Town of Indian Trail

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PLANNING AND DEVELOPMENT DEPARTMENT

BOARD OF ADJUSTMENT MINUTES
August 28, 2014
06:30 P.M.

Call to Order

Meeting was called to order by Acting Chair-Chris Chopelas.

Roll Call-

The following members of the governing body were present:

Board Members:	Daniel Takah, Shirley Howe, Tim Rogers, and Christopher Chopelas.
Members Present but not Voting:	Robert Thurbon, Dr. Shamir Ally, and Patrick O'Connor.
Absent:	None.
Staff Members:	Keith Merritt- Town Attorney, Rox Burhans-Planning Assistant Director, Kevin Icard-Associate Planner, and Pam Good-Board Secretary

Member Tripp Melton was absent during roll call but entered the meeting at approximately 6:40pm

Swearing in of new members

Shirley Howe, Tim Rogers, were sworn in to regular seats. Dr Shamir Ally, Patrick O'Connor were sworn in as alternate members.

Appointment of Chair and Vice Chair

Daniel Takah was nominated as Chair.
Christopher Chopelas made a motion to approve Appointment of Chair, motion seconded by Tripp Melton
Board voted unanimously in favor of the motion.

Chris Chopelas was nominated for Vice-Chair. Daniel Takah made a motion to approve Appointment of Vice-Chair, motion seconded by Daniel Takah.
Board voted unanimously in favor of the motion.

The gavel was passed to new appointed Chair Daniel Takah to conduct the remainder of the meeting.

Approval of Minutes - JUNE 26 (no meeting in July)

Motion to approve the June minutes as written by Member Chopelas. Seconded by Tim Rogers.
Approval was unanimous.

Public Hearings-

Chair Takah gave a brief description of what a quasi-judicial hearing entails. He also welcomed Attorney Keith Merritt and stated that Mr. Merritt is in attendance at the hearings for advice, when needed.

Staff Kevin Icard and Mr Maffucci were sworn in.

Opening of the Public Hearing: by Daniel Takah. Seconded by Tim Rogers. Board voted unanimously in favor of the motion.

Staff Kevin Icard presented a power point of the application in which the owner was desiring to build a screened-in porch in the rear of the home on the property. Staff Icard presented power point slides of the site property, as well as other properties, and other typical porches in the neighborhood. (powerpoint presentation is attached). Mr. Icard stated, for plan consistency, there is no change of use. It is also similar design elements with the surrounding area of additions throughout the neighborhood. The staff report is incorporated into the minutes and is also available on the Town's website.When approving the Variance, there are three items that need to be considered:

1. Whether the property being considered is in the Town's jurisdiction
2. If the application is complete
3. Is the application in compliance with all the applicable requirements.

Staff Icard stated that this is in the Town's jurisdiction, it is complete, and if the variance is granted, it would comply with all the applicable requirements. Staff Icard stated that the Board needed to use the following findings in determining their decision. They are as follows:

1. **Unnecessary hardship would result from the strict application of the ordinance; and**
2. **The hardship results from conditions that are peculiar to the property, such as location, size, or topography; and**
3. **The hardship did not result from actions taken by the applicant or the property owner;**
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 Unified Development Ordinance (UDO) Division 1400 nor authorize the initiation of a nonconforming use of land.**

Staff Icard asked if the board members had any questions for him.

Shirley Howe asked the question that she had previously heard the variance was 5 ft. now hears that it may be 3 more feet. Mr. Icard replied that the reason was the applicant approached him right before the meeting and was concerned that the applicant's intent is to have a 10 foot addition onto his house. However if the construction would go over 6 inches, then it wouldn't be allowed. Then he would actually be in violation of the variance. His intent is to have 10 feet and whatever overhang for the pitch of the roof, he just wanted to make sure the foundation would be in compliance.

Member Howe asked if the application would need to be modified if the board would consider the additional footage with this change.

Attorney Keith Merritt replied that the additional three feet would not need to be redone as you are imposing

conditions on it anyway. You could approve or disprove as you see fit. You could have the footprint in a particular area and size and the overhang not to exceed a certain amount.

Tripp Melton asked if the 13 feet was the measurement from the house. Staff Icard said that was correct.

Member Tim Rogers asked, with this subdivision, are there any HOA requirements regarding architecture? Staff Icard replied that the Home Owner's Association has been notified who would have their own architecture review committee. We, (Staff) always make sure the materials used are consistent with the design of any additions, and that is Town's Unified Development Ordinance. Members Rogers clarified his question about whether Staff has asked the HOA the question about their regulations needing to remain in the setbacks of the property. Staff Icard responded that no, that question has not yet been asked of the HOA.

Attorney Merritt stated that they have been given notice of this proceeding and have the opportunity to come to the hearing and be heard, and the discussion should stick with what is before us here. The Town's concern is that the property owners have been notified and the HOA has been notified. The Town tries to notify anyone affected by the proceeding.

Staff Icard mentioned two HOA's have been notified. Mailings went to both as well as all the adjacent property owners.

Member Shirley Howe asked if there had been any phone calls or letters to the Town regarding this hearing. Staff Icard responded that the Town had received no phone calls or e-mail regarding this.

Daniel Maffucci of 1120 Kinder Oak Drive, Indian Trail, came to the podium to speak.
He had purchased the house as a spec house. He had asked his real estate agent if they could add a screened-in porch, agent told them a variance would be needed. He didn't really know what that meant. He had thought it meant it was just a permit process. They didn't expect the bugs to be so bad as they had previously lived in Phoenix, AZ. He stated most houses on the block either have room to build something like a screened-in porch or already have one, or have a porch they could cover without encroaching into the setback. This porch addition would not be any closer to the neighbors than is presently. He explained that he doesn't think the plan will include the extra 3 feet but doesn't have a design yet as the builder has not yet given a design or estimate before a Variance Hearing. He is still planning on a 10 foot room addition; just didn't want to be 6 inches over the Variance.

Member Rogers asked Mr. Maffucci whether he'd contacted the HOA regarding what their ruling would be on this. Mr. Maffucci answered that he'd not done it yet. Member Rogers also asked Mr. Maffucci if he would have needed the Variance if he was just covering the present patio.
Mr. Maffucci replied yes; he would still need one. He noted that the future possible porch would be offset somewhat from the patio because the builder had said it would need to be because of the windows and where the present door is located.

Member Melton asked if this was anything different from the standard of the neighborhood. Mr. Maffucci replied it was consistent with the other homes.

Member Howe asked who poured the patio. Mr. Maffucci replied that the builder did, but the patio is allowed to encroach into the setback. Staff Icard stated that it is allowed to go into the setback because it is not vertical.

Member Howe asked if the site plan showed a blue line stream behind the property. Staff Icard said that it was an intermittent stream in which the water didn't dry up. He pointed out that there is no flood plain on his property.

Chair Takah asked Mr. Maffucci to clarify one more time, how many feet are you asking? Mr. Maffucci replied that he was asking for 13 feet from the house, 8 feet beyond the setback.

As there were no other speakers signed up, Chair Takah closed the Public Comment portion of the Hearing.

Deliberation:
Chair Takah called for a few minutes of silence in the meeting so the board could review and write notes in the Finding of Facts worksheets.

Member Tim Rogers asked to define unnessessary hardship. Keith Merritt stated that it is an undefined term; that is what the board decides. Each of the circumstances are unique and that is why you seek a variance from the rules. There have been amendments to the particular statute with regard to variances since that time. The standard for variance has gotten more liberal since I think 2010. The sheet that you're looking at is the standard as of today. You don't want to do anything that is out of character with the neighborhood. It really is up to you, as a board, to decide what is unreasonable and unnecessary hardship.

Chris Chopelas stated that he felt the hardship would be that Mr. Maffucci could only build a 5 ft porch and not make good use of the patio.

Having heard all of the evidence and arguments presented at the public hearing, the Board of Adjustment makes the following **FINDINGS OF FACT** and draws the following conclusions:

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;** The Board determined that the applicant's hardship is that he could only build a porch that would be five (5') feet in depth from the rear of the home; which isn't sufficient in depth to meet his needs.
Motion: by Member Rogers to approve. Seconded by Member Chopelas. Unanimously approved.

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.** The Board determined that due to the shape, size and placement of the home on the lot there is a hardship which is peculiar to the property.
Motion: by Member Chopelas to approve. Seconded by Member Howe. Unanimously approved.

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.** The Board determined that the hardship was not a result of any actions taken by the property owner. Since the home was built by the builder as an inventory home, the owner had no input on the placement of the home on the property. The home was built twelve (12') feet behind the front setback, which is thirty (30') feet. The specific type of home that was built is larger than the majority of homes in the neighborhood. This decreased the amount of available space in the rear for expansion.
Motion: by Member Chopelas to approve. Seconded by Member Melton. Unanimously approved.

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.** The Board determined that the request to allow an eight (8') foot encroachment into the rear setback is consistent with the spirit, purpose and intent of the ordinance.
Motion: by Member Melton to approve. Seconded by Member Rogers. Unanimously approved.

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.** The Board determined that the variance will not result in the extension of a nonconforming situation since one did not currently exist.
Motion: by Member Chopelas to approve. Seconded by Member Melton. Unanimously approved.

Therefore, on the basis of the foregoing, it is ordered that the application of Variance 2014-001 for 1120 Kinder Oak Drive, Indian Trail be **GRANTED** with the following conditions:

1. A zoning permit must be issued from the Town of Indian Trail; and
2. A building permit must be issued from Union County Building Code Enforcement prior to construction; and
3. An as-built survey must be submitted for final zoning compliance once the addition is complete; and
4. The enclosed structure's foundation or wall may not encroach more than six (6') feet into the thirty (30') foot rear setback; and
5. Any roof eave (overhang) may not encroach more than an additional two (2') feet beyond the structure's foundation or wall into the thirty (30') foot rear setback

Member Shirley Howe made the motion to accept Variance 2014-001 with the 5 conditions.
Member Tripp Melton seconded the motion. The vote to approve was unanimous.

Other Business- Review and adoption of updated Rules of Procedure

Staff Keven Icard presented Rules and Procedures.

All board members had received a copy of the updated version to reflect the recent changes of the Unified Development Ordinance.

Mr. Merritt had question regarding attendance and the three consecutive meeting rule and also advised it also needs to be approved by the Town Council since the rules have a provision about an action that can be taken by the council. Mr. Burhans replied that it historically hadn't been done previously but would take that into consideration.

Member Rogers asked about extraneous reasons for missing meetings, saying that the way, it is presently written in the Rules of Procedure, after three consecutive misses, the Town Council would be notified, and the member would be removed. Mr. Merritt replied that the Town Council was required to do so, just had that option.

Member Rogers suggested adding to phrase that certain circumstances, it would be allowed to miss consecutive meetings. Mr. Merritt explained about the hardship of getting a quorum and being able to make decisions. He also spoke about making the attendance of meetings/boards a priority. He explained the importance of the Board of Adjustment to the Town, how the decisions are separate from the Town Council. So, there is a lot of responsibility that exists in serving on this board, more than any other board, besides the Town Council.

We need to have members that are available and sitting on a regular basis as decisions need to be made.

Chair Daniel Takah felt that it was well stated. He is aware of someone is waiting for a decision.

Chair Takah suggested waiting a month to vote on the updated Rules of Procedure. Mr. Merritt reminded the board that regardless of the vote, some changes are based on state statutes.

Tripp Melton made a motion to table the review and adoption of updated Rules of Procedure, motion seconded by Chris Chopelas. Board voted unanimously in favor of the motion. The review of the Rules and Procedure will be tabled until the September meeting.

Member Howe asked if the lettering for the boarding kennel had been removed. Mr. O'Connor stated that it had been. Staff Burhans stated that there are no outstanding cases that would need a check in.

Adjournment-
Motion to adjourn by Chair Takah, seconded by Tripp Melton. Approval was unanimous.

Chairman: Daniel Takah

Secretary: Pamela J Good