

Town of Maggie Valley
Zoning Board of Adjustments
September 17, 2020

MINUTES

Members Present: Vice-Chair Marion Hamel, Allen Alsbrooks, Jimmy Moody, Evans Duncan, Joshua Hoogerwerf, and David Lybrand

Members Absent: Chairman Bill Banks

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

Others Present: Approximately fifteen (15) members of the public

1. **Call to Order**

Vice-Chair Hamel called the meeting to order at 5:27 pm in the Community Pavilion adjacent to Town Hall on Thursday September 17, 2020. Vice-Chair Hamel explained how a Quasi-Judicial Board operates similar to a Court of Law.

2. **Approval of the Minutes of the July 16, 2020 and August 20, 2020 meetings**

(Action Required)

MR. ALSBROOKS MADE A MOTION TO APPROVE THE MINUTES WITH THE FOLLOWING AMENDMENT: ADD DAVID LYBRAND'S NAME TO THE JULY 16, 2020 MINUTES AS BEING PRESENT. MOTION CARRIED UNANIMOUSLY.

Vice-Chair Hamel asked for a motion to move agenda item 5: Application for Variance: Smyth, 54 Meandering Way, Rear-Yard Setback to the front of the agenda.

MR. ALSBROOKS MADE A MOTION TO MOVE AGENDA ITEM 5 TO THE BEGINNING OF THE AGENDA. MOTION CARRIED UNANIMOUSLY.

Everyone wishing to speak was sworn in to provide accurate and truthful testimony.

3. **Application for Variance: Centeno and Wengyn, La Bella Vita, Caldwell Drive; side yard setback**

(Action Required) Mr. Duncan asked to be recused from voting, not because of financial reasons, but because of possible bias due to his home being in such close proximity to said subdivision.

MR. ALSBROOKS MADE A MOTION TO RECUSE MR. DUNCAN. MS. MOODY SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

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Vice-Chair Hamel explained that due to Mr. Duncan being excused and Mr. Hoogerwerf voting on Extra-Territorial- Jurisdiction (ETJ) items only, the vote will require four (4) out of four (4) in favor for the variance to be granted.

Planner Hancock provided the facts of the case.

Facts for Variance Application #9_4_20_VAR1

1. Albert Centeno and Sharon Wengyn are the owners of property located off Caldwell Drive in Maggie Valley with PIN 7676-95-1415.
2. This property consists of a vacant lot adjacent to Campbell Creek and accessed by Caldwell Drive, a state-maintained road.
3. The parcel was originally approved by the Town in February 2011 as Lot #4 of the La Bella Vita Subdivision.
4. In March 2007, the developer of the La Bella Vita Subdivision was granted variances by the Board of Adjustment to allow 50-foot-wide lots, and in many instances to have zero lot lines on side boundaries (no setback).
5. The original intent for La Bella Vita was to build a community featuring extensive common areas and a mixture of housing types including attached single-family townhomes and detached single family houses. Except for the extension of public water and sewer utilities, this design was never developed.
6. The lot is currently zoned R-2, a Medium Density Residential zoning district having a front yard setback requirement of 20 feet and side and rear yard setback requirements of 10 feet. The building area on the lot is further constrained by the existence of a small stream which, in accordance with NC statutes, requires a 25-foot trout buffer.
7. In September 2020, the property owners applied for a variance from the side setback requirement in order to construct a house with an attached carport that would be located within the side setback area. The carport would be located on the southwest side of the lot and adjacent to Lot #5, which is vacant.
8. The applicants have stated that the setback requirement causes an unnecessary hardship because they will not be able to construct their

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carport as needed without being granted a variance.

9. Placement of the carport in the side setback area is the only way the carport will fit due to the unique circumstances of the lot, including: a very small lot width, the trout buffer required by the small stream in the rear, and the existence of utility easements in the front.
10. Construction of the carport will not impede emergency vehicle access, create a fire hazard, or otherwise be contrary to public health and safety.
11. All adjacent property owners have been notified of the Public Hearing and the site has been posted as required by state statute.

In 2007, a zero-lot-line variance was granted for La Bella Vita because at that time the lots were to be used to construct three two-unit duplexes. Each of the units was to be sold individually on the fifty (50) foot wide lots to include side and rear yards in the sale.

At that time, the lot width of 50-feet was not to be noticeable due to the structures being centered at three, 100-foot intervals. The lots would have appeared to be 100-feet wide.

Due to the lot widths, the Board was concerned about the continued issues that will arise.

Planner Hancock explained that there is a home recently built on lot 3 that met the setbacks.

Ms. Wengyn addressed the Board stating that they want to build a carport along with the house. The Armstrong's are going to come (lot 3) and ask for the same variance. Ms. Wengyn explained that the carport cannot go on the side lot with lot 3 but will need to go to the lot 5 side.

Mr. Thomas Roche, owner of lots 5 and 6 addressed the Board stating that on October 8, 2018 a Declaration of Protective Covenants, Conditions, Restrictions and Easements for La Bella Vita Subdivision was recorded. Although duplexes and zero lot line units are allowed, he does not want an encroachment into the setbacks alongside his property. The encroachment would affect the integrity and value of his property.

Planner Hancock again informed the Board that lot 3 has a single-family home and has met the setback requirements. The problem is the developer never

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followed through with the development. The Town requires minimum lot to be sixty (60) feet wide.

Vice-Chair Hamel had concerns that the Board did not have all the information.

Jeffery Richardson, resident of 64 Boulder Lane often walks in that area. It was his opinion that the lots are close together in fact, so close that it cannot be developed in an attractive manner. The lots would work for Townhomes, not single-family homes. The area is not esthetically appealing. Although, the carport addition would remain on Centeno and Wengyn's property.

Mr. Alsbrooks stated that this is a unique situation and more information is needed; going on to ask if this is something that the Board will have to go through every time a home is built. The only homes that will work here are "shotgun homes". Stoney Ridge Subdivision got together and agreed about common areas. Maybe the property owners need to see if they can resolve their common issues.

Mr. Lybrand agreed, adding that more information is needed because it appears that people have options on a first-come-first basis.

Mr. Roche purchased two lots and his son has placed a modular home on the lots. Some people in the audience stated that the Roche home is a double-wide trailer. Planner Hancock must go by how Haywood County classifies the structure.

Mr. Duncan, speaking as a citizen/resident of the adjoining property stated that he would oppose someone building a carport up to his property line (where he mows). The Armstrong's built a beautiful home on a small lot without a carport.

After further discussions, it was determined that there may not be any additional information. The decisions will be made by this board.

Planner Hancock concurred. The Armstrong's are not here to provide their opinion. Other than that, there is no additional information. Planner Hancock reminded the Board that you cannot appear before the Zoning Board of Adjustments twice for the same request.

MR. ALSBROOKS MADE A MOTION TO DENY THE REQUEST FOR THE VARIANCE. MR. LYBRAND SECONDED THE MOTION. MS. MOODY AND VICE-CHAIR HAMEL AFFIRMED THE MOTION. MOTION CARRIED UNANIMOUSLY.

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4. **Application for Variance: Pulliam and Marx, 210 Raven Ridge, side yard setback**

(Action Required) Planner Hancock provided the Finding of Facts for the Pulliam and Marx's request for a variance.

Facts for Variance Application #8_23_20. VAR1

1. Steve Pulliam and Maria Marx are the owners of lot #14 located in the Raven Ridge neighborhood in Maggie Valley, NC. More specifically, the property is described as 210 Raven Ridge Road having PIN 7696-88-2120 and consisting of a single-family residence situated on .05 acres, or approximately 2,200 square feet.
2. Raven Ridge subdivision lot #14 was recorded with the Haywood County Register of Deeds on October 13, 1981. This parcel is adjacent to a 30-foot street right of way containing a 14-foot wide paved private street known as Raven Ridge Road.
3. The Raven Ridge neighborhood has access to a public road known as Soco Road near the traffic light at the intersection of Soco Road with Moody Farm Road and Cardinal Drive.
4. Lot #14 has approximately 50-feet of frontage on Raven Ridge Road and is currently zoned R-2, a Medium-Density Residential zoning district with a side yard setback requirement of 10 feet.
5. The building setback is measured from the property boundary (Zoning Ordinance Section: 154.055).
6. In August 2020, Mr. Pulliam inquired about receiving a zoning permit from the Town in order to construct a 12' x 19' open carport on the west side of the house.
7. The Town Planner informed Mr. Pulliam that because the side setback requirement would not be met by the proposed construction he could apply for a variance.
8. Mr. Pulliam has submitted an application to the Town of Maggie Valley Zoning Board of Adjustment seeking a variance from the required side yard setback area.
9. The Applicant has stated that:
 - a. The variance will not change the character of the neighborhood, which has several other carports which encroach on setback areas; and

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b. The construction of the carport in the side yard will not have a negative impact on adjoining property; and

c. The construction of the carport will maintain public safety and help keep the applicants safer when using their property and driveway during inclement weather conditions.

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.

Mr. Pulliam asked and received approval from the Raven Ridge HOA Board on 8/21/20 for a 12 x 19 feet carport.

Mr. Pulliam and Ms. Marx stated that they purchased the home in 2000 but had never spent the winters here until last year. The area where the carport will go is very slippery due to it icing over. There are other carports in the area that have been approved. Single car carports have been approved by the HOA.

The Board discussed the denied variance request last month for a double carport in the same subdivision. If the other requestor had asked for a single carport that would have made a difference. Therefore, the two issues are not comparable.

MR. LYBRAND MADE A MOTION TO APPROVE THE SINGLE CARPORT FOR 210 RAVEN RIDGE. MR. ALSBROOKS SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

5. Application for Variance: Smyth, 54 Meandering Way, rear yard setback

(Action Required) (item moved to the beginning of the agenda by motion)

Planner Hancock provided the Finding of Facts to the case.

Facts for Variance Application #8_22_20_VAR1

1. Donald and Mary Smyth are the owners of a single-family residence located at 54 Meandering Way in Maggie Valley, NC with PIN 7676-98-7058.

2. This residence is situated on an eighteen (18) foot wide paved Town street.

3. The lot has approximately 95 feet of street frontage on Meandering Way and the rear lot line is approximately 110 feet in length.

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4. The lot is currently zoned R-3, which is a High-Density Residential district with a rear yard setback requirement of 10 feet. The setback is measured from the property line (Zoning Ordinance Section:154.055).
5. On August 22, 2020 Mr. Smyth applied for a 2-foot variance from the rear setback in order to construct an attached covered deck on the portion of the house furthest from Meandering Way.
6. Mr. Smyth has stated that construction of the deck addition will not infringe on any adjacent property and that the location of the home is unique because it was originally placed further back on the lot than other similar homes on the street.
7. A 2-foot variance in the rear yard setback area is consistent with the purpose and intent of the ordinance requirement because the area of the lot immediately adjacent to the proposed addition will remain natural for approximately 50 feet due to the presence of a stream and its associated trout buffer.
8. Construction of the addition will not impede emergency vehicle access, create a fire hazard, or otherwise be contrary to public health and safety.
9. The Crockett's Meadow HOA has shown support for the proposed addition and the plan is under review by the Architectural Review Committee.
10. All adjacent property owners have been notified of the Public Hearing and the site has been posted as required by state statute.

The Crocketts Meadow HOA have confirmed that the rear deck is acceptable. The overhang will be twelve (12) to eighteen (18) inches. The Town Ordinance allows overhangs in the setbacks.

Haywood County has no issue about the small stream on the parcel.

**MR. ALSBROOKS MADE A MOTION TO APPROVE THE
VARIANCE REQUEST FOR 54 MEANDERING WAY REAR-YARD
SETBACK. MS. MOODY SECONDED THE MOTION.**

Mr. Duncan asked that the board review the worksheet for undue hardship.

The Board discussed what a hardship is. 1. Unnecessary hardship would result from the strict application of the ordinance. 2. The hardship results from conditions that are peculiar to the property. 3. The hardship is not a self-created hardship.

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Mr. Alsbrooks added that the structure sets back further than the other homes on the street.

Mr. Bill Delgrego, President of the Crockett Meadows HOA addressed the Board stating that he has talked with both neighbors and they have no issue with the construction of the deck. No one's view will be hindered.

Mr. Alsbrooks was most concerned about the Webb property that is not part of the subdivision.

The person interested in the Webb property has no issue with the rear setback.

Mr. Duncan still questioned the hardship to the case. When the property was purchased the house was where it is.

VICE-CHAIR HAMEL AFFIRMED AND MR. LYBRAND AFFIRMED THE MOTION. MR. DUNCAN OPPOSED. MOTION CARRIED FOUR TO ONE BY MAJORITY.

6. **Other Business**

There was no other business to discuss.

7. **Adjourn**

ON MOTION OF MR. ALSBROOKS, SECONDED BY MR. DUNCAN, WITH ALL IN FAVOR, THE MEETING ADJOURNED AT 6:46 PM.

The next Zoning Board of Adjustment meeting is scheduled for October 15, 2020.



Vice-Chair Marion Hamel



Vickie Best, CMC, NCCMC,

Town Clerk

