



MINUTES
Board of Adjustment
April 8, 2008 ~ 7:00 p.m.
☞ Town Chambers ☞

Board Members Present: Chairman David Snider, Reta Berman, Steve Bomgardner, Margie Ebner, Carolyn Lawson, Michael Sheaffer, and Thomas Snyder.

Board Members Absent: Steve Howard, Vice Chairman, and Michael Schutrum.

Planning Staff Present: Lisa McCarter, Planner, David Peete, Principal Planner, and Michelle V. Haines, Secretary.

Chairman Snider called the Board of Adjustment hearing to order at 7:04 p.m.

Approval of the Minutes

Thomas Snyder moved to approve the Minutes of the March 18, 2008 meetings, and Reta Berman seconded the Motion. The vote carried unanimously.

Case #V08-05 Called

Kevin Nelson, Sales Manager with Champion Patios appeared as applicant, and on the behalf of the owners, Janet and Stuart Thomas. Kevin Nelson and Lisa McCarter were sworn in prior to giving testimony concerning the matter of Variance # V08-05 - 9718 Sunset Grove Drive.

Planning Staff Testimony

Lisa McCarter gave her preliminary statement of the case to the Board and entered her facts, findings and conclusions into the record through verbal testimony and written documentation, as follows.

BACKGROUND:

1. The subject property is zoned Rural (R), and is located at 9718 Sunset Grove Drive. There is currently a multi family home on the property also known as lot 15 of the Skybrook Townhomes Subdivision.
2. On March 3, 2008, the applicant filed for a variance from the rear Minimum Building Lines specified on the approved plat.

STAFF FINDINGS

Article 11.3.2 f, Standards for Granting a Variance of the Huntersville Zoning Ordinance:

- 1) Before granting a variance, the Board of Adjustment shall have made the following findings:
 - (a) That practical difficulties or unnecessary hardships, as defined in subparagraph 2) below, would result from the strict application of these regulations; and
The property is currently in use as a multi family home; therefore reasonable use is currently being made of the property without the proposed variance.
 - (b) That the variance is consistent with the objectives and policies of any adopted plan for the district or area covering the property, any other adopted written policies governing land development, and the construction and improvement of public facilities, and the general intent of these regulations; and
The Town intends the property to be used for a multi family residential dwelling and the applicant's proposal is consistent.
 - (c) That the public safety and welfare have been protected and substantial justice done.
Granting this variance would not threaten safety or welfare.
- 2) Only the following three conditions shall constitute a practical difficulty or unnecessary hardship and all must be met:
 - (a) The difficulty or hardship would result only from these regulations and from no other cause, including the actions of the owner or previous owners of the property; and
The setback was imposed at the time of the subdivision approval by the Town of Huntersville as agreed upon by the developer.
 - (b) The difficulty or hardship is peculiar to the property in question and is not generally shared by other properties classified in the same zoning district and/or used for the same purposes; and
As exhibited on the approved plat, all the surrounding properties in the Skybrook Townhomes Subdivision have a required minimum 35 foot rear setback.
 - (c) The difficulty or hardship resulting from the application of these regulations would prevent the owner from making a reasonable use of the property. The fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not be considered as grounds for granting the variance.
Reasonable use of the property may be made without the variance.

STAFF CONCLUSIONS

For attached homes on small lots, the intention of the Ordinance is to have a private yard space to the rear of the home. The property is currently being used for a multi family residence, and can continue to be used for a multi family residence if the variance is not granted. Staff does not support a variance since the request does not meet the findings of fact.

Applicant Testimony

Kevin Nelson (hereinafter "Nelson"), applicant, presented argument in support for a variance pursuant to Article 4 Building and Lot Type; Attached House, which requires a 35' minimum rear setback. The applicants are requesting a variance from this requirement so that they may construct a sunroom addition on the rear of the home that encroaches into the required 35 foot setback

approximately 7.5 feet. Nelson presented to the Board that the owners purchased the property with the idea and intent of building on to the back the house. The Restrictive Covenants state that they (the homeowners) have a right to build on the property (a copy of the pertinent portion was shown to the Board but no exhibits were supplied). The homeowners sought approval from the Homeowner's Association prior to contracting with Champion, and with neighbors. Nelson did not present a copy of the approval from the Homeowner's Association, or written approval of the neighbors who are in favor of this addition. The original survey showed there was about a 14' open space with no view obstructions. There were no persons present to oppose and present argument against the application. Both sides were permitted to present rebuttals to opposing testimony.

Steve Bomgardner questioned whether there is any unnecessary hardship to this request. Nelson responded that the hardship is in the owner's feeling about the project and their initial intent to build the addition, which is why they purchased this property.

Margie Ebner commented that the language in the Restrictive Covenants states "patio" can be constructed not an enclosed porch or addition. Nelson replied that the verbiage used is hard for the average homeowner to understand.

Board Conclusions

The period for public discussion was closed by the Chairman. The Board publicly discussed the case without further input or the necessity of clarification from the applicant and planning staff concerning the amount of encroachment, setback lines, and hardship.

Steve Bomgardner does not see a hardship being imposed. Thomas Snyder agreed, and feels that if the Restrictive Covenants allowed for this type structure he would agree to grant the variance. However, Thomas Snyder made a **Motion to Deny** the variance based upon the following Findings of Fact.:

Findings of Fact

The Board of Adjustment finds the following:

1. Before granting a variance, the Board of Adjustment shall have made the following findings:
 - a. That practical difficulties or unnecessary hardships, as defined in subparagraph 2) below, would result from the strict application of these regulations; and

There is not a hardship created by the regulations of the Zoning Ordinance.

- b. That the variance is consistent with the objectives and policies of any adopted plan for the district or area covering the property, any other adopted written policies governing land development, and the construction and improvement of public facilities, and the general intent of these regulations; and

The variance is not in keeping with the objectives of the Zoning Ordinance *Article 4: Attached House Building and Lot Type*. The existing multi-family use is consistent with the approved plan for Skybrook Townhomes.

- c. That the public safety and welfare have been protected and substantial justice done.

Public safety is not an issue in this request.

2. Only the following three conditions shall constitute a practical difficulty or unnecessary hardship and all must be met:
- d. The difficulty or hardship would result only from these regulations and from no other cause, including the actions of the owner or previous owners of the property; and

This request does not meet the criteria for a difficulty or hardship.

- e. The difficulty or hardship is peculiar to the property in question and is not generally shared by other properties classified in the same zoning district and/or used for the same purposes; and

The 35' minimum rear setback is not peculiar to the property and is shared by the neighboring properties.

- f. The difficulty or hardship resulting from the application of these regulations would prevent the owner from making a reasonable use of the property. The fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not be considered as grounds for granting the variance.

Reasonable use of the property is being made without the variance. The property is currently in use as a multi-family residence.

Carolyn Lawson **seconded** the **Motion to Deny**. The members voted on the Motion by showing of hands. In favor of the **Motion to Deny** was unanimous. **Therefore**, the request for a variance is **DENIED**.

Case #V08-06 Called

Kevin Nelson (hereinafter "Nelson"), applicant, Richard McElrath, property owner, and David Peete were sworn in prior to giving testimony concerning the matter of Variance # V08-06, 11111 Arthur Auten Road.

Statement by Board Member

David Snider disclosed to the applicant, property owners, Board Members and Planning Staff that he was contacted by the property owner when originally seeking a survey. He did basic research regarding this particular lot, but received no financial gain, and did nothing further for the homeowner. David Snider indicated that he did not feel any conflict of interest in hearing or deciding this matter, but did want full disclosure of his background in connection herewith. There were no objections to David Snider fully participating in this matter by any member of the Board, Planning Staff, or by the owner and/or applicant. Carolyn Lawson indicated that when his research was heard in testimony, if any, to identify those points. It was agreed, and this matter was opened for hearing.

Planning Staff Testimony

David Peete gave his preliminary statement of the case to the Board and entered his facts, findings and conclusions into the record through verbal testimony and written documentation, as follows.

BACKGROUND

The subject property is zoned Rural (R), and is located at 11111 Arthur Auten Road. There is currently a single-family home on the property. The property is located in the Mountain Island Lake Watershed Overlay, and was created in 1996 under Mecklenburg County's jurisdiction.

On March 7, 2008, the applicant filed for a variance from the 100 foot undisturbed buffer from the shoreline of Mountain Island Lake in order to add a patio room to the lakeside of the existing home.

The information available on POLARIS for this site incorrectly identified the required S.W.I.M. buffer as 50 feet. It is 100 feet in the Mountain Island Lake Critical Area. Mecklenburg County Water Quality Program Staff have identified the error and are working to correct POLARIS. The statewide buffer is 30 feet and is shown on the survey as well.

Article 3.3.2 C *Appeals and Variances in MIL-O District* states: 3.3.2-C.1 - The Zoning Board of Adjustment is hereby designated the Watershed Review Board. Article 3.3.2-C.3.b - Minor variances shall include petitions for the reduction of any numerical standard of the low-density option in the overlay district by a factor of 10% or less.

Minimum statewide water supply watershed protection criteria require a 30' undisturbed buffer from Mountain Island Lake. If the square footage of the proposed addition that is located in the 30' buffer is more than 10% of the total square footage of the area on the property located within the 30' buffer than this variance request is a major variance. Although the entire existing home is within the 100' buffer required by the Huntersville Zoning Ordinance, the existing home or the proposed patio room do not encroach into the 30' statewide buffer. Therefore, the request is a minor variance. Article 3.3.2-C.3.c further states, "Minor variances shall comply with the procedures and standards of Section 11.3 of these regulations (Zoning Ordinance)."

In summary, as this request is a minor variance, the Board of Adjustment may approve or deny the request subject to the provisions of Section 11.3 of the Zoning Ordinance (see below).

STAFF FINDINGS

Article 11.3.2 f, Standards for Granting a Variance of the Huntersville Zoning Ordinance:

- 1) Before granting a variance, the Board of Adjustment shall have made the following findings:
 - (a) That practical difficulties or unnecessary hardships, as defined in subparagraph 2) below, would result from the strict application of these regulations; and
The property is currently in use as a single family home; therefore reasonable use is currently being made of the property without the proposed patio room addition.
 - (b) That the variance is consistent with the objectives and policies of any adopted plan for the district or area covering the property, any other adopted written policies governing land development, and the construction and improvement of public facilities, and the general intent of these regulations; and
The Town intends the property to be used for a single-family residential dwelling and the applicant's proposal is consistent. The request is not consistent with the regulations for the Mountain Island Lake Watershed Overlay and preservation of the 100 foot buffer.
 - (c) That the public safety and welfare have been protected and substantial justice done.

The cumulative impact of approving variances to the undisturbed buffer from Mountain Island Lake would negatively impact water quality.

- 2) Only the following three conditions shall constitute a practical difficulty or unnecessary hardship and all must be met:

- (a) The difficulty or hardship would result only from these regulations and from no other cause, including the actions of the owner or previous owners of the property; and

The existing home was built in 1996 prior to the enactment of these watershed regulations and was not held to the current standards in the Huntersville Zoning Ordinance. This subdivision was approved by Mecklenburg County and not The Town of Huntersville. While the existing home is a legally non-conforming use, any addition or alteration must comply with current regulations.

- (b) The difficulty or hardship is peculiar to the property in question and is not generally shared by other properties classified in the same zoning district and/or used for the same purposes; and

As exhibited on the aerial photograph from POLARIS the surrounding properties are a) vacant, b) have single-family homes that appear to encroach into the 100' buffer and c) have single-family homes that do not appear to encroach into the 100' buffer. Not all parcels in this area encroach into the required buffer, but several do and will face similar development limitations.

- (c) The difficulty or hardship resulting from the application of these regulations would prevent the owner from making a reasonable use of the property. The fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not be considered as grounds for granting the variance.

Reasonable use of the property is currently available without the variance.

STAFF CONCLUSIONS

The property is currently being used for a single family residence, and can continue to be used for a single family residence if the variance is not granted. Staff does not support a variance since the request does not meet the findings of fact.

Applicant Testimony

Nelson, applicant, and Richard McElrath, owner, presented argument in support of the application for a variance from **Article 3.3.2-A Critical Areas** to add a patio room to a home that currently encroaches 100% into the required 100 foot undisturbed buffer from shoreline of Mountain Island Lake. Nelson, Sales Manager of Champion Patio Rooms, introduced into evidence that the homeowners purchased the property with the intent to expand not realizing the house was in the watershed. Champion Patios relied on POLARIS as a guide knowing that it may not be completely accurate, but should be relatively accurate. In this case, time and money has been invested and since the backyard is somewhat unusable, the homeowners are not able to utilize it. There is a four foot (4') walkway in the back that is not an area to utilize and they lack the ability to enjoy the property. The applicant appreciates the watershed; however one point to consider about this project is that it only requires three (3) post 2'x2'x12" deep for footers. The amount of the affect of this is basically the extent of planting three (3) trees.

Richard McElrath, owner, presented argument in support of the application. According to his testimony he made it clear when purchasing the home that they would need to remove the spiral staircase and add a room to look out on the lake. There are not enough windows in the house and for that reason is it needed to make the house acceptable, and to enjoy the lake. Another point was made was that the house next door to their property was located closer to the lake. Concerning impervious areas the addition will be standing off ground approximately six (6) to seven (7) feet high, extend out, and be supported by posts.

Carolyn Lawson stated that the property was purchased with the same problem the rest of the people have, and that her concern is that the public is not getting the right information and being told about the 100' buffer. Reta Berman stated that it is up to the homeowner to find this information. David Snider stated that public hearings were held to advise residents of the watershed areas, and the sellers should have known about it; not the buyers, and the realtors should know and disclose.

It was discussed about a survey being performed at the time of closing (December 2007). Richard McElrath testified that none was performed to his knowledge. Additionally, title insurance, if any purchased by owner, hasn't been reviewed by them to indicate the 100' buffer.

It was pointed out by staff member, Lisa McCarter, concerning the imperious area that the addition would include a roof, and runoff from roof tops add to the sediment in the lake, which is the biggest source of pollution. Additionally, McCarter stated that Mecklenburg County could do a mitigation plan, which might help, and may include plantings, rain gardens and on site detentions.

There were no persons present to oppose and present argument against the application. Both sides were permitted to present rebuttals to opposing testimony.

Board Conclusions

The period for public discussion was closed by the Chairman, and the Board publicly discussed the case with further input and clarification from the applicant, owner and planning staff. The Board has concerns with the 100' buffer and mitigation. Carolyn Lawson feels that if they granted the variance with mitigation, the end result may be better, and mitigation may be a better solution to the situation. Steve Bomgardner cautioned this panel not to go down this road stating that the watershed and buffer is intended to keep the shoreline in its natural and undisturbed state; that to open this with the County may be more that what the Board wants down the road. The Board further discussed conditional approval based on the County's mitigation plan, and that more evidence is necessary prior to making a decision based upon mitigation. The Chairman asked Richard McElrath his preference; either delay the vote and defer this matter to a later date, or move forward at this time with a final determination. Mr. McElrath testified that he wants to delay the vote in order to allow more time to gather information and present to the Board for consideration.

Thomas Snyder, made a **Motion to Defer**, and Margie Ebner **seconded the Motion to Defer**. The members voted on the Motion by showing of hands. In favor of the **Motion to Defer** are: Chairman David Snider, Reta Berman, Margie Ebner, Carolyn Lawson, Michael Sheaffer, and Thomas Snyder. Opposed to the **Motion to Defer** is Steve Bomgardner.

Therefore, this matter shall be deferred to the May 13, 2008 Board of Adjustment meeting to be held at 7:00 p.m.

There being no further business, the meeting was adjourned at 8:15 pm.

Approved this 29th day of May, 2008.

David H. Snider
David Snider, Chairman

Michelle V. Haines
Michelle V. Haines, Secretary



MECKLENBURG COUNTY
Land Use and Environmental Services Agency
Water Quality Program

March 31, 2008

Mr. David Peete
Town of Huntersville
Planning Department
P.O. Box 664
Huntersville, NC 28070

Subject: 1111 Arthur Auten Rd., Variance Case # 08-06

Dear David:

As requested, the Mecklenburg County Water Quality Program (MCWQP) has reviewed the variance request from Article 3.3.2-A, Mountain Island Lake Watershed Overlay-Critical Area, at the subject address. The variance request involves a reduction in the required 100 foot watershed buffer to allow an addition of a sunroom to an existing single family dwelling to be built within 59.5 feet from the normal pool elevation (648 contour) of Mountain Island Lake.

MCWQP recommends that this request be denied due to the lack of hardships. The buffer regulations are mandated by the State to protect raw drinking water supplies such as Mountain Island Lake from urban non-point source pollution. The granting of variances such as this one may set an unwanted precedent in the watershed that could lead to cumulative water quality impacts over time. If the Zoning Board of Adjustment does grant the variance, MCWQP would require buffer mitigation and requests that the Board add mitigation as a condition of approval.

Sincerely,

Heather S. Davis
Environmental Specialist

Cc: Rusty Rozzelle and David Caldwell, MCWQP



April 7, 2008

To: David Peet, AICP
Principal Planner
Town of Huntersville

From: C Edward Cross
Division Manager, Water Supply & Treatment Division
City of Gastonia

Subject: **Comments on Variance Petition #08-06**

As the Division Manager of Water Supply and Treatment for the City of Gastonia, I wish to offer the following thoughts on the above referenced Variance Petition:

- The City of Gastonia is fundamentally opposed to any encroachment into the 100 foot undisturbed buffer.
- Should the Town of Huntersville approve this Petition, we would request that the approval contain provisions that require the applicant to replace sufficient impervious surface materials with compensatory pervious material sufficient to reduce the runoff potential to the current level.

Please make these comments part of the public hearing record.

Thank you!

pc: File