

**TOWN OF BLACK MOUNTAIN
ZONING BOARD OF ADJUSTMENT**

The Black Mountain Zoning Board of Adjustment held its regular meeting on Thursday, June 21, 2018 at 6:00 p.m. in Town Hall at 160 Midland Avenue, Black Mountain, North Carolina.

I. CALL TO ORDER

The meeting was called to order with the following members present:

Cheryl Milton, Chair
John DeWitt, Vice Chair
Rebecca Harris
Bob Osmundsen
Janet McKimpson, Alternate
Ted Mattson, Alternate (in audience)

Absent:

Jillian Ballard, Secretary

Staff:

Jennifer Tipton, Zoning Administrator
Ron Sneed, Town Attorney

The meeting was called to order at 5:59 p.m. and duly constituted and opened for business with a quorum of four (4) regular members and one (1) alternate member.

II. ADOPTION OF AGENDA

John DeWitt made a motion to adopt the agenda as presented. The motion was seconded by Bob Osmundsen and approved by a vote of 5-0.

III. ADOPTION OF MINUTES

John DeWitt made a motion to adopt the minutes of April 19, 2018 and May 17, 2018 as written. The motion was seconded by Janet McKimpson and approved by a vote of 5-0.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

1. Variance Request for 18 Wordsworth Road

Ms. Tipton presented the variance request for 18 Wordsworth Road. The owners are seeking a variance of three feet from the rear setback due to an existing sidewalk that encroaches into the front yard and the front setback. The property is located in the Village of Cheshire, which is zoned TND (traditional neighborhood district), and has a front setback requirement of twelve to eighteen feet and a rear setback of twenty feet. The surrounding properties are zoned TND and TR-4 (town residential) and are comprised of single family residences and multi-family residences. Notice of the meeting was sent to twenty-eight property owners that were within two hundred feet of the subject site.

Jane Coates, 20 Keats Road, said that she had spoken to her architect, Michael McDonough, and that relocating the sidewalk was not an option therefore she is requesting the three foot variance into the rear setback. Ms. Coates has spoken with the Architectural Review

Zoning Board of Adjustment Regular Meeting
June 21, 2018

Committee (ARC) and the layout is the desired area per the ARC. The back terrace is to be vegetation and a courtyard.

Ben Buchanan, 114 Hill Street, said that he opposed the variance request because his property backs up to the subject site and with a two-story structure encroaching three feet it would invade his privacy and he doesn't agree with the rules and regulations because they are so close and are asking to be even closer. Mr. Buchanan said that there are other structures that are within inches to his property line..

Jane Coates, 20 Keats Road, said that property 6238 and property 6224 is a town home and on property 6362 there is a house with a garage. Ms. Coates said that she is looking to encroach three feet into the twenty foot rear setback and the other houses have garages or porches that are within three feet of property line as allowed by the Cheshire Guidelines.

Ms. Tipton explained that Cheshire has their own design guidelines for houses, town homes, cottages and tree houses and the setbacks are not the same for each of those. The guidelines were approved in 1998 with the creation of Cheshire. Attorney Ron Sneed explained that a TND is a master planned community with their own zoning that the town enforces.

Jane Coates, 20 Keats Road, explained that the other area shown on the map is a breezeway to the garage and does not need a variance.

Joe Tyson, 309 N. Dougherty Street, said that he owns property within the two hundred feet buffer and feels that the subject property is the border between TND and TR-4 and that he personally does not like TND's because they get special treatment from the town because they get to evolve their own zoning ordinances that are usually more liberal than the town's. They have smaller lots, smaller setbacks and greater density. Mr. Tyson feels that the intent of a TND is for the people to live within the special rules that they are given and the idea of a variance is to protect someone from a hardship that has been caused by something beyond their control like a stream. Mr. Tyson feels that if a property owner does their due diligence and their architect is worth a hoot then the architect can fit the house to the lot and feels that this is a case in which the architect has failed to fit the house to the lot and now they are trying to ask for forgiveness. Mr. Tyson said that the new house is a two-story house and that does impact the neighbor. Mr. Tyson feels that the bicycle garage should be part of the main structure like it is in the regular zoning and questioned an ancillary structure versus an accessory structure. Mr. Tyson said that if the Buchanan's wanted to subdivide their property and build another house this would impact the use of their property and the privacy. Mr. Tyson said that he felt that the town should not let Cheshire do anything outside of the special rules that have been approved unless it is a hardship that has been created through no fault of the owner but the owner has to do due diligence. Mr. Tyson said he would be in favor of moving the house into the sidewalk and that he supported the Buchanan's claim that there should not be a variance on any of the lots that adjoin the TR-4 district.

Ms. Tipton again explained the guidelines and read them again regarding ancillary structures and the setback for ancillary structures and the breezeway. Chair Milton asked that Ms. Coates come back up to the podium to ask about how big the garage will be. The measurements were not on the site plan but Ms. Coates said the measurements are within the guidelines and was approved by the ARC. Ms. Tipton said that no drawings have been submitted yet for the property so measurements are not required at this point. Chair Milton was asking for the specific

Zoning Board of Adjustment Regular Meeting
June 21, 2018

measurements because she is not sure if the plan is drawn to scale. Attorney Sneed informed the board that the garage is not part of the matter that is being heard tonight.

Chair Milton asked about the sidewalk easement and Ms. Tipton said the recorded plat showed a two foot easement for the setback. It was asked if there were any rules about allowing the house to move three feet forward closer to the sidewalk and Ms. Tipton said that the town does not want anyone building on the sidewalk as it would not be safe to walk on. Chair Milton said that if the sidewalk is encroaching onto the property then why not go back and say this is what I would like done here to take it off of the property.

Ms. Tipton stated again that Cheshire is unique and that they have their own zoning rules and that is what we enforce and that a single family residence is a permitted use. Ms. Tipton reminded the board about the state change regarding self-created hardships and we do not want anything to be built on the sidewalk and by encroaching three feet would still be sixteen feet to the property line.

Rebecca Harris made a motion to go into recess at 6:47 p.m. to deliberate. The motion was seconded by Bob Osmundsen and approved by a vote of 5-0. Chair Milton said that she does not feel like a sidewalk encroachment was not the buyers fault but also not the town's fault and that there are different house plans that could be utilized and that there are things in Cheshire that are not seen in other districts. Chair Milton said that there are other places that a bathroom could be worked in but she is not an architect. Mr. DeWitt said he did not understand that if the ARC has okayed the variance then why are we trying to fight them when we have given them the authority to set their own zoning rules. Chair Milton said that they are not within their own zoning rules and are asking for three feet. Attorney Sneed reminded the board that they have the final say and their decision has to be based on facts that are derived from the evidence in the hearing despite what the ARC has found. Mr. Osmundsen said the neighbor doesn't have any standing inside the association and as the person affected sees that as a problem. It was reiterated that the garage is not a concern of this hearing tonight and the hearing tonight is only for the primary structure which would be seventeen feet from the line if the three foot variance is granted. John DeWitt made a motion to come out of recess at 6:57 p.m. The motion was seconded by Rebecca Harris and was approved by a vote of 5-0.

Chair Milton asked about the staff recommendation page from the staff report and Ms. Tipton explained that Elizabeth Teague used to do staff reports and Ms. Tipton did not do them for a while and now Jessica would like for staff reports to be done for all the meetings and typically recommendations are put into the staff reports. Chair Milton said that she does not agree with the recommendations being placed in the staff report. Chair Milton asked that Ms. Tipton summarize the evidence of the hearing:

- Town's Exhibit 1: Variance Application
- Town's Exhibit 2: Site Plan
- Town's Exhibit 3: Copy of Check and Receipt
- Town's Exhibit 4: Buffer Map of Properties within 200'
- Town's Exhibit 5: List of Property Owners within 200'
- Town's Exhibit 6: Notice to Property Owners within 200'
- Town's Exhibit 7: Certificate of Mailing

Zoning Board of Adjustment Regular Meeting
June 21, 2018

- Town's Exhibit 8: Aerial Map
- Town's Exhibit 9: Picture of Property Posting
- Town's Exhibit 10: Plat Showing Original Sidewalk Easement

Ms. Tipton noted that no evidence had been submitted into the record by the applicant or the opponents. Ms. Coates let the board know that other than the variance requested, everything else on the site plan is in compliance with the ARC guidelines.

Davette Buchanan, 114 Hill Street, asked for a clarification regarding roof lines and connections to primary structures or accessory structures and it was explained that in Cheshire the garage can be connected by a breezeway but does not count as part of the footprint of the primary structure.

Bob Osmundsen made a motion to close the public hearing. The motion was seconded by Janet McKimpson. The motion was approved by a vote of 5-0. The board made the following findings of fact:

- The property is zoned TND, and the rear building setback line in this district is 20 feet for the subject lot.
- That the said Lot 51 has a rear setback of 20 feet and the front setback is 12 to 18 feet.
- That there is an existing sidewalk which encroaches onto the front of the property lying outside the easement created for the sidewalk by the recording of the plat in Plat Book 98 at Page 157.
- That the sidewalk encroaching onto the Applicants' property was built outside the existing easement and is at a location where there is no easement for that purpose.
- That the chosen house which the Applicants want to build on the property will encroach three feet into the rear building setback area if it is set back a reasonable distance from the existing sidewalk.
- Unnecessary hardship will result from a strict application of the ordinance establishing the rear setback requirements, as it will prohibit the construction of the chosen house by the Applicants.
- The hardship is not the result of actions taken by the applicant as the hardship is caused by the encroaching sidewalk which was already in existence when the Applicants purchased the property.
- The requested variance is not consistent with the spirit, purpose and intent of the ordinance, as the variance will allow construction of a two story structure three feet closer to property in a different zoning district (TR-4) which is subject to more restrictive zoning requirements than the TND district.
- That the Applicants have other remedies to allow them to build the house they have chosen, and one of those is to compel the removal or relocation of the sidewalk that is built on their lot but outside the easement created for that purpose.

John DeWitt made a motion to deny the variance request. The motion was seconded by Janet McKimpson and approved by a vote of 5-0.

VI. COMMUNICATION FROM ZBA

None.

VII. COMMUNICATION FROM STAFF

None.

Zoning Board of Adjustment Regular Meeting
June 21, 2018

VIII. ADJOURNMENT

The meeting was adjourned at 7:26 p.m.

Prepared by:

Cheryl Milton, Chair

Jennifer Tipton, Zoning Administrator

Jillian Ballard, Secretary

Zoning Board of Adjustment Regular Meeting
June 21, 2018