

**TOWN OF SEVEN DEVILS
BOARD OF ADJUSTMENT**

Public Hearing – 5:00pm

Variance Application – 147 Deepwood Court, Bridges Residence

Regular/Organization Meeting – 5:30pm

October 24, 2017

The Seven Devils Board of Adjustment met for a Public Hearing for a Variance Application on Tuesday, October 24, 2017 at 5:00pm and in a Regular/Organizational Meeting at 5:30pm at Town Hall. Present at the Public Hearing were members John E. Duncan, Lois Dodson, George Ehlinger, Barbara Hurlbrink, Jack Byrnes-Alternate. Sarah Manning and Butch McLean-Alternate were absent. A quorum was met. Also in attendance were Debbie Powers, Town Manager; Rob Angle, Town Attorney joined for the Regular/Organizational Meeting; The minutes were recorded by Hillary Gropp, Town Clerk.

CALL TO ORDER

Manager Powers called to Order at 5:00pm the Public Hearing for a Variance Application – 147 Deepwood Court for the Bridges Residence. The purpose of this Public Hearing is to hear and review the Variance Application submitted by Bob Bridges, Owner. The Board of Adjustment received the Variance Application packet via email and a hard copy of the Variance Application/Board of Adjustment Meeting Agenda Packet was available.

As required by law, all property owners within 100 feet of 147 Deepwood Court have been notified via US first class mail of this Public Hearing. A notice was published in the Watauga Democrat on October 4, 2017. Signs have been posted at 147 Deepwood Court and Town Hall to notify of this Public Hearing. The Variance Application was posted on the Seven Devils website at www.sevendevils.net.

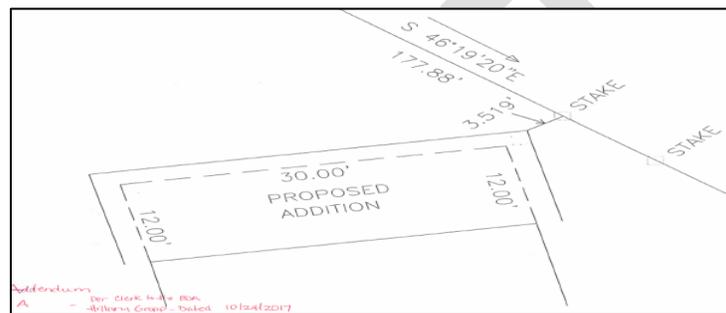
PUBLIC HEARING PRESENTATION

Mr. Bob Bridges thanked the Board of Adjustment for allowing him to present his Variance Application. He began by offering a brief history of his ownership of this residence for the previous twenty (20) years. Initially, he occupied the residence as a seasonal owner, but now the desire is to relocate as a year-round resident. To accommodate being a full-time resident he requires one (1) level living and a garage for winter months. Thus, the existing laundry room needs to be relocated from the downstairs to the upstairs level.

It will be necessary to extend the existing house twelve (12) feet in the back to move the laundry to an existing small bath on the main level, enlarge the master bedroom and build new larger master bathroom. The existing house footprint plus the angle of the side lot property line creates a setback violation with the additional 12 feet. A diagram from a survey site plan, dated 5/24/2017 is provided as an illustration. Mr. Bridges also provided

an excerpt from a lot survey dated 11/9/1995 as supporting documentation of setbacks. This encroachment of the additional 12 feet to the existing house footprint will violate the fifteen (15) foot setback in the Town of Seven Devils Unified Development Ordinance (UDO). The proposed extension of the house footprint will have a distance of only 6.27 feet from the side property line. The violation is caused by the unique angle of the existing foundation and the property line that angles toward the house.

The necessary two (2) foot roof overhang will then shorten the distance to 3.519 feet to the property line, as illustrated in an Addendum A, as noted by the Clerk to the Board of Adjustment and presented during the Public Hearing.

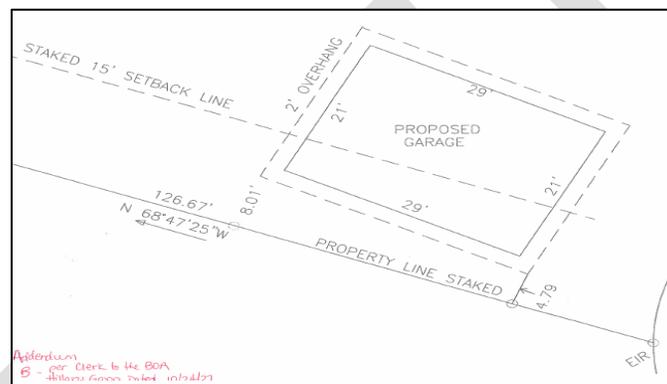


Even with this additional measurement for the overhang, Mr. Bridges states there will not be any encroachment on or beyond the joint property line. The addition to the home will use the same materials, color and style to match the existing structure. Mr. Bridges has contacted the neighboring property owner, Mr. Hendrik Hanekom to discuss with him the scope of work and Variance Application. He states Mr. Hanekom does not have any problems with this project.

Mr. Bridges, asked the Board of Adjustment to please review the survey dated 11/9/1995 and then pointed out the twenty (20) foot easement that runs along the side to the back of the property. This survey demonstrates the existing house encroaches on the 20-foot easement as of 11/9/1995. This violation was discovered by Bob Bridges during his due diligence prior to purchasing the property. Prior to closing on this property, the easement was released and quit claimed to the previous owners of lot 37. Therefore, when Mr. Bridges purchased this property it was deeded with clear and proper title; the easement no longer exists.

Mr. Bridges proceeded to discuss the details about the proposed garage as indicated on the survey dated 5/24/2017. His intention was to honor the required setback of fifteen (15) feet, by originally locating the proposed garage within the lot. However, the Watauga County Health Department inspection determined this location would have the garage

placement on the existing septic tank drain field, which is prohibited and without waiver. Mr. Bridges then explored the possibility of relocating the existing septic tank drain field, and a new inspection was performed by the Watauga County Health Department. It was determined the only area that it could be relocated to is at the back of the property, and because of the topography it would not perk for a septic drain field. The conclusion is the existing drain field must stay where it is located. This required the proposed garage to be repositioned on the lot, therefore creating a violation of the fifteen (15) foot setback. Mr. Bridges provided an Addendum B, as noted by the Clerk to the Board of Adjustment and presented during the Public Hearing. It illustrates the proposed garage with the two (2) foot overhang and the distance to the property line as 4.79 and 8.01, from the front to the rear of the garage.



Mr. Bridges states the proposed garage will not encroach on or beyond the property line. The garage design will be the same as the existing house, using the same materials and colors. Mr. Bridges has contacted the neighboring property owner, Mr. Raymond Schank, and he does not have any objection to the garage project.

Mr. Bridges continued the presentation with regards to the well on the property. He acknowledges the violation for the existing well and the health departments required 25-foot setback from the proposed garage. Mr. Bridges applied for an exception to the required 25-foot setback with the State Department of Health and Human Services-Division of Public Health. The request was granted, conditionally the well is brought up to code and the head of the well is raised, which is now complete. Supporting paperwork from the Watauga County Health Department is included in the Variance Application.

In conclusion, Mr. Bridges conveyed his sincerity to the Board of Adjustment to the commitment of this project by pointing out his expenses and effort to date, and then explained the benefits to the Town of Seven Devils. The Ad Valorem value of the Bridges Residence will increase, and therefore economically benefit the town. More importantly,

the increase of year-round residents with citizen participation in the Town of Seven Devils will create a more enriching environment and community.

PUBLIC COMMENTS

Larry Fontaine – **127 West Rocky Top**, Larry Fontaine spoke in favor of the Variance Application. He states upon review of the three (3) required criteria to be met; in his opinion Mr. Bridges has satisfied the criteria. He encouraged the Board of Adjustment to find the same results.

CLOSE PUBLIC HEARING

With no further comments Town Manager closed the Public Hearing at 5:15pm.

RECESS

CALL TO ORDER FROM RECESS – 5:30pm

Town Manager ended the recess at 5:30pm with the action of opening the Regular/Organizational Meeting of the Board of Adjustment.

ROLL CALL – Town Manager Powers initiated Roll Call for the board, with John “Jack” Duncan, Lois Dodson, George Ehlinger, Barbara Hurlbrink, Jack Byrnes-Alternate being present. Sarah Manning and Butch McLean-Alternate are absent. A quorum is met.

ELECT CHAIR AND VICE CHAIR

Town Manager opened the floor for nominations of Chair of the Board of Adjustment. Member Hurlbrink nominated George Ehlinger as Chair; Member Byrnes seconded the nomination; no other nominations occurred. Member Hurlbrink made the motion to elect George Ehlinger as Chair; Member Byrnes seconded the motion; the members agreed unanimously; the members conveyed their vote individually when asked. 5 Ayes – 0 Nays

The meeting procedures were handed to Chair George Ehlinger from Town Manager Powers; Chair Ehlinger asked for nominations for Vice Chair. Member Hurlbrink nominated John “Jack” Duncan as Vice Chair; Member Byrnes seconded the nomination; no other nominations occurred.

Member Byrnes made the motion to elect Jack Duncan as Vice Chair; Member Hurlbrink seconded the motion; the members agreed unanimously; the members conveyed their vote individually when asked. 5 Ayes – 0 Nays

OATH OF OFFICE

Town Clerk Gropp administered the Oath of Office to: John E. Duncan, Lois Dodson, George Ehlinger, Barbara Hurlbrink, Jack Byrnes-Alternate

ADOPT AGENDA

Chair Ehlinger asked for a motion to Adopt Agenda; Member Hurlbrink made a motion; Member Duncan seconded the motion; the members agreed unanimously.

APPROVAL OF MINUTES – April 28, 2015

Member Hurlbrink made a motion to approve the minutes dated April 28, 2015. Member Duncan seconded the motion; the members agreed unanimously.

OLD BUSINESS – None

NEW BUSINESS – Variance Application – Bridges Residence, 147 Deepwood Court

ZONING ADMINISTRATOR

Town Manager Debbie Powers in her role as Zoning Administrator read the following procedures to the Board of Adjustment:

- **Procedure:** Deliberate in Open Session, Determine Facts (does the project injure property values, is the hardship peculiar to this property), Apply Standards (Consistent with the intent of the Ordinance, Secures public Safety, not a self-created hardship) Conditions? Then Need Motion to approve, approve with conditions, or deny. Vote (needs 4/5 approval). Written decision – accurately reflects actions and reasoning of the Board – post Notice of Decision.
- **Findings of Fact:** The Town of Seven Devils received an Application for Variance from Mr. Bob Bridges, delivered to Town Hall on Friday, September 29, 2017. The application was complete and was accompanied by the \$100 fee and all required documentation. The property address is 147 Deepwood Court, Parcel ID # 1878-15-2528-000, and is .45 acres. Property is located in MDR (Medium Density Residential) on Official Zoning Map of Town of Seven Devils. UDO, page 38 & 39 outlines setback requirements. MDR minimum front yard setback is 30 feet; MDR minimum side yard setback is 15 feet; MDR minimum rear yard setback is 15 feet.
- The BOA's major function is that of granting variances from the Ordinance. A variance is a permit, enabling a property owner to make use of his or her property in some way that conflicts with the literal provisions of the Ordinance. When the Board grants exemptions from harsh provisions, it is granting a variance.
- From G.S. 160A-388(d) – “When practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the BOA may, vary or modify any regulation or provision of the ordinance relating to the use, construction, or alteration of buildings or structures or the use of land, so that the spirit of the Ordinance is observed, public safety and welfare secured, and substantial justice done.”
- Before a BOA can issue a variance, the courts require that it make certain findings. These findings must be included in the record of the case (ordinarily the board's minutes) and must be broad enough to indicate not only the conclusions that the Board draws but also the factual reasons on which they are based. NC's enabling act calls for three main findings: 1) that there

are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance 2) that the variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit, and 3) that in granting the variance, the public safety and welfare have been assured and substantial justice has been done.

- **Call for Disclosures** (Members) – Any Ex Parte Communication (Contacts with party outside of hearing) or Conflicts of Interest (financial interest in the outcome of matter) – must be disclosed
- **Discussion** – Board Members
- **Decision** – Approve as is, Approve with Conditions, or Deny (or may continue to next regularly scheduled meeting)

CALL FOR DISCLOSURES

A. Ex Parte Communications

The party to this case has a right for any Ex Parte communication to be disclosed. Ex Parte communication is any communication about the case outside of the Public Hearing. This may be site visits as well as conversations with parties, staff, or the general public.

Site Visits – Jack Duncan visited the site on Thursday, 10/19/2017 and Mr. Bridges merely pointed to where the stakes would be located for project, however no discussion ensued; George Ehlinger visited the site on Sunday, 10/22/2017 and asked the owner about the overhang on the proposed garage; Barbara Hurlbrink visited the site on Sunday, 10/22/2017 to view the property and proposed garage and house extension, at her visit she did not see the owner; Jack Byrnes accompanied George Ehlinger for the site visit, but refrained from discussion at the time; Lois Dodson did not visit the site, but is familiar with the house location.

Conversations/Communications – George Ehlinger has had conversation with Town Manager Powers; Barbara Hurlbrink has had conversation pertaining to the easement with Town Manager Powers; Jack Duncan, Lois Dodson, Jack Byrnes have NOT had any conversations or communications with regards to the Variance application; Manager Powers disclosed she had telephone communication with the neighboring property owner, Hendrik Hanekom. Mr. Hanekom is agreeable with the intended scope of work for the Variance application. No other communications from surrounding property owners.

The party to this case has a right to an impartial, unbiased Board of Adjustment. Does any Board member have a fixed opinion prior to this hearing that is not susceptible to change, or a financial interest in the outcome of this matter?

Conflicts of Interest – Each Board member was asked individually about any Conflict of Interest; Response recorded as follows – Jack Duncan – No; Lois Dodson – No; George Ehlinger – No; Barbara Hurlbrink – No; Jack Byrnes – No

DELIBERATE & DISCUSSION

Upon deliberation and discussion of this Variance Application, The Board of Adjustment is tasked with deciding this proposal meets certain standards as set forth in Article 7 – Intensity Regulations of the Town of Seven Devils Unified Development Ordinance (UDO). Discussion and deliberation should focus on criteria as follows:

- 1) Are there practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance?
- 2) Is the Variance in harmony with the general purpose and intent of the Ordinance and preserves its spirit?
- 3) If granting the Variance, it is assured the public safety and welfare have been assured, and substantial justice has been done?

Member Barbara Hurlbrink does not think there is a safety issue for neighborhood, the adjacent properties owners are agreeable with approval of this variance; she states the owner has a hardship due to the topography of the land and the placement of the well. She does not have a problem with the Variance Application as presented and submitted.

Member Jack Duncan states the applicant, Bob Bridges has demonstrated a strong approach in his presentation with details for the project.

Chair George Ehlinger inquired about the garaged overhang and wants to be assured it will not encroach on the property line upon completion of construction. The Zoning Administrator will verify and record at completion.

Alternate Member Jack Byrnes states he does not have any issues with the project and all required permits from Watauga County/State are included. He is satisfied with the project.

Member Lois Dodson asked about the use of the well? Mr. Bridges confirmed the well on the property is for his use solely and the health department has declared it safe. Additionally, she inquired about the status of the abandoned road easement; if all satisfied, she has no problem with the application.

DECISION

Chair George Ehlinger made a motion to APPROVE the Variance Application – 147 Deepwood Court for the Bridges Residence as submitted and presented to the Board of Adjustment on October 24, 2017. Member Barbara Hurlbrink seconded the motion.

Each member of the Board of Adjustment verbally provided a vote.

Jack Duncan – Aye; Lois Dodson – Aye; George Ehlinger – Aye; Barbara Hurlbrink – Aye;

Jack Byrnes – Aye

The motion passed with 5 Ayes – 0 Nays

BOARD MEMBER COMMENTS – None

ADJOURN

Chair Ehlinger made the motion to adjourn the meeting at 5:45pm; Member Hurlbrink seconded the motion; All members agreed unanimously.

George Ehlinger
Chairperson

Hillary Gropp
Clerk to the Board of Adjustment

DRAFT