

BOARD OF ADJUSTMENT

MINUTES

Thursday, February 25, 2021

The Blowing Rock Board of Adjustment met on Thursday, February 25, 2021 at 5:30 p.m. via Zoom. Members present were E.B. Springs, Lee Rocamora, Lance Campbell, Jim Steele and Sarah Murphy. Staff present were Planning Director Kevin Rothrock and Planning and Zoning Support Specialist Tammy Bentley.

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

APPROVAL OF MINUTES:

Chairman Springs advised the Board that the minutes from November 17, 2020 were not yet completed.

1. BOA Policies and Procedures Discussion and Actions

*Chairman Springs made a motion to repeal a motion that was passed on January 28, 2020, seconded by Dr. Rocamora. **All members were in favor of the motion.***

*Chairman Springs said he made a past motion to accept sworn, signed notarized written statements. Chairman Springs made a motion to repeal this, seconded by Ms. Murphy. **All members were in favor of the motion.***

Chairman Springs distributed and read a document regarding the 160D sections pertinent to the Board. Document is attached.

*Chairman Springs made a motion that **Item 1. Scheduling** be adopted, seconded by Mr. Campbell. **All members were in favor of the motion.***

*Chairman Springs made a motion that **Item 2. Telephone or Online Witness Testimony** be adopted, seconded by Mr. Steele. **All members were in favor of the motion.***

*Chairman Springs made a motion that **Item 3. Sworn Affidavits** be adopted, seconded by Mr. Steele. **All members were in favor of the motion.***

*Chairman Springs made a motion that **Item 4. Adjournment Time for Meetings and Hearings** be adopted, seconded by Dr. Rocamora. **All members were in favor of the motion.***

*Chairman Springs made a motion that **Item 5. The Board and Vice-Chair May Make Motions** be adopted, seconded by Dr. Rocamora. All members were in favor of the motion.*

*Chairman Springs made a motion that **Item 6. Rulings on Objections** be adopted, seconded by Ms. Murphy. All members were in favor of the motion.*

Chairman Springs explained the difference between situations and uses in the Town Land Use Code. Chairman Springs distributed a handout regarding variances. The Board discussed same.

Chairman Springs asked Ms. Aiken if she received the staff report. Chairman Springs said according to the staff report there is a legal non-conforming situation where the carport is within the setback. Chairman Springs read Section 16.8.3, Extension or Enlargement of Non-conforming situations and said if the presently existing non-conforming carport is completely removed that Ms. Aiken would be in the same situation as if it were never there. Dr. Rocamora asked if she would lose the grandfather status. Mr. Rothrock said no. Chairman Springs said she still has the right to appeal any Board decision. Mr. Rothrock read Section 16.8.3.3, which allows for a legal non-conforming structure to be removed and replaced in the same footprint, but no larger in any area that would increase the non-conformity.

2. Variance 2021-01 Patricia Aiken

Ms. Murphy recused herself from the hearing.

Chairman Springs noted that Sky House Design was the applicant and asked Ms. Aiken if she would mind becoming the applicant. Ms. Aiken said she did not mind. Ms. Aiken amended to the application. Mr. Rothrock said it is not unusual for the applicant to be a builder and not the homeowner.

Chairman Springs advised that the Board vote must be unanimous since Ms. Murphy's recusal. Chairman Springs asked Ms. Aiken and Mr. Rothrock if they objected to this. They did not.

Chairman Springs advised Ms. Aiken that Ms. Bentley, who is taking the minutes for this hearing, is an employee of the Town. Chairman Springs asked Ms. Aiken if she had a problem with this. She did not. Mr. Rothrock did not have an objection to this.

Chairman Springs asked if any member has a conflict of interest, or ex-parte communications. No members had either. Chairman Springs asked how many members drove by the property. All remaining Board members had driven by the property.

Chairman Springs asked if Ms. Addison wanted to be a party or a witness. Mr. Jim Addison said he has standing as he is an adjacent property owner. Chairman Springs advised the

difference between a party and a witness. Ms. Addison said she was confused and asked if the adjoining owners can give input. Chairman Springs said absolutely and asked Ms. Addison if she felt she would suffer damages should the variance be granted. Ms. Addison said she did not yet know.

Kevin Rothrock, Ms. Patricia Aiken, Mr. and Ms. Addison, and Mr. Jeff Pell were sworn for testimony to the Board.

Mr. Rothrock gave the staff report and Powerpoint presentation. Patricia Aiken is requesting a setback variance of 9.1 feet from the 12-foot side property line setback to build a garage. The closest point of the new proposed garage will be 2 feet 11 inches from the side property line. The property is located at 252 Heather Ridge Lane and is further identified by Watauga County PIN 2817-77-3145-000. The property is zoned R-15, Single-family.

Ms. Aiken is planning to remove the existing carport and is requesting relief from the side setback of her property to construct a new garage and covered access from the garage to the house. The covered walkway as proposed is also shown to encroach a couple of feet into the 12-foot setback. The existing carport is 2 ft 1 in from the adjacent neighboring property line at its closest point. The proposed garage will be moved off the property line to 2 feet 11 inches at its closest point. The proposed garage is a one level, two-car garage with no living space above.

Mr. Rothrock advised that Board that he received an email from the Addisons and Judith Allison, of 244 Heather Ridge Lane, to the south of Ms. Aiken's property. Mr. Rothrock read the email to the Board in which Ms. Allison stated that they had no objection to the request, that Ms. Aiken had thoughtfully planned this renovation. Chairman Springs asked Mr. Rothrock to make the email part of the record. Chairman Springs noted to Ms. Aiken that the email was hearsay and asked if she had an issue with it being made part of the record. Ms. Aiken did not.

Chairman Springs asked Mr. Rothrock if he had taken a position on this variance request. Mr. Rothrock advised he had not.

Chairman Springs asked if Ms. Aiken had questions for Mr. Rothrock. Ms. Aiken asked him if when the carport was built, was it non-conforming. Mr. Rothrock said the property was under Watauga County's jurisdiction until 2005 and he could not say when the carport built. Mr. Rothrock said the structure was made non-conforming in 2005 when the property became part of the ETJ.

Dr. Rocamora asked Mr. Rothrock if the front corner of the garage meets the setback. Mr. Rothrock said yes from the edge of the road. Dr. Rocamora asked the footprint of the current carport. Mr. Steele asked the dimensions of the current carport and the proposed

garage. Mr. Rothrock said the proposed garage dimensions are 22' (not including the overhang) by 26'. Mr. Rothrock estimated the existing carport at 18' by 22'.

Chairman Springs asked for an exact measurement that the covered walkway encroaches into the setback. Mr. Rothrock asked Mr. Pell the width of the walkway. Mr. Pell said 5'. Mr. Rothrock said it would be about 2' 6" in the setback. Chairman Springs asked Mr. Pell to get an accurate measurement of the walkway into the setback. Chairman Springs asked Mr. Rothrock if he had given proper notice of this hearing to the public and everyone else with a right to have legal notice. Mr. Rothrock advised he had. Chairman Springs asked when the residence was built. Ms. Aiken said it was built in 1979. Chairman Springs asked when the property was taken into the city. Mr. Rothrock said the property it was taken in the ETJ in 2005 and annexed into the Town limits in November 2020. Mr. Steele asked if the road is town maintained. Mr. Rothrock confirmed that it is maintained to the Town limit's line.

Chairman Springs asked Ms. Aiken if she had any questions for Mr. Rothrock. She did not.

Chairman Springs asked Mr. Pell, representing the builder and the applicant, if there was an addition on the house as well. Mr. Pell confirmed and said there is an addition/renovation of the existing house, a new retaining wall and removing the carport and building a garage. Mr. Pell said there is a large oak tree around the carport and in order to save the tree, the footprint of the garage is moved closer to the house. Chairman Springs confirmed the variance request and dimensions of the garage with Mr. Pell. Chairman Springs asked Mr. Pell if he had the dimensions of the carport. Chairman Springs said Mr. Rothrock estimated the carport dimensions as approximately 18' by 22'. Mr. Pell confirmed. Chairman Springs asked how far into the setback the proposed walkway will be. Mr. Pell said 2 feet into the setback.

Mr. Steele asked property behind the Aiken property was deeded to the state. Mr. Rothrock said the Addisons own the property behind the carport and that the property behind the house was deeded to the state. Ms. Addison said her family deeded the large tract to the state.

Chairman Springs asked the what the grade is like right behind the existing carport. Mr. Pell said there might be three or four feet of rise from the back of the carport to the property line. Chairman Springs asked how much property was flat. Mr. Pell said about 2 feet. Chairman Springs asked if there is vegetation behind the carport. Mr. Pell said there are rhododendron on Ms. Aikens and the Addison property.

Chairman Springs asked Mr. Rothrock if he sent public notices to the adjacent properties. Mr. Rothrock confirmed and said that the Addisons and Ms. Allison responded. Mr. Steele said when he visited the site, the owner on the south side asked what he was doing there. Mr. Steele explained, and they said they were in favor of the project.

Ms. Aiken said the lots are long and narrow and the majority of the homes are closer to the property lines than the current code allows. Ms. Aiken said she is not asking for something that is inconsistent with the neighborhood.

Chairman Springs asked Mr. Pell if there is a lot of space for parking and turning around cars. Mr. Pell said no. Chairman Springs asked Ms. Aiken how she characterized the lot. She said very narrow.

Chairman Springs asked if the carport is being removed. Mr. Pell said yes if this request is approved.

The Board discussed with the builder the roof line of the proposed garage in relation of the carport, the proposed garage size versus the carport, and the height of the garage versus the carport.

Mr. Steele asked the height of the garage from grade. Mr. Pell said 18'. Mr. Addison asked how this compares with the height of the carport. Mr. Pell said about the carport is about 4'6" shorter.

Dr. Rocamora asked Mr. Pell to indicate the carport dimensions. Dr. Rocamora noted that the width of the garage is the same as the carport, but the width is greater and that the garage is being moved closer to the house and is therefore further from the side setback. Mr. Pell confirmed. Chairman Springs confirmed that the proposed garage is 22' by 26'. Mr. Pell confirmed this, adding that this is the footprint and does not include the overhang.

Dr. Rocamora asked if there will be a room above the garage. Mr. Pell said it may be used as storage, will not be a conditioned space.

Mr. Addison asked the height of the garage compared to the carport. Mr. Pell said 18'. Mr. Pell said the carport is about 4'6" lower than the garage.

Mr. Addison asked if a variance is actually needed. Chairman Springs said the existing carport is too close to the property line to meet the setback requirements, which does require a variance. Mr. Addison said he thought a nonconforming could be torn down and be replaced. Mr. Rothrock said the structure is changing from a carport to a garage. Mr. Addison said he understands.

Ms. Addison said if the variance is granted, could a condition that the garage cannot be expended in any dimension. Ms. Addison also asked that the garage be one story only, with no be a space above it. Ms. Addison asked if this will be recorded at the courthouse. Chairman Springs said they would have to get a building permit from the Town and that it would be discovered then, as long as a building permit was issued. Ms. Addison said she wants to ensure that a buyer cannot plead ignorance. Mr. Rothrock said this would be recorded at the courthouse. Ms. Addison said she would like to add this as a condition. Chairman Springs asked Ms. Addison if she had any objection to the garage if it is recorded

at the courthouse. Ms. Addison added the conditions that the garage cannot be expanded in any dimensions and there will be no finishing of the attic area. Ms. Addison added that she was happy to share in the cost of recordation.

Dr. Rocamora asked if the garage could be reduced in size to conform with the setbacks. Mr. Pell said no that Ms. Aiken cannot exit a smaller garage without hitting the door. Dr. Rocamora asked the entrances. Ms. Aiken said the side entrance is being moved with the renovation, that it is not easily accessible. Dr. Rocamora asked the purpose of the covered walkway. Ms. Aiken said to carry in groceries out of the elements. Mr. Pell noted there is currently a permanent walking bridge due to the uneven terrain. Ms. Aiken said the walkway goes into the laundry room. Dr. Rocamora asked if she understands if the variance is granted, the walkway cannot be enclosed. Ms. Aiken confirmed. Dr. Rocamora noted that if the variance is granted the covered walkway cannot be enclosed. Ms. Aiken confirmed.

Chairman Springs listed the finding of facts.

1. The applicant is Patricia Aiken.
2. The owner of the property in question is Patricia Aiken.
3. The address of the property in question is 252 Heather Ridge Lane, Blowing Rock, N.C. The Watauga County identification number for the property is 2817-77-3145-000.
4. The property is zoned R-15.
5. The applicant wants to do the following, which would violate zoning regulations and which would require a variance:

applicant wants to build a garage and a covered walkway from the existing house residence to the new garage. Both the garage and the covered walkway would encroach into the 12-foot setback required by zoning regulations. The garage the applicant wants to build would require a 9.1-foot variance; the garage would be 2 feet 11 inches from the property line at the closest point. The covered walkway, if built the way applicant wants it, would encroach into the 12-foot setback by 2 feet and require a 2-foot variance.
6. The Blowing Rock Land Use Ordinance section(s) which is at issue here and which stands in the applicant's way is section 16-12.4, and put into words, the ordinance requires this:

requires a 12-foot setback from the lot boundary line, which stands in the applicant's way.
7. There are no other parties with standing to come into this case and hearing.
8. The applicant did provide drawings or sketches or plans or 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.

10. There was proper notice of this case and hearing given to all property owners with property abutting the parcel of land, which is at issue here, and proper notice was given to any other persons entitled to receive notice.

11. The applicant did receive a copy of the Planning Director's staff report prior to the hearing.

12. There were witnesses in the hearing who are neighboring property owners.

Facts given by such witnesses are:

name of witness # 1: Mr. Jim Addison said:

He had questions for the Board, but no facts he wished to contribute. He owns the vacant lot next door.

name of witness # 2: Mrs. Dinny Addison said:

She had no opposition to the requested variance so long as (1) the variance was recorded in the Watauga County Register of Deeds, such that any future owner of the property would be sure to see the variance and its terms. And if the Blowing Rock Town Attorney did not record the variance, the applicant should record the variance. (2) There should be no expansion of the garage in the future and it should never be used for any kind of living space, and any space in the garage should forever remain unfinished.

13. What the applicant is proposing would not impair emergency vehicles such as fire trucks and ambulances.

14. What the applicant is proposing would not create a fire hazard.

15. What the applicant is proposing would not block or impede visibility on any street or highway.

16. What the applicant is proposing would not be contrary to public health and/or safety.

17. At the time of this hearing there is a lawful nonconforming carport on the property. It is located in almost the same location where the proposed new garage would be located. The existing carport is 2 feet 1 inch from the property line at its closest point.

18. The residence on this property was built in 1979.

19. The dimensions at the ground of the proposed garage are approximately 22 feet by 26 feet. The height of the proposed garage, at the highest point, is approximately 18 feet.

20. The dimensions of the existing carport, measured at the outside of the roof overhang, are approximately 18 feet by 26 feet.

21. The existing nonconforming carport will be completely removed if this variance is granted.

22. The representative of the Town of Blowing Rock, Planning Director Kevin Rothrock, has no position one way or the other as to whether this variance should be granted.

23. This property was taken into the Town of Blowing Rock's Extra Territorial Jurisdiction in 2005, and was later fully annexed into the Town of Blowing Rock in 2020.

24. As proposed, the width of the covered walkway as measured at the ground is 4 feet and 6 inches.

25. As proposed by the applicant, the requested variance would not be an increase in encroachment by the new garage into the 12-foot setback, and in fact would be slightly less encroachment by the new garage, compared to the amount of encroachment by the existing carport.

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

Chairman Springs made a motion to close the public hearing seconded by Mr. Campbell. All were in favor of the motion.

The Board determined the following conclusions of law:

The Board applied the facts to (a). **All members agreed.**

- (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. The Board determined that the property is very tight as regards vehicular parking and turn around area and that the overall lot is fairly unique in being very narrow.

The Board applied the facts to (b). **All members agreed.**

- (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. The Board determined that the property is very tight as

regards vehicular parking and turn around area and that the overall lot is fairly unique in being very narrow.

Chairman Springs made a motion to reopen the findings of fact, seconded by Dr, Rocamora. All were in favor of the motion.

Mr. Campbell asked to amend fact number 25. The amended fact number 25 is listed above. *Chairman Springs made a motion to amend fact number 25 to include Mr. Campbells comment, seconded by Dr, Rocamora. All were in favor of the motion.*

The Board returned to the Conclusions of Law.

The Board applied the facts to (c). **All members agreed.**

- (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. The Board determined that the residence was as built was not sited in its location by the Applicant and the Applicant is forced to deal with the topography and the siting as she found it when she purchased the property.

The Board applied the facts to (d). **All members agreed.**

- (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 grant the variance with the following conditions, seconded by Mr. Steele. All were in favor of the motion.

There are additional conditions ordered by the Board that are mandatory for the applicant to follow if the applicant is to receive this variance. Those are:

A. The encroachment by the covered walkway into the 12-foot setback is to be no more than 1 foot and 6 inches, as measured at the ground, making the distance of the covered walkway from the property line, as measured at the ground, 10 feet and 6 inches.

B. The variance decision document here must be recorded in the Watauga County Register of Deeds, and if the Blowing Rock Town Attorney does not record the variance decision document, the applicant, Patricia Aiken, must have it recorded.

C. There is to be no expansion of any kind of the new garage and covered walkway in the future, and there is to be no living area of any kind in the garage, and space in the garage is to remain forever "unfinished."

This decision is effective upon filing with the Clerk.

The Board of Adjustment did adopt the above listed Conclusions of Law, granting the applicant a variance as shown, by unanimous vote.

Mr. Rothrock told the Board that he would prepare the order.

With no further business, the Board adjourned at 8:20 p.m.

E.B. Springs, Chairman

Tammy Bentley, Planning & Zoning
Support Specialist