the issue is just the material of the requested fencing. Specialist Carpenter added that a fully enclosed box frame would be permissible, and possible a shadow box could be if it is open. Mr. Gurney asked if it is feasible with the current ordinance and Specialist Carpenter answered that he thought so. Specialist Carpenter noted that the issue here is it is chain link material. Ms. Geary noted that the POA is required to screen the maintenance area. Mrs. Sayles noted that if they had Cyprus screening it would suffice. Ms. Geary noted that there is existing

vegetative screening, but it is not effective and homeowners claim that it is impacting their property values. Ms. Geary asked if a shadow box fence would work and Specialist Carpenter answered that he thinks so. Mr. Hardy noted that the Board has no further questions.

The testimony was closed and deliberation began.

Mr. Owensby noted that he did not identify any hardships. Mr. Gardner noted that he thinks that there are alternatives. Mrs. Sayles expressed concern with the mesh because it can be harmful to the environment. Mr. Gurney expressed that the hardship could be that the ordinance does not allow options for screening, but it sounds like they have options for alternatives. Board members discussed that there are several alternatives. Mr. Hardy asked Board members if they see any hardships and various Board members answered no. Mr. Gardner asked Specialist Carpenter if the applicant would need to come back for an alternative and if it would it make sense to continue the hearing. Mr. Hardy expressed that the Board can deny the variance and Rumbling Bald could find an alternative that is permitted. Specialist Carpenter reminded the Board that they can set parameters.

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 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?

This question was not applicable.

Mr. Gardner made a motion to deny Variance Request: ZV2023016 regarding O Buffalo Creek (Rumbling Bald Resort maintenance area at Buffalo Creek Rd and end of West Lake Drive South) to receive a variance from Section 36-231(d) of the Zoning Ordinance to allow a chain link fence in a street front yard, but extend to the applicant that this could be completed with an approved fence structure. Mr. Gurney seconded and all voted in favor.

C. Variance Request: ZV2023017 regarding 107 Lost Cove Road to allow a 35 square foot encroachment into the lake front yard and side yard setbacks for a nonconforming access walkway.

The following individuals were sworn in:

Richard Carpenter, Development and Environmental Review Specialist
Lewis Ruben, Property Owner
Vince Wigman, Architect

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

Specialist Carpenter presented the following information:

Lewis & Debbie Rubin are seeking a variance to keep a non-conforming structure that was recently built contrary to site plans. The property is addressed as 107 Lost Cove Dr., Lake Lure, NC (Parcel #1636258) and is in the Residential 1 (R-1) Zoning District.

Additional Information for the Board:

- 1) Per §36-70, Building site minimum dimensional requirements. The side setback for the R-1 district is 10' & (c) 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) The applicants are seeking a variance based on the footprint of the structure without a specific reduction to the required yards.
- 3) Project was permitted with an alternative design. However, the plans changed, and staff noticed a non-compliant structure recently built that did not meet the original plans.
- 4) The builder was given an option to make the structure code compliant but declined this option to pursue a variance.

Staff Position: Staff recommend that the board review hardship versus personal convenience or preference for a more lenient standard. State standards make it clear that the special circumstances (hardship) cannot result from actions taken by the applicant/property owner. The structure was built to maximize the lot and meet multiple setback limits. The construction of a smaller dwelling would have allowed for this design to move forward. Additionally, there are alternative designs that could be constructed that would be code compliant.

Specialist Carpenter displayed a photo of the property. Mrs. Sayles suggested that there could be an alternative solution and Specialist Carpenter answered that was his suggestion, but there may be an issue with building code. Mr. Hardy asked for verification that the applicant did not propose a specific footage for the variance request, but requested just the approval of the footprint of the structure and Specialist Carpenter answered that this is correct.

Mr. Vince Wigman provide the Board with additional photos (Attachment B). Mr. Wigman noted that he did not have elevation and explained that the best option was the original drawing, but there was not enough length to pursue that option and it was complicated. Mr. Wigman explained that the proposed walkway is for connection because the topography is very steep. Mr. Hardy asked if this could have been avoided by making the stairs parallel to the back of the house and Mr. Wigman explained that

they were trying to hit the landing, and that making it parallel would hit in the middle of a stairs. Mr. Gurney asked if the goal is to keep it the structure as current constructed and Mr. Wigman explained that it could be split in half, but a trip hazard would be created. Mr. Hardy noted that it would have had to be angled under alternative plans. Mr. Ruben explained that they wanted erosion control, then building code wanted railings and came up with the access, but topography would not allow the originally submitted structure.

The testimony was closed and deliberation began.

Mr. Gardner expressed that topography is an issue and others agreed.

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.

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 will 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 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.

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. Gurney made a motion to grant Variance Request: ZV2023017 regarding 107 Lost Cove Road to allow a 35 square foot encroachment into the lake front yard and side yard setbacks for a nonconforming access walkway, maintaining the current footprint. Mr. Gardner seconded and all voted in favor.

D. Variance Request: ZV2023018 regarding 130 Paramount Way to reduce the minimum lake front yard setback by 29' to allow the rebuilding of a pre-existing nonconforming deck that has rotted structural members.

The following individuals were sworn in:

Richard Carpenter, Development and Environmental Review Specialist
Steven Beattie, Applicant
Vince Wigman, Architect

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

Specialist Carpenter presented the following information:

Steven Beattie is seeking a variance to construct a deck within the lake front setback. The property is addressed as 130 Paramount Way, Lake Lure, NC (Parcel #228286) and is in the Residential 1 (R-1) Zoning District.

Additional Information for the Board:

- 1) Per §36-70 Building site minimum dimensional requirements (c) 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) The applicants are seeking a reduction of 29' from the required setback.
- 3) Project was in progress when town received a complaint from a neighboring property. Upon inspection, it was determined that the construction did not have a permit. The contractor acknowledged this fact when a stop work order was issued.

Setback Type	Requirement	Requested Setback	Reduction
Lake Front	35'	6'	29'

Staff Position: Based on Rutherford County tax records, and site photographs, it appears that the applicant is seeking to re-build based on the original footprint. It is possible that a variance would not have been required if the applicant went through the permitting process. Dwelling is located within the lakefront setback & the uphill side is a forested slope.

Mr. Hardy expressed that the substructure was still be in place and Specialist Carpenter answered that some footers did remain, but they went beyond that. It was noted that they want to go back to the original which is non-conforming since any part of it was removed aside from the County exemption that could have been sought. Specialist Carpenter noted that building code has not given an opinion. Mr. Gardner asked if all of the rotted wood is gone and Specialist Carpenter said yes. Chair Gardner asked if it is the same as the former footprint and Specialist Carpenter said yes, according to County tax records. Mr. Owensby asked if Specialist Carpenter was the one that issued the stop work order and Specialist Carpenter answered yes.

Mr. Steven Beattie, 130 Paramount Way, explained that he bought the house in November of 2022. Mr. Beattie added that he hired a contractor to replace decking boards and railing, and that he was not aware that any permits were required. It was noted that once the contractor started making the changes, it was identified that the boards were rotting. Mr. Beattie contacted Lee Pace with the County to discuss this. Mr. Beattie explained that he is asking to replace the deck to the original condition. Mr. Beattie added that he is working towards figuring out the proper process and has been relying on his contractor. Mr. Gardner asked if the rot showed up in the County's inspections and it was answered that it showed up in the inspection in the railings and board. Mr. Owensby asked if he is redoing the boat lift and Specialist Carpenter answered yes, and that the application for that has been submitted. Mr. Owensby noted

that this is on sewer line. Mr. Gurney asked if it is exactly the same as what it was previously there and Mr. Beattie stated that he would work with staff to ensure that this is the exact same. Mrs. Sayles noted that it is fortunate that someone took photos of the rot, and that boards were covering the rot during building inspection. Mr. Wigman added that the structure needed improvements and that he is not surprised that there was rot. Specialist Carpenter noted that ordinance is designed to let people rebuild because of this. Mr. Gurney asked if the neighbor who complained was just complaining about the lack of permitting and Specialist Carpenter said yes, there were no comments about the actual work.

The testimony was closed and deliberation began.

Mr. Gardner noted that this needed to be done, built in same footprint, and that the only issue was that the owner should have gotten a permit and steps should have been taken to resolve issues. Mr. Gurney agreed that he is glad that they have County documentations.

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.

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 will 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 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.

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. Gardner made a motion to grant Variance Request: ZV2023018 regarding 130 Paramount Way to reduce the minimum lake front yard setback by 29' to allow the rebuilding of a pre-existing nonconforming deck that has rotted structural members. Mr. Gurney seconded and all voted in favor.

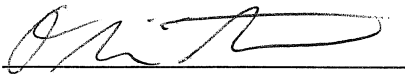
VII. October Department Report

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

VIII. Adjournment

Chair Gardner asked for a motion to adjourn the Board of Adjustment regular meeting at 2:20 p.m. Mrs. Sayles made motion to adjourn and Mr. Owensby seconded. All members voted in favor.

ATTEST:


Olivia Stewman, Town Clerk


Greg Gardner, Chair





PHOTOGRAPHED BY
JAMES W. HARRIS

