

1
Town of Maggie Valley
Zoning Board of Adjustment
January 16, 2020
MINUTES

Members Present: Chairman Bill Banks, Allen Alsbrooks, Marion Hamel, Tinker Moody, Evans Duncan, and David Lybrand

Staff Present: Town Planner Ron Hancock and Town Clerk Vickie Best

Others Present: Four (4) people were in attendance

1. Call to Order

Chairman Banks called the meeting to order at 5:35pm on Thursday January 16, 2020 in the Town Hall Boardroom.

2. Approval of the Minutes from the September 19, 2019 meeting

MR. ALSBROOKS MADE A MOTION TO APPROVE THE SEPTEMBER 19, 2019 MINUTES AS PRESENTED. MS. HAMEL SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

Chairman Banks explained how the Zoning Board of Adjustments operates like a court of law; with testimony being given under oath.

3. Application for Variance: Kent/Ayers, 7 Higel Lane

Mr. Stephen Ayers and Planner Hancock provided the following information under oath.

Planner Hancock provided the following facts for the case.

1. Timothy Kent and Stephen Ayers are the owners of property located at 7 Higel Lane in Maggie Valley, NC with PIN 7686-27-3595, consisting of a single-family residence on .56 acres.
2. This residence is situated on a corner lot south of, and adjacent to, a 20-foot private right of way containing a 12-foot wide unpaved private road known as Higel Lane.
3. The property on Higel Lane is accessed by Deer Run Road, an 18-foot-wide paved Town of Maggie Valley street having a 40-foot right of way.
4. The property has 137 feet of frontage on Higel Lane and is currently zoned R-1, a Low-Density Residential zoning district with a front yard setback requirement of 25 feet.
5. The setback is measured from either the property line or road right-of-way, whichever is greater (Zoning Ordinance Section:154.055), in this case the two coincide.
6. In December 2019, Tim Kent inquired about receiving a zoning permit for a deck/addition on the front of the house.
7. The Town Planner informed Mr. Kent that the proposed structure would encroach on the front yard setback.

Town of Maggie Valley
Zoning Board of Adjustment
January 16, 2020

MINUTES

8. Mr. Kent and Mr. Ayers have applied to the Town of Maggie Valley Zoning Board of Adjustment seeking to encroach five feet from the existing structure into the required front yard setback area in order to construct the deck/addition.
9. The Applicants have stated that:
 - a. The front yard setback requirement creates an unnecessary hardship, not a result of their own actions; and
 - b. The construction of the deck/addition nearer to the private right of way will not have a negative impact on adjoining property; and
 - c. The construction of the deck/addition will not impede emergency vehicle access or have any bearing on the use of the private road by surrounding landowners.

As required by state statute, the property has been posted with a zoning hearing notice and all adjacent property owners have been notified of this hearing.

The proposed deck will be approximately 675 square feet under the main floor of the house.

Mr. Ayers explained that the hardship is due to the topography of the land. The staircase in the pictures presented accesses the front door. There is only one entrance to the area where the deck is desired, and that is through the garage.

The desire is to alleviate the problem by creating a deck area to provide a means of getting to that side of the house for maintenance.

To gauge how big Mr. Ayers wants the deck to be; (in the pictures provided) start at the beginning of the stairs and go to the end of the upper deck.

The neighbors have no concerns about the proposed deck as the pictures show the topography of the front yard is the issue. No trees will be removed with the addition of a lower deck.

Town of Maggie Valley
Zoning Board of Adjustment
January 16, 2020
MINUTES

Factors Relevant to the Issuance of a Variance

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. In order for a variance to be granted, the applicant must be able to demonstrate that all of the following requirements are met. In the spaces provided, please indicate the facts that you intend to show and the arguments that you intend to make to convince the Board of Adjustment that it can properly reach the required conclusions.

1. Indicate how an 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.

The front of the home has a shear drop off and is currently unusable for passage due to the topography. Currently maintenance and simply walking across the front of the property is difficult and dangerous in passing. A five foot variance for a deck will correct much of the issue and allow access to the lower portion of the front of the property and home.

2. Indicate how 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. Unique personal or family hardships are irrelevant since a variance, if granted, runs with the land.



Much of the lot is fairly unusable due to the topography of the overall lay out of the lot. More so on the backside of the lot. I believe because of the back of the property being so steep, the house was built on the front side of the property which faces the road. The 5 foot variance for the deck in front of the home area will help with access the home and resulting in a much greater use of the land, making the home complete and accessible at the front of the home.

3. Indicate how 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.

I recently purchased the home in November of 2019. The homes construction was begun in 2003 and I believe completed in 2005 to the best of my knowledge. There was only one previous owner and I have done no exterior repairs or building of any kind since the purchase.

4. Indicate how the requested variance is consistent with the spirit, purpose, and intent of the ordinance. Show how the request represents the least possible variation from the ordinance.

The proposed deck will mirror the existing decking currently at the home. It will enhance the overall value and appeal of the neighborhood. The deck will extend out only as far as needed to go around the existing exterior staircase and posts that leads up to the front door.

Town of Maggie Valley
Zoning Board of Adjustment
January 16, 2020
MINUTES

5. Indicate how the requested variance will maintain the public safety and welfare and do substantial justice. Demonstrate how the request will not be injurious to the neighborhood. State facts and arguments to show that, on balance, if the variance is approved, the benefit received by the Applicant will substantially outweigh the harm suffered by the public.



The deck will in no way encroach or have any bearing of the use of the roadway that is only used by two neighbors. There is currently a tree line that runs between the proposed deck and the current road. There is a two foot rock wall that runs the duration of the road in this area.

MS. HAMEL MADE A MOTION TO GRANT THE VARIANCE AS DISCUSSED. MR. ALSBROOKS SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

4. Application for Special Exception: Polyanchek, 3530 Dellwood Road

Clerk Best swore in Joshua Hoogerweft as the new Zoning Board of Adjustment Extra Territorial Jurisdiction (ETJ) member.

Under oath, Mr. Polyanchek discussed his request for a Special Exception.

Planner Hancock provided the facts for the case.

1. Robert Polyanchek is the owner of a 2.46- acre tract located within the Maggie Valley ETJ at 3530 Dellwood Road. This parcel, has PIN 8606-29-6625, and is zoned C-1: General Business.
2. Mr. Polyanchek would like to subdivide the property and use the resulting tract for residential purposes.
3. The landowner must petition the Town of Maggie Valley for annexation of the new tract if the residence will be served by the Town's public sewer system.
4. The Town Planner informed Mr. Polyanchek that the Town's Zoning Ordinance will allow residential uses within the C-1 District upon issuance of a Special Exception by the Board of Adjustment.
5. The adjacent properties are currently being used primarily for residential purposes.
6. The Town's Future Land Use Plan identifies this property for residential use.
7. The Planning Board has reviewed this application for the following considerations:
 - a) Relation of the special exception to applicable elements of the planning program; and
 - b) Appearance of the special exception relative to location, structure and design.

5
Town of Maggie Valley
Zoning Board of Adjustment
January 16, 2020
MINUTES

8. The Planning Board has recommended approval of the Special Exception.
9. All requirements of the Town's Zoning Ordinance for Special Exceptions shall be met.
10. As required by state statute, the property has been posted with a zoning hearing notice and all adjacent property owners have been notified of this hearing.

The purpose of requesting a Special Exception is to provide a home for Mr. Polyanchek's 91-year old father who has been under the supervision of his brother in Florida until being diagnosed with Cancer. Although requiring constant care, the father wants his own home/property.

Planner Hancock stated that since this is a Special Exception and not a Variance request, the members can listen to why the request is being made.

The double-wide home will be placed in front of the Polyanchek home. The approximate 12,000 square feet lot will be surveyed out of the 2.46 acres owned by the Polyanchek's.

Mr. Alsbrooks questioned the logic behind not annexing the entire parcel.

Mr. Polyanchek responded that he did not want to pay taxes on the entire property to Haywood County and Maggie Valley.

Planner Hancock explained that the new parcel will need water and sewer, therefore that parcel must be annexed to receive municipal services. The rear home (the Polyanchek home) has septic and Sanitary District water, so town services are not required.

Mr. Alsbrooks questioned the distance from the property line and shared driveway.

Chairman Banks responded that the proposed doublewide would meet all setbacks. The driveway will be a shared driveway.

Ms. Hamel questioned if the neighbors mind having a mobile home in the area.

The Burgess home to the east has been vacant for many years. Mr. Grant to the west was sent notice of the meeting.

Mr. Grant spoke from the audience informing the board that he received notice of the meeting but was unsure what the meeting was about. Mr. Grant stated that he believes a property owner should be able to do whatever he wants with his property, but he has lived in his home for 53-years and cannot visualize a doublewide mobile home next door to the front of the property.

Mr. Duncan questioned if there were any other mobile homes in the area. The ordinance requires doublewide homes or stick built homes.

There are no other mobile homes in the area that are lining Dellwood Road.

6
Town of Maggie Valley
Zoning Board of Adjustment
January 16, 2020
MINUTES

Mr. Duncan had concerns that the definition of compatibility would be compromised by there being no other mobile homes in the area. Mr. Alsbrooks concurred, adding that everything else in the Commercial 1 (C1) is stick built and a mobile home would be out of harmony.

Mr. Lybrand questioned if the Polyanchek's could put a modular home on the property.

Mr. Polyanchek responded that a modular home would be too expensive for the family.

Chairman Banks reminded the board that the ordinance does allow doublewide mobile homes in the district.

Mr. Alsbrooks, a neighbor to the property, stated that he was glad to see the home occupied by the Polyancheks; "the home has been vacant for some time now".

Mr. Polyanchek responded that they have put over \$60,000 remodeling the house and would not put an eyesore in the neighborhood.

Mr. Alsbrooks countered that he was sworn in to do the best for Maggie Valley that he could, and he does not want to see a mobile home in the area. "The area needs to be cleaned up rather than continue with junk piles lining Dellwood Road."

The mobile home cannot be put behind the current residence.

Mr. Alsbrooks stated that he is wearing two hats; as a board member and as a neighbor to the property. "Could you build a garage apartment instead? The County can rate the septic system to see if it would carry a one-bedroom apartment. Or you could build a one-bedroom cottage and annex the entire property?"

Ms. Hamel questioned Mr. Polyanchek about his intentions when the 91-year-old Dad no longer needs the mobile home.

Mr. Polyanchek responded that he would not sell the mobile home because it would be part of the property.

Ms. Moody spoke up stating that the board needs to consider that the Polyancheks are needing to get the Dad to North Carolina in a timely manner. Ms. Hamel agreed adding, that a double wide mobile home is the smartest and fastest thing to do for the father; but was not agreeable with a double wide being on Dellwood Road.

Again, Mr. Polyanchek stated that he would not put an eyesore on his property. It will be in front of his home. Mr. Polyanchek added that he was thinking of putting log siding on the mobile home.

Sympathetic to the issue, the board discussed putting conditions on the residential use such as allowing for the mobile home for a defined amount of time. The board discussed seven (7) to ten (10) years.

Mr. Polyanchek stated that he would not want to move the mobile home after the passing of his father.

Chairman Banks explained that if the area is zoned Residential 1 (R1) after the adoption of the Unified Development Ordinance, it will be a moot point.

Town of Maggie Valley
Zoning Board of Adjustment
January 16, 2020
MINUTES

MR. DUNCAN MADE A MOTION TO APPROVE THE SPECIAL EXCEPTION FOR A RESIDENTIAL PURPOSE WITH A TERM LIMIT OF EIGHTY-FOUR (84) MONTHS. MR. ALSBROOKS SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

Planner Hancock informed everyone that since this is an unorthodox condition so if any part thereof is held invalid or void then approval shall be void and of no effect.

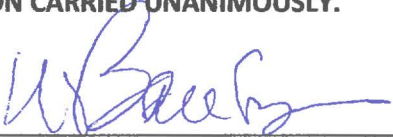
Mr. Alsbrooks had concerns about the future zoning map being a hodgepodge of zonings.

4. Other Business

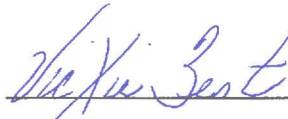
There was no other business.

5. Adjourn

MR. ALSBROOKS MADE A MOTION TO ADJOURN AT 6:46PM. MR. DUNCAN SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.



Chairman Bill Banks



Vickie Best, CMC, NCCMC, Town Clerk

The next Zoning Board of Adjustment meeting is scheduled for February 20, 2020.

