

**BANNER ELK BOARD OF ADJUSTMENT
MONDAY AUGUST 15, 2022
MINUTES**

Members Present: Morgan Herdklotz, Fred Schmitt, Deka Tate, David Tate

Staff Present: Zoning Administrator Riley Pudney, Town Attorney Four Eggers, Town Manager Rick Owen

Others Present: Chet Menefee and Brian Phillips

Chairman Fred Schmitt called the meeting to order at 6:00 p.m. Chairman Schmitt asked everyone present to stand and join in the Pledge of Allegiance.

Consideration of the June 2022 Minutes

The minutes for the June 20, 2022, and June 22, 200, meetings were approved unanimously as presented with a motion by Chairman Fred Schmitt and Seconded by Deka Tate.

Chairman Schmitt stated that this meeting is a quasi-judicial proceeding, much like a court proceeding, in which one's individual's rights are being determined. Witnesses will be sworn in for testimony. Before opening the hearing, Chairman Schmitt reviewed the requirements for the board members to be seated. The Chairman asked if there were any board members present that could not be impartial or who had received information outside of this hearing. None were noted. Chairman Schmitt stated for the record that Ted Silver was not present, and David Tate would be hearing the cases as the alternate member.

The following individuals were sworn in by Chairman Schmitt:

Zoning Administrator Riley Pudney
Chet Menefee
Brian Phillips

SUP REQUEST ROGER MENEFFEE-MANUFACTURED HOME ON 209 FORD CREEK LANE

Zoning Administrator Riley Pudney informed the Board that the applicant, Roger Menefee, was not present due to a medical emergency and that his son will speak on his behalf. She further stated that this is a request for a permit to allow for a manufactured home to be placed on a residential property in the ETJ. She informed the Board that any request for a mobile/manufactured home requires a special use permit. She explained that due to it being a residential building, the ARG's do not apply to the structure, however, the home will have wood and stone accent to match the look and feel of the area. She further explained that there are other manufactured homes in the neighborhood and that this specific home will not be seen from the road or public view.

Chairman Schmitt asked if the capacity of the well and septic were adequate for that area. Zoning administrator Riley Pudney stated that Toe River Health Department has signed off on it and it should be sufficient. He also asked what the difference is between a mobile home and a manufactured home. She explained that it is the way they are built to different codes. Chet Menefee closed his statement by

telling the Board that it will ne used as a rental and will act as the primary residence for his mom and dad.

Chairman Fred Schmitt asked if any of the Board members had any questions. With none, he directed Attorney Eggers to review the questions the Board were to address. Mr. Eggers said there were four questions the Board must address: 1. Is the application complete? 2. Does the application and project substantially meet the requirements of the ordinance? 3. Are there any conditions the Board would like to impose on the permit? And lastly, 4. Does the Board approve the permit?

Chairman Fred Schmitt opened the Board to discuss question one, as to whether the application was complete. Chairman Fred Schmitt motioned that it was with a second by Morgan Herdklotz. The vote was:

Chairman Fred Schmitt-yea

David Tate- yea

Deka Tate- yea

Morgan Herdklotz- yea

The motion passed unanimously.

The second questions as to whether the application substantially complies with the ordinance was motioned for approval by Chairman Schmitt and was seconded by David Tate. The vote was:

Chairman Fred Schmitt-yea

David Tate- yea

Deka Tate- yea

Morgan Herdklotz- yea

The motion passed unanimously.

The third question was whether the Board was going to implement any conditions on the project. Chairman Schmitt motioned to not place conditions on the permit and was seconded by Morgan Herdklotz. The vote was:

Chairman Fred Schmitt-yea

David Tate- yea

Deka Tate- yea

Morgan Herdklotz- yea

The motion passed unanimously.

The last question considered was whether the Board approved the permit. Chairman Fred Schmitt motioned to approve and was seconded by David Tate. The vote was:

Chairman Fred Schmitt-yea

David Tate- yea

Deka Tate- yea

Morgan Herdklotz- yea

The motion passed unanimously.

Chairman Fred Schmitt congratulated the applicant and motioned to close the hearing. His motion was seconded by David Tate and the hearing for this SUP was closed.

VARIANCE REQUEST-BRIAN PHILLIPS

Chairman Fred Schmitt referred to Attorney Four Eggers to guide the discussion regarding the variance request. Attorney Eggers explained to the Board what a variance entails and that there are four items that need to be proven in order for the request to be granted. He also stated that each criteria must be a unanimous vote based on there only being four members of the Board. The four considerations are:

- (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.
- (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 a basis for granting a variance.
- (3) The hardship did not result from action 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.
- (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.

Zoning Administrator Riley Pudney asked Attorney Eggers if conditions may be placed on variances, and he explained that there could be. She then explained the request to the Board. She said the original request was for a variance from the setback of the side and rear of the property and had been since changed to just the rear setback. She further explained that the deck would not have footers in the setback but would cantilever into the area. The request states that the setback encroachment is the most cost-efficient route for the build. Zoning Administrator Riley Pudney requested to the Board that if the variance is granted, she would require an as built survey for the build to ensure it is off the setback. With no questions from the Board, Chairman Schmitt allowed for Mr. Phillips to present his case to the Board.

Mr. Phillips stated to the Board that he believes the house is in harmony with the community. It is over 3,000 sq. ft and matches the size and feel of the neighborhood. He has moved the home around to the best of his ability and maintain the wants of the owners. He believes the slope of the lot does not allow for the home to be built as the homeowners want it. Mr. Phillips then asked the Board to consider the original plan of having a variance for both the rear and side setback. Chairman Fred Schmitt asked Mr. Phillips if he was now asking for two variances rather than just one. After consideration, Mr. Phillips decided to move forward with the request of only the rear setback variance. Chairman Fred Schmitt asked the Board if they had any questions. David Tate asked how it would be considered a hardship to make the corner of the deck 3 feet smaller. Mr. Phillips answered that it is because that is what the homeowner wanted. Chairman Fred Schmitt asked for more justification that the deck size is an “unnecessary” hardship. He stated that the Board has to determine if it is an unnecessary hardship and that he believes that it does not meet that requirement. Morgan Herdklotz asked what the minimum square footage to build in Elk Creek. Mr. Phillips did not know the answer. There were no further

questions for the applicant and Chairman Fred Schmitt closed the public portion of the hearing and opened it open for discussion.

Attorney Eggers reminded the Board of the four votes the bed must unanimously pass in order to grant the variance.

- 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.
 - o David Tate believes that it does not create an unnecessary hardship needed to justify the variance. Morgan Herdklotz, Deka Tate and Chairman Fred Schmitt agree with David. The Board voted 4-0 that there was not an unnecessary hardship.
- 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 a basis for granting a variance.
 - o The Board voted 4-0 that the hardship is not peculiar to the property. Chairman Fred Schmitt and Morgan Herdklotz agreed that there are many lots and properties in the Town that have the same limitations but did not ask for a variance.
- The hardship did not result from action 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.
 - o The Board voted 4-0 that it is not a result of the homeowner.
- 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
 - o The Board voted 4-0 that the variance request was not consistent with the ordinance.

Based upon the findings of the Board, David Tate motioned to deny the variance and was seconded by Chairman Fred Schmitt. The motion passed 4-0 and the request was denied.

OTHER BUSINESS

Zoning Administrator Riley Pudney introduced the new Special Use permit application to the Board for their approval. The Board had no edits or recommended changes.

With no further business, Chairman Fred Schmitt motioned to adjourn the meeting and was seconded by David Tate. The meeting adjourned at 7:30 p.m.

Respectfully Submitted,

Riley Pudney, Zoning Administrator