

BOARD OF ADJUSTMENT

MINUTES

Thursday, October 27th, 2022

The Blowing Rock Board of Adjustment met on Thursday, October 27th, 2022 at 5:30 p.m. in Town Hall. Members present were Chairman E.B. Springs, Stephen Schiller, Sarah Murphy, Lee Rocamora and Jerry Starnes. Staff present was Planning Director Kevin Rothrock, Zoning Officer Brian Johnson and Support Specialist Taylor Miller.

Chairman Springs called the meeting to order at 5:35 p.m.

APPROVAL OF MINUTES

Chairman Springs asked if everyone received a copy of the revised minutes from the August 25th, 2022 meeting minutes. All members received a copy. There were a couple edits to the previous minutes.

Chairman springs made a motion to adopt the minutes for Ben Frantzen's variance request #2022-03, seconded by Mr. Stephen Schiller. All members in favor of the motion.

Chairman Springs made a motion to adopt the minutes for David and Shirley Moreland variance request #2022-04. All members in favor of the motion.

Chairman Springs asked if there were any board members that would like to bring up and procedures they would like to adopt or change or any business to discuss. No one had any topics to discuss.

1. Variance #2022 – 05 Raymond Linker requesting a variance for 131 New River Lakes Drive

Chairman Springs asked if all staff members and applicants were okay with Planning and Zoning staff member, Taylor Miller, taking the minutes for the hearing. Everyone was okay with that.

Chairman Springs stated that this hearing is a quasi-judicial hearing. It is conducted according to the rules and laws pertaining to quasi-judicial hearing. It will have all of the essential elements of a fair trial. Parties will have the opportunity to give evidence, cross examine witnesses, inspect documents and testimonies shall be under oath. The board findings will be based on substantial material and competent evidence.

Chairman Springs asked if any board members had any conflict of interest, business or relationship with any of the parties in this case. No one had any of those issues.

Chairman Springs asked if any board members had any ex parte conversation with anyone about this case outside of this hearing. No board members participated in any ex parte communication.

Chairman Springs asked if any board members had gone by the address in question in order to see the property. All board members had been by the property.

Chairman Springs asked if there was anyone in the room or watching the hearing felt entitled to be a party to this case, meaning they have standing to come into this case to participate. No one stated they had standing in this case.

Chairman Springs asked Mr. Brian Johnson if anyone had contacted him about being a witness by way of zoom. Mr. Johnson said no.

All witnesses to speak on the Linker case were then sworn in by Taylor Miller. The witnesses were Zoning Officer Brian Johnson and Mrs. Linker.

Chairman Springs asked if the board members and applicants received a copy of the staff report. All board members and applicants received a copy of the staff report.

Mr. Brian Johnson presented the staff report. Mr. and Mrs. Linker are requesting a street setback variance of 20 feet to construct an enclosed garage. The closest point to the street of the enclosed garage will be 10 feet from the pavement edge. The enclosed garage will be 20 feet by 20 feet. Staff are able to provide administrative waiver up to 5 feet to reduce the 30 foot setback down to a 25 foot setback. Mr. Johnson advised that with the 5 foot relief off the 30 foot setback, it was still not enough to accommodate the garage the applicants want.

Chairman Springs noted that an administrative waiver is something the staff can give an applicant based on the town ordinance. Mr. Johnson confirmed that is how the administrative waiver works.

Chairman Springs asked Mr. Johnson is if the proposed garage will impede view of traffic or get into driver's site lines? Mr. Johnson said he did not think it would impede any traffic views.

Mr. Johnson took the council through the site plan and photos of the property.

Chairman Springs asked for an aerial view of the property and noted that the shape of the parcel is unique.

Mr. Lee Rocamora asked if you excluded topography from the situation, is there another place on the property that this garage can be built within the setback?

Mr. Johnson said that where they are proposing the garage is the flattest part of the property, but excluding topography, there are other places on the property that the garage can be built.

Chairman Springs asked if we sent notices to the property owners and all parcels abutting the land.

Mr. Johnson advised we sent notices to properties within 150 feet of the property in question which ended up being 15 different parcels.

Chairman Springs asked if any had called or inquired about the project. Mr. Johnson said one lady stopped by and asked about the project. She was one who received a notice.

Chairman Springs asked if a prominent sign was [placed at the sight of the property. Mr. Johnson said yes.

Chairman Springs asked if we completed all requirements of sending notices. Mr. Johnson said yes.

Chairman Springs asked if the proposed garage would or would not impede emergency vehicles such as fire trucks and ambulances. Mr. Johnson said no.

Chairman Springs asked if the proposed garage would pose a fire hazard at all. Mr. Johnson said no.

Chairman Springs asked if the proposed garage would pose a threat to public health and safety. Mr. Johnson said no.

Mrs. Nola Linker presented on behalf of her and her husband. She told the board that they saw a need for the garage during the winter months due to the weather. They reached out to an architect friend, Sam Greeson, to help with coming up with a plan for the garage. He completed the site plan and drawings for the project. He will also be executing the project if approved.

She noted how steep their lot and driveway are and that this seems to be the only reasonable place to put the garage.

Mr. Lee Rocamora asked if they looked at other options for putting the garage somewhere else on the property that would meet the setback requirements. Mrs. Linker advised a large foundation would need to be built in order to support the garage on the slope which would basically double the cost of the garage.

Mr. Johnson noted that any eaves of the garage will need to be within the setback requirement or the approved variance requirement, meaning the eaves have to meet whatever variance is approved.

Chairman Springs asked if the applicant wanted to amend their application for approval to represent shifting the structure, if necessary, a bit further away from the street in order to meet any setback requirement for the eaves.

The applicant agreed to amend their application.

Mr. Lee Rocamora questioned the applicants about the placement of the garage. He asked if they placed the garage flush to the existing home, if they would still be able to enter the home from the garage level. The homeowner said that they walk up the steps to the deck to enter the home. Mr. Rocamora asked if there was a way to enter the home on the lower level. Mrs. Linker explained that there was an alternative way to get into the home. Mr. Rocamora asked if the garage was moved to be against the existing structure, if they would have a way to get into the house.

Taylor Miller swore in Planning Director Kevin Rothrock.

Mr. Rothrock introduced himself. He stated that the board can review the variance request and what the applicant is asking for, but that they can not tell the homeowners how to build their home. He acknowledged there are some building issues with trying to adjoin the current structure and the new structure. He said he wasn't sure that the applicant needed to amend the application but that they could have just moved the structure during building to meet the setback variance if it is approved. He said the request is asking for a reduction in the setback and if that variance is approved, then they need to meet those requirements but can change the position of the garage any way they'd like as long as they meet the approved variance. He noted they could amend the application to ask for more encroachment into the setback to accommodate the eaves but to amend the request to move the structure to accommodate the approved variance is not necessary.

CHAIRMAN SPRINGS LISTED THE FINDINGS OF FACT.

1. The applicant is Raymond Linker.
2. The owners of the property in question are Raymond and Nola Linker.

3. The address of the property in question is 131 New River Drive, Blowing Rock, N.C. The Watauga County PIN number of the property in question is 2817-25-2537-000
4. The property in question is zoned R-15.
5. The Applicant wants to build a structure, a garage, closer to the street setback than allowed, requiring a 20 foot encroachment variance from the applicable 30 (thirty) foot street setback. The garage would be 10 (ten) foot from the street pavement edge at its closest point.
6. The Blowing Rock zoning code ordinance section which is at issue here and which stands in the Applicant's way is 16-12.4, and put into words, the ordinance requires a setback of 30 (thirty) feet from the street.
7. There are not other parties with standing to come into this case.
8. The Applicant did provide drawings or sketches and plans and pictures illustrating what the applicant wants to do.
9. The Town of Blowing Rock has provided and given all necessary legal notices of this case and this hearing.

There were proper notices given to all property owners with property abutting the parcel of land that is at issue here, and proper notice was given to all persons entitled to receive notice. Notices were sent to 15 property owners.
10. The Applicant did receive a copy of the Zoning Enforcement Officer's staff report prior to the meeting.
11. The witnesses in the hearing were Applicant Raymond Linker, Nola Linker, and the Zoning Enforcement Officer, Brian Johnson.
12. What the Applicant is proposing would not impair emergency vehicles such as fire trucks and ambulances.
13. What the Applicant is proposing would not create a fire hazard.
14. What the Applicant is proposing would not block or impede visibility on any street or highway.
15. What the Applicant is proposing would not be contrary to public health and/or safety.
16. Unique features of this property include the fact that the lot is very steep other than the location where the existing house is located and the proposed garage would be located. The location of the proposed new garage is the only realistic place to put a garage, and that location would require a variance.

Chairman Springs made a motion to close the evidentiary hearing. Seconded by Mr. Stephen Schiller. All members in favor.

The Board of Adjustment did adopt the above-listed facts by a unanimous vote, all five (5) members voting to adopt the facts.

CHAIRMAN SPRINGS THEN LISTED THE CONCLUSIONS OF LAW.

1. Based upon the evidence presented and the facts shown above, the Board of Adjustment finds substantial, material and competent evidence exists to conclude that in this case unnecessary hardship would result from the strict application of the regulation.

The Applicant wants a garage so as to more fully enjoy living in the home, and the proposed garage location is the only realistic place to put a garage, and that would require a variance.

The Board's vote on this factor was unanimous.
2. Based upon the evidence presented and the facts shown above, the Board of Adjustment finds substantial, material, and competent evidence exists to conclude that in this case the hardship results from conditions that are peculiar to the property.

The Applicant wants a garage to more fully enjoy living in the home, and the proposed garage location is the only realistic place to put a garage, and that would require a variance.

The Board's vote on this factor was unanimous.
3. Based upon the evidence presented and the facts shown above, the Board of Adjustment finds substantial, material, and competent evidence exists to conclude that in this case the hardship did not result from actions taken by the applicant or the property owner.

The Applicant/Owners bought the property in 2021, and the existing house was already there and Applicant/Owners had nothing to do with the siting of the existing house.

The Board's vote on this factor was unanimous.
4. Based upon the evidence presented and the facts shown above, the Board of Adjustment finds substantial, material, and competent evidence exists to conclude that in this case the requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

No neighbor objected to the variance request and no evidence was produced showing that public safety would be affected and substantial justice not achieved.

The Board's vote on this factor was unanimous.
5. The Board of Adjustment does grant the requested 20 (twenty) foot street setback variance as shown in the Applicant's variance application package with its accompanying materials, so as to build a garage. This is a 20 (twenty) foot variance from the applicable 30 (thirty) foot setback from the street. This would put the garage 10 (ten) feet from the street pavement edge, at its closest point.
6. If he so chooses, the Applicant shall be allowed to move the exact site location of the proposed new garage several feet away from the exact location shown in his application materials, if he so chooses, so long as the adjusted location of the garage, including roof overhang, gets no closer to the street pavement edge than what Applicant has asked for

and the Board has granted; a 20 (twenty) foot variance and the structure being 10 (ten) feet from the street pavement edge at its closest point.

This decision is effective upon filing with the Clerk.

The Board of Adjustment did adopt the above listed Conclusions of Law by unanimous vote.

Chairman Springs suggested a 10 minute break before moving on to the next variance request.

2. Variance Request #2022-06 – Barry & Lynn Buxton for 110 Blackberry Lane

Chairman Springs announced the variance request from Mr. Larry Buxton. Mr. Buxton joined the meeting through Zoom.

Chairman Springs asked Mr. and Mrs. Buxton and Mr. Johnson if they would be okay with Mrs. Miller taking the minutes for the meeting as she is a town employee. They said they were okay with it.

Chairman Springs advised that this hearing is a quasi-judicial hearing and is conducted according to the rules and laws according to quasi-judicial hearing. It will have all of the essential elements of a fair trial. Parties will have the opportunity to give evidence, cross-examine witnesses, inspect documents and testimonies shall be under oath. The board's findings will be based upon substantial, material, and competent evidence.

Chairman Springs asked if anyone had any conflicts or bias due to relationships or family with property or property owners that would require them to remove themselves from the hearing. All members advised there was no conflict or bias.

Chairman Springs asked if anyone had engaged in any sort of ex parte communication before this hearing. All members advised they had not.

Chairman Springs asked if any of the other board members had driven past the property to look at it. All members had been by the property.

Chairman Springs asked board members and the public if they felt that anyone had standing in regard to the case – meaning that they felt there would be harm done if the case didn't go the way they thought it should go. Everyone said no. Mr. Johnson advised no one came forward or asked to be a witness for this case.

Chairman Springs asked Taylor Miller to swear in any witnesses that would be testifying in this case. Brian Johnson and Barry Buxton were sworn in.

Chairman Springs asked if each board member and Mr. Buxton had received a staff report. They all did.

Mr. Brian Johnson gave the staff report for the variance request. Mr. and Mrs. Buxton are requesting a variance for 110 Blackberry Lane. They are requesting a 12 foot encroachment into the applicable 30 foot setback. The closest point to be modified on the home is 18 feet from the street right-of-way. They are planning to enclose an existing carport and add a garage door. All work will be done within the existing footprint of the current structure.

The existing carport is non-conforming so although they will not be going outside of the existing footprint, the addition of exterior walls is considered an expansion of the structure itself. Mr. Brian Johnson also noted that this case is unusual due to the 40 foot right-of-way in front of that property.

The proposed plan shows that he meets the side setback requirements but needs a reduction in the setback to enclose the non-conforming existing carport.

Chairman Springs asked Mr. Brian Johnson to elaborate on the 40-foot setback just to clarify that Mr. Buxton has to pull his 30 foot setback requirement from that 40-foot right-of-way.

Chairman Springs asked if Mr. Johnson wanted to enter his staff report into the record. Mr. Johnson said yes.

Chairman Springs asked Mr. Buxton if there was anything he would like to add. Mr. Buxton noted that he met with all of his neighbors to inform them of what his plan was and keep them in the loop about what he intended to do with the enclosure of the carport. All neighbors were supportive.

Chairman Springs asked if Mr. Buxton was changing the roof of the structure at all. Mr. Buxton told him they were not changing the roof or overhang at all.

Chairman Springs asked Mr. Johnson if he had made all necessary notices to the public of this case and this hearing. Mr. Johnson said yes. Chairman Springs asked if notices had been mailed to Mr. Buxton. Mr. Johnson said yes. Chairman Springs asked if he had sent notices to all near-by property owners. Mr. Johnson said yes, we notified 12 property owners within 150 feet of the property. Chairman Springs asked if he had heard from any of those people or anyone in general. Mr. Johnson said no.

Chairman Springs asked if Mr. Johnson had been to the property. Mr. Johnson said yes.

Before getting into the findings of fact, Mr. Johnson asked if there needed to be anymore clarification of the right-of-way. Mr. Johnson explained the 40-foot right and that a typical right-of-way is only 30 feet, whereas this one is 40-feet.

FINDINGS OF FACT

1. The Applicant is Barry and Lyn Buxton.
2. The owner of the property in question is Lyn Boyd. The existing house and carport were built in the 1960's. Owner Lyn Boyd bought the property in 2013.
3. The address of the property in question is 110 Blackberry Lane, Blowing Rock, N.C.
The Watauga County PIN number of the property in question is 2817-64-1046-000.
4. The property in question is zoned R-15.
5. The Applicant wants to make the existing carport into a garage. The existing carport is closer to the street right of way than allowed by Blowing Rock Town Code. The existing carport and house were built prior to the existing Blowing Town Code. (The existing carport is "grandfathered" for its distance from the street right of way.)

The Applicants are asking for a 12 (twelve) foot variance in the 30 (thirty) foot setback in order to enclose the existing carport, making it a garage.

6. The Blowing Rock zoning code ordinance section(s) which is at issue here and which stands in the applicant's way is 16-12.4, which requires a setback of 30 feet from the street right of way for any construction.
7. There are not other parties with standing to come into this case.
8. The applicant did provide drawings or sketches and plans and pictures illustrating what the applicant wants to do.
9. The Town of Blowing Rock has provided and given all necessary legal notices of this case and this hearing. There were proper notices given to all property owners with property abutting the parcel of land that is at issue here, and proper notice was given to all persons entitled to receive notice. Notices were sent to 12 property owners.
10. The applicant did receive a copy of the Zoning Enforcement Officer's staff report prior to the meeting.
11. The witnesses in this hearing were Applicants Barry and Lyn Buxton and the Zoning Enforcement Officer, Brian Johnson.
12. What the applicant is proposing would not impair emergency vehicles such as fire trucks and ambulances.
13. What the applicant is proposing would not create a fire hazard.
14. What the applicant is proposing would not block or impede visibility on any street or highway.
15. What the applicant is proposing would not be contrary to public health and/or safety.
16. Unique features of this property include the fact that the Applicants do not want to build an entirely new structure, but merely want to enclose the existing carport, built in the 1960's.

The Board of Adjustment did adopt the above listed facts by a unanimous vote.

Chairman Springs made a motion to close the evidentiary hearing. Seconded by Mr. Stephen Schiller. All members in favor.

CONCLUSIONS OF LAW

1. Based upon the evidence presented and the facts shown above, the Board of Adjustment finds substantial, material and competent evidence exists to conclude that in this case unnecessary hardship would result from the strict application of the regulation.

The Board's vote on this factor was unanimous.

2. Based upon the evidence presented and the facts shown above, the Board of Adjustment finds substantial, material, and competent evidence exists to conclude that in this case the hardship results from conditions that are peculiar to the property.

The Board's vote on this factor was unanimous.

3. Based upon the evidence presented and the facts shown above, the Board of Adjustment finds substantial, material, and competent evidence exists to conclude that in this case the hardship did not result from actions taken by the Applicant or the property owner. Lyn Boyd, the owner of the property, bought the property in 2013 and the existing carport to be enclosed was built in the 1960's.

The Board's vote on this factor was unanimous.

4. Based upon the evidence presented and the facts shown above, the Board of Adjustment finds substantial, material, and competent evidence exists to conclude that in this case the requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved. It appears that from Applicants' application package and its drawings that the new garage would be more attractive in appearance than the existing carport.

The Board's vote on this factor was unanimous.

5. The Board of Adjustment does grant the requested 12 foot variance as shown in the Applicants' variance application package. The applicant may build a garage on the same footprint of the existing carport, enclosing the carport. The Applicants must build as described in the Applicants' own application package and its drawings and plat. Applicants must follow their own described additions.

This decision is effective upon filing with the Clerk.

The Board of Adjustment did adopt the above listed Conclusions of Law by unanimous vote.

Chairman Springs made a motion to adjourn the meeting at 7:43 p.m., seconded by Mr. Stephen Schiller.
All members in favor.

E.B. Springs, Chairman

Taylor Miller

