

**BANNER ELK BOARD OF ADJUSTMENT  
MONDAY APRIL 17, 2023  
MINUTES**

Members Present: Morgan Herdklotz, Fred Schmitt, Ted Silver, Deka Tate

Staff Present: Zoning Administrator Riley Pudney, Town Attorney Stand in Jonathan Green

Others Present: Bill Aceto, Roger Menefee and Michael Taylor

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 March 2023 Minutes

The minutes for the March 20, 2023, meeting was approved unanimously as presented with a motion by Ted Silver and Seconded by Deka Tate.

**VARIANCE REQUEST-1285 Balm Highway-Watauga Association Inc.**

Chairman Fred Schmitt referred to Attorney Jonathan Green to guide the discussion regarding the variance request. Attorney Green 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 explained to the Board that this request was for an existing structure that encroaches over the property line. The deck and rear corner of the building sit across the line and the applicant was asking for a variance to keep it compliant with the ordinance. She further explained that there is no additional exterior work or expansion of the footprint being requested. Chairman Fred Schmitt asked what would happen if the variance was not approved. She answered that the building and use would have to remain the same and no permits or changes would be allowed.

Bill Aceto, the agent for Watauga Association Inc, addressed the Board by stating that it was existing when the property was purchased by the applicant, that the applicant did not create the hardship and that they wanted to bring everything into compliance. Morgan Herdklotz asked when the property was purchased. Mr. Aceto stated that it was purchased on 2/13/2023 with the intent to be a long-term rental property. Ted Silver asked if the property had an easement or right to access the property from painter Lane. Mr. Aceto stated he believed so but was not entirely sure.

Attorney Green reminded the Board of the four votes they 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 Ted Silver believes that it does create an unnecessary hardship needed to justify the variance due to the property being purchased with the existing encroachment. Chairman Fred Schmitt motioned that it does create the hardship and was seconded by Morgan Herdklotz, The Board voted 4-0 that there was 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 peculiar to the property since the house sits across the property line, with a motion by Chairman Fred Schmitt and seconded by Ted Silver.
  
- 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 with a motion by Chairman Fred Schmitt and seconded by Morgan Herdklotz.
  
- 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 consistent with the ordinance with a motion by Chairman Fred Schmitt and seconded by Morgan Herdklotz.

Based upon the findings of the Board, Deka Tate motioned to approve the variance and was seconded by Morgan Herdklotz. The motion passed 4-0 and the request was approved.

**SUP REQUEST CHET MENEFFEE-MANUFACTURED HOME ON 207 FORD CREEK LANE**

Zoning Administrator Riley Pudney informed the Board that the applicant, Chet Menefee, was not present due to a work emergency and that his father 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 residential property in the ETJ. She informed the Board that any request for a mobile/manufactured home requires a special

Board of Adjustment Minutes

April 2023 Meeting

Page 2 of 5

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.

Ted Silver 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.

Chairman Fred Schmitt asked if any of the Board members had any questions. With none, he directed Attorney Green to review the questions the Board were to address. Mr. Green 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. Morgan Herdklotz motioned that it was with a second by Ted Silver. 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 Ted Silver 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 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. 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. Ted Silver motioned to approve and was seconded by Deka Tate. The vote was:

Chairman Fred Schmitt-yea

David Tate- yea

Deka Tate- yea

Morgan Herdklotz- yea

The motion passed unanimously.

Deka Tate motioned to close the hearing for the special use request. The motion was seconded by Chairman Fred Schmitt

**SUP REQUEST WATAUGA ASSOCIATION INC-DUPLEX 1285 BALM HIGHWAY**

Chairman Fred Schmitt informed the Board that this request for a duplex was a stand-alone application and is held on its own merits and separate from the previous variance request.

Zoning Administrator Riley Pudney explained to the Board that this request was for a duplex in the R-2 zoning district. She explained that it met the requirements of the ordinance by having 4 parking spaces, screened trash refuse and was not changing the exterior layout of the property. She further explained that the project would add an additional bedroom, bathroom and living space within the existing footprint. Chairman Fred Schmitt asked Mr. Aceto if the proposed use would injure the surrounding property values. Mr. Aceto said it would not, that it was an allowed use in the R-2 district and that the neighbors were aware of a proposed duplex. He stated that their intention was to allow for long-term rentals and not short-term rentals.

Chairman Fred Schmitt asked if any of the Board members had any questions. With none, he directed Attorney Green to review the questions the Board were to address. Mr. Green 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. Ted Silver motioned that it was with a second by Deka Tate. 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 Deka Tate and was seconded by Chairman Fred Schmitt. 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. 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. Deka Tate motioned to approve 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.

Deka Tate motioned to close the hearing for the special use request. The motion was seconded by Chairman Fred Schmitt

**OTHER BUSINESS**

Zoning Administrator Riley Pudney provided a staff update to the Board. She provided a packet of ordinance changes and informed them that they will receive copies for their books shortly. There were no questions from the Board.

With no other business, Deka Tate motioned to adjourn the meeting and was seconded by Chairman Fred Schmitt. The motion passed and the meeting adjourned at 7:26 p.m.

Respectfully Submitted,

Riley Pudney, Zoning Administrator

Approved: \_\_\_\_\_

Fred Schmitt, Chairman to the Board

Attested: \_\_\_\_\_