

## BOARD OF ADJUSTMENT

### MINUTES

Thursday, September 28, 2006

The Blowing Rock Board of Adjustment met on Thursday, September 28, 2006 at 7:00 p.m. Members present were Vice-Chairman Mark Klein, Annie Whatley, Al Wheeler, Jerry Starnes and Carol Horne. Members absent were Chairman Ron Oberle and Bob McCants. Staff present was Planning Director Kevin Rothrock, and Administrative Assistant Sherrie Pitts.

Vice-chair Klein called the meeting to order at 7:00 p.m.

*Mr. Wheeler made a motion to table election of officers until the full board was present. Ms. Whatley seconded the motion. All members were in favor of the motion.*

#### **APPROVE MINUTES:**

*Ms. Horne made a motion to approve the minutes from September 22, 2005. Ms. Whatley seconded the motion with a change on page 3 that she did not ask about changing shingle to metal roof. All were in favor of the motion.*

Kevin Rothrock, Mrs. Lianne Mattar, Mr. Richard Mattar and Mr. Tom Dobbs were sworn in for testimony to the Board.

Mr. Rothrock gave the staff report to the board in reference to Variance #2006-01:

Mr. and Mrs. Richard Mattar are requesting a setback variance to construct a bathroom addition over an existing deck. The applicants are requesting a variance to encroach 11.5 feet into the 40-foot street setback on Mockingbird Lane. Based on the survey provided, several points along the existing house have an average setback of 14.2 feet from the right-of-way on Mockingbird Lane. The existing deck is 11.9 feet from the right-of-way and is located completely within the 40-foot setback. The bathroom addition is proposed on the east side of the deck and would be 28.5 feet from the right-of-way on Mockingbird Lane. Section 16-124(E) of the Land Use Code does not allow the creation of new nonconformities or to modify the nature of an existing structure. Section 16-184 (G) of the Land Use Ordinance allows a reduced setback of 33.6 feet from Mockingbird Lane based on an adjacent structure. Given this setback reduction the applicants would still need 5.5 feet of setback variance.

Mr. Rothrock stated that each finding of fact must be voted on separately. To approve a variance, the board must affirm by a 4/5<sup>th</sup> majority each finding of fact. If all findings are

affirmed in favor of the applicant, the board shall make a final motion to approve the variance. If two or more members deny any findings of fact, the variance must be denied.

With no questions of Mr. Rothrock, the floor was opened to the applicants.

Ms. Lianne Mattar, applicant, spoke about the house and explained the reason for the bathroom request is to create a wheelchair accessible area.

Mr. Tom Dobbs, Ms. Mattar's father, explained his physical difficulty and gave a statement in favor of the bathroom addition.

Mr. Richard Mattar, applicant, stated that the house was already there and is probably 75% in the setback. The top of the rest of the property is extreme and the house was built on the only level portion of the lot. They did not build the house and did not create the setback complication.

Ms. Whatley commented that she was familiar with the Americans with Disabilities Act (ADA) and how it affected commercial buildings, but was not sure how it would refer to local ordinances. Mr. Rothrock advised that the building code addresses ADA accessibility for commercial buildings, but not in single-family homes.

Vice-chairman Klein commented on the understanding of the personal dilemma and advised that the board must follow the findings of fact. He also asked if the bathroom could be built in another location in the house.

Mr. Mattar explained the house layout and commented that it might be possible to use another location but would be very difficult.

With no other questions or comments *Mr. Starnes motioned to close the public hearing. Mr. Wheeler seconded the motion. All members were in favor.*

The Board voted on the Findings of Fact found in Section 16-92 of the Land Use Ordinance.

1. If the applicant complies strictly with the provisions of the ordinance, he can make no reasonable use of his property. **Members Mr. Klein, Mr. Wheeler, Mr. Starnes and Ms. Horne voted "True". Ms. Whatley voted "False".**
2. The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public. **All members voted "True".**
3. The hardship relates to the applicant's land, rather than personal circumstances. **All members voted "True".**
4. The hardship is unique, or nearly so, rather than one shared by many surrounding properties. **All members voted "True".**

5. The hardship is not the result of the applicant's own actions; and **All members voted "True"**.
6. The variance will neither result in the extension of a nonconforming situation in violation of Article VIII nor authorize the initiation of a nonconforming use of land. **Members Mr. Klein, Mr. Wheeler, Mr. Starnes and Ms. Whatley voted "True". Ms. Horne voted "False"**.

*Mr. Wheeler made a motion to approve the variance request. Ms. Whatley seconded the motion. All members voted in favor of the motion. The variance was approved to encroach 11.5 feet into the 40-foot street setback of Mockingbird Lane with a bathroom addition.*

Mr. Rothrock spoke to the board in recognition and remembrance of Mr. Walter Green and Mrs. Louise Oberle. A moment of silence followed.

With no further business *Ms. Horne made a motion to adjourn. Seconded by Mr. Starnes. All members were in favor of the motion*

### **Adjourn**

With no further business, the Board adjourned at 7:53 p.m.

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Mark Klein, Vice-chair

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Sherrie Pitts, Administrative Assistant