

BOARD OF ADJUSTMENT

MINUTES

Thursday, September 24, 2020

The Blowing Rock Board of Adjustment met on Thursday, September 24, 2020 at 5:30 p.m. Members present were Chairman EB Springs, Lee Rocamora, Jerry Starnes, Susan Murphy and Lance Campbell. Staff present were Planning Director Kevin Rothrock, Building Inspector John Warren and Town Clerk Hilari Hubner.

Chairman Springs called the meeting to order at 5:30 p.m. and noted there were five Board Members in attendance.

APPROVE MINUTES:

Chairman Springs made a motion to amend the minutes from June 25, 2020 as follows. Page 8, item number 7 'except' should be 'et seq.' On page 11, 'this decision is effective upon distribution to the parties by the authority of the Board of Adjustment' to 'this decision is effective upon filing with the Clerk and distribution to the parties'. The motion was seconded by Mr. Campbell. All were in favor of the motion.

Miscellaneous Administrative Matters

Chairman Springs referred to the Board agreeing to allow telephone testimony to the Board at the last meeting. Chairman Springs asked Mr. Rothrock to add this wording regarding telephone testimony to public notices. Mr. Rothrock confirmed he would. Chairman Springs noted that the public notice for Appeal 2020-01 did not contain this wording. Chairman Springs asked Mr. Rothrock if he had changed his mind. Mr. Rothrock said he had not; that he simply forgot to add this.

Chairman Springs distributed a 14-page summary from The Quasi-Judicial Handbook written by David Owen which is pretty much a playbook for Boards of Adjustment. He asked the Board to review this well-done summary. Chairman Springs stated that this quasi-judicial Board should conduct hearings like a court of law. Chairman Springs advised that variances were easy to handle and not very adversarial and the Planning Director generally assists the appellant in presenting their case and the four findings of fact are clear and easy to apply. Chairman Springs said that appeals are adversarial and that the Board must know the laws and provide due process. Chairman Springs said the Board could not ask Town Attorney Alan Moseley to advise the Board because he represents one party. Chairman Springs said he has been acting as the Board's attorney and is happy to continue. Chairman Springs said

he invited the Town Manager and Mr. Moseley to this hearing. Chairman Springs said an attorney would need to brush-up on the applicable laws for each appeal to advise the Board. Chairman Springs said he was surprised to see that the Town does not have a municipal ordinance requiring a building permit and that the Town is relying on the NC State Statute requiring a building permit.

Mr. Campbell asked if phone testimony is considered sworn just as if the person were in attendance. Chairman Springs advised that participants can be sworn to testify over the phone.

Appeal 2020-01 Hargett

Ms. Hargett joined the meeting via Zoom. Chairman Springs introduced himself and informed Ms. Hargett and asked if she received Mr. Rothrock's staff report. Ms. Hargett said she had not been home in 10 days and had not received the packet. Mr. Rothrock advised that he had emailed the information to her. Ms. Hargett confirmed that she did receive the information. Chairman Springs advised Ms. Hargett that Ms. Hubner is an employee of the Town and that she would be taking the minutes for this hearing. Chairman Springs asked Ms. Hargett if she had any objections to Ms. Hubner taking the minutes. Ms. Hargett did not. Chairman Springs asked Mr. Rothrock if he had any objections to Ms. Hubner taking the minutes. Mr. Rothrock did not.

Mr. Rothrock, Ms. Hargett and Mr. Warren were sworn in for testimony to the Board.

Chairman Springs asked the Board Members if they had any earlier ex parte conversations about this case or conflicts of interest regarding this case. No board members had any ex parte conversations or conflicts of interest regarding this case. Chairman Springs advised that he had driven by the property and asked the Board members if they had. Dr. Rocamora, Mr. Campbell and Ms. Murphy had driven by the property. Chairman Springs asked Ms. Hargett if she had any questions of these Board members. Ms. Hargett asked for clarification of the question. Mr. Rothrock advised Ms. Hargett that four of the five Board members had driven by the property and asked if she had any questions for them. Ms. Hargett did not. Chairman Springs asked Mr. Rothrock to enter the staff report into the record.

Chairman Springs advised that it appeared that Ms. Hargett had filed her appeal one day too late and that had to be heard before the appeal could be heard. Mr. Rothrock said that she did not file late. Chairman Springs asked Mr. Rothrock if he served the notice of violation and on what day. Mr. Rothrock confirmed that he served the notice on July 13, 2020. Chairman Springs asked Mr. Rothrock where he served the notice to Ms. Hargett. Mr. Rothrock advised on her porch at 371 Clawson Drive. Chairman Springs asked Mr. Rothrock to read the third paragraph of the notice of violation. Mr. Rothrock read the third paragraph: 'Please be advised that this written Notice of Violation constitutes your final written notice. As provided in Section 16-5.1 of the Land Use Ordinance, this decision may

be appealed to the Board of Adjustment. Any appeal must be filed within 30 days of the date of this letter by completing an application provided by this office and paying the require fees. Chairman Springs asked if Ms. Hargett filed an appeal form. Mr. Rothrock confirmed. Chairman Springs asked Mr. Rothrock the case number assigned. Mr. Rothrock advised 2020 – 01. Chairman Springs confirmed that Ms. Hargett’s full name is Robin R. Hargett and asked Mr. Rothrock when she filed for the appeal. Mr. Rothrock advised that he received the appeal form when he returned to the office on August 13, 2020 and advised that Town Hall open three days per week. Mr. Rothrock advised that the letter was postmarked August 10, 2020 and he received it on August 13, 2020. Chairman Springs asked Mr. Rothrock if the envelope was mailed and the postmark. Mr. Rothrock confirmed that the envelope was mailed via USPS and was postmarked August 10, 2020. Chairman Springs asked when the envelope was received. Mr. Rothrock said probably on August 12, 2020, adding it could have been prior to that, but he was not there at the time. Mr. Rothrock advised that when he returned to his office it was on his desk. Chairman Springs directed Mr. Rothrock’s attention to his handwritten note at the top right of the appeal form indicating that \$150 was received on August 13, 2020. Mr. Rothrock confirmed this was in his hand. Chairman Springs then directed Mr. Rothrock’s attention to the Appeal Background paragraph in the Administrative Appeal document and asked Mr. Rothrock to read it. Mr. Rothrock read ‘Town Staff discovered the carport structure in July of 2020 and realized that no permits were received for the construction. Ms. Hargett was given a hand-delivered Notice of Violation on July 13, 2020 with instructions to remove the structure within 30 days. Ms. Hargett then filed an appeal application to that decision on August 13, 2020, which includes a letter. Chairman Springs noted that the appeal was filed on August 13th. Mr. Rothrock advised it was filed before August 13th, that he received it on August 13th. Chairman Springs said it would have been nice if Mr. Rothrock had indicated this instead of saying that the appeal was filed on August 13th. Mr. Rothrock’s response was ok. Chairman Springs asked Mr. Rothrock if he was confident that the appeal arrived in his office prior to August 13th. Mr. Rothrock confirmed. Chairman Springs asked Ms. Hargett if she remembered mailing the appeal to the office of the Planning Director. She confirmed. Chairman Springs then asked if she remembered when she mailed it. Ms. Hargett advised that she did not, but she was trying to get it in as quickly as possible. Chairman Springs asked the Board if they had any questions for Ms. Hargett or Mr. Rothrock on this issue. Mr. Starnes said that the postmark would be the legal date. Chairman Springs said that it appears to him that Ms. Hargett made a timely appeal which arrived on August 12th and asked if the Board if they agreed. All members agreed. *Chairman Springs then made a motion to proceed with the hearing as Ms. Hargett made a timely appeal. Seconded by Mr. Dr. Rocamora. All were in favor of the motion.*

Mr. Rothrock gave the staff report. Ms. Robin Hargett has appealed a Final Notice of Violation issued to her regarding construction of a carport structure at 371 Clawson Drive. The subject property is zoned R-15, single-family and is further identified by Watauga County PIN# 2817-18-9187-000.

APPEAL BACKGROUND

Town Staff discovered the carport structure in July of 2020 and realized that no permits were received for the construction. Ms. Hargett was given a hand-delivered Notice of Violation on July 13, 2020 with instructions to remove the structure within 30 days. (Exhibit A). Ms. Hargett then filed an appeal application (Exhibit B) to that decision on August 13, 2020, which includes a letter (Exhibit C)

Photos (Exhibit G -1, 2, 3) are included that show the carport and its location in proximity to the street. The closest point of the carport overhang (NE corner) is 2 feet 10 inches from the edge of the street pavement.

Public Notice for this Appeal was mailed on September 9, 2020 to the property owner and adjacent property owners within 150 feet (Exhibit D-1, 2, 3). The property was posted on September 9, 2020. A public notice is scheduled to appear in the Blowing Rocket on September 17, 2020.

Mr. Rothrock reviewed the attachments in the packet, noting the aerial view of the property marked with a red arrow and a Zoning Map of the property. Mr. Rothrock referred to the photographs (Exhibits G -1, 2, 3) which show the carport as constructed and the proximity to the street. Mr. Rothrock referred to Article 4 in the Blowing Rock Land Use Ordinance, Permits and Final Plat Approval:

Section 16-4.1 Zoning and Conditional Use Permits. Subject to Section 16-17.6 (Sign Permits), the use made of property may not be substantially changed (see Section 16-10.8) substantial clearing, grading or excavation may not be commenced, and buildings or other substantial structures may not be constructed, erected, moved, or substantially altered except in accordance with and pursuant to one of the following permits:

- a) a zoning permit issued by the Administrator; or
- b) a conditional use permit issued by the Board of Commissioners.

Mr. Rothrock said that in this case, a zoning permit would have been required prior to construction of a structure such as this. Chairman Springs asked if this is an actual paper form. Mr. Rothrock confirmed adding there is an application that is required first including the submission of a site plan indicating where the structure will be located and how close to the house, other houses, the property lines, or the street.

Ms. Murphy asked what defines 'substantial'. Mr. Rothrock read the definition of 'structure' is defined in the Land Use Ordinance as being anything constructed or erected. Ms. Murphy said that was good. Mr. Rothrock said a building is defined in the Land Use Ordinance as 'a structure enclosed within exterior walls, whether portable or fixed, having a roof, the purpose of which is to shelter persons, animals, or property. For the purposes of this Chapter, a parking deck shall be considered to be a building.' Mr. Rothrock said Accessory

Building is defined as ‘a minor building that is located on the same lot as a principal building and that is used incidentally to a principal building or that houses an accessory use.’ Mr. Rothrock said the main reason that the notice of violation was issued was that this structure was built without a zoning permit and was also built without a building permit, which is also required.

Chairman Springs asked for confirmation that proper notice was given. Mr. Rothrock confirmed.

Chairman Springs asked Mr. Rothrock to confirm the applicable setbacks for this property. Mr. Rothrock advised this property is in the R-15 zoning district and the front setback is 30 foot. Dr. Rocamora asked about the front and side setbacks as the street wraps around this house. Mr. Rothrock said this is a unique property in that it is in a curve and that the property owners are allowed to establish a front street setback and then a secondary setback. Mr. Rothrock said in this case the property has frontage on one street and in the apex of the curve the front setback is 30 foot setback on one portion and a 20 foot setback on the other portion. Mr. Rothrock said this is determined by the apex of the curve. Mr. Rothrock advised that the back property line would be a 12 foot setback. Dr. Rocamora asked for clarification. Mr. Rothrock said the 30 foot setback is not necessarily tied to the front entrance of the property adding that there must be a front setback. Mr. Starnes confirmed that the setbacks are 30, 20 and 12 foot. Mr. Rothrock confirmed. Dr. Rocamora confirmed with Mr. Rothrock that the back setback is 12 foot. Chairman Springs noted that this structure is too close to the street. Mr. Rothrock confirmed.

Chairman Springs asked Mr. Rothrock about the building permit approval process. Mr. Rothrock asked Mr. Warren, Building Inspector, to address this. Chairman Springs agreed and asked to hold that thought. Chairman Springs asked if the Board had any more questions for Mr. Rothrock. There were none.

Chairman Springs asked Ms. Hargett if she had any questions for Mr. Rothrock. Ms. Hargett said she was not sure what to ask and apologized to the Board. She advised that they have owned the house for 30 years and she had just lost her husband and he handled these matters. Ms. Hargett said that it never occurred to her that she needed a permit because the sides of the carport were open and that she did not understand about setbacks. Ms. Hargett said there is no other place for the carport and that the parking pad has been there for 30 years. Chairman Springs advised Ms. Hargett that the Board does want to hear everything she has to say, but at this point they want to know if she has any questions for Mr. Rothrock. Ms. Hargett said she does not have any questions for Mr. Rothrock. Chairman Springs said she would have the opportunity to speak freely adding at this point the Board will move to Mr. Warren.

Chairman Springs referred to the notice of violation sent to Ms. Hargett and noted if the Planning and Inspections Department is charging for building a structure without a permit there needs to be a written law allowing this. Chairman Springs asked Mr. Warren what law

applies. Mr. Warren advised NCGS 160A – 417 is the applicable law. Mr. Warren read the first part of the statute:

Except as provided in subsection (a2) of this section, no person shall commence or proceed with any of the following without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building or structure.

Chairman Springs asked Mr. Warren to pause so that he could distribute this statute to the Board with section 417 highlighted. Chairman Springs advised that this statute gives local building inspectors the authority to enforce state laws. Mr. Warren advised that the section he read applies to this situation. Chairman Springs reiterated that this statute does require a building permit prior to construction. Chairman Springs asked if there is a statute that gives local building inspectors the authority to enforce this state law. Mr. Warren said he did not have this information. Chairman Springs advised that it is section 160A – 412. Chairman Springs asked if there were any more questions for Mr. Warren. Chairman Springs and Mr. Rothrock asked Ms. Hargett if she had any questions for Mr. Warren. She did not. Chairman Springs asked Mr. Rothrock if he had any other witnesses or exhibits. Mr. Rothrock stated he did not.

Chairman Springs advised Ms. Hargett that it is her turn to address the Board. Ms. Hargett reiterated what she said earlier and apologized to the Board again. She added that she has been a happy resident of Blowing Rock for years and has been doing a lot of work around the house. Ms. Hargett said she has no excuse adding that she did not know about setbacks or that adding the carport would be against the law. Ms. Hargett said her neighbors said they love it and it adds to the property. Ms. Hargett advised that the structure was built to withstand potential high wind loads. Ms. Hargett said that she was at the mercy of this Board and apologized to the Board again.

Chairman Springs asked the Board if they had questions for Ms. Hargett. They did not. Chairman Springs asked Ms. Hargett who built the carport. Ms. Hargett said some friends built it. Chairman Springs asked if they were professional builders. Ms. Hargett said they had been at one time but were not in the business anymore. Chairman Springs asked when it was built. Ms. Hargett said the structure had been there for some time and it was noticed when the house across the street was being built. Ms. Hargett said she thought it was in November before the snow started. Ms. Hargett said that it was built to protect her and her car. Chairman Springs asked if it was built around November 2019. Ms. Hargett confirmed. Chairman Springs asked the cost to build the carport. Ms. Hargett said she did not have the exact amount, but said it was several thousand dollars. Chairman Springs asked Ms. Hargett if she had anything else to tell the Board. Ms. Hargett replied just that she loves the town of Blowing Rock and always has. Dr. Rocamora asked Ms. Hargett if she modified the site to build the carport adding that it appeared a retaining wall had been installed to

accommodate the carport and asked if the retaining wall existed prior to building the structure. Ms. Hargett said the wall was not added. Mr. Rothrock noted that this was the parking area prior to construction of the carport. Ms. Hargett confirmed and said the wall has been there and it did not retain the dirt, it was for aesthetics only.

*Chairman Springs made a motion to close the evidentiary portion of the hearing and move onto deliberations, seconded by **Mr. Starnes**. All were in favor of the motion.*

Chairman Springs said the setback chart and the xerox copy that Mr. Rothrock distributed need to be part of the record. Chairman Springs asked Ms. Hubner how to ensure this. Ms. Hubner said she would receive and make these documents part of the record.

Chairman Springs stated that obviously Ms. Hargett had built the carport without a building permit and zoning permit, both required by law. Chairman Springs advised he had studied cases like this and the law in this state is that if something is built without a permit and nothing impeded getting the permit, then a permit can be applied for and proper fees paid to obtain a retroactive, after-the-fact building permit, but there can't be any problems with the application. Chairman Springs added that if there is a zoning problem, the variance must be approved before construction. Chairman Springs said that unfortunately Ms. Hargett is out of luck adding that she had violated the Town zoning ordinance and the state statute, which requires a building permit prior to construction.

The Board determined the findings of fact.

1. Case Number is 2020 – 01. The appellant is Ms. Robin Hargett. The property is located at 371 Clawson Drive.
2. The property is zoned R – 15 and the carport structure was built 17 feet 2 inches too close to the street in violation of the zoning ordinance.
3. The carport was built in the latter part of 2019.
4. The structure was built without applying for a building permit in violation of NCGS 160A - 417.
5. No variance was sought prior to building the structure.
6. The structure was built without applying for a zoning permit in violation of the Blowing Rock Land Use Ordinance Section 16-4.1.

*Chairman Springs made a motion to find substantial, material, and competent evidence to establish facts 1 through 6, seconded by **Dr. Rocamora**. All were in favor of the motion.*

Chairman Springs made the following conclusions of law.

1. The structure was built in the latter part of 2019 without applying for or having a building permit as required by NCGS 160A - 417.
2. This structure was built in the latter part of 2019 without applying for the required zoning permit in violation of the Blowing Rock Land Use Ordinance Section 16-4.1.

3. The structure was built in a location that did not meet the setback requirements of the Blowing Rock Land Use Ordinance.

*Chairman Springs made a motion to find substantial, material, and competent evidence to establish and support conclusions of law 1 through 3, seconded by **Mr. Starnes. All were in favor of the motion.***

Chairman Springs made a motion to add this conclusion of fact:

4. The Planning Director's notice of violation is affirmed and upheld completely.

*The motion was seconded by **Mr. Starnes. All were in favor of the motion.***

Chairman Springs said the order would be filed with the court and distributed to the parties.

Chairman Springs advised Ms. Hargett that she did not prevail. The Board advised Ms. Hargett that she has 90 days to remove the structure once the order has been finalized and delivered.

With no further business, the Board adjourned at 7:15 p.m.

Chairman E.B. Springs

Hilari Hubner, Town Clerk