

BOARD OF ADJUSTMENT

MINUTES

Thursday, June 25, 2020

The Blowing Rock Board of Adjustment met on Thursday, June 25, 2020 at 5:30 p.m. Members present were EB Springs, Lance Campbell, Buz Helms and Lee Rocamora. Staff present were Planning Director Kevin Rothrock and Town Clerk Hilari Hubner.

Chairman EB Springs called the meeting to order at 5:30 p.m.

New members Jim Steele, Sarah Murphy and Jerry Starnes were sworn to the Board.

APPROVE MINUTES:

Mr. Helms made a motion to approve the minutes from January 28, 2020. Mr. Rocamora seconded the motion. All were in favor of the motion.

APPROVAL OF MINUTES:

Mr. Helms made a motion to approve the minutes from February 19, 2020. Mr. Rocamora seconded the motion. All were in favor of the motion.

Other Business

Chairman Springs moved Other Business to the first agenda item and confirmed that the Board has approved telephone witnesses and asked if Mr. Rothrock would include this information in future Board of Adjustment Public Notices. Mr. Rothrock confirmed he would do this.

Chairman Springs made a motion to approve telephone witnesses, seconded by Mr. Steele. All were in favor of the motion.

Chairman Springs said that the Board has the ability to relax some rules of evidence and noted that letters are considered unsworn testimony. Chairman Springs suggested a motion that written statements and letters from neighbors and citizens be admitted as evidence provided all parties and the Board agree, which would be done on a case by case basis.

Chairman Springs made a motion to approve written statements and letters from neighbors and citizens as evidence, provided that all parties and the full Board agree on a case by case basis. The motion was seconded by Ms. Murphy.

The Board discussed the motion. Mr. Helms asked if this would be on a case by case basis. Chairman Springs confirmed. Mr. Helms asked if the written statements would be considered as opinion and not sworn testimony. Chairman Springs confirmed, provided all parties and the full Board agreed to including these communications. Mr. Steele said that if the written statement was fact, as opposed to opinion, it should be notarized. Chairman Springs said it would not be sworn and would not have to be notarized per his motion, adding that this is bending the rules. Chairman Springs said that the motion can be amended to add that written statements must be notarized. Mr. Steele said that facts must be sworn testimony. Chairman Springs said, according to his motion, a notarized statement would not be considered sworn testimony and would be considered hearsay and it breaks the rules. Mr. Rothrock said it would need to be a sworn affidavit and not simply notarized. Chairman Springs said notarized letters or statements are affidavits. Mr. Helms asked if these would be in the packet. Chairman Springs said they may or may not be included in the packet. Mr. Helms again confirmed that this would be on a case by case basis. Ms. Murphy asked if the applicant can decide which written statements would be considered sworn testimony. Chairman Springs said the other party and the full Board would have to agree. Ms. Murphy said that if the letter was important to the applicant, then the applicant should ensure that it is notarized. Chairman Springs agreed. Chairman Springs reiterated that his motion only allows this as evidence provided all parties and the full Board agree. Mr. Steele said only sworn testimony can be admitted as evidence. Chairman Springs suggested an alternative motion that a hearsay letter must be notarized to constitute sworn testimony. Mr. Steele noted that he considers unsworn testimony as opinion and not fact. Mr. Rothrock said that he understands that findings of fact cannot be based on unsworn testimony, opinion or hearsay. Mr. Rothrock added that unsworn testimony and opinions can be accepted as opinion, but the Board can't base findings of fact or determinations on unsworn testimony, hearsay or opinions.

Chairman Springs withdrew his original motion and made a new motion, that only notarized statements or letters, which would be considered hearsay, from members of the public be accepted as sworn testimony, provided that all parties and the full Board agree. Seconded by Mr. Rocamora.

Mr. Campbell asked how is this different from current procedure. Chairman Springs said that before this motion unsworn testimony and blatant hearsay could not be accepted by the Board. Mr. Helms asked if this would have been considered opinion. Chairman Springs confirmed and noted that this would not even be close to meeting the strict rules of evidence. Chairman Springs added that the Board could do a lot of things if everyone agrees and no one objects and the court, in the case the Board, does not object.

Chairman Springs asked for a vote on his amended motion. All were in favor of the motion.

Variance 2020-01 Bridget and Stephen Holcombe

Chairman Springs asked the Holcombes if they are aware that Mr. Harwood is a member of the Town Council. The Holcombes confirmed. Chairman Springs asked if they are okay with Mr. Harwood being a member of the Town Council and being a witness in this proceeding on their behalf. The Holcombes confirmed. Chairman Springs then asked Mr. Rothrock if he had any problem with Architect David Harwood laying out the Holcombe's proposal. Mr. Rothrock confirmed.

Kevin Rothrock and Mr. David Harwood were sworn for testimony to the Board.

Mr. Rothrock presented the staff report and Powerpoint presentation. Bridget and Stephen Holcombe are requesting a setback variance of 9.95 feet from the 12-foot side property line setback to extend an existing carport and create an outdoor living space. The property is located at 210 Blackberry Lane and is further identified by Watauga County PIN 2817-64-3440-000. The property is zoned R-15, Single-family.

The Holcombes are requesting relief from the side setback of their property to extend an existing carport and construct an outdoor patio. The existing carport is 2.05 feet from the adjacent neighboring property line at its closest point. Documentation, including a survey and site plan drawings are provided for review. A letter from the Holcombes and their neighbors, the Marion family, is attached as well.

Mr. Rothrock said the Board must determine facts from the testimony given and apply the facts to these criteria. Then the Board could vote on the request.

(a) FINDINGS OF FACT

The Board must identify facts through the review of the materials and testimony presented at the hearing. The facts must be written into the record of the hearing based on competent evidence presented.

In addition, the Board must vote separately on each determination identified in Section 16-5.2. To approve a variance, the board must affirm by a 4/5th majority each determination listed. If all four (4) variance determinations are affirmed in favor of the applicant, the board shall make a final motion to approve the variance. If any determination is not approved by a 4/5 majority, the variance must be denied. The variance determinations found in Section 16-5.2 are listed below:

When unnecessary hardships would result from carrying out the strict letter of these regulations, the board of adjustment shall vary such regulations upon a showing of all the following:

- (a) Unnecessary hardship would result from the strict application of the regulations. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (b) 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.
- (c) 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.
- (d) The requested variance is consistent with the spirit, purpose, and intent of the regulations, such that public safety is secured, and substantial justice achieved. Substantial justice is not achieved when granting the variance would be injurious to the neighborhood or to the general welfare.

Mr. Rothrock noted that the information on the Town's website regarding Finding of Facts is inconsistent with these and said this will be corrected.

Mr. Rothrock said the Holcombe's had included a survey as well the architectural plans for the proposed project.

Mr. Helms asked how close the Holcombe's' house is to the neighboring property line. Mr. Harwood said there is probably 8 feet or less. Mr. Harwood said the neighbor's home is closer to the Holcombe's property than they are to the neighbor's line. Mr. Rothrock pointed out the Powerpoint slide of the two properties for the Board. The Board discussed the current proximity of the existing structures. Mr. Rocamora asked how close the carports are now. Mrs. Holcombe responded very close.

Chairman Springs asked if the Holcombe's had been sworn. Mr. Rothrock advised they had not. The Holcombes were sworn for testimony to the Board.

Chairman Springs asked the zoning of the property. Mr. Rothrock replied R – 15. Chairman Springs asked which section of the Land Use Code authorizes the setbacks in R – 15. Mr. Rothrock replied Section 16-12.4. Mr. Helms asked if Blackberry Lane is a cul-de-sac. Mr. Rothrock confirmed. Chairman Springs referenced Section 16-12.4 and asked if the required side setback is 12 feet. Mr. Rothrock confirmed. Chairman Springs asked when the house was built. Mr. Harwood said in 1972.

Chairman Springs asked Mr. Rothrock if the packet the Board received was complete. Mr. Rothrock confirmed. Chairman Springs said the packet can be made part of the record,

excluding the letter, which he will revisit. Chairman Springs asked if any Board member had any objection with the packet, excluding the letter, being made a part of the record. There were no objections. Chairman Springs made the packet, excluding the letter, a part of the record.

Chairman Springs asked if the Holcombes had any questions for Mr. Rothrock. Mr. Holcombe asked if there is an issue with extending the roof line of the house since it was built in 1972. Mr. Rothrock said it's only an issue if the addition does not meet the applicable setbacks at the time, adding that this is the reason for the variance request. Mrs. Holcombe asked is the house is in any way grandfathered. Mr. Rothrock advised that what is existing is grandfathered, but you cannot, without a variance application, extend a nonconformity. Mrs. Holcombe asked Mr. Rothrock his concerns about this project. Mr. Rothrock advised that he does not have any concerns, as he does not have the authority to do anything and he sends it to the Board to decide, as long as it meets the building code.

Mr. Harwood addressed the Board for the Holcombes. Mr. Harwood, principal architect of Sketchline Architecture, said this is a beautiful property and it has been the family for many years. Mr. Harwood added that this house has the best view from any carport in Blowing Rock. Mr. Harwood said when they first started looking at the property, they wanted an outdoor living space on the same level as the kitchen. Mr. Harwood asked Mr. Rothrock to display the floorplan. Mr. Harwood went over the existing footprint of the house and the challenges with an addition off the lower steps at the walkout basement. He said that's when they began to consider an addition that would be at the same level as the kitchen. Mr. Harwood highlighted the floorplans and advised this plan would be about the same level of the existing kitchen and would maintain the existing roofline. Mr. Harwood said the roofline would look like it has always been there.

Mr. Steele asked if the entire the roof would be new. Mr. Harwood said he had advised that all the roof shingles be replaced. Mr. Steele asked if the roof pitch would change. Mr. Harwood said the pitch would be the same. Mr. Steele asked if the chimney is new. Mr. Harwood confirmed. Mr. Steele asked if the new chimney is about 3 feet in depth. Mr. Harwood confirmed. Mr. Steele said that rather than 9.5 feet, the encroachment would be 6 feet. Mr. Harwood said this would be changed because the fireplace will be inset into the drip line. Mr. Steele said the elevations do not reflect this. Mr. Harwood agreed and apologized. Mr. Steele asked if it is still 2.5 feet from the boundary line. Mr. Rothrock and Mr. Harwood said it is 2.5 feet. Mr. Steele asked why they want to encroach more. Mr. Rothrock said they are not encroaching further, that as the proposed living area is constructed it will be further from the property line. Mr. Rothrock noted the closest point in the staff report. Mr. Harwood said the further east the addition goes, the further it is from the property line.

Chairman Springs asked Mr. Harwood to confirm that they do not want to park cars; that they want to enlarge the outdoor living space. Mr. Harwood confirmed. Chairman Springs referenced Section 16-8.3 of the Land Use Code stating that nonconforming situations

cannot be enlarged. Chairman Springs added that this is clearly a nonconforming situation. Mr. Harwood confirmed that they do not want to enlarge the carport; that they want to add an outdoor living area. Mr. Harwood said they are enlarging the roof plane. Mr. Helms asked if the roof overhang is considered. Mr. Harwood confirmed. Mr. Rocamora asked if this could be built to conform with the setback if the roofline was moved forward. Mr. Harwood said it could be done, but it becomes more problematic with the height of the structure and other issues. Mr. Steele said that the use does make any difference; that this does not meet the setback for R – 15. Chairman Springs noted that’s why this variance is being requested. Mr. Rothrock said just to be clear, they are not increasing the carport parking area, they are increasing the roofline.

Chairman Springs asked Mr. Rothrock if Public Notices were sent. Mr. Rothrock confirmed and added that the property was posted, and the Public Notice was published twice in the newspaper. Chairman Springs asked which newspaper. Mr. Rothrock replied The Blowing Rocket. Chairman Springs asked which neighbors received mailed public notices. Mr. Rothrock said those within 150 feet of the subject property. Chairman Springs asked how many notices were mailed. Mr. Rothrock advised eight notices were mailed. Chairman Springs asked if any neighbors responded. Mr. Rothrock said the Marions were the only neighbor who responded.

Chairman Springs asked Mr. and Mrs. Holcombe if they had anything to add. Mrs. Holcombe said they have owned the house since 1992 and they are very concerned about preserving the view for themselves and their neighbors. She added that the only option to meet the setbacks is to distance this from the house towards the view, which would be an eyesore and disrupt the view for others. Mrs. Holcombe said they are very privileged to have this view and that they do not want to disturb the bones of the house. Mr. Holcombe said they first went to their neighbors and asked their opinions, adding said that if any neighbors had any objections, they would not pursue it.

Chairman Springs referenced Dr. Marion’s letter, adding that Dr. Marion is not here to testify, and therefore the letter is considered hearsay. Chairman Springs asked if they have had any friction with the Marions. Mrs. Holcombe said absolutely not adding that they are very close. Chairman Springs asked if she could get Dr. or Mrs. Marion on the phone. Mrs. Holcombe contacted Mrs. Marion. Chairman Springs advised Mrs. Holcombe to contact Mr. Rothrock, Planning Director. Mr. Rothrock shared his contact number with Mrs. Holcombe and Mrs. Marion. Mrs. Marion called Mr. Rothrock. Dr. Marion said he could not attend due to working all today attending to patients, including Covid patients.

Chairman Springs advised Dr. Marion needed to be sworn for testimony to the Board. Dr. Marion was sworn for testimony to the Board.

Chairman Springs confirmed that he was speaking with Dr. Malcom Marion, III and asked if he authored the letter dated May 31, 2020 and submitted said letter to the Town of Blowing Rock Board of Adjustment. Dr. Marion swore that he did author the letter ‘so help

me God'. Chairman Springs asked Dr. Marion if he had any objections to what the Holcombe's are proposing. Dr. Marion said he has no objections. Chairman Springs noted that his carport is very close to the Holcombe's carport. Dr. Marion confirmed. Chairman Springs asked if this has ever presented any friction or problem with the Holcombes. Dr. Marion advised it had not caused any friction or problems. Chairman Springs also noted that it appears that their street or driveway is at the other end of the house. Dr. Marion confirmed. Chairman Springs asked Dr. Marion if this proposed structure would interfere with or impede any ambulance or police car from accessing either property. Dr. Marion said it would not impede such traffic. Chairman Springs asked the Board if they had any questions for Dr. Marion. There were none. Chairman Springs asked the Holcombes if they had any questions for Dr. Marion. Mrs. Holcombe thanked them for attending the meeting and that they appreciate their support. Chairman Springs asked Mr. Rothrock if he had any questions for Dr. Marion. He did not. Mrs. Marion asked to speak. Mrs. Marion was sworn for testimony to the Board. Mrs. Marion said she did contact Mr. Rothrock after the notice was sent and asked Mr. Rothrock if there was anything else she needed to do and Mr. Rothrock advised the letter should be fine. Mrs. Holcombe and Mr. Rothrock thanked the Marions.

Chairman Springs asked Mrs. Holcombe if she wanted Dr. Marion's letter to become evidence and part of the record. Mrs. Holcombe said yes. Chairman Springs asked Mrs. Holcombe if they had any further witnesses or evidence to present. Mrs. Holcombe said they did not.

Chairman Springs referred the Board to information provided by Mr. Rothrock, specifically Land Use Code Section 16-5.2 Variances, and NCGS 160A-388 (d) enacted in 2013 which details what an applicant must show to be granted a variance. Chairman Springs noted that the Town's Land Use Code is consistent with the NCGS. Chairman Springs outlined the 4 criteria and provided a form for Board members to complete. Chairman Springs explained that this form will assist the Board now, and in the future, to determine the finding of facts and will form the basis of the Board's written decision.

Chairman Springs asked the Board if they would like to determine the findings of facts, or that he could do it. Mr. Steele said that Chairman Springs could do this. Chairman Springs noted that the evidentiary portion of this hearing will remain open as there may be questions regarding the finding of facts. Then the Board will vote on the facts.

Chairman Springs determined the following facts:

1. The property is located at 210 Blackberry Lane and is owned by Mr. and Mrs. Stephen Holcombe.
2. The property is zoned R – 15.

3. The applicant wants to do the following which will require a variance, add an outdoor living area with fireplace next to the house.
4. The applicant did provide sketches and plans for the project.
5. The applicant is requesting a variance because the R – 15 zoning side setback is 12'. The outdoor living area will require a variance for 9.95' into the 12' side setback.
- 6.a The Blowing Rock Land Use Ordinance that covers the setback requirement is Section 16-12.4.
- 6.b The proposed new roof will increase the level of nonconformity of the carport. The carport was built in 1972 and is grandfathered nonconforming to the current zoning setback ordinance.
7. Variances such as that applied for here are governed by Blowing Rock Land Use Code Section 16-5.2, et seq regarding NCGS 160A-388(d).
8. The Town of Blowing Rock has given proper notices of this variance application hearing.
9. There was evidence given by the neighbors of the property as to the impact of the applicants' proposal on the neighboring property.
10. What the applicant is proposing would not appear, to Chairman Springs, to impair emergency vehicle access.
11. What the applicant is proposing would not appear, to Chairman Springs, to create a fire hazard.
12. What the applicant is proposing would not appear, to Chairman Springs, to be contrary to public and safety.
13. The roofline being extended would increase the level of nonconformity.

Chairman Springs asked if Board if they wanted to add any facts.

Mr. Rocamora asked Mr. Rothrock if extending the roof line increases the nonconformity. Mr. Rothrock confirmed. Mr. Rocamora noted that this proposal increases and adds new nonconformity. Mr. Rothrock replied these are synonymous and this does increase the nonconformity.

Ms. Murphy asked Mr. Harwood if the appearance from the street of the proposed addition would look very much like the existing structure. Mr. Harwood confirmed it would look very

much the same, adding that it would be hard to know that a change had been made from the street view.

Mr. Steele asked if the roof pitch is 12/4 now. Mr. Harwood confirmed and said it matches the house.

The findings of fact were amended to include item 6 b.

Chairman Springs made a motion to find the findings of fact 1 -13. Seconded by Mr. Helms. All members were in favor of the motion.

The Board discussed the hardships.

Chairman Springs made a motion to close the evidentiary hearing. Seconded by Mr. Steele. All members were in favor of the motion.

The Board returned to their discussion of the hardships.

Chairman Springs noted the Board can approve this request with conditions.

Mr. Rocamora noted there are two conflicting images of the fireplace and said the correct image should be clearly indicated. Mr. Harwood responded that both images are correct and apologized for giving incorrect information earlier. Mr. Harwood said that the fireplace will be higher than the roof but will not extend beyond the overhang. Mr. Steele asked if the images accurately reflect what will be built. Mr. Harwood confirmed and pointed out the dashed lines on one image as the overhang and noted that it matches what is existing. Mr. Helms asked if the chimney extended beyond the roof line. Mr. Harwood confirmed and reiterated that the chimney will not extend beyond the fascia or edge of the roof line.

The Board applied the facts to (a).

- (a) Unnecessary hardship would result from the strict application of the regulations. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

Chairman Springs made a motion to accept (a) and added that this fact was particularly illustrated by Mr. Harwood's, project architect, testimony. Seconded by Mr. Steele. All members were in favor of the motion.

The Board applied the facts to (b).

- (b) 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.

Chairman Springs made a motion to accept (b). Seconded by Mr. Rocamora. All members were in favor of the motion

The Board applied the facts to (c).

- (c) 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.

Chairman Springs made a motion to accept (c), based on the fact that the house and carport were built in 1972 and the Holcombes did not buy the property until 1992 and had nothing to do with the house location. Seconded by Mr. Helms. All members were in favor of the motion.

The Board applied the facts to (d).

- (d) The requested variance is consistent with the spirit, purpose, and intent of the regulations, such that public safety is secured, and substantial justice achieved. Substantial justice is not achieved when granting the variance would be injurious to the neighborhood or to the general welfare.

Chairman Springs made a motion to accept (d). Seconded by Ms. Murphy. Chairman Springs added that this request is not injurious to the neighborhood and not contrary to public health. All members were in favor of the motion.

Chairman Springs made a motion to grant the variance as the applicant has met all requirements.

5. Chairman Springs noted that this will extend the nonconformity based on the extension of the roof line. Chairman Springs referred to Land Use Code Section 16-5.2 (f) commenting that this is not initiating a nonconforming use of land, however this does appear to be an extension of a nonconforming use. Chairman Springs, noting that state statute trumps local ordinances, referred to and read aloud NCGS 160A-388 (d) 'When unnecessary hardships would result in carrying out the strict letter of the zoning ordinance the Board of Adjustment shall vary any other provisions of the ordinance on a showing of the following (a) – (d). Chairman Springs said the applicant had met all requirements of this NCGS. Chairman Springs said the applicants have shown all the foregoing (a) – (d) requirements. Chairman Springs added that based on this NCGS, the Board of Adjustment shall vary any other provision of the ordinance upon a showing of the following. Chairman Springs said that he feels that this would allow the roof extension to 'squeak in under the wire.

Chairman Springs asked if there was any discussion on his motion. Mr. Steele asked the dimension of the overhang. Mr. Harwood advised the existing overhang is two feet and proposed roof line overhang will also be two feet.

*With no further discussion and based the Boards' ruminations, Chairman Springs said the Board does vote to approve the applicant's application for a variance in this case. Motion was seconded by Mr. Rocamora. **All members were in favor of the motion.***

Chairman Springs added the following item.

6. This decision is effective upon filing with the Clerk and distribution to the parties.

Chairman Springs advised Ms. Hubner that he would provide her information for the final order. Ms. Hubner thanked Chairman Springs.

Mr. Steele asked if the Board should submit their work sheets to the Chairman. Chairman Springs said the Board could keep those adding that he hoped this work sheet was helpful.

With no further business, the Board adjourned at 7:45 p.m.

Mr. E.B. Springs, Chairman

Hilari Hubner, Town Clerk