

## Town of Indian Trail



P.O. Box 2430

Indian Trail, North Carolina 28079

Telephone 704-821-5401

Fax 704-821-9045

### PLANNING AND DEVELOPMENT DEPARTMENT

### BOARD OF ADJUSTMENT MINUTES

May 28, 2015

06:30 P.M.

#### Call to Order-

Chair Takah called the meeting to order at 6:30pm.

#### Roll Call

The following members of the governing body were present:

Board Members: Daniel Takah, Tim Rogers, Christopher Chopelas, Dr. Shamir Ally, and Patrick O'Connor.

Members Present None.

but not Voting:

Absent: Tripp Melton, Shirley Howe, and Robert Thurbon.

Staff Members: Keith Merritt- Town Attorney, Kevin Icard-Senior Planner, and Pam Good-Board Secretary

#### Approval of Minutes - March 26, 2015

Member Ally made a motion to approve the minutes, seconded by Member Chopelas. Approval was unanimous.

#### Public Hearings-

Motion to open by Member O'Connor, seconded by Member Rogers. Approval was unanimous.

Staff Icard presented the case VAR2015-001 DC Homes LLC Lot 1 Wadsworth Front Loading Garage. He gave a verbal overview and timeline of events as seen on the power point and as well as in the hard copy staff report in front of each of the board members. Staff had met with the applicant to discuss possible solutions to the present violation to meet the requirement as Staff was unable to approve the plan as built. Therefore, the applicant has come to ask for a variance for the structure.

Staff Icard presented a larger image of the elevation of what was submitted as well as a recent photo of the present property. Staff Icard then spoke that this project is consistent with Comprehensive Plan goal 2.3.2 Land Use and Housing. *Land Use and Housing No. 3: Improve existing Indian Trail neighborhoods to create strong and vibrant communities.*

Criteria for Approving a Variance

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.

#### **Findings of Fact**

Under UDO Section 380.020, the Board of Adjustment must make these required considerations of public health, safety, and welfare. The Board of Adjustment's authority in the review of this variance application is broad and the

Board may approve with conditions if it concludes, based upon the information submitted at the hearing, that the proposed request finds that:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property; *and*
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance; *and*
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as self-created hardship; *and*
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*
5. The variance will neither result in the extension of a nonconforming situation in violation of DIVISION 1400, Nonconformities nor authorize the initiation of a nonconforming use of land.

If one of these findings cannot be made, then the Board must move to deny the variance request, stating for the record why the Board has decided to do so. If the Board is of the opinion that the above required findings can be made to approve the variance, staff recommends the site be subject to the following conditions:

1. Staff does not have any recommended conditions of approval. The Board may develop specific conditions if it chooses to approve the proposed variance.

All adjacent property owners were notified by first class mail.

#### Applicant Presentation:

Wes Hinson of 309 Post Office Dr. Indian Trail, representing Mr. Cole, stepped to the podium to provide additional information. He spoke that at the time the plan was approved, there was a problem with the site setback so the applicant inverted the garage. The applicant had met with Staff Keith Sorensen, former employee, and decided to invert the garage. The present structure is not in compliance so the applicant recently has met with Staff Icard to discuss possible solutions to bring the structure into compliance.

Mr. Hinson stated he believed the present structure fits with the spirit of the ordinance if not the letter of it. Mr. Hinson stated that they'd received no phone calls from area property owners. Staff Icard stated that all property owners in Wadsworth had been notified of the hearing, and he'd received no communication from anyone.

Dan Cole with DC Homes of 2020 of King Henry's Highway stepped to the podium. Mr. Cole presented two renderings that he'd brought to the meeting were submitted to the board to examine and to be kept for the record.

Member Ally asked Mr. Cole what really happened and what will happen if the board doesn't approve the variance. Mr. Cole explained that he submitted the plans, made three trips to the Town Hall, and met with Staff Keith Sorensen to try different variations of the original plan.

Chair Takah asked if the lack of size of the lot is the problem. Mr. Cole answered yes. Chair Takah also asked why Mr. Cole didn't come back with a foundation site plan? Mr. Cole answered that he didn't know that it was required.

Staff Icard stated that a foundation site plan was recommended not required.

Staff Icard stated that the county has already approved the structure. He is not allowed to get electricity on his property till the Town of Indian Trail gives zoning approval.

Member Rogers asked if we can call Keith Sorensen back as a witness. Attorney Merritt answered that we can subpoena a witness. Other members expressed various opinions on whether that would help clarify as there are no known notes.

Member Chopelas asked how a house gets drawn on a lot that doesn't fit on it. Wouldn't the architect or surveyor see that it wasn't working. Staff Icard said, in general, that builders try to maximize every square foot on a lot.

Member Rogers asked what would consist of making side load garage on this property. Mr. Cole answered that it won't fit.

Wes Hinson stated that it can be difficult to follow all changing ordinances within various municipalities. In the end, what is the best of the options for a solution.

Member Rogers asked for clarification that staff wasn't recommending any solution. Staff Icard verified that he had no recommendations.

Mr. Hinson stated that the lot is unique and also that the neighborhood has older homes that also have the extended garage. He added that no one is opposing this structure in the neighborhood. The mental hurdle is greater than the real issue. Attorney Keith Merritt advised the board to make decisions based on current evidence presented to them.

Member Ally asked how many lots are unsold yet. Mr. Cole answered that there are six lots. Mr. Cole stepped down.

#### **Board Discussion:**

Member Rogers looked at this case from a builder's perspective, didn't like it, and flipped it around.

Member Rogers said hardship is a dilemma. There is no evidence from Keith Sorensen one way or the other. Member O'Connor felt like the builder acted in good faith.

No further questions for staff or Mr. Cole.

#### **Closed Public Comments**

Member Ally made a motion to close, seconded by Member Chopelas. The vote was unanimous.

1. Is the property in the Town's jurisdiction? Chair Takah made a motion that yes it was, seconded by Member Chopelas. The vote in favor was unanimous.
2. Is the application complete? Yes, motion by Member Ally, seconded by Member Chopelas. The vote in favor was unanimous.  
Discussion followed regarding various interpretations of #3.
3. Does the application comply with all the applicable requirements of this ordinance? Member Ally made a motion in favor, seconded by Member Chopelas. The vote in favor was unanimous.

#### **Finding of Fact**

1. **Unnecessary hardship would result from the strict application of the ordinance; and** (Clarifier: *It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.*) Member Rogers made a motion that it would be a hardship because the applicant couldn't build a side loading garage. Motion seconded by Member Ally. Vote: 3-aye 2-no

2. **The hardship results from conditions that are peculiar to the property, such as location, size, or topography; and** (Clarifier: *Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.*) Member Rogers made a motion that it is not a hardship because the house was approved to be built on the property. Seconded by Member Ally. Vote: 3-aye 2-no
  
3. **The hardship did not result from actions taken by the applicant or the property owner; and** (Clarifier: *The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.*) Member Ally made the motion that the applicant didn't deliberately or maliciously cause the problem. Seconded by Member Rogers. Vote: 3-aye 2-no
  
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 Rogers made a motion with the reasoning that the requested variance is consistent as stated in the Land Use and Housing #3: *Improve existing Indian Trail neighborhoods to create strong and vibrant communities.* Seconded by Member O'Connor. Vote: 3-aye 2-no

Attorney Merritt clarified that each variance is decided alone; there is not precedence setting for another situation.

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 Ally made a motion that neither will result in extension of nonconforming situation. The motion failed for lack of a second.  
 Member Chopelas made a new motion that the variance will result in a non-conforming situation in violation of UDO Division 1400. Seconded by Member Takah. Vote: 3-aye 2-no

Based on the findings of fact, Chair Takah made a motion to deny the variance. Member Chopelas seconded the motion. The vote: 4-aye 1- no.

**Other Business-** none

**Adjournment** Meeting adjourned at 7:45pm.

Chairman: Daniel Takah

Secretary: Pamela Wood