

**MINUTES  
BOARD OF ADJUSTMENT  
THURSDAY, APRIL 3, 2014  
HOOD ROOM, MATTHEWS TOWN HALL**

**PRESENT:** Chairman Jim Jiles, Members, Walter Monestere, Cecil Sumners, Jim Mortimer; and Jeanne Moore; Alternate Members Jerry Meek and Gary Smith; Attorney Robert Blythe; Senior Planner Jay Camp and Zoning Technician/Deputy Town Clerk Mary Jo Gollnitz

**ABSENT:** Alternate Member Peter Tuz

**CALL TO ORDER/INVOCATION:**

Chairman Jiles called the meeting to order at 7:00 pm and Jim Mortimer gave the invocation.

**APPROVAL OF THE MINUTES:**

Jeanne Moore motioned to approve the minutes of the March 6, 2014 meeting. Walter Monestere seconded the motion and they were adopted unanimously.

**SWEARING IN:**

The following were sworn in: Jay Camp, Allen Hackman, Jonathan Basnett, and Ray Zaffaresse

**VARIANCE REQUEST: 1712 Stevens Ridge Road; Swimming Pool in S.W.I.M Buffer**

**STAFF REPORT:**

Senior Planner Jay Camp stated that this evening's case involves 1712 Stevens Ridge Road; PID #227-641-37. The property was purchase by the applicant in October 2013 and is on a cul-de-sac. The property does back up to Four Mile Creek, thus the request for variance of the SWIM Buffer. Staff discussed this with the applicant in December and understands that the applicant purchased the home with the intent of installing a pool.

Mr. Camp continued noting that the applicant needs two items to proceed with the construction of the pool. The applicant needs an issuance of a variance from the SWIM Buffer. The second item the applicant will need is a Floodplain Development Permit from the Mecklenburg County. The applicant can move forward on the permit if they receive a variance this evening.

The specific variance is for an encroachment of approximately 12 feet into the SWIM Buffer. The total square footage of impervious surface is 200 square feet. Mr. Camp noted that this was not included in the staff report. He explained that SWIM Buffer is an acronym for Surface Water Improvement Management. There are four main goals to the SWIM Buffer: water quality for filtering water, storage for flood waters, allowing flood channels to meander naturally and providing suitable habitat for wildlife.

He continued stating that this property is several hundred feet from the actual centerline of Four Mile Creek. He explained that the standard buffer width is 100 feet. However, in some locations it is very wide. In this instance the creek is about 380 feet from the back of the property. The County determines the buffers using the flood fringe, and 100 year flood maps to determine the appropriate location for the buffers.

Mr. Camp reminded the Board that in September of 2013 they adopted new rules of Rules of Procedure in response to the changes in state statues. The seven standards and four findings were included in their packets to help with deliberations.

Mr. Camp showed the location of the SWIM Buffer map and approximate location of the pool in the back yard. He noted that the back stairs of the home encroach into the SWIM Buffer. He explained that the home was constructed in 1998 and the SWIM Buffer went into effect in 2000. He stated that the impervious surfaces in the buffer would be the part of the pool, pool decking and the hot tub.

Mr. Jiles asked where the center line of the creek is located. Mr. Camp stated that the creek is approximately 300 ft from the house. He further stated that the parcel behind this home is owned by the county and is being reserved for future greenway access. Mr. Jiles asked which of the three buffer zones the pool construction would fall into. Mr. Camp explained that the three buffers are the stream side, midland and upland zones. He said that construction is several hundred feet beyond the upland zone. It is located in the flood fringe.

Ms. Moore asked why this property fell into SWIM Buffer after the construction of the home. Mr. Camp stated that some houses in Matthews are covered by these flood maps. It is because mapping was completed by the county using the 100 year floodplain. They do not adjust base maps where houses are built. Discussion continued about the floodplain administration and construction of buildings before 1998.

Mr. Mortimer asked for clarification on the letter provided by Public Works Director Ralph Messera regarding possible conditions to the potential variance. Mr. Camp said that as part of the adopted UDO, staff must forward the variance request to the Public Works Director for review. The letter recommends reforestation in the lowland areas of the property. Mr. Camp showed the area to the Board.

Ms. Moore asked for explanation of the reforestation recommendation. Mr. Camp noted that it is the response to ordinance provision. He explained that it is mitigation for the variance request. Some of the mitigation is very extreme and better suited to a 200 home subdivision. The version that Mr. Messera recommended is the least impact to the home owner for a minor project such as this.

Mr. Jiles asked if the Public Works Director recommendation is in the ordinance for the upper portion towards the home for disbursement of storm water. Mr. Camp stated yes, that is the location and he believes the primary reason for reforestation is filtration. Ms. Moore asked if the reforestation is planting or cutting and planting. Mr. Camp said that it could be planting of shrubs and small trees where there is currently grass.

Mr. Jiles stated that the property is located on a cul-de-sac and wanted to know if there is proper drainage. Mr. Camp said that he believed that there are proper storm water inlets in the development. Mr. Camp said that all the construction in the back would only create about 200 sq ft of impervious surfaces.

Ray Zaffaresse 1712 Stevens Ridge Rd Matthews, addressed the Board. He stated that his family recently relocated from New York City. He was a police officer there and completed his twenty years of service and decided to leave the city. They have found a better life in Matthews. They have been here two months and love it here. They fell in love with the home. The sale advertisement for the home said that it would be perfect for an oasis pool and spa. Mr. Zaffaresse provided a copy of the advertisement to the Board. He continued stating that he has consulted with Matt Jones from Jones civil design to complete a floodplain study, if the variance is granted. He said that the pool designer and a neighbor are also present this evening.

Mr. Mortimer asked Mr. Zaffaresse if he had seen the letter from Public Works. Mr. Zaffaresse said he had seen the letter and is in agreement with the letter. They are interested in planting some fruit trees and would like to plant in the area suggested.

Allen Hackman 1709 Stevens Ridge Rd addressed the Board. He stated that he lives two doors from the applicant. He noted that the family is great neighbors. He continued stating that he was surprised to find out there was an issue with the pool. There is a huge spacious area and the creek is a long hike away. The creek is visible from his home but not really close by. The yards have been dry and there is no standing water. The neighborhood is excited for the family. There are other homes in the neighborhood with pools. He said that people take care of their homes in the neighborhood and he believes this will be an asset to the neighborhood and in line with the rest of the homes.

Jonathan Basnett representing Blue Haven Pools addressed the Board. He stated that the change in grade is important to understand. He described the backyard area and details of the swimming pool and decking. He said that the property owner has decided to eliminate the hot tub from the plans. He noted that there is eight foot drop down and then the floodplain begins. The 100 year floodplain will not affect the pool unless it rises eight feet above grade. With that there is 380 feet to the closest point of the creek. He showed the Board the conceptual pool and where the floodplain was in relation to the pool. He continued describing the plans for the pool. There is a very steep slope in the property.

Mr. Jiles asked how high the slope edge of the pool is. Mr. Basnett stated there is approximately eight feet above. He continued describing the distance between the creek and the pool. There was discussion about the slope of the pool and how to stabilize the area. Mr. Basnett stated that they would not leave the area unsafe or unmanageable.

#### **DELIBERATION:**

Chairman Jiles opened the deliberations. Mr. Blythe noted that the Board had the standards to refer to for the Findings of Fact and could comment on any of the standards. Mr. Mortimer asked if the Board was required to go through all seven of the standards. Mr. Blythe stated these are standards and in your ordinance. They are to be considered in concluding the Findings of Fact.

1. That special or unique circumstances or conditions or practical difficulties exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts. Mr. Jiles said that the separation of the improvements and buffer zone is extensive and meets this. Ms. Moore said that he is a distance away from the creek. Mr. Jiles noted that the pool is in the upland zone and is the least critical for storm water. Mr. Sumners noted that it is the furthest away from the creek. He continued saying that he believes the grading on the site would help the drainage.

2. That the special conditions or circumstances or practical difficulties do not result from the actions of the property owner or applicant, their agent, employee, or contractor. Errors made by such persons in the development, construction, siting or marketing process shall not be grounds for a variance except in cases where a foundation survey submitted to the Planning Director, or designee, before a contractor proceeds beyond the foundation stage has not revealed an error which is discovered later. Mr. Mortimer said that this is correct. Mr. Blythe stated that the difficulties are not of the applicant's actions, rather the result of the SWIM Buffer.

3. That the unique hardship situations cited by the applicant are not hardships resulting from personal or household members' circumstances which would no longer be applicable to the location if the applicant or household was no longer present at the property. Mr. Jiles said that the hardship situation did not result from the applicants doing.

4. That the strict enforcement of this Title would deprive the owner or applicant of reasonable use of the property that is substantially consistent with the intent of this Title. Mr. Mortimer said that strict enforcement would deprive the owner of building a pool.

5. That the granting of a variance will not result in advantages or special privileges to the applicant or property owner that this Title denies to other land, structures, or uses in the same district, and it is the minimum variance necessary to provide relief. Mr. Mortimer said that granting a variance will not advantage the applicant that this Title denies others.

6. That the proposed use and the appearance of any proposed addition or alteration will be compatible with, and not negatively impact, nearby properties. The Board agreed that the proposed use is compatible with nearby properties.

7. That the variance shall not be materially detrimental to the health, safety or welfare of persons residing or working in the neighborhood. Consideration of the effects of the variance shall include but not be limited to increases in activity, noise, or traffic resulting from any expansion of uses allowed by the variance.

Mr. Mortimer said that a variance would not be materially detrimental to the neighborhood. The Board agreed with him on this standard.

### **Findings of Fact**

Jim Mortimer said that unnecessary hardship would result from the strict application of this Title in that the property owner would not be able to build a pool. He continued stating that hardships results from conditions that are peculiar to the property, such as location, size, or topography. He stated that this is certainly true.

Mr. Mortimer continued stating that the hardship did not result of action taken by the applicant or property owner, so far, prior to building the pool. He said that the requested variance is consistent with the spirit, purpose, and intent of the Title, public safety is secured, and substantial justice is achieved. He stated that he believes this is correct with the remediation.

Jerry Meek asked that if the Board is inclined to grant the variance, would the Board condition the variance on the applicant following the recommendation of Mr. Messara. Mr. Blythe answered yes. Mr. Meek asked if this would include the conservation easement, and the planting. The Board agreed that it would be included in the motion if the variance is approved.

Gary Smith asked if the Board would have to impose the conservation easement. Mr. Blythe stated that is part of the recommendation of the mitigation. If the Board is going to incorporate the letter, then the Board will have to impose the conservation easement.

Mr. Meek said that it is his understanding that the purpose of the easement is to place the restriction to subsequent owners. This protects the scenario of granting the variance, the pool being built, the house being sold and subsequent purchaser removing all the trees. Mr. Jiles said that the owner has seen the letter and understands what it involves. Mr. Jiles continued noting that he realizes this is extra large area and may not need all that area to protect the storm water. However, the regulations require this and the Town is willing to work with the property owner.

Jeanne Moore made a motion to grant the variance as indicated in the findings of fact and incorporate the conditions of the letter provided by Mr. Messera. Cecil Sumner seconded the motion which carried unanimously.

### **Election of Vice Chair**

Ms. Moore nominated Jim Mortimer for Vice Chair and Mr. Sumner seconded the motion. The motion carried unanimously.

### **ADJOURNMENT:**

Mr. Mortimer moved for adjournment. Mr. Jiles seconded the motion and the meeting adjourned at 7:42 pm.

Respectfully submitted,



Mary Jo Gollnitz  
Zoning Technician/Deputy Town Clerk