

**BOARD OF ADJUSTMENT  
MINUTES  
Thursday, January 31, 2002**

The Blowing Rock Board of Adjustment met in regular session Thursday, January 31, 2002 at 7:30 p.m. Chairperson Lisle Snyder called the meeting to order at 7:30 p.m. Members present were Albert Yount, Barbara Wright, Mark Klein, and Jim Thirtle. Staff present were Kevin Rothrock, Planning Director, Don Holycross, Town Manager, John Warren, Building Inspector, Marion Rothrock, Town Engineer, Allen Moseley, Town Attorney, and Sonya Long, Administrative Assistant.

Chairman Snyder asked that anyone testifying be sworn in. The following people were sworn in: Don Holycross, Kevin Rothrock, John Warren, Marion Rothrock, Jim Sauder, Wayne Green, and Bill Dickinson.

*Mr. Thirtle made a motion that the minutes from the September 27, 2001 meeting be approved, seconded by Mr. Yount. All members were in favor.*

Mr. Rothrock stated that Mr. Sauder was appealing his decision to deny a Certificate of Occupancy for the house located on Lot 21 in the Peacock Ridge Subdivision. This decision was based on Mr. Rothrock's discovery that the attached garage was built well into the 12-foot side yard setback.

Mr. Rothrock pointed out that in his original staff report, he had stated that the garage was located 7.5 feet from the common boundary line and 23 feet from the house located on Lot 22. With recent information submitted to Mr. Rothrock that information had changed. The garage was actually 1.5 feet from the common boundary line. The survey submitted and labeled **Exhibit D** showed the latest information.

Mr. Rothrock added to the record **Exhibit L**, the recorded subdivision plat. The plat showed all lot lines, front setbacks, rear and side yard setbacks. It was signed by the owner and the Administrator at that time and recorded.

Mr. Rothrock went through the chronology of the case as in the staff report. He pointed out **Exhibit K**, a site plan that showed the setbacks as presented to the Town in December 1996. This plan was consistent with the final plat submitted and recorded.

Mr. Thirtle pointed out that in an Architectural Integrated Subdivision, the front yard setbacks may be reduced. Mr. Rothrock confirmed that but also pointed out that the rear and side yard setbacks could also be reduced but that in this particular conditional use permit only the front yard setbacks and the square footage were reduced.

Mr. Yount stated that in the R15 single family zoning district the standard side yard setback is 12 feet. Mr. Rothrock agreed with Mr. Yount but also pointed out that the 24-foot required separation was a condition in the applicant's conditional use permit.

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Mr. John Turner, attorney representing Mr. Sauder was present. He verified that there was no indication of a revised site plan or other paper work in the file noting the addition of the garage in question. Mr. Rothrock agreed with that statement. He also pointed out that there was really nothing to prove the contention of the former administrator's approval of the garage. Mr. Turner stated that there was no question that there had to be a 24-foot separation of buildings but there was nothing referencing the setbacks in the conditional use permits.

Mr. Yount asked if additional fees would be charged if a garage were added to the original building permit. Mr. Rothrock stated that there would fees added to building permit, the money would have been collected at the time of the addition request and a receipt would have been given to the applicant.

Mr. Dickinson, the adjoining property owner of Lot 22, was present. He asked about the laws on notifying neighbors when a building permit is issued on an addition that would bring it closer to an adjoining neighbor. Mr. Rothrock stated that when something is being built legally, no notification would be sent. Mr. Dickinson wanted to point out that in closing on his house, he was not aware that you could build in the 12-foot side yard setback.

Mr. Sauder explained to the Board the circumstances that occurred while receiving approval for the garage. He stated that Mr. Bob Lopel, Building Inspector at that time and Mr. Wayne Green, Zoning Administrator at that time, visited the site upon Mr. Sauder's request. He stated that he drew the garage out on a piece of paper for Mr. Green and that he approved it at that time and turned it over to Mr. Lopel. According to Mr. Sauder, Mr. Lopel did inspect the footers for the garage and stated that he would let Mr. Sauder know what the fees would be for the addition to the building permit. Mr. Sauder stated that he believed the masons put the blocks for the garage on the wrong side of the line and that is what caused the 24-foot separation problem.

Mr. Turner did point out that there had been other houses built in the subdivision that did not meet the 12-foot side yard setback but did meet the 24-foot building separation. Mr. Sauder stated that out of nine (9) houses, four (4) were built with the separation but not the setbacks.

Mr. Turner requested that the portion of the September 10, 1996 Town Council meeting regarding Peacock Ridge be played for the Board members and the audience.

After listening to the tape, Mr. Holycross asked that a new exhibit be entered into the record. Mr. Holycross entered into the record **Exhibit M**, staff report that went to the Town Council in

December 1996 regarding Peacock Ridge Subdivision. Mr. Sauder came before the Town Council in December 1996 for final plat approval. This plat showed 30 single-family lots with all setback requirements shown. The staff report, **Exhibit M**, also stated if any changes were made to Lot, 21, 22 or 23, the new locations would have to be specifically approved by the Town Council.

The Board also listened to the recorded December 1996 Town Council meeting regarding the final plat request by Mr. Sauder for Peacock Ridge Subdivision.

Chairman Lisle Snyder requested that a break be taken. The Board recessed at 8:21 p.m. and resumed at 8:30 p.m.

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Mr. Sauder pointed out that regarding the building permit fees, Mr. Lopel would allow additional fees to be paid when the Certificate of Occupancy was requested and that is why fees were not paid at the time of the garage request.

Mr. Thirtle had questions regarding the existing retaining wall. Mr. Sauder stated that some of the retaining wall was actually the inside wall for the garage.

Mr. Klein pointed out that several of the other houses in the subdivision have garages. Mr. Sauder stated that out of the nine (9) houses five (5) have garages and that most of them are underneath the house.

Mr. Moseley, town attorney, stated that three (3) of the site plans made reference to setbacks including the final plat. Mr. Sauder stated that they agreed with setbacks and that any changes made to those setbacks would need to be brought to the staff so that they wouldn't have to go back before the Town Council for approval every time a change was made. He also pointed out that they were trying to maintain the setbacks if possible, but that it wasn't required.

Mr. Yount questioned why there was nothing in writing from Mr. Green in the file showing his approval. Mr. Sauder stated that there was a drawing with the garage and Mr. Green's approval on that drawing left for Mr. Lopel, the building inspector at that time.

Mr. Wayne Green, the former Zoning Administrator spoke next. He stated that at the time of request by Mr. Sauder, he reviewed the Peacock Ridge conditional use permits when considering the garage. Mr. Green stated that he did not look at the staff report submitted as **Exhibit M** when making his decision. Mr. Green also stated that he issued the permit to build the garage based on the setbacks in Peacock Ridge being private and that the Town of Blowing Rock did not regulate

private setbacks. He believed that Mr. Sauder had abided by his permit with the exception of the retaining wall.

Mr. Turner asked Mr. Green questions regarding the case. Mr. Turner pointed out that it was in Mr. Green's authority to approve changes to the interior boundary lines. Mr. Green explained that he did write on the site plan that Mr. Sauder had submitted that any building had to be at least 24 feet from the adjoining property owner.

Mr. Dickinson entered into the record **Exhibit N**, a new survey of his property. This survey showed Mr. Sauder's garage 1.5 feet off of his property line. The survey also showed Mr. Dickinson's house and the driveway. Mr. Dickason stated that he would rather not have the garage so close to his house and that it probably would de-value his property. Mr. Thirtle asked Mr. Dickason questions regarding his deed. Mr. Dickason stated that his deed did not say very much with regard to setbacks. He was also concerned about Lot 23, which adjoins him. Mr. Dickason stated that if the same rules were applied to that lot, then the value of his property would definitely decrease. He wanted to be assured that wouldn't happen.

Mr. Warren, current Building Inspector answered questions from the Board. Mr. Warren stated all building fees are taken at the time of issuance of a building permit. He explained that Mr. Sauder called for a final inspection and that was the first time he had been on the site. There were no building plans attached to the building permit upon Mr. Warren's inspection.

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Mr. Rothrock, Town Engineer and Engineer for Peacock Ridge Subdivision, stated that at one of the Town Council meetings he remembered some discussion regarding the side yard setbacks. He also recalled that at the September 1996 Town Council meeting, the Town Council asked for, and the developer agreed to, side yard setbacks.

Mr. Turner entered into the record **Exhibit O**, the site plan submitted to the Town Council at their meeting in September 1996.

Mr. Moseley asked that all Exhibits be listed for the record before the public hearing closed. The following Exhibits were entered into the record; **Exhibit A** – Administrative Appeal Application, **Exhibit B** – Peacock Ridge Conditional Use Permit dated May 14, 1996, **Exhibit C** – Peacock Ridge Amended Conditional Use Permit dated December 10, 1996, **Exhibit D** – Peacock Ridge Site Plan dated November 12, 1996, **Exhibit E** – Building Permit Application for Lot 21, **Exhibit F** – Preliminary Site Plan for Lots 18-21, **Exhibit G** – Building Permit issued for Lot 21, **Exhibit H** – Mr. Wayne Green letter dated November 8, 2001, **Exhibit I** – Mr. Kevin Rothrock's letter to Mr. Sauder dated November 15, 2001, **Exhibit J** – Picture of garage,

**Exhibit K** – Site Plan Previous and New Proposed House Locations for Lots 21 & 22 of Peacock Ridge, **Exhibit L** – Recorded Plat for Peacock Ridge dated September 9, 1997, **Exhibit M** – Memo from Don Holycross, Town Manager to the Town Council dated December 3, 1996, **Exhibit N** – Mr. William Dickinson survey, and **Exhibit O** – Peacock Ridge Site Plan House Footprint.

In closing, Mr. Turner stated that even early on, everything indicated that there was a controlling standard of the 24-foot separation, which continued through the amendments. It was not made clear to Mr. Sauder or Mr. Green that the standard was changed to a 12-foot setback instead of the 24-foot separation. Mr. Sauder built the house in conformity and then received approval for the addition of the garage. There are four (4) out of the nine (9) houses within the subdivision that have been built within the 12-foot setback and still received approval and Certificate of Occupancy.

Mr. Turner suggested that the Board make their decision based upon Mr. Rothrock's statement and recommendation as presented in his staff report in the summary. If the conclusion is made based upon the evidence submitted at the hearing, you may also determine that the applicant reasonably relied upon the Zoning Administrator's decision and that this decision should therefore not be reversed by the successor Zoning Administrator. Mr. Turner argued that the financial investment that had been made with the construction of the garage, Mr. Sauder should be allowed to keep the garage. Mr. Turner stated that Mr. Sauder would comply as much as he could now by paying the additional building fees and completing the necessary paper work. He asked that the decision to deny the Certificate of Occupancy be reversed based upon the prior administrator's decision and that Mr. Sauder would comply to the 24-foot separation requirement and work with the Mr. Dickinson on any other conditions.

Mr. Moseley stated what was important and significant is that the prior zoning administrator made an interpretation based upon the land use ordinance and that the ultimate decision should be whether Mr. Sauder reasonably relied on that interpretation. Mr. Moseley agreed that if the Board decided that Mr. Sauder relied on Mr. Green's decision, then the Board should consider the above recommendation.

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*Mr. Klein made a motion to close the public hearing, seconded by Mr. Thirtle. All were in favor of the motion.*

Chairman Snyder asked that the Board take a break. The Board agreed. They recessed at 9:35 p.m. and intervened at 9:43 p.m.

*Mr. Yount made a motion that the public hearing be opened back up so that the Board could ask more questions, seconded by Mr. Thirtle. All were in favor of the motion.*

Mr. Rothrock stated that if the Board chose to modify his decision, they should consider the earlier suggestions from Mr. Turner. The applicant must maintain a 24-foot separation, pay all building fees for the construction of the garage, all future construction meet the 12-foot setbacks, any lot line changes or recombination's meet the setbacks and that Mr. Sauder work with the adjoining neighbors regarding the encroachment, with a driveway easement or some other type of easement. Mr. Sauder agreed with those conditions.

Mr. Thirtle questioned how the 24-foot separation that is currently 23 feet would be worked out with the adjoining property owner. Mr. Rothrock stated that Mr. Sauder had agreed to separate the wall from the garage and work with Mr. and Mrs. Dickinson on the other issues.

Mr. Greene pointed out that a retaining wall could be in a setback. Part of the garage wall is a retaining wall holding up Mr. Dickinson's driveway. If the back wall of the garage were separated from the garage, then it would be considered part of the retaining wall, which could be in the setback. Mr. Thirtle was not comfortable with that because Mr. Dickinson would become responsible for the retaining wall.

Mr. Yount suggested deeding Mr. Dickason one foot for the encroachment and then an easement for the driveway. Mr. Thirtle pointed out that wouldn't resolve the 24 foot separation problem. Mr. Turner stated that the maintenance for the retaining wall could be worked out between Mr. Sauder and Mr. Dickason.

*Mr. Klein made a motion to close the public hearing, seconded by Ms. Wright. All were in favor of the motion.*

Mr. Thirtle stated with the evidence presented, he would vote to agree with Mr. Rothrock's original decision of denying a Certificate of Occupancy. But since Mr. Rothrock agreed to consider other alternatives than the removal of the garage, he would vote with his recommendation to modify his decision.

*With no further discussion, Mr. Klein made a motion to modify the decision of the Zoning Administrator to deny the Certificate of Occupancy with the stipulation that all building fees be paid, all future development meet all setbacks as shown on the recorded plat, the garage structure can not be any closer than 24-feet from the adjoining house located on Lot 22, Mr. Sauder give legal assurance that Lot 23 will have a minimum 12-foot side yard setback, an easement be given for the portion of Mr. Dickinson's driveway encroaching on Lot 21, and that the final agreement be signed by Mr. Sauder and recorded at the Register of Deeds to run with all titles for Peacock Ridge, seconded by Ms. Wright. All were in favor of the motion.*

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**Adjourn**

*With no further business, Mr. Klein made a motion to adjourn at 10:15 p.m., seconded by Ms. Wright. All were in favor of the motion.*

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Chairman Lisle Snyder

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Sonya Long, Administrative Assist.