

BOARD OF ADJUSTMENT

MINUTES

Thursday, August 25, 2022

The Blowing Rock Board of Adjustment met on Thursday August 25th, 2022 at 5:30 at Town Hall. Members present were E.B. Springs, Jerry Starnes, Stephen Schiller, Brandon Walker and Paul McGill. Staff present was Planning Director Kevin Rothrock, Zoning Enforcement Officer, Brian Johnson and Planning and Zoning Support Specialist Taylor Miller.

Chairman Springs called the meeting to order at 5:32 p.m.

APPROVAL OF MINUTES

Chairman Springs asked if there were changes to the minutes from the April 28th, 2022 meeting. Mr. Schiller advised there was an incorrect spelling of Mr. Johnson's name on page 2 in the seventh paragraph. Mr. Walker advised *ex parte* was spelt incorrectly at the top of page two.

Chairman Springs made a motion to adopt the minutes from April 28th, 2022.

All members were in favor of the motion.

Chairman Springs advised that in the last meeting, the idea of making sure the applicant for a variance would be okay with not having a fifth board member as a buffer, if and only if, a fifth board member was not available for the meeting. All board members agreed that as long as the applicant is okay with not having a fifth board member present, they would proceed with the meeting. If the applicant was not okay with not having a fifth board member, they would re-schedule the board meeting to a time where five board members could be present.

1. Variance #2022-03 Ben Frantzen for 126 Greenway Court

Chairman Springs asked if it was okay with everyone, including Mr. Frantzen and Mr. Brian Johnson, that Taylor Miller works for the town and will be recording the minutes for the meeting. Everyone agreed that it was okay.

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. Parities will the opportunity to give evidence, cross-examine witnesses, inspect documents and testimonies shall be under oath. The boards findings will be based upon substantial, material, and competent evidence.

Chairman Springs asked if anyone had any conflict or bias related to the Mr. Frantzen's case. All members said no.

Chairman Springs asked if anyone had any conflict on interest with this case. All board members stated no.

Chairman Springs asked if anyone had engaged in any ex parte communications with anyone in regard to the case. All board members stated no.

Chairman Springs stated that board members are allowed to drive by the property related to the case and asked if any board members had done so. All members advised they had driven 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 then acknowledged that Mr. Brian Johnson sent an application packet to each of the board members with all of the information in regard to the variance. Chairman Springs asked if Mr. Frantzen had received one of those packets as well, Mr. Frantzen said yes.

Chairman Springs began to explain the steps that the board would go through for the meeting and the procedure for each of those steps. He then asked for everyone who would be a witness to the Frantzen case to be sworn in. Mr. Brian Johnson, Mr. Kevin Rothrock and Mr. Ben Frantzen were sworn for testimony to the Board.

Mr. Brian Johnson took to the podium to present the staff report for the Frantzen Variance. The location for the variance is 126 Greenway Court in Blowing Rock. Further identified by the Watauga County PIN # 2807-97-2788-000. The property is zoned as Central Business. Last BOA meeting, Mr. Frantzen is asked for a variance of the parking space requirements – a reduction in the required 9 ft in width to 8 ft in width. This means he is asking for a 1-foot variance in the parking spot width requirement. This meeting he is requesting the same variance but for a secondary parking space that would allow for two vehicles to park in tandem with each other next to the residence. This variance request is in relation to Section 16-20.6

Section 16-20.6 Parking Space Dimensions. *Each parking space shall contain a rectangular area at least nineteen feet long and nine feet wide. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this section.*

The second parking space would be placed next to the building. Mr. Frantzen is considering using his building as short-term rentals and would be required to have a parking space per bedroom. He already has one existing parking space that meets all town ordinance standards but needs another to meet the short-term rental standards of 1 space per bedroom.

Mr. Brian Johnson gave a bit of history for the property. He advised the request from the last meeting for the first parking space that was approved. He explained the new variance request and that it is essentially the same request of dimensions but is for a second space to be approved – that way two cars can park in tandem with each other.

Chairman Springs asked if Mr. Johnson wanted to offer the entire staff report in the record. Mr. Johnson said yes.

Chairman Springs asked if Mr. Frantzen had any questions for Mr. Johnson. Mr. Frantzen said no.

Chairman Springs asked Zoning Officer Brian Johnson about his experience in his position and how familiar he is with the land use zoning laws and well as the town ordinance. He asked how familiar Mr. Johnson is with the building process and codes in the town. Mr. Johnson advised he is still learning but familiar.

Chairman Springs asked if Mr. Johnson has dealt with a parking situation that entailed one parking space being directly in front of another parking space which would cause one car to have to move in order for the other car to get out. Mr. Johnson advised he has dealt with situations like this before.

Chairman Springs referenced the Land Use Code.

Section 16-20.8 General Design Requirements. *Unless no other practicable alternative is available, vehicle accommodation areas shall be designed so that, without resorting to extraordinary movements, vehicles may exit such areas without backing onto a public street. This requirement does not apply to parking areas consisting of driveways that serve one or two dwelling units although; backing onto arterial streets is discouraged.*

Chairman Springs asked Mr. Johnson if he agreed that the council would not approve of backing onto an arterial street in this situation. Mr. Johnson advised it is not ideal and that the key word be 'discouraged' in that section.

Chairman Springs directed Mr. Johnson to the Land Use Code again.

Section 16-20.6 Parking Space Dimensions. *Each parking space shall contain a rectangular area at least nineteen feet long and nine feet wide. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this section.*

Chairman Springs advised he did not see anything in there about "tandem" parking like this situation presents. Mr. Johnson said that it does suggest there needs to be lines demarcating the spaces.

The board asked Mr. Ben Frantzen to take the podium.

He explained that he originally wanted two spaces to be able to park in tandem to begin with. He also mentioned he wanted a handicap accessible spot for individuals who could possibly be staying in the short-term rental. He also mentioned he did not want to compromise the look of the building by opening up the front of building for two-car parking.

Chairman Springs questioned Mr. Frantzen on whether or not the car that parked first and was blocked in by the second car would be able to leave without needing the second car to move. Mr. Frantzen advised that without using the neighbor's property for the first car to leave, that yes, the second car would have to move in order for the first car to leave.

Chairman Springs questioned Mr. Frantzen again on why he does not want to open up the front of the building. Mr. Frantzen advised that he did not want to compromise the structure and look of the building or compromise the square footage that the property offered with 4 bedrooms. Chairman

Springs questioned what changed from now to back in April when he came in for the variance and why he is just now realizing this. Mr. Frantzen advised he was unaware that he could come before the Board of Adjustments and thought that his only option was to renovate the building so that's why he proposed that back in April.

Chairman Springs asked Mr. Frantzen if he would accept the condition of a rigid barrier between the two properties. Mr. Frantzen said that he would be able to get out of that property but that it would be a problem for the neighbors and make getting in and out of their property difficult. He mentioned he would no longer be able to get to the shared dumpster that him, Village Café, Kilwin's, the brewery, and his neighbor's use. It would also make it difficult for the garbage truck to get in and out to empty the dumpster. In order to get to the dumpster, the garbage truck has to drive on a portion of his property. He advised that all of the neighbors work harmoniously to use the dumpster and use each other's property.

Mr. Frantzen acknowledged that he has parked in the area in question many times in the past 30 years without it being an issue. Member Paul McGill pointed out that now there would be a change in use (from single family use to short term rental use) which would trigger the parking requirement of one space per bedroom of the STR which would make parking there a problem without a variance.

Planning and Inspections Director Kevin Rothrock took to the podium. He asked Mr. Frantzen if the neighbors, Village Café, the brewery and Kilwin's all use his property to get to the dumpster and that he uses his neighbor's property to park in the parking space in front of the home. They mutually use each other's property. Mr. Rothrock also asked what type of modifications would need to be made to the property in order to accommodate the parking space in question. Mr. Frantzen said he would need to move the HVAC system to somewhere else in order for a vehicle to park there.

Mr. Rothrock also brought up that the brackets that hang off the side of the building would impede on a bigger vehicle that needed to park there. The brackets hang low enough that only two cars (sedan-type cars, not a truck or taller vehicle) would be able to park in that space. Mr. Frantzen advised that he didn't think the brackets needed to be removed but Mr. Rothrock thought differently. He pointed out that the building is trying to be sold and that we could possibly be dealing with new owners and not Mr. Frantzen himself.

Chairman Springs asked about the notices sent out to the properties within 150 feet of the property in question. He asked how many notices were sent out – Mr. Johnson advised there were 21 notices sent out including Mr. Frantzen.

Member Stephen Schiller asked if anyone spoke out in regard to the public notice. Mr. Johnson advised no one reached out.

Member Brandon Walker asked Mr. Frantzen what modifications would need to be made to the building in order to accommodate the parking space in question. Mr. Frantzen advised he would need to take down two walls and the balcony on the front, as well as the columns needing to be cut down to 6x6 posts.

Chairman Springs motioned to close the evidentiary hearing. Seconded by Stephen Schiller. All in favor.

During the Findings of Facts, Member Starnes brought up that what Mr. Frantzen is proposing is essentially an 8 foot by 40 foot parking space alongside his building. Mr. Starnes voiced some concern on the idea of a firetruck/emergency vehicle being able to easily access this area.

He also voiced a concern with the idea of a shared driveway. He felt as if there is a shared driveway that has been created by the Board of Adjustments but not documented. There is not a shared driveway agreement.

Mr. McGill advised that he felt more comfortable with the approval from April as opposed to this new proposed parking space (the second one).

Member Brandon Walker acknowledged that the only reason we are looking at this as a variance to begin with is because of the short-term rental aspect.

Mr. Frantzen raised his hand to speak.

Chairman E.B. Springs made a motion to re-open the evidentiary hearing, seconded by Member Stephen Schiller. All in favor.

Mr. Frantzen advised they had to take a tree down with a crane at some point and the crane fit in the driveway without issue to try and alleviate some concern over the firetruck issue.

Chairman Springs made a motion to re-close the evidentiary hearing, seconded by Member Stephen Schiller. All in favor.

Mr. Starnes brought up the fact that he feels concerned about setting a precedent for future properties and allowing "shared use" or "authorized use" of a driveway. Chairman Springs pointed out that the BOA is entitled to setting a condition for the variance to make sure there is not shared use to try and ensure there is not an issue with the people staying at the property in question do not use the neighbor's driveway. Mr. McGill pointed out that it would be very difficult to enforce that on people staying in the short-term rentals for a short period of time.

Member Brandon Walker brought up some personal experience in the short-term rental world. He advised that he has many long term and short term rentals in downtown area with much worse parking situations than the one being presented today. He also acknowledged that no one came to the meeting, called, or wrote in to express any concern in regard to this parking spot. Mr. Schiller mentioned that he would be viewing this variance very differently if anyone had come with a concern or complaint in what is being presented.

CHAIRMAN SPRINGS THEN LISTED THE FINDINGS OF FACT.

1. The applicant is Ben Frantzen.
2. The owner of the property in question is Ben Frantzen.
3. The address of the property in question is 126 Greenway Court, Blowing Rock, N.C., and its Watauga County PIN number is 2807-97-2788-000.

4. The property in question is zoned "CB," Central Business.
5. The applicant wants a one (1) foot variance for a parking space on his property on the south side of his house, where there is eight (8) feet in width between applicant's building and the property line. Blowing Rock Land Use Code section 16.20.6 requires a parking space to have a width of nine (9) feet. See sketches and photos in the Staff Report. Applicant's need for this parking space is related to his desire to do short term rentals at this property. See Blowing Rock Land Use Code Section 16-10.12 (c).

The applicant has already been granted a variance of one (1) foot in width for a parking space on that same south side of the property, that earlier variance having been granted on April 28, 2022, application number 2022-01. See the Staff Report and decision on that application.

Applicant now wants to add an additional parking space on that south side of the building, such that two vehicles could be parked on that south side of the building, with one vehicle parked directly behind the other, in a parallel parking configuration but without the ability of the vehicles to pull out of the side of the parking spaces as in traditional parallel parking. The vehicles would both have to be backed out the parking spaces in order to exit, or have backed into the spaces from the street so as to exit by driving straight out.

The neighbor's property line is eight (8) feet from applicant's building, and the two parking spaces applicant wants would be in that eight (8) foot width. The ordinance, section 16-20.6, requires that parking spaces be nine (9) feet wide, and applicant seeks a variance of one (1) foot for a second parking space on that side of his building. See sketches in Staff Report.

6. The Blowing Rock Land Use Code Section(s) which is at issue here and which stands in the applicant's way is Section 16-20.6, and put into words, the ordinance requires a parking space to have a width of nine (9) feet, and the applicant only has eight (8) feet at that location for the width of the desired parking space. See applicant's sketches of the proposed parking space in the Staff Report.
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 21 property owners.
10. The applicant did receive a copy of the Zoning Enforcement Officer's staff report prior to the meeting
11. The only other witness in the hearing besides the applicant and the Zoning Enforcement Officer, Brian Johnson, was the Blowing Rock Planning Director, Kevin Rothrock.

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 a very narrow width of property on the south side of the applicant's existing building, the building being only eight (8) feet from the neighboring property line.

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 DOES NOT find 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 has three members, Mr. Walker, Mr. Springs, and Mr. Schiller voting "yes," that the applicant had presented sufficient evidence and met the required standard for this factor, and two members, Mr. Starnes and Mr. McGill, voting "no," that the applicant had failed to provide sufficient evidence and has not met the requirements.

2. Based upon the evidence presented and the facts shown above, the Board of Adjustment DOES NOT find 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 has three members, Mr. Walker, Mr. Springs, and Mr. Schiller voting "yes," that the applicant had presented sufficient evidence and met the required standard for this factor, and two members, Mr. Starnes and Mr. McGill, voting "no," that the applicant had failed to provide sufficient evidence and has not met the requirements.

3. Based upon the evidence presented and the facts shown above, the Board of Adjustment DOES NOT find 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 Board's vote on this factor has three members, Mr. Walker, Mr. Springs and Mr. Schiller voting "yes," that the applicant had presented sufficient evidence and had met the required standard, and two members, Mr. Starnes and Mr. McGill, voting "no," that the applicant had failed to provide sufficient evidence and has not met the requirements.

4. Based upon the evidence presented and the facts shown above, the Board of Adjustment DOES NOT find 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.

The Board's vote on this factor has three members, Mr. Walker, Mr. Springs and Mr. Schiller voting "yes," that the applicant had presented sufficient evidence and had met the required standard, and two members, Mr. Starnes and Mr. McGill, voting "no," that the applicant had failed to provide sufficient evidence and has not met the requirements.

5. The Board of Adjustment **does not** grant the requested variance, the application is denied.

Chairman Springs suggested a short restroom break from Board Members and the public.

2. Variance Request #2022-04 – Mr. Kieth Swieter on behalf of David & Shirley Moreland at 195 Fairway Lane

Chairman Springs announced the variance request from Mr. Kieth Swieter on behalf of David and Shirley Moreland.

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. Parities will the opportunity to give evidence, cross-examine witnesses, inspect documents and testimonies shall be under oath. The boards 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 except Mr. Walker and Mr. McGill 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 Mr. and Mrs. Moreland 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 asked Taylor Miller to swear in any witnesses that would be testifying in this case. Brian Johnson, Kieth Swieter, David Moreland, and Shirley Moreland.

Chairman Springs looked over the variance application and explained the steps of what would proceed throughout the hearing.

Mr. Brian Johnson gave the staff report for the variance request. Kieth Swieter, the general contractor for the property is requesting a variance on behalf of Mr. and Mrs. Moreland at 195 Fairway Lane. That property is further identified by the parcel ID of 2817-23-3785-000.

The applicant is requesting to enclose an already existing carport on the property. The carport has been there for many years and a very small portion of it connects to the house. It is technically considered a non-conforming structure due to the carport being in the required setback area for the R-15 zoning area. It is 9 ½ feet into the required 12 foot setback. They will not be going outside of the existing footprint. The distance from the carport to the property line is about 2 ½ feet.

Chairman Springs asked if there were any questions for Mr. Johnson from Mr. and Mrs. Moreland. They did not have any questions.

Chairman Springs asked Mr. Swieter to come to the podium. Mr. Swieter advised that he thinks the enclosed garage will be more aesthetically pleasing compared to the open carport that has been existing for a long time. He and the Moreland's believe it will be an improvement for the property.

Chairman Springs made a motion to close the evidentiary hearing, seconded by Member Walker. All members in favor.

CHAIRMAN SPRINGS THEN LISTED THE FINDINGS OF FACT.

1. The applicant is Kieth Swieter, on behalf of David and Shirley Moreland.
2. The owners of the property in question are David and Shirley Moreland.
3. The address of the property in question is 195 Fairway Lane, Blowing Rock, N.C. The Watauga County PIN number of the property in question is 2817-23-3785-000.
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 "grandfathered" for its distance from the side property line, being two- and one-half feet from the setback at its closest point). The applicant would keep the proposed garage enclosure of the carport within the existing footprint of the existing carport and the existing carport is two- and one-half feet from the side property line, at its closest point. Because Blowing Rock ordinances require a side setback of 12 feet from the property line, the applicant is seeking a nine- and one-half foot variance in the setback.
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 12 feet from the side property line for construction.
7. There are no 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.
8. 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 17 property owners.
9. The applicant did receive a copy of the Zoning Enforcement Officer's staff report prior to the meeting.
10. The witnesses in the hearing were applicant Kieth Swieter, David and Shirley Moreland, and the Zoning Enforcement Officer, Brian Johnson.
11. What the applicant is proposing would not impair emergency vehicles such as fire trucks and ambulances.
12. What the applicant is proposing would not create a fire hazard.
13. What the applicant is proposing would not block or impede visibility on any street or highway.
14. What the applicant is proposing would not be contrary to public health and/or safety.
15. Unique features of this property include the fact that the existing carport building is only two and a half feet at its closest point from the side property line.

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

CHAIRMAN SPRINGS 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 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. Mr. and Mrs. Moreland, the owners of the property, bought the property in 2021 and the existing carport was already there and not of their creation.

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.

The Board's vote on this factor was unanimous.

5. The Board of Adjustment does grant the requested variance as shown in the applicant's variance application package. This is a variance for nine- and one-half feet of the side setback from the east property line, where the ordinance required a setback of 12 feet. The applicant may build a garage on the same footprint of the existing carport, enclosing the carport.

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 7:47pm, seconded by Member Stephen Schiller. All members in favor.

E.B. Springs, Chairman

Taylor Malm Miller, Planning & Zoning
Support Specialist