

**BOARD OF ADJUSTMENT MEETING**  
**Town of Sylva Board of Commissioners**  
**October 10, 2023**

The Town of Sylva Board of Adjustment met in a Quasi-Judicial Hearing on October 12 2023, 5:30 p.m., at Town Hall, 83 Allen Street, Sylva, North Carolina.

Present:	David Nestler, Mayor	Paige Dowling, Town Manager
	Mary Gelbaugh, Commissioner	Amanda Murajda, Town Clerk
	Ben Guiney, Commissioner	Eric Ridenour, Town Attorney
	Greg McPherson, Commissioner	
	Natalie Newman, Commissioner	
	Brad Waldrop, Commissioner	

Absent:

Mayor Nestler called the meeting to order at 5:30 p.m.

**STAFF PRESENT:** John Jeleniewski (County Planner),

**VISITORS:** Luther Jones, JB Mathews, Kathy Mathews, Kim Mitchell, Ina Sams, Cornelia Waldrum, Evelyn Bennett, Jeremiah Wiggins, Joy Hooper, Pat Newman, Nathan Shepherd and Dowdy Bradley.

*Mayor Nestler:* A quasi-judicial meeting is an evidentiary hearing where the Town of Sylva Board of Adjustment will make a decision based solely on competent, material and substantial evidence in the record. The record is all of the materials and input that is presented to the Board, including the application, exhibits, testimony and related materials. The record may include some insufficient evidence, but the Board may not base its decision on it. These types of hearings are conducted in a manner similar to courts.

***Opening of the Quasi-Judicial Meeting***

*Mayor Nestler:* The next item on the agenda is a request from Mountain Modern Construction, LLC for a variance from the required front building setback of 30' and side setback of 10' in the LDR district for their specific property. The hearing on this matter is judicial in nature and will be conducted in accordance with special due process safeguards.

***Disclosures***

*Nestler:* Before we begin, I'd like to give Board members a chance to reveal any possible disclosures or conflicts. I would like to remind the Board that a conflict of interest has a stricter definition with a quasi-judicial matter than a general legislative matter. If an individual board member has a strong personal interest in a case, he or she must not participate in this case. Disclosures might include site visits, Ex parte communications with any person including County and Town staff and consultants, specialized knowledge related to the case, family, business or other relationship with the applicant or affected person, financial interest in the outcome or any other relevant information.

*Nestler:* Are there any disclosures to be made?

*Guiney:* I would like to disclose that I visited the site and sent pictures to the board of the site.

***Parties***

Mayor Nestler inquired if there was anyone other than the Applicant and the County/Town Staff who wished to be a party to this action. Anyone other than the Applicant and County/Town Staff who want to be a Party in this action must have standing as explained earlier. Those wishing to be a party to the action, in addition to county and town staff were Kathy Mathews and Jeremiah Wiggins. Mayor Nestler administered an oath to the above-mentioned individuals, John Jeleniewski (Senior County Planner) and Paige Dowling (Town Manager).

**Variance Request—Mountain Modern Construction, LLC**

**(1) General Information:**

- (a) Project: Residential Home Build
- (b) Applicant: Mountain Modern Construction, LLC
- (c) Location: Keener Street, Sylva, PIN 7641-07-0338; LDR District

**(2) Explanation of Proceedings:** Mayor Nestler explained the order of business for the hearing as follows:

- a. Staff Presentation of Report.
- b. Applicant Presentation of Evidence and Witnesses.
- c. Other Parties with standing Presentation of Evidence and Witnesses.
- d. Rebuttal.
- e. Closing Statements

**(3) Evidence:** Mayor Nestler added that if anyone wanted the Board to see written evidence such as reports, maps, or exhibits, the witness who is familiar with the evidence should ask that it be introduced during or at the end of their testimony. Also, parties may cross-examine witnesses when questions are called for.

**EXHIBITS:**

- (A)** Application for the Variance Request
- (B)** Drawings
- (C)** Staff Report
- (D)** Letter of Support from Mary Ann Roos

**(4) Staff Presentation of Report:** John Jeleniewski, Jackson County Senior Planner, presented the staff report. Jackson County is contracted by the Town of Sylva to do planning and zoning. The applicant is requesting a variance for setback requirements for a residential home build. Jeleniewski read the staff report as follows:

**Project:** Residential Home Build

**Applicant:** Mountain Modern Construction, LLC

**Property Location:** Keener Street, Sylva, PIN 7641-07-0338

**Property Zoning:** Low Density Residential District (LDR)

**Ordinance Request:** Article 3, Section 3.8.B - Variances

**Description of Request:** The applicant is requesting a variance from the required front building setback of 30' and side setback of 10' in the LDR District for his specific property. The variance process administered by the Board of Adjustment is intended to provide limited relief from the requirements of this ordinance in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of the land in a manner otherwise allowed under this ordinance. However, in no event shall the Board of Adjustment grant a variance that would conflict with any state code, would allow the establishment of use that is not otherwise allowed in a particular zoning district, or which would change the zoning district classification or the district boundary of the property in question.

**Background:** The property for this requested variance is located off Keener Street and is approximately 300' south of the Old Jackson County Courthouse. This property is 0.22 acres in land area and is bordered residential properties to the north, east and south. The applicant is seeking a variance from the required 30' front building setback to be reduced to a 20' front setback and that the side building setback (south side only) be reduced from 10' to 5' for a proposed residential dwelling. Public utilities will be provided by Tuckasegee Water and Sewer Authority (water and sanitary sewer) and Duke Power.

**Staff Findings:** Based on the submitted documents by the applicant, the requirements for a variance application have been met for review by the Town Board of Adjustment.

The findings as required by:

- **Article 3, Section 3.8.B.3. – Variances, Required Findings:**  
(Staff assistance is offered in bold below)

3. Required Findings: The Board of Adjustment shall not grant a variance unless and until it makes all of the following findings:

- a. Carrying out the strict letter of the ordinance would result in unnecessary hardship. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

***The applicant is requesting a reasonable reduction of the front and side (south side only) building setbacks which will move the proposed residential dwelling closer to Kenner Street in effort to minimize disturbance of the steeper areas of the property.***

b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

*The existing site conditions and constraints are not the actions of the applicant. The Town's Zoning Ordinance was adopted in 1997 which established building setbacks and the existing grade of the property does not appear to be a modified slope.*

c. The hardship did not result from actions taken by the applicant of the property owner. The act of purchasing property with the knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

*The existing site conditions and constraints are not the actions of the applicant. The Town's Zoning Ordinance was adopted in 1997 which established building setbacks and the existing grade of the property does not appear to be a modified slope.*

d. The requested variance is consistent with the spirit, purpose, and intent of this ordinance, such that public safety is secured, and substantial justice is achieved.

*This existing lot of record has limited land area and a somewhat steep slope. Reducing the front building setback by 10' and the side setback by 5' will keep in standing with the spirit/purpose/intent of the Zoning Ordinance as public safety and unnecessary land disturbance will be supported.*

e. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit. That is, the applicant is not seeking to establish, or expand, or extend a nonconforming use. Moreover, the existence of a nonconforming use is the same or in any other zoning district shall not constitute a reason for granting the requested variance.

*The applicant is not requesting to expand a nonconforming property or use. The variance request is specific to the subject property only.*

**Staff Recommendation:**

- That the applicant complies fully with the Town of Sylva's Zoning Ordinance and any conditions set forth by the Board of Adjustment.

Jeleniewski: Building a residential home on the property is a use by right.

**Questions from the applicant:** None.

**Questions from parties with standing:** Kathy Mathews, neighbor on lower side, said her concern is groundhogs that live on the property and whether they plan to trap and remove, removal of them, concern is that construction will cause them to self-disperse.

Jeleniewski: There is nothing in zoning ordinance that requires applicant to remove any non-protective wildlife.

**Questions from the Board of Adjustments or Town Attorney:** None.

**(5A) Applicant Presentation of Evidence and Witnesses:** Jeremiah Wiggins, managing member of Mountain Modern Construction, LLC, explained that there is a knoll on the property and the goal is to position the home on that knoll which eliminates some construction cost and keeps ground stability. Without variance then forced to crowd neighbor below by building lower. There is a large stand of popular trees, and we are trying to preserve the tree canopy so that means they need side setback reduction. As far as the groundhogs go, we have already trapped

and removed two groundhogs humanely. It is a single-family residence, and we have two interested families who would be permanent residents.

**Questions from other parties:** None.

**Questions from the Board of Adjustments or Town Attorney:** None.

**(5B) Other Parties Presentation of Evidence and Witnesses:** Mayor Nestler submitted as Exhibit D a letter of support from Mary Ann Roos.

Nestler: Read letter of support.

**Questions from the applicant:** None.

**Questions from parties with standing:** None

**Questions from the Board of Adjustments or Town Attorney:** None.

**(5C) Rebuttal**

**Applicant:** None.

**Other Parties:** None.

**(5D) CLOSING STATEMENTS:**

*Nestler:* Does the staff have any closing statements? None.

*Nestler:* Does the applicant have any closing statements? None.

*Nestler:* Board do you have questions of the applicant? None.

Being no further comment Mayor Nestler asked for a motion to close the hearing. *Commissioner Guiney made a motion to close the hearing at 6:00 p.m. The motion carries with a unanimous vote.*

**NEW BUSINESS:**

Mayor Nestler summarized the quasi-judicial hearing with the following:

**Project:** Residential Home Build

**Applicant:** Mountain Modern Construction, LLC

**Property Location:** Keener Street, Sylva, PIN 7641-07-0338

**Property Zoning:** Low Density Residential District (LDR)

**Ordinance Request:** Article 3, Section 3.8.B - Variances

**Description of Request:** The applicant is requesting a variance from the required front building setback of 30' and side setback of 10' in the LDR District for his specific property.

**Discussion/Motions:**

Is there any additional discussion from the Board on this variance request application? None.

Is there a motion from the Board to vote on the variance request application?

*Commissioner Guiney made a motion to vote on the application. The motion carried with a unanimous vote.*

**Decision:**

*Nestler:* Now comes the decision time on this. The following items are necessary in granting a variance. All must be approved for the request to be granted.

Item 1: *Carrying out the strict letter of the ordinance would result in unnecessary hardship.*

Votes in the affirmative? Unanimous

Votes against?

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Item 2: The hardship results from conditions that are peculiar to the property, such as location, size, or topography.

Votes in the affirmative? Unanimous  
Votes against?

Item 3: The hardship did not result from actions taken by the applicant of the property owner.

Votes in the affirmative? Unanimous  
Votes against?

Item 4: The requested variance is consistent with the spirit, purpose, and intent of this ordinance, such that public safety is secured, and substantial justice is achieved.

Votes in the affirmative? Unanimous  
Votes against?

Item 5: The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit.

Votes in the affirmative? Unanimous  
Votes against?

**(e) Motion:** Commissioner Guiney made a motion to approve the variance request. The motion carries with a unanimous vote.

There being no further business, Commissioner Guiney made a motion to adjourn the meeting at 6:03 p.m. The motion carries with a unanimous vote.

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David Nestler  
Mayor

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Amanda W. Murajda  
Town Clerk