

Board of Adjustment

Thursday, March 1, 2018

7:00 PM

Hood Room, Matthews Town Hall

AGENDA

- I. CALL TO ORDER
- II. INVOCATION
- III. APPROVAL OF MINUTES
- IV. VARIANCE REQUEST: BA 2018-01 Carport at 13401 Phillips Road
- V. ADJOURNMENT

**MINUTES
BOARD OF ADJUSTMENT
THURSDAY, DECEMBER 7, 2017
HOOD ROOM, MATTHEWS TOWN HALL**

PRESENT: Chairman Jim Jiles; Vice Chairman Jerry Meek; Members Jim Mortimer and Cecil Summers; Alternate Member Steven Lee; Attorney Robert Blythe; Senior Planner Jay Camp; Administrative Assistant/Deputy Town; Clerk Shana Robertson

ABSENT: Member Jeanne Moore; Alternate Members Gary Smith and Peter Tuz

Chairman Jim Jiles designated Alternate Member Steve Lee as a voting member for the evenings meeting.

CALL TO ORDER/INVOCATION:

Mr. Jiles called the meeting to order at 7:07 pm.

Mr. Lee gave the invocation.

APPROVAL OF THE MINUTES:

Jim Mortimer made a motion to approve the minutes of the October 5, 2017 meeting. Cecil Summers seconded and the motion passed unanimously.

SWEARING IN:

Senior Planner Jay Camp and Catherine Kio were sworn in by Mr. Jiles.

VARIANCE REQUEST: BA 2017-7 Rear Yard Variance at 115 Matthews Township Parkway

STAFF REPORT:

Senior Planner Jay Camp reviewed the applicants request for a rear yard variance of approximately five feet. Mr. Camp refreshed the Board on the Meadows of Matthews rezoning to R-VS and the shared driveway from Sardis Road to the seven lots with four home sites currently developed. Mr. Camp said that the house at 115 Matthews Township Parkway was built in 2006 and the current owner purchased the home in 2012. The owner discovered from a survey of the lot that the garage encroached into the rear yard. Photos provided by the property owner were presented to the Board. Mr. Camp said that the home was slightly skewed on the lot with one foot of the garage inside corner and five feet at the outside corner was built within the rear yard.

DELIBERATION

Mr. Jiles asked if the garage was original to the homes construction and Mr. Camp said that the home and attached garage were built at the same time. Mr. Jiles asked if the shared driveway was maintained by the town. Mr. Camp said that the homes front Matthews Township Parkway and the cross driveway easement were in place from the two rear flag lots.

Jerry Meek asked if this was the only home in the development that encroached into the rear yard. Mr. Camp said that the other homes did not appear to be but the Town did not have a survey to prove that they were compliant. Mr. Meek asked if something occurred or if there was an enforcement action that prompted the request. Mr. Camp said that the home owner was aware of the encroachment and was being proactive. Mr. Camp added that there was no Code Enforcement action.

Catherine Kio of 115 Matthews Township Parkway, Matthews, NC 28105 addressed the Board. She said when they purchased the home a few years ago a survey was done and they were told of the encroachment. Ms. Kio added that if a variance was not granted then a portion of the garage would need to be removed making the garage unusable. Ms. Kio said that the share driveway was maintained and repaired by the Meadows of Matthews residents. She said that she did not want any future owners to have any issues or financial impacts due to the mistake of the builder.

Mr. Jiles asked if the 25 foot minimum rear yard was current to the Unified Development Ordinance at the time of construction and Mr. Camp said that the requirements for R-VS did not change with the adoption of the UDO.

Mr. Sumners asked when the R-VS zoning district was added to the Towns Ordinance and Mr. Camp said that it was added in the late '90s.

FINDINGS OF FACT

1. Unnecessary hardship would result from the strict application of this Title. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

Without a variance, the owner would have to demolish a portion of the home. Back yard garage area.

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.)

There are no hardships at the property that are peculiar in nature. Property lines that rectangular in nature

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.

The applicants did not create the hardship.

4. The requested five foot variance is consistent with the spirit, purpose, and intent of the Title, because public safety is secured and justice is achieved.

The private driveway and yard for the home are set back 35 feet from the common shared driveway, giving the appearance of a rear yard greater than 25 feet.

Mr. Meek motioned that the application be granted and a variance of five feet to allow for the existing home to encroach into the required rear yard be approved. Mr. Sumners seconded the motion and it passed unanimously.

Mr. Lee made a motion to adjourn the meeting at 7:33 pm. Mr. Meek seconded the motion and the motion passed unanimously.

Respectfully submitted,

Shana Robertson
Administrative Assistant/Deputy Town Clerk

**Matthews Board of Adjustment
Variance Request for 13401 Phillips Road
BA 2018-01
March 1, 2018**

Summary of Request

The applicant requests a variance to allow a carport constructed without a building permit to remain at a location that violates both the 40' front setback and is located closer to the side street than the principal structure.

Background

The property owner at 13401 Phillips Road has constructed a 17' x 19' carport without first obtaining a building permit. The carport appears to have been constructed in 2016 or early 2017. There are two violations related to the structure. Accessory structures are not allowed in the required front setback nor are they allowed closer to the side street than the principal structure when located on a corner lot. In the R-15 district, the minimum front setback as measured from the front lot line is 40'. According to the drawings provided by the applicant, the carport is situated about 32' from the front property line and about 22' from the side lot line while also being closer to the side street than the principal structure.

Since receiving the Notice of Violation, the applicant has applied for a building permit for the carport. The County will not issue a building permit unless a variance is first obtained from the Matthews Board of Adjustment. Should the Board elect to grant a variance, it should be conditioned that a building permit for the current structure must be obtained. If the County determines that the current structure cannot be salvaged, a new structure would need to meet setback and locational requirements.

Unified Development Ordinance Definitions and Requirements

155.601.20 Accessory Structures

- A. Accessory structures shall not be permitted in any required front setback or side yard or within three feet (3') of any exterior property line. If located on a corner lot, the accessory structure shall not be nearer to the side street than the principal structure.
- B. On parcels with single-family attached or detached dwellings, no accessory structure shall be the greater of:

**Matthews Board of Adjustment
February 1, 2018**





December 6, 2017

Veaceslav Stuteknik
13401 Phillips Rd.
Matthews, NC 28105

**RE: NOTICE OF ZONING VIOLATION
13401 Phillips Rd. – Tax Parcel 215-171-35**

Dear Mr. Stuteknik,

As we have previously discussed, it was brought to my attention that the carport on the side of your property was built without obtaining zoning approval from the Town of Matthews and a permit from Mecklenburg County. The carport is closer to the street than the principal dwelling unit and based on aerial photos, the structure appears to be in the front setback. These items are violations of section 155.213 and 155.601 of the Town of Matthews Unified Development Ordinance (UDO). Applicable sections of the UDO are attached.

Mr. Stuteknik, I realize that Mecklenburg County Building Code Department will not issue you a building permit until you are in compliance with the Town of Matthews Zoning which requires that accessory structures not be placed in the front or side setback and if it is on a corner lot, that the accessory structure be no closer to the street than the principal structure. You spoke with our Planning Staff a few weeks ago and you were told that you would need to seek a variance before our Board of Adjustment for the violations but as of today, we have not received the variance application or any further communication from you; therefore, I am sending this official Notice of Violation for future enforcement and compliance.

The Town of Matthews requires you to either remove the structure from the property or to submit the necessary paperwork along with a survey to the Town Planning and Development Staff no later than December 18th.

If these violation are not corrected and there is no appeal to the Zoning Board of Adjustment, this Department reserves the right to exercise any one of the following **REMEDIES: REVOCATION OF A CERTIFICATION OF OCCUPANCY** making continued occupancy unlawful; seeking of an **INJUNCTION**; the issuance of a **CITATION WITH FINES** up to \$500 per day; and/or the issuance of a **CRIMINAL SUMMONS**.

If you feel that these violations are not correct, you may appeal those violations to the Zoning Board of Adjustment by submitting an application of appeal concurrently to the Town Clerk and the Planning Office within 30 days of this Notice of Violation. This Notice of Violation meets the provision of 155.214.B.4. and serves as a warning citation. Because this written Notice of Violation includes an opportunity for appeal, there will be no provisions for appeal after the 30 days.

Your prompt response to this matter is appreciated and will prevent any further enforcement action by the Town of Matthews. If you have any questions, please do not hesitate to contact me in person, via phone at 704-708-1232, or via email at cmckoy@matthewsnc.gov.

Sincerely,


Carlo McKoy
Code Enforcement Officer

Example Findings of Fact

In reaching a decision on a variance request, the Board shall make findings upholding all of the following criteria:

1. Unnecessary hardship would result from the strict application of this Title. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

A carport could be constructed at a different location on the property. The home has a one car garage and has functioned without a carport since 1984.

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.)

There are no hardships at the property that are peculiar in nature. Corner lots are typical in single family subdivisions.

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.

The hardship results from actions taken by the applicant. The applicant constructed a building without first obtaining a building permit or verifying zoning requirements.

4. The requested variance is consistent with the spirit, purpose, and intent of this Title, public safety is secured, and substantial justice is achieved.

The variance is inconsistent with the spirit of the UDO and would allow an 8' reduction to the front setback while also allowing an accessory building closer to the side street than the principal structure.

Findings of Fact Standards for Zoning Variances

In granting any zoning variance, the Board of Adjustment shall make findings that the spirit of the ordinance shall be observed, public safety and welfare shall be secured, and substantial justice shall be done. To reach these findings, the Board of Adjustment shall consider the following 7 standards:

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.
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.
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.
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.
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.
6. That the proposed use and the appearance of any proposed addition or alteration will be compatible with, and not negatively impact, 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.