Town of Indian Trail

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PLANNING AND DEVELOPMENT DEPARTMENT

BOARD OF ADJUSTMENT MINUTES
September 25, 2014
06:30 P.M.

Call to Order

Chair Daniel Takah called the meeting to order.

Roll Call

The following members of the governing body were present:

Board Members:	Tripp Melton, Daniel Takah, Shirley Howe, Tim Rogers, and Christopher Chopelas.
Members Present but not Voting:	Robert Thurbon.
Absent:	Dr. Shamir Ally, and Patrick O'Connor.
Staff Members:	Keith Merritt- Town Attorney, Rox Burhans-Planning Assistant Director, Kevin Icard-Associate Planner, and Pam Good-Board Secretary

Approval of Minutes - August 28th

Shirley Howe made a motion to approve Minutes - August 28th, motion seconded by Christopher Chopelas.

Board voted unanimously in favor of the motion.

Public Hearings-

Chair Takah opened the hearing by reading the fairness statements to the board members.

Staff and applicant came forward for the affirmation of oath.

ember Chopelas made a motion to open the hearing. Seconded by Tripp Melton. The vote was unanimous.

Staff Icard presented the case regarding VAR2014-002. Timothy & Tammy Burney the property owners of 233 Enchanted Drive (Parcel 07-132-146) were requesting a variance to allow existing structure relief from the side setback requirement for accessory structures that are over a height of twelve (12') feet. Mr. Burney's accessory structure is fifteen (15') feet in height which requires it to be set eleven (11') off the side property line. It is set approximately five (5') feet off the property line. Mr. Burney constructed a structure (no walls) in July of this year in the rear of his property along the side property line as a means to park his recreational vehicle. The structure was constructed without Town zoning or Union County building permits. The applicant chose to wait to make any structural changes until he could see if the variance was approved. Also, if the variance was approved, because of the square footage of the accessory structure, a special use permit for the structure would also be required. Staff Icard presented a power point presentation as well as providing a copy of of the site summary in the staff report to each board member. The site was in the Enchanted Forest subdivision in which Staff Icard noted that there is no HOA. The structure on the property was attached to the existing garage. Pictures were shown of various angles of the property.
Staff Icard explained that the Town's Ordinance states that an accessory structure can only be 60% of a principal structure. With the applicant's 1500 square foot home, he would be allowed to build up to 900 square foot addition. Since the applicant already had built a 400 ft previous addition, he would be allowed a 500 foot structure to house his recreational vehicle. Presently the additional structures add up to 90% of the principal structure.

The Union Country Building Code Inspector contacted Staff to inform them that the structure was not acceptable according to state building codes. There would need to be penetration of the roof structure down to the sub-base and would need to be reinforced for the current design to be continued. Mr. Burney had consulted a structural engineer who had stated that if plans go forward, he felt he could draw plans to bring the structure to code but hadn't drawn plans yet at this time.

Staff Icard then spoke to the Plan consistency and stated that it could become compliant but many questions remain until going through the complete permitting process.

Application must meet the follow the following 3 criteria:

1. Is the property in the Town's jurisdiction?
2. Is the application complete?
3. Does the application comply with all the applicable requirements of this ordinance?

Staff Icard stated that the applicant had met the first two criteria but was not able to comply with all the requirements of the ordinance as it presently exists because of the setback requirements as well as the need for the special use permit.

Mr. Icard also stated that the notices were properly posted as well as adjacent property owners were notified. He finished his presentation with the statement that he would be available for questions.

Member Rogers asked if there were any restrictive covenants associated with the property. Staff Icard replied that there were none to his knowledge but that it would be a question for the applicant, Mr. Burney, who also replied no to the question.

Member Melton asked who filed the complaint. Staff Icard answered that it was the adjacent property owner who was notified of the meeting regarding this case.

Chair Takah asked about the steps of proceeding, if the variance is approved and what would happen with the special use permit. Staff Icard explained that that the variance would have to be approved. If that occurs, the pplicant would need to return to the board to request a special use permit. Before applying for the special use permit, an impact statement would be required, the same format followed that occurs with any other special use permit. This meeting was due to where the structure was placed on the property. The special use permit would be required due to the size of the structure.

The question was asked what will happen if the variance is not approved. Staff Icard stated that a notice of violation would be issued and the structure would need to come into compliance. If the applicant lowered the height to 12 foot, he wouldn't need the variance but would still need the special use permit. Staff Icard mentioned that because of the height of the vehicle, it wouldn't be possible to lower the height.

Member Howe asked when the structure had been built. Staff Icard answered in June or July of 2014. He also explained about the County Building Code Inspector's findings and the load bearing problem with the structure.

Mr. Timothy Burney of 233 Enchanted Dr. Matthews, NC stepped forward to speak. He also presented copies of photos of the property he'd brought to the hearing. Copies were passed to each of the board members and entered into the record as Exhibit 1.

He stated he'd built structure to protect his RV. Passed copies of photos to members of the board. He was previously informed that he could have put a driveway in but anesthetics made them choose what they did. He wasn't aware of the setback and height regulations and tried to make it look as good as he could. He stopped construction when the complaint was made. He made note of one photo that showed from a neighbor's property that had a tree line that hid view of the structure.
he reason for separating variance and SUP, was advised to separate the two and an appraisal for the SUP would be approx $900. He felt there was no reason to go forward until receiving approval for the variance.

The question was asked if Mr. Burney did work himself. He answered that he did. He tried to make it as nice as he could for what it was; and matched the shingles with the house.

Member Rogers asked what expertise applicant relied on when building this. Mr. Burney replied that he used what he'd learned through the years and his father-in-law who has done some sub work.

Chair Takah asked about the safety of the structure and the roof, the 6 by 6's are exposed without being tied in with any gussets, questioned Mr. Burney if he felt if the structure was safe with a substantial wind. Mr. Burney felt it was safe. The structural engineer had told him what to do, what to purchase, and how to attach it.

Member Rogers asked the applicant if a variance is not given, would 500 feet accommodate the structure? Mr. Burney answered no.

Chair Takah asked the applicant if he'd thought about the need for a building permit when considering building this structure. Mr. Burney said he'd not considered it because it was an exterior structure like a pole barn that doesn't have electrical power.

Member Rogers stated that lots of deeds have restrictive covenants, did the applicant have any? Mr. Burney replied he didn't know of any currently and that two properties in the neighborhood have built structures that ceeds the square footage of his structure.

Member Howe mentioned that it is hard to enforce older neighborhoods that don't have HOA's.

The question was asked why the applicant hadn't built the structure on the other side of the property. Mr. Burney said that he wouldn't be able to get into the structure from that side as the house was in the way.

Chair Takah explained his concern about the soil; is it sufficiently setting for the structure, the engineer doesn't know at this point. The professionals have to say it is sturdy.
Staff Icard stated that the Town relies on Union County to inspect the buildings to make sure they are in compliance.

Member Chopelas reminded the board the meeting was for the variance only at this time.

TR- must go through 5 finding of fact, bound by law and must make a determination if you are in violation of any of the 5 findings of fact. Is there a question that you can go back and redo where you wouldn't have to ask for variance.
Mr Burney answered to his knowledge, no, he would be unable to do so.

Chair Takah spoke about the height of the structure should be built at 11 foot, not the present 6 foot where it now stands, in fairness to the neighbors.

Member Howe asked what width did Mr. Burney's vehicle have between the structure and his RV on the inside of the structure.
Mr. Burney replied that he had a clearance of approximately 18 inches when sides slide out.

Member Howe complimented Mr. Burney on the appearance of the shingles on the roof line matching the house.

Chair Takah closed the public comment portion of the hearing.

Deliberation-
Staff Icard reminded the Board that they needed a four fifth's vote for a variance decision.

SH- asked staff to provide all date stamp and signatures to board in future. Rox replied that staff would be able to do so.

The Board proceeded to vote on the 3 criteria that the Variance must meet.

1) Whether the property was in the Town's jurisdiction.
Member Chopelas made a motion that it was in the Town's jurisdiction. Member Melton seconded the motion.
The motion carried unanimously.

2) Was the application complete.
Member Melton made the motion that the application was complete. Member Rogers seconded the motion.

Member Howe asked about pages without dates and fees. Staff Icard stated that the application was date stamped. Staff Burhans said all paperwork was submitted as a packet to the Town of Indian Trail. He also stated that Staff would be happy to have future attachments show all signatures and date stamps for the board to examine.

The motion carried unanimously.

3) Does the application comply with all the applicable requirements of this ordinance.

Attorney Merritt stated that a motion should be that it was not in compliance at this time, but that is the subject of the variance.

Member Rogers made the motion that it was not in compliance but that it was the subject of the variance. Motion seconded by Member Howe.

The motion carried unanimously.

Findings of Fact-

1. *Unnecessary hardship would result from the strict application of the ordinance; and*

Member Rogers made the motion that there was no unnecessary hardship. Seconded by Member Chopelas.

Vote was unanimous.

2. *The hardship results from conditions that are peculiar to the property, such as location, size, or topography; and*

Member Chopelas made the motion that the hardships do not result from the above conditions, that other locations within the property

could be utilized and the structure could be lowered to fit within the ordinance. Member Howe seconded the motion.

Vote was unanimous.

3. *The hardship did not result from actions taken by the applicant or the property owner; and*

Member Chopelas made the motion that it was a self-inflicted hardship as the applicant didn't apply for permits or seek guidance from

professionals in this matter. Member Rogers seconded the motion.

Vote was unanimous.

4. *The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and*

substantial justice is achieved; and

Member Chopelas made a motion that it wasn't consistent in that no building permits were pulled and public safety was not assured.

Member Rogers seconded the motion.

Vote was unanimous in favor of the motion.

5. *The variance will neither result in the extension of a nonconforming situation in violation of Unified Development Ordinance (UDO) Division*

1400 nor authorize the initiation of a nonconforming use of land.

Member Rogers moved that the variance would violate the above statement. Member Chopelas seconded the motion.

Vote was unanimous in favor of the motion.

Member Rogers made the motion to deny the variance for the applicant of VAR2014-002. Seconded by Member Chopelas.

Vote was unanimous to deny the variance.

Mr. Burney was excused to speak with Staff Icard about other steps regarding his structure.

Chair Takah closed the public hearing. Member Melton made the motion to close. Member Chopelas seconded the motion.
Vote was unanimous.

Other Business-

Member Rogers commended Attorney Merritt on his explanation of the portion in the Rules of Procedure regarding three consecutive meetings, and asked if it could be worded so that there is some leeway for reasonable commitments.

Mr. Merritt stated that it would be hard to write it to cover every circumstance. You could write something in about reasonable and standard wording or without good cause for missing a meeting so it gives some discretion.

Staff Burhans explained that the wording says "may be removed "not "shall" in missing consecutive meetings. The language as written takes into account special circumstances.

Chair Takah stated that the Board of Adjustment would make a recommendation to the Town Council that would start the process, not the Town Council.

Attorney Merritt stated that there would be nothing to prohibit the board from acting on behalf of the person in question. He also said the current wording is for due cause, not just for attendance.

Member Howe mentioned that Alternate Members, gain knowledge and experience by being in the audience even when not seated at the dais. All agreed there is value to all attending regularly.

Discussion continued that there is a lot of leeway in the present wording of attendance in the Rules of Procedu document.

Motion was made by Member Rogers to send the Rules of Procedure as presently worded to the Town Council. Seconded by Member Chopelas. Vote was unanimous.

Member Howe mentioned that $1000 had be approved to be split between the Towns boards for miscellaneous treats and snacks for the year.

Adjournment- Meeting adjourned at 8:07PM.

Chairman: Daniel Takah

Secretary: Pamela L Stood