

**TOWN OF HUNTERSVILLE
BOARD OF ADJUSTMENT MEETING
MINUTES**

October 13, 2020
6:30 PM - Huntersville Town Hall

Roll Call, Determination of Quorum

Prior to testimony, a group attestation was completed for all parties involved or giving testimony to the case. This included the applicants: Shane & Kristi Evatt, 8201 Sandowne Lane; Alba Rothell, 21249 Cold Spring Lane, Cornelius NC 28031; Laurie Martin, 15710 Pine Street; Scott Miskimon 2136 Vicchio Lane, Apex, NC; Steven Brown, 15719 Pine Street; Lauren Speight, Planner 1 and Sierra Saumenig, Senior Planner.

The Chairman read the disclosure statement to the members: The parties to this case are entitled to an impartial board. A board member may not participate in this hearing if she/he has a fixed opinion about the matter, a financial interest in the outcome of the matter, an undisclosed *ex parte* communication with a party, or a close relationship with an affected person. Does any board member have any partialities, *ex parte* communication, financial interest, or a close relationship with affected persons to disclose and recusal to offer? There were none.

Approval of Minutes

Consider approval of the August 11, 2020 Minutes of the Meeting

Consider approval of the September 15, 2020 Minutes of the Meeting

Hearing of Cases

V20-05 - Consider an impervious request for 8201 Sandowne Lane

made were to enable the families to be able to enjoy their time together.

The co-applicant then requested that the Board consider not just that a disability is a hardship in their case, but also that this is a reality with an aging population that must be considered for future needs of the residents and how this decision will affect their ability to address accessibility issues to their own homes as the need arises.

Alva Rothwell, 21249 Cold Spring Lane, Cornelius NC 28031 testified that he has been in quarantine since February and Shane and Kristi made the accommodations for him so that they could enjoy time together and not face a situation as they previously dealt with when his car broke down during a visit at their home and he was unable to find a

local car company with a wheelchair accessible vehicle to take him home. He urged the Board in their zeal to create a Town that complies not to forget about diversity and the need to adapt to others.

E. Cecil thanked the applicants for their testimony and then stressed that while he was empathetic to their situation the Board must consider that this is a decision regarding a private residence and not a publicly accessible location where ADA requirements could be applied.

P. Jacobson asked the applicants if switching the pavers to a wood deck had been considered since this is a pervious material and would resolve the issue. The applicant responded that they had been advised that a deck would not hold up given its location, drainage and type of soil.

J. Klutz commented that these are state mandates not just local Town ordinances therefore an impervious transfer or density averaging certificate are the two mitigation options that really exist and agreed that they are challenging to accomplish.

J. Bradshaw commented that in his opinion items 2 and 4 of the standards for granting a variance have been met since it does seem that the request is in line with the spirit and purpose of the Ordinance and he does agree with Staff that items 1 and 3 have not been met as there are remedies available to the applicants, although not easy to achieve. While he is sympathetic all four standards would need to be met for the granting of a variance.

J. Loucks asked the applicant if they were aware that an accessibility lift may be an option that could remove the necessity of the ramp and would alleviate some of the impervious overage.

E. Cecil offered that the applicant may want to consider removing the shed from the property which would also reduce some of impervious overage.

The applicant thanked the Board for their suggestions and stated that ADA requires an 8% grade on the ramp, and it was not practical to make this of wood when they investigated it at the time of installing the ramp.

P. Jacobson suggested that a Density Averaging Certificate was the most logical remedy that may be available to the applicant. He recommended that they zoom in on the watershed overlay and prospect locations within that watershed.

W. Smith made a Motion to Deny. This motion was incomplete, so E. Cecil offered to make a complete motion.

E. Cecil made a Motion to Deny in consideration of Staff's position for V20-05, a request by GREGORY S EVATT and KRISTINA J EVATT for a variance from Article 3.3.2-B, Section E of the Town of Huntersville Zoning Ordinance, the Board of Adjustment denies the major variance request based on a finding that the request

meets none of the four criteria, outlined in the Zoning Ordinance, for granting a variance. The Board of Adjustment finds the request meets the request does not meet the criteria for granting a variance based on the findings of fact indicated in the Staff Report. J. Loucks seconded the motion.

J. Bradshaw stated that while he agrees the variance must be denied, it was still his opinion that the variance request met 2 of the 4 criteria.

The motion passed (6-1) with J. Bradshaw opposed.

V20-06 - Consider an impervious request for 15710 Pine Street

Lauren Speight, Planner I (also referred to herein as “staff”) presented, and entered the Staff Report into the record through verbal testimony as indicated below, and written documentation, which is attached hereto as Exhibit B, and incorporated herein by reference.

The applicant, LAURIE R MARTIN, requests a variance Article 3.3.3-A, Section E of the Town of Huntersville Zoning Ordinance. The subject property is located within the Lake Norman Watershed Critical Area. This request is for a major variance to increase the impervious built upon area for the property by 1,279 square feet. See Exhibit A for the variance application.

Standards for Granting a Variance

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.

It is Staff's position that:

1. For the compliance of the existing excess of impervious area and the additionally requested impervious area for the pool the strict application of the Ordinance (Article 3.3.3-A, Section E) requires: 1) removal of impervious overage 2) the subject property obtain an impervious transfer from a lot within the subdivision 3) the subject property obtain a density averaging certificate from an eligible lot in the Town 4) the subdivision or subject property install a Best Management Practice (BMP) for water quality.
2. The applicant states removal of the driveway would require a significant reduction of the driveway area. The applicant states an impervious transfer from a lot within the subdivision is unlikely. The applicant states they are actively exploring the option of seeking a density averaging certificate. The applicant states they are not able to add a BMP.
3. The subdivision plat map does not note the property is located within the Lake Norman Critical Area Watershed and also does not record a maximum impervious limit for the property.
4. The subject property received zoning approval for a building permit and did not include the proposed amount of impervious are for the home and driveway. However, the permit notes “BROWNS COVE LOT #3-B-WATERSHED HOLD: LN-CA 24% MBUA,” which indicates the property received a hold on the

Certificate of Occupancy for the Lake Norman Critical Area Watershed and the property has a 24% maximum built upon (impervious) area restriction.

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.

It is Staff's position that:

1. The applicant does not demonstrate the physical conditions of the lot prevent adherence with Watershed regulations for impervious area.
2. The subdivision plat map does not note the property is located within the Lake Norman Critical Area Watershed and also does not record a maximum impervious limit for the property.
3. The subject property received zoning approval for a building permit and received a Certificate of Occupancy.
4. Based on Mecklenburg County GeoPortal estimates of impervious use, among the currently developed lots within Brown's Addition, Lot 3B appears to be the only property that is over its impervious maximum built upon area.

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 a self-created hardship.

1. The plat map "Brown's Addition Lots 2 & 3, Revised" that created Lot 3B does not note the subject property is located within the LN CA and also does not record the maximum impervious area for the lot.
2. A building permit was issued to Laurie R Martin (property owner and building contractor) January 20, 2006 for the existing home and driveway.
3. The building permit nor plot plan include the total proposed impervious area for the original home and driveway.
4. The permit notes, "BROWNS COVE LOT #3-B-WATERSHED HOLD: LN-CA 24% MBUA," which indicates the property received a hold on the Certificate of Occupancy for the Lake Norman Critical Area Watershed and the property has a 24% maximum built upon (impervious) area restriction.
5. While the applicant is the property owner and was the building contractor and therefore responsible for the home build, the applicant states they deliberately constructed the home based on information received by zoning authorities at the time.

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.

It is Staff's position that:

1. Per Article 3.3.3 of the Town of Huntersville Zoning Ordinance, "The intent of the Lake Norman Watershed Overlay District is to provide for the protection of public water supplies as required by the NC. Water Supply Watershed

- Classification and Protection Act (G.S 143-214.5) and regulations promulgated there under.”
2. Per Article 3.3.3-A, “The intent of these regulations is to require higher standards in the Critical Area of the Lake Norman Watershed because of the greater risk of water quality degradation from pollution.”
 3. Lake Norman Watershed regulations were effective June 6, 1994. Thus, when Lot 3B was created June 1, 2000 as a new lot of record, it was immediately subject to Watershed regulations with impervious restrictions.
 4. The plat map “Brown’s Addition Lots 2 & 3, Revised” that created Lot 3B does not note the subject property is located within the LN CA and does not record the maximum impervious area for the lot.
 5. A building permit was issued to Laurie R Martin (property owner and building contractor) January 20, 2006 for the existing home and driveway.
 6. The building permit nor plot plan include the total proposed impervious area for the original home and driveway.
 7. The permit notes, “BROWNS COVE LOT #3-B-WATERSHED HOLD: LN-CA 24% MBUA,” which indicates the property received a hold on the Certificate of Occupancy for the Lake Norman Critical Area Watershed and the property has a 24% maximum built upon (impervious) area restriction.
 8. The existing excess of impervious area and the requested additional 200 square feet of impervious area for a swimming pool qualify this variance application as a major variance request.
 9. The applicant states the requested impervious area of the pool may be mitigated by the removal of some impervious area.
 10. Per Staff correspondence with Rusty Rozzelle, Mecklenburg County Water Quality Program Manager and Storm Water Administrator, any increase beyond the maximum built upon area limit for the property necessitates mitigation to ensure water quality standards are met (Exhibit E).

L. Speight requested to enter an email received from Rusty Rozzelle, Mecklenburg County Water Quality Program Manager and Storm Water Administrator into the record as Town Exhibit 1. The request passed unanimously (9-0).

The email dated October 8, 2020 indicated that the County Storm Water Services, after review of the applicant’s request, recommends the variance be denied because an increase of 3.7% Allowed Built Upon Area would result in increased pollutants entering our drinking water supply reservoirs.

E. Cecil reviewed Section 5E of the Boards Rules of Procedure Conduct of Hearing. Scott Miskimon, 2136 Vicchio Lane, Apex, NC indicated he is the husband of the applicant. They were not married at the time she purchased the property and as such is not listed as an owner of the property.

S. Miskimon went on to testify that his wife purchased the property in 2005 and acted as General Contractor on the project. The location of the septic on the property required a very long driveway and meeting with Mecklenburg County staff onsite,

during which time no mention of impervious was made. His wife subsequently applied for a building permit and it was granted. Both the plot plan and the survey on the home indicate a 24% maximum built-upon-area, with no maximum square footage indicated. This reference did not translate with any County departments as being an issue and all permits and certificate of occupancy were granted. No additional impervious was added to the property in the following 13 years. Now that a request to add a swimming pool has been submitted the applicant has become aware of the impervious overage and is seeking to resolve the issue.

S. Miskimon requested to enter Applicant Exhibits 7-9 into the record. E. Cecil stated that the deadline for the applicant to provide evidence has already passed. He asked if any of the members of the Board had reviewed the contents of the exhibits, all members stated nay. He asked when the evidence became available to the applicant and what the general nature of the evidence consisted of in its relevance to the case. S. Miskimon stated that the evidence became available Sunday, October 11, 2020 and it is relevant in demonstrating the applicants attempt to mitigate the issue through impervious transfer.

J. Klutz recommended that the applicant consider tabling their variance so that the Board could consider their additional evidence. The applicant agreed to that option.

E. Cecil made a Motion to Hold Open the hearing until the November 10, 2020 meeting so that additional evidence as submitted by the applicant could be considered. J. Bradshaw seconded the motion. The motion passed unanimously (7-0).

J. Bradshaw requested that this item be placed first on the November agenda and E. Cecil noted that the alternate members, J. Bradshaw and J. Loucks, sitting as regular members for this hearing will need to be available to hear the continued request at the November meeting.

Other Business

Adjourn