



**Board of Adjustment
Regular Board of Adjustment Meeting Agenda
June 11, 2019 - 6:30 PM**

Town Hall

A. Roll Call, Determination of Quorum

Quorum was determined, and Chairman Welch called the meeting to order.

Regular Members in attendance: B. Welch, Chairman, D. Brewer, T. Primiano, J. Kluttz, E. Cecil, S. Genenbacher, and W. Smith. J. Loucks was called upon to participate as a Regular member.

Alternate Members in attendance: J. Bradshaw, and P. Jacobson

Alternate Members absent: J. Loucks

B. Approval of Minutes

B.1. Consider Approval of January 8, 2019 Regular Meeting Minutes

Ed Cecil made a Motion to Approve the January 8, 2019 Regular Meeting Minutes, and Joseph Kluttz seconded the Motion. The vote carried unanimously (8-0).

Chairman Welch requested that item D, Other Business be heard prior to item C. A Motion to hear items out of order was made by Ed Cecil, and Steven Genenbacher seconded the Motion. The vote carried unanimously (8-0).

D. Other Business

D.1. Approval of Variance Applications V18-04, V18-05, V18-06, submitted by Applicant, WJH, LLC, for those properties located at 7411, 7417 and 7425 O'Hara Street, Huntersville, NC 28078.

Angela Beeker, Town Attorney stated that the applicant, WJH, LLC appealed the denial of variance and Judge Donnie Hoover of Mecklenburg Superior Court found in the applicants favor and ordered the Board of Adjustments to grant the variance.

Members of the Board inquired if this would set a precedence. A. Beeker explained that this would not create precedence unless an identical fact situation occurred then they would be hard-pressed to deny it. They would need to continue to hear each case on a case-by-case basis.

W. Smith confirmed that this was previously denied by the Board. A. Beeker responded that Judge Hoover reviewed the Boards findings, made his own finding that the Board had ruled in err and by his authority has ordered the Board to issue the variance.

E.Cecil requested clarification if the Board had to re-vote in favor of the ruling. A. Beeker stated that the Board does not have the discretion to vote no, if you did then it's possible that the Board could be found in contempt of the Judges orders. T. Primiano stated that she believes it is sanctionable. E. Cecil asked if the order can go through without having to vote again.

J. Klutz made a Motion to Approve. I motion in recognition of Judge Donnie Hoover's order reversing the Boards denial and order that the Board grant the applicants request and pursuant to his written order for V18-04, V18-05, and V18-06. T. Primiano seconded the motion. The Motion passed with a vote of 7-1 with W. Smith opposing (2 abstentions; E.Cecil and D.Brewer).

C. Hearing of Cases

Prior to testimony the following individuals were placed under oath: Sierra Saumenig, Planner I, Jack Simoneau, Planning Director, Cyndi Shock, and Allison Brady.

The Chairman read the disclosure statement to the members: The parties to this case are entitled to an impartial board. A board member may not participate in this hearing if she/he has a fixed opinion about the matter, a financial interest in the outcome of the matter, an undisclosed *ex parte* communication with a party, or a close relationship with an affected person. Does any board member have any partialities, *ex parte* communication, financial interest, or a close relationship with affected persons to disclose and recusal to offer? There were none.

C.1. Variance Case V19-01: 10620 Devonshire Drive; Applicants, Charles and Allison Brady, are requesting a variance from Article 8.8.9, to allow an existing encroachment of a subordinate structure to remain.

J. Klutz made a Motion to Approve. In considering the findings of fact for V19-01, a request by Charles & Allison Brady for a variance from Article 8.8.9, the Board of Adjustment grants approval of the variance request based on a finding that the request meets all four criteria, outline in the zoning ordinance, for granting a variance. The Board of Adjustment adopts and finds the request meets the four criteria for granting a variance based on staff's findings of fact, as follows:

1. The property is located at 10620 Devonshire Drive, Huntersville, NC 28078
2. The property owners are Charles and Allison Brady
3. The property is zoned General Residential Conditional District
4. The property has a 30' rear yard setback
5. This property is subject to Article 8.8.9 of the Huntersville Zoning Ordinance that states that subordinate structures may extend into the required rear yard up to 25% of its depth, and may consume 20% of its area. It also states that such extensions may not exceed 50% of the width of dwelling at the rear building line.
6. Charles and Allison Brady purchased the home located at 10620 Devonshire Drive on April 17, 2013.

7. At closing, the applicants' claim they requested a survey and the surveyor and closing attorney at that time did not indicate the property had any zoning violations.
8. The purchase of the home went through and in 2014, the applicants state they began talking to an architect about extending the deck 10' and covering part of the existing deck.
9. The design and plans were submitted to the Birkdale HOA in August 2014 and were approved.
10. On August 20, 2015, the applicants submitted a permit application to Mecklenburg County to extend their deck and add a covering over a portion of the existing deck.
11. On the plot plan (a document uploaded with the building permit application), the builder, Casale Builders, hand drew the deck to be outside of the 30' rear yard setback.
12. On August 26, 2015, Mecklenburg County issued the building permit for the work.
13. During the course of construction, Winchester, the County's building permit software, indicates that the property received three building inspections on September 1, 2015, January 26, 2016 and the final inspection was completed on May 6, 2016.
14. Brian Sifford, Zoning Administrator for Mecklenburg County, indicated to Huntersville Planning Staff on June 5, 2019 via email that no zoning inspection was ever completed for this property once it was constructed.
15. Mecklenburg County issued a Certificate of Compliance on May 6, 2016.
16. The property was built on a slope.
17. The property sits closer to the rear property line than adjoining properties do in this portion of the Birkdale subdivision.
18. The property abuts a golf course.
19. On February 25, 2019, the Brady's listed their home for sale as they need to relocate.
20. On April 3, 2019, a relocation company accepted a contract on behalf of the Brady's.
21. On April 11, 2019, the Brady's received a survey the buyers had performed on the property. At that time, a setback violation was pointed out indicating the deck was built into the 30' rear yard setback and the encroachment exceeded more than 50% of the width of the dwelling.
22. On April 29, 2019, Cyndi Shook (the real estate agent for the home) and Tara Cuffney (the closing attorney), met with Planning staff regarding a variance application.
23. On May 10, 2019, the Brady's submitted a variance application for a variation from Article 8.8.9.

D.Brewer seconded the Motion. The Motion carried with a 7-0 vote.

Sierra Saumenig, Planner I (also referred to herein as “staff”) presented, and entered the Staff Report into the record through verbal testimony as indicated below, and written documentation, which is attached hereto as Exhibit A, and incorporated herein by reference.

Findings of Fact with Staff’s Position (ordinance standards are in italics):

Please see Exhibit 1 for the applicant’s responses to the required criteria for granting a variance.

In considering any variance request, the following *Standards for Granting a Variance* (Article 11.3.2.e) must be addressed with findings of fact:

Standards for Granting a Variance. When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following: 1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

It is Staff’s position that:

- A. The strict application of the Ordinance (Article 8.8.9) requires that no subordinate structure can extend more than 25% into the rear yard or consume more than 20% of its area. Article 8.8.9 also requires that no extension exceed 50% of the width of the dwelling at the rear building line.
- B. The applicants state that they unknowingly purchased the home with the deck already in violation on April 17, 2013. The deck, at that time, encroached into the 30’ rear yard setback and exceeded 50% of the width of the dwelling. (See image below referencing the 2013 closing survey).
- C. The surveyor nor the closing attorney indicated any type of violation.
- D. After purchasing the home unaware of any violation, the applicants worked with an architect in 2014 and submitted a building permit to extend the deck 10’ and to cover a portion of it on August 20, 2015.
 - a. The builder, Casale Builders, drew a plot plan for the extension of the deck being in compliance with the 30’ rear yard setback (see image below).
 - b. Mecklenburg County issued the building permit on August 26, 2015. (See Exhibit A, page 20).
 - c. Various building inspections were conducted throughout construction of the deck, but no zoning inspection was completed. (See Exhibit C).
 - d. On May 6, 2016, Mecklenburg County completed a final building inspection and a Certificate of Compliance was issued.

The applicants state they are now trying to sell their home and it’s unsellable in its current condition because a clear title cannot be conveyed as the relocation company pointed out on the 2019 survey that the deck was built into the 30’ rear yard setback and the extension exceeds more than 50% of the width of the dwelling. (See Exhibit A, page 8).

It is Staff’s position that:

While the Zoning Ordinance allows flexibility for a subordinate structure to encroach into the rear yard setback, the Brady's were unaware there was a violation to begin with. The applicants relied on the professionalism of a licensed surveyor, attorney, and builder. There also was no zoning inspection recorded for this property (See Exhibit D) and therefore, the information the applicants have provided and the information the staff has found concludes that the applicants completed their project in good faith.

Staff's position is that this criteria has been satisfied.

2) 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.

It is Staff's position that:

- A. All property located in the Town of Huntersville must comply with Article 8.8.9 regarding placement of subordinate structures.
- B. In the applicant's opinion, their lot is unique in that the lot slopes toward the street.
- C. Part of the back of the house (the bay window) sits on the 30' rear setback.
- D. Using aerial photography, the property sits closer to the rear property line than any other adjoining property (see photo below).
- E. The house abuts a golf course (see photo below).

It is Staff's position that:

Aerial photography indicates that the house was built on a slope, therefore the house sits back further from the street. It also shows that the house sits closer to the rear property line than other lots in this portion of the neighborhood and the lot backs up to a golf course.

Staff's position is that this criteria has been satisfied.

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

It is Staff's position that:

- A. See Criteria #1
 - a. The applicants state that they unknowingly purchased the home with the deck already in violation.
 - b. The surveyor nor the closing attorney indicated any type of violation at the time the Brady's purchased the home.
 - c. The builder, Casale Builders, drew the plot plan for the extension of the deck being in compliance with the 30' rear yard setback (See Exhibit B).
 - d. No zoning inspection was ever completed, only building inspections.

e. All permits were filed and completed and a Certificate of Compliance was issued by the County.

It is Staff's position that:

The applicants were not aware they had a violation when they purchased the home. Their project to add a roof and extend the deck was achieved through the correct channels and permitted correctly. The builder, Casale Builders, incorrectly drew the existing deck and extension to be within the rear yard setback. There was no zoning inspection completed to catch the violation. This concludes that the hardship did not result from actions taken by the applicant/property owner.

Staff's position is that this criteria has been satisfied.

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

It is Staff's position that:

A. The intent of Article 8.8.9 is to allow for flexibility for homeowners to construct subordinate structures and to allow them to encroach into rear yard setbacks but also protect neighboring property owners in that the encroachment is limited to no more than 50% of its area and 50% of the width of the dwelling unit.

B. The purpose of the 30' rear yard setback is to provide a buffer/separation between accessory structures or subordinate structures from neighboring properties.

C. The condition is existing and to date, staff has not received any complaints from adjacent property owners.

D. The parcel behind the property is a golf course.

It is Staff's position that:

Staff concludes that while the deck is in violation, it is not a safety concern or interfering with neighboring properties.

Staff's position is that this criteria has been satisfied.

Staff Conclusion:

The applicant is seeking a variance from Article 8.8.9 to allow an existing encroachment of a subordinate structure to remain. Staff's position is that this request does meet the four Ordinance requirements for granting a variance, as outlined on pages 2-6 of this report.

The Chairman called the applicant to testify. A.Brady emphasized that as the property owners they acted within their scope of knowledge, received HOA approval, and the surveys needed which they believe demonstrated that they were acting in the spirit of being good citizens. The Chairman called for questions. The Chairman closed the public hearing for Board discussion. Ed Cecil found it interesting in looking at the aerial map that there is another house further down

that appears even closer than the applicants to the rear. There was no further discussion, and the Chairman called for a Motion.

E. Adjourn