

## TOWN OF BLOWING ROCK

### BOARD OF ADJUSTMENT

#### MINUTES

JANUARY, 25<sup>th</sup> 2024

The Blowing Rock Board of Adjustment met on Thursday, January 25<sup>th</sup>, 2024 at 5:30 p.m. in Town Hall. Members present were Chairman E.B. Springs, Stephen Schiller, Jerry Starnes, Lee Rocamora and Sarah Murphy. Staff members present were Interim Planning Director Brian Johnson and Support Specialist Taylor Miller.

Chairman Springs called the meeting to order at 5:29 p.m.

Chairman Springs acknowledged that Mr. Larry Armor, our newest Board member, would be here to observe the meeting and to be sworn in as a member. Taylor Miller swore in Mr. Larry Armor.

#### APPROVAL OF MINUTES

Chairman Springs stated they received a copy of the August 24<sup>th</sup>, 2023 meeting. Mr. Stephen Schiller pointed out multiple corrections and provided a list to Taylor Miller of the applicable corrections. *Chairman E.B. Springs made a motion to accept the corrected minutes, seconded by Mr. Jerry Starnes. All members in favor of the motion.*

Chairman Springs advised that we are supposed to swear in a Chairman and Vice Chairman at the first meeting of every year.

E.B. Springs was nominated as Chairman of the board. *Stephen Schiller made a motion to elect E.B. Springs as Chairman, seconded by Mr. Lee Rocamora. All members in favor of electing E.B. Springs as Chairman.*

Stephen Schiller was nominated as Vice Chairman of the board. *E.B. Springs made a motion to elect Stephen Schiller as Vice Chairman of the board, seconded by Stephen Schiller. All members in favor of electing Stephen Schiller as Vice Chairman.*

Chairman Springs moved on to the next topic of discussing how the UNC School of Government defines unnecessary hardship. To get a variance, you must show evidence of unnecessary hardship. There is no simple answer on how to determine unnecessary hardship, it is determined on a case-to-case basis. The hardship must be more than a mere inconvenience. Unnecessary hardship must be peculiar to the property.

Chairman Springs advised he wanted to touch on something else from our last meeting. He provided a handout and referenced that for this conversation. There are a couple places in the Blowing Rock Town Code that state an existing non-conformity cannot be enlarged. He referenced the code. The last

meeting, the Sleiman's were trying to prove four factors and they lost on four. The last factor, we said that because they wanted to enlarge an already non-conforming situation, that they could not do that because of Blowing Rock statutes. Chairman Springs stated that the Sleiman's would not have gotten their variance otherwise, but that it turns out the board was wrong about not being able to enlarge a non-conformity. He referenced NC Statute 160D-705D. The statute describes what is necessary for variances in this state. Chairman Springs advised that he believes the board did have the authority to grant a variance of a non-conforming situation to be increased if they proved all four factors to win the variance.

#### **1. Variance # 2023 – 02 – Matt & Jenny Martella variance request for 442 Dogwood Lane**

Chairman Springs stated there is a variance request for Matt & Jenny Martella. Amanda Waters was the applicant and Mr. Kevin Troyer from 4 Forty-Four is also here to help present the request.

Chairman Springs stated that the minutes for the meeting would be kept by Taylor Miller who is a Town employee. He stated the Town is a party to this case and can take a position on the variance request and oppose it if they see reason to. Chairman Springs asked the applicants and Mr. Brian Johnson if they object to Taylor Miller taking the minutes for the hearing. No objections.

Chairman Springs stated that this hearing is a quasi-judicial hearing. It is conducted according to the rules and laws pertaining to quasi-judicial hearings. 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 on substantial, material, and competent evidence.

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

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 any conflict of interest, any financial interest, or any relation to any of the parties in this case. No one had any of those issues.

Chairman Springs asked if anyone besides the applicant and the Town staff considers themselves to have standing in this case. No response.

Chairman Springs asked if were being shown on zoom. Mr. Brian Johnson said yes.

Chairman Springs asked for anyone who will be presenting or speaking to be sworn in by Taylor Miller. Kevin Troyer, Matt Martella and Brian Johnson were all sworn in.

Chairman Springs asked if all board members and the applicants had received a staff report from the town. They had all received one.

Mr. Brian Johnson presented the staff report. Amanda Waters of 4 Forty Four on behalf of Matt & Jenny Martella is requesting a setback variance from Land Use Ordinance Section 16-12.4, R-15 Street Setback, to construct a second story and two decks. The property is located in Blowing Rock but considered Caldwell County.

Mr. Brian Johnson referenced a provided site plan.

Matt & Jenny Martella are requesting a 12-foot setback variance from the applicable 20-foot street setback for the construction of a second story in the same footprint as the existing structure, and 5-foot setback variance from the applicable 20-foot setback for the construction of a new 4' wide by 26'9" long deck and 4'2" wide x 23'9.5" long deck on the rear of the structure.

The street setbacks have been established at 20 feet based on staff applying an Administrative waiver to Section 16-12.4.6 for the street fronting the main entrance to the house, and Section 16-12.4.9 for the street to the rear of the house.

They have applied the 20-foot setback to the rear of the property.

Chairman Springs asked for Brian Johnson to go through the staff report page by page and indicate who sent in what and explain the documents included.

Chairman Springs asked how wide the street is on Dogwood Lane. Mr. Brian Johnson made a rough estimate that it is probably 10 to 12 foot wide.

Chairman Springs wanted to know how close the house is to the road at it's closest point. Mr. Johnson said approximately 10 feet, plus or minus.

Chairman Springs asked where the 12-foot variance request is coming from. Mr. Johnson advised there are no variance requests on the front of the house, the request is coming from the addition on the backside of the house with a setback of 20-feet that they would be encroaching on.

Chairman Springs asked how close is the existing deck to the road? Mr. Johnson said the existing deck overhang looks like it encroaches on the back property line. The overhand of the deck is 1.9 feet south of the property line. Mr. Johnson advised this part of the house is not being changed.

Chairman Springs asked if this property was a vacant lot and someone wanted to build a house exactly like the one that is there, would it meet the current setback requirements? Mr. Johnson said no.

The house is legal non-confirming and grandfathered including the deck.

Chairman Springs asked if he had sent out all the required public notices for this case. Mr. Johnson said yes.

Chairman Springs asked if he had mailed a notice to the applicant or the property owner. Mr. Johnson said yes.

Chairman Springs asked if he sent public notices to parcels of land abutting to this property. Mr. Johnson said yes, we sent a notice to 11 property owners.

Chairman Springs asked if he had heard back from any of the property owners. Mr. Johnson advised he received a phone call from one neighbor. Mr. Gregory Needham, an adjacent property owner.

Chairman Springs asked if the appropriate signs were put up for the notice. Mr. Johnson said yes.

Stephen Schiller asked if the hearing was advertised in the paper. Mr. Johnson said yes.

Mr. Matt Martella presented his case. He advised his objective was to make his case for hardship and outline the scope of the variance.

Mr. Martella noted that when they initially wanted to renovate, they thought about going out as opposed to up. The first hardship was the powerlines that ran through the property. He met with Blue Ridge Electric to discuss trying to move the power lines. When they investigated going up on the renovation, they realized the hardship of the setbacks from the road as well as where they place the second story because it would need to be placed directly on the existing foundation.

He wanted to point out that they plan to stay within the existing footprint of the house.

Chairman Springs asked for more information on the powerlines. Mr. Martella said in March of 2023, he met with an engineer from BREMCO to discuss the power lines. The engineer explained that if they were to move the lines, a new 15-foot easement on both sides of the new line would be introduced. He advised there is not much space to move the pole at the top of Dogwood due to the closeness to the neighbor's property. Moving the bottom pole would cause 10 or 12 large trees to be taken down and remove the natural buffer provided by the trees. The engineer also mentioned that even if they figured out how to move the poles and the line, good luck getting Spectrum and AT&T out here to move their lines.

Chairman Springs asked where they park and how many cars they can fit. Mr. Martella said they have a gravel driveway that can fit about 3 cars.

Chairman Springs asked MR. Martella to describe the tightness of the road. Mr. Martella said he would describe it as a one-lane road. Two cars cannot comfortably pass on that road. Mr. Martella said the UPS driveway does it everyday.

Chairman Springs clarified that their personal vehicles are out of the roadway and not blocking the road at all. Mr. Martella confirmed that.

Lee Rocamora asked about the purpose of the two decks proposed for the variance requests. Mr. Martella said mainly to enjoy the view outside of their living room and off their master bedroom. Mr. Rocamora asked how wide those decks were. He advise 4-feet.

Mr. Rocamora asked what the existing deck is used for. Mr. Martella said outside dining and enjoyment.

Chairman Springs asked Mr. Martella what makes the property unique and makes it harder for him than the guy next door.

Mr. Martella stated that they believe sitting on that small corner in the hairpin turn, they are bound by the power lines on the only space of the property that could be utilized for an addition. They went in thinking that they would pay for those lines to be moved if it was possible, but it does not seem possible. The other uniqueness of the property is that most lots are not bound on all three sides by one road. So, they are bound by power lines on one side and a road on the other three sides.

Mr. Kevin Troyer presented and stated he wants to go more into detail of the hardships of the property. Plan A for the property was to expand into the allowable buildable area of the lot, but that is where the power lines run through. Moving the power lines has become a very significant hurdle to overcome.

Mr. Troyer wanted to point out that everything they are requesting within the variance is well within the structure that already exists.

Mr. Troyer noted that there would be a domino effect of trees and brush that would need to be cleared on the Martella's property as well as the neighbor's property if the power lines were to be moved like they had planned originally. Chairman Springs asked if the neighbor would have to give permission to remove those trees. Mr. Troyer advised they would not have to give permission, if it is within the power company's easement, they can remove them without the property owner's permission.

Mr. Troyer stated that there is a high level of complexity that comes with moving these lines. Clearing trees, the substation that feeds the lines, the phone and internet. There is just a domino effect that comes with moving the lines. This is what led them to adding the blue area on the map, the second story addition. It is on the existing footprint so there is minimal intrusion. The existing building height is 13-feet. They are intending to take it to 23-feet. The town ordinance allows 30-feet. They are not requesting the maximum height allowable.

Mr. Troyer talked some more about the hardship of moving the power lines. One thing he noted is that BREMCO confirmed that the upper level (the new addition) would be grandfathered into the existing maintenance easement.

Chairman Springs asked if the variance is granted as requested, would any trees anywhere on the Martella property need to be taken down and removed? Mr. Troyer said no.

Mr. Troyer went into the second hardship of the case, which is the boundary restriction from Dogwood Lane on three sides of the property, which is a distinct rarity.

Mr. Troyer then explained the third hardship of the case, which is structural integrity. He stated that any attempt to honor the exact boundary restriction setbacks would require a structure built inside of the existing building foundation. This approach would create complex and excessive structural work due to the lack of load bearing foundation walls to build on, and create a structure less natural to the neighborhood architecture.

Lee Rocamora asked if there are any structural changes that need to be made to the existing structure to support the proposed addition. Mr. Troyer said yes, there would need to be some reinforcements put in place.

Chairman Springs asked how long the whole project would take if they gave the variance. Mr. Troyer said 8-9 months.

Chairman Springs asked if the construction work could be completed without obstructing Dogwood Lane. Mr. Troyer stated they would utilize the space on the side of the house that is open and the deck space would need to be maximized. Chairman Springs asked where the Martella's would park if they are occupying their parking space. Mr. Troyer stated the Martella's would not occupy the home during construction.

Chairman Springs asked Mr. Troyer if they could do this project without obstructing any of the roadway. Mr. Troyer stated they've done projects on similar roadways and says it can be done.

Lee Rocamora stated he lives in the neighborhood and wants to know how many vehicles would be used for the project and how they would keep the space open for vehicles to get through. He asked who would be monitoring that. Mr. Brian Johnson stated the town would monitor that and that any lane closures would have to come before the town to make sure we're aware of it. Mr. Rocamora asked how often it is monitored. Mr. Johnson advised we monitor based on complaints.

Chairman Springs asked Mr. Troyer and Mr. Martella how they would feel about a condition attached to the variance that under no circumstance there would be no blocking or obstruction of the road for the entire length of the project.

Mr. Troyer advised he would be comfortable with that because that is how they anticipate proceeding with the job. They do not want to block the road because it would feel like it would not be good keeping with the project.

Mr. Martella stated he is comfortable with that condition.

Chairman Springs read a list of conditions regarding blocking the road for the duration of the project. There will be no parking of vehicles or placement of materials for the project placed in the roadway of Dogwood Lane. No loading or unloading of materials with road blockage should exceed more than 15 minutes. There must be a sign displayed on the property in front of 442 Dogwood Lane that must be 8-foot by 4-foot with the wording that states "During construction here, the owner has agreed to not block or impede the Dogwood Lane roadway. Any problems with the roadway being blocked can be reported to The Blowing Rock Planning & Inspections Office at 828-295-5240."

Chairman Springs asked Mr. Troyer and Mr. Martella if they accept the conditions. Mr. Troyer and Mr. Martella said they accept the conditions.

Chairman Springs stated we would take a 10-minute break at 7:22 p.m.

Meeting resumed at 7:31 p.m.

Mr. Troyer resumed with talking about the conditions and language presented by Chairman Springs on obstructing the road. Mr. Troyer asked if the property across from the Martella's, a vacant lot, was to be sold and if they blocked the road during construction, what would happen. Chairman Springs stated it would not be the Martella's problem and is irrelevant.

Mr. Martella asked if someone bought that vacant lot and decided to build a new home on it, would they be held to the same standard of blocking the road as the construction of the Martella addition would be?

Member Sarah Murphy asked Mr. Brian Johnson what the Town's requirements are for any project construction.

Mr. Johnson stated the Town's policy is that you do not block a road period, but we understand construction and we understand narrow roads and needing to load and unload construction material, so we allow for lane closures. There is a system that goes through our fire department, police department and 911 that alerts neighbors and neighborhoods of closures. Mr. Johnson advised he understands a lane may need to be closed sometimes.

Chairman Springs stated that a lane closure will not happen, not on this project with these conditions. There will be no lane closures.

Mr. Troyer stated he could commit to saying that they would not request a lane closure.

Chairman Springs said that if they grant the variance and this condition is attached and there is a violation during the construction of the project, the Town Attorney would do what he needed to do which would most likely void the variance.

Mr. Johnson asked Mr. Troyer if the house is on a septic tank. Mr. Troyer said yes. Mr. Johnson stated that anything impact wise on the septic system would need to go before Calwell County Health Department and just wanted to make that clear. Mr. Troyer stated the number of bedrooms is staying the same so the impact will not change.

Lee Rocamora stated to the board that he sees two different components to this project. The first is the structural component of increasing the house size itself and the other is the deck. He asked if the components should be treated equally or looked at separately.

Chairman Springs stated he thinks there are technically 3 separate variance requests. Two decks and an addition. Chairman Springs said though the Findings of Fact and Conclusions of Law, he will refer to them as the second story addition, the 26-foot deck and the 23-foot deck.

#### **FINDINGS OF FACT**

1. The applicant is 4FortyFour, a construction company, on behalf of Matthew D. Martella and Jenny I. Martella.
2. The owners of the property in question are Matthew D. Martella and Jenny I. Martella.
3. The address of the property in question is 442 Dogwood Lane, Blowing Rock, North Carolina, which is located in Caldwell County and has property identifying PIN number 2807-93-3632-000.
4. The existing house on the lot was built in 1964. The house does not conform with present day zoning setback regulations, but the house is "grandfathered" for its location on the lot and is legally nonconforming.
5. The property is zoned R-15.
6. The applicant wants to do the following three things, which would violate zoning regulations and require a variance:
  - (A) The applicant wants to build a second story addition onto the footprint of the existing house on the lot. Blowing Rock Code of Ordinances section 16-12.4, "Building Setback Requirements," requires a street setback of 30 feet, but after applying the allowed administrative waiver of Blowing Rock Code of Ordinances section 16-12.4.9, the allowed street setback required is 20 feet. The applicant is seeking a 12-foot variance into the 20-foot street setback for construction of the second story addition on the footprint of the existing legally nonconforming house. See the Staff Report, which is a part of the record of this hearing.

(B) The applicant wants to build a deck on the south side of the house, which is the rear, measuring 14 feet long by 4 feet and 2 inches wide onto the rear of the house. (The typed Staff Report contains a typographical error on the first page where it says this deck would measure 26 feet and 9 inches long; the correct desired length is 14 feet.) This deck would require a 5-foot variance into the 20-foot street setback at the rear of the house, which the applicant is seeking.

(C) The applicant wants to build a second new deck on the south side of the house, which is the rear, measuring 23 feet and 9.5 inches long by 4-feet 2 inches wide. This deck would require a 5-foot variance into the 20-foot street setback at the rear of the house, which the applicant is seeking.

7. The Blowing Rock Town Code ordinance sections which are at issue here, and which stand in the applicant's way are section 16-12.4, section 16-12.4.6, and 16-12.4.9. After application of these ordinances to the property at issue, there would be a required 20-foot street setback on the north/front side of the house and a 20-foot street setback on the south/back side of the house.
8. There are no other parties with standing to come into this case and hearing.
9. The applicant did provide drawings and sketches and plans and pictures illustrating what the applicant wants to do.
10. The Town of Blowing Rock has provided and given all necessary legal notices of this case and this hearing.
11. 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.  
  
Eleven (11) nearby property owners were sent notice of this case and hearing. The Town Planning Director, Brian Johnson, heard from only one of the eleven nearby owners, and that was Gregory Needham, who was not present at this hearing.
12. The applicant and property owner did receive a copy of the Planning Director's staff report prior to the hearing. The staff report is an exhibit in the record of this case.
13. There was one other witness in the hearing besides the Planning Director, Brian Johnson, and the witness for applicant 4FortyFour, Kevin Troyer. That other witness was the owner of the property at issue, Matthew D. Martella. Mr. Martella testified and gave evidence as regards the planned construction and the hardships created by the zoning ordinances.
14. What the applicant is proposing would not impair emergency vehicles such as fire trucks and ambulances.
15. What the applicant is proposing would not create a fire hazard.
16. What the applicant is proposing would not block or impede visibility on any street or highway.
17. What the applicant is proposing would not be contrary to public health and/or safety.
18. Unique features of this property include:



- (A) The property is in the shape of a triangle, with street roadway (Dogwood Lane) bounding the property on three sides.
- (B) The property narrows greatly on the east side at a hairpin curve in the roadway.
- (C) The property is bounded on the west side by power/utility lines which have a 30-foot utility easement.
19. Any attempt to expand the size of the existing home toward the west side of the property would meet with extreme difficulties, if not impossibilities.
  20. The applicant and the property owner say no trees will be removed from the west side of the property for this project.
  21. The entire project, second story addition and two new decks, is expected to take less than a year.
  22. The square footage of the existing house is 1,284, and the second story addition would add 725 square feet.
  23. The entire project as proposed and shown in the staff report exhibit does not require any variance on the north side of the existing house.
  24. The height of the proposed addition is allowed by ordinance.

#### **CONCLUSIONS OF LAW**

1. (A) 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 regulations as regards the second story addition. The Board's vote on this factor regarding the second story addition was unanimous, all five members voting "yes," to FIND substantial, material and competent evidence exists.  
  
(B) 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 regulations as regards the 14-foot-long deck. The Board's vote on this factor regarding the 14-foot deck was three members (Ms. Sarah Murphy, Mr. E. B. Springs IV, and Mr. Jerry Starnes) voting "yes," to FIND substantial, material and competent evidence exists, and two members (Mr. Stephen Schiller and Dr. Lee Rocamora) voting "no," to NOT FIND substantial, material and competent evidence exists.  
  
(C) 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 as regards the 23 foot and 9.5 inches long deck. The Board's vote on this factor regarding the 23 foot and 9.5 inches long deck was three members (Ms. Sarah Murphy, Mr. Jerry Starnes and Mr. E. B. Springs IV) voting "yes," to FIND substantial, material and competent evidence exists, and two members (Dr. Lee Rocamora and Stephen Schiller) voting "no," to NOT FIND substantial, material and competent evidence exists.

2. 

(A) 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 as regards the second story addition. The Board's vote on this factor regarding the second story addition was unanimous, with all five members voting "yes," to FIND substantial, material and competent evidence exists.

(B) 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 as regards the 14-foot-long deck. The Board's vote on this factor regarding the 14-foot-long deck was three members (Ms. Sarah Murphy, Mr. E. B. Springs IV and Mr. Jerry Starnes) voting "yes" to FIND substantial, material and competent evidence exists, and two members (Dr. Lee Rocamora and Mr. Stephen Schiller) voting "no," to NOT FIND substantial, material and competent evidence exists.

(C) 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 as regards the 23 foot and 9.5-inch-long deck. The Board's vote on this factor regarding the 23 foot and 9.5-inch deck was three members (Mr. Jerry Starnes, Ms. Sarah Murphy and Mr. E. B. Springs IV) voting "yes," to FIND substantial, material and competent evidence exists, and two members (Dr. Lee Rocamora and Mr. Stephen Schiller) voting "no," to NOT FIND substantial, material and competent exists.
3. 

(A) 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 property owner as regards the second story addition. The Board's vote on this factor as regards the second story addition was unanimous, all five members voting "yes" to FIND substantial, material and competent evidence exists.

(B) 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 property owner as regards the 14-foot-long deck. The Board's vote on this factor regarding the 14-foot-long deck was unanimous, all five members voting "yes" to FIND material and competent evidence exists.

(C) 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 property owner as regards the 23 foot and 9.5-inch-long deck. The Board's vote on this factor regarding the 23 foot and 9.5-inch-long deck was unanimous, all five members voting "yes" to FIND substantial, material and competent evidence exists.
4. 

(A) 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 as regards the second story addition 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, all five members voting "yes" to FIND substantial, material and competent evidence exists.

(B) 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 as regards the 14-foot-long deck 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 regarding the 14-foot-long deck was three members (Ms. Sarah Murphy, Mr. Jerry Starnes and Mr. E.B. Springs IV) voting "yes" to FIND substantial, material and competent evidence exists, and two members (Dr. Lee Rocamora and Mr. Stephen Schiller) voting "no," to NOT FIND substantial, material and competent evidence exists.

(C) 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 as regards the 23 foot and 9.5-inch-long deck 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 regarding the 23 foot and 9.5-inch-long deck was three members (Ms. Sarah Murphy, Mr. Jerry Starnes and Mr. E.B. Springs IV) voting "yes" to FIND substantial, material and competent evidence exists, and two members (Dr. Lee Rocamora and Mr. Stephen Schiller) voting "no," to NOT FIND substantial, material and competent evidence exists.

5. The Board of Adjustment DOES grant the applicant a variance, but only for the second story addition, as proposed and shown in the staff report, allowing a 12-foot variance into the street setback on the south side of the property. The approval for this variance for the second story addition has mandatory conditions attached; there is no approval without these mandatory conditions. The conditions are as follows:

#### **MANDATORY CONDITIONS**

The Board of Adjustment makes the following mandatory conditions of the granting of this variance, and these mandatory conditions last from the beginning of building and construction activity related to the second story addition, until the end of that activity and a successful permit of completion being issued by the Blowing Rock Town Building Inspector.

The first condition is that there is to be absolutely no parking of vehicles or placement of materials related in any way to the building and construction of the second story addition in the roadway of Dogwood Lane, from curb to curb and side to side of Dogwood Lane. This includes all of the roadway of the Blowing Rock street "Dogwood Lane," not just the roadway adjacent to the property at 442 Dogwood Lane.

Vehicles related to that building and construction may stop and stand for brief periods of time not to exceed fifteen (15) minutes to load and unload materials and equipment. During such loading and unloading the vehicle is not to be left unattended for any period of time.

As a further condition, there must be a sign prominently displayed and visible in the front of the property at 442 Dogwood Lane and the sign must be as follows:

It must be 8 feet by 4 feet in size, standing erect, and with the following wording boldly written on it and visible from the street:

"During construction here, the owner has agreed to not block or impede the Dogwood Lane roadway. Any problems with the roadway being blocked can be reported to the Blowing Rock Planning and Inspections Office, 828-295-5240."

6. The Board of Adjustment did adopt the above-listed Conclusions of Law by a unanimous vote, all five members voting "yes," to adopt the Conclusions of Law.

This decision has been put into writing and has been approved by the participating members of the Blowing Rock Board of Adjustment.

This decision is effective upon filing with the Clerk.

*Chairman Springs made a motion to adjourn the meeting, seconded by Jerry Starnes. All in favor.* Meeting Adjourned at 9:07 p.m.

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Chairman, Board of Adjustment

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Planning & Zoning Specialist, Taylor Miller