



**Board of Adjustment  
Regular Board of Adjustment Minutes  
September 10, 2019 - 6:30 PM**

**Town Hall**

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**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, P. Jacobson, and J. Bradshaw were called upon to participate as a Regular member.

Members absent: W. Smith, and S. Genenbacher

Alternate Members absent: J. Loucks

**B. Approval of Minutes**

**B.1. Approval of June 11, 2019 Regular Meeting Minutes**

J. Bradshaw made a Motion to Approve the June 11, 2019 Regular Meeting Minutes, and E. Cecil seconded the Motion. The vote carried unanimously (8-0).

**C. Hearing of Cases**

Prior to testimony the following individuals were placed under oath: Sierra Saumenig, Planner I, Flint Foley.

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 V19-02: 6604 Pamela Street. The applicants are requesting a variance from Article 3.2.3.d.3, for a 0.7' and 0.4' variance from the required 10' side yard setback.**

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 3.2.3(d)) requires that properties located in the General Residential Zoning District have a minimum 10' side yard setback.
- B. The applicants state that they purchased the home prior to Huntersville taking over Biltmore Park.
- C. The applicants also state the side yard setback of the subject property is 9.3' at its shortest distance. (See survey in attached)

**It is Staff's position that:**

While the Zoning Ordinance states that properties in the General Residential should have a minimum of 10' side yard setbacks, this home was constructed in 1979 which was before the Town of Huntersville's zoning jurisdiction expanded to include Biltmore Park (in 1997).

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's General Residential Zoning District must comply with Article 3.2.3(d) regarding minimum setbacks.
- B. The applicant states the property is unique because the overlap existed since the property was built in 1979 and the property was built prior to being taken into the Huntersville's jurisdiction.
- C. Its staff's opinion the property is unique because Biltmore Park is an old neighborhood that was previously under Mecklenburg Subdivision regulations.

**It is Staff's position that:**

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

- 2) *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 house already in violation
  - b. The applicants also state the setback violation is minimal and not noticable
  - 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.

- 3) *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 POSITION:**

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 asked Flint Foley, Real Estate agent for the owner if he would like to testify, he declined. The Chairman called for questions. E. Cecil asked if the adjoining properties had been notified. S. Saumenig confirmed that they had. P. Jacobson asked if there was a fence on the side of the lot where the variance was requested and if the option to request a shift of the property line would be considered prior to a homeowner being required to remove a portion of their home to comply. S. Saumenig confirmed that a recombination of plots was a possibility if the variance was not granted.

J. Klutz made a Motion to Approve; In considering the findings of fact for V19-01, a request by Charles and 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 finds the request meets the four criteria for granting a variance based on the following findings of fact, as follows:

1. The property is located at 6604 Pamela Street, Huntersville, NC 28078
2. The property owners are Lewis and Madeline Wallace
3. The property is zoned General Residential
4. The property has a 10' side yard setback
5. This property is subject to Article 3.2.3(d) of the Huntersville Zoning Ordinance that states that properties in the General Residential zoning district have minimum side yard setbacks of 10'.
6. The house is located in Biltmore Park which was subdivided under Mecklenburg County regulations in 1964. The subdivision plat does not state setback information.
7. The Biltmore Park Declaration of Restrictions states that the house should not be built nearer than 10 feet to the side lot line.

8. The Biltmore Park Declaration also states any violation of the building line restriction shall not exceed 10% of the marginal requirements of such building line restriction.
9. The house was built in 1979
10. Lewis and Madeline Wallace purchased the property located at 6004 Pamela Street on October 23, 1974.
11. In 1997, the Town of Huntersville's zoning jurisdiction was expanded to include Biltmore Park. The Town zoned this subdivision, General Residential (GR).
12. As of August 13, 2019, the house located at 2204 Pamela Street is under contract for purchase.
13. The potential buyer obtained a survey as part of the normal closing process and discovered that the side of the house encroaches (house sits at 9'3) on the 10' side yard setback.
14. On August 13, 2019, Flint Foley, who is representing the Wallace's submitted a variance application on their behalf for a variation from Article 3.2.3(d)

E. Cecil seconded the Motion. The Motion carried unanimously (8-0).

**D. Other Business**

**E. Adjourn**

Approved this \_\_\_\_ day of \_\_\_\_\_ 2019.

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Chairman or Vice Chairman

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Board Secretary