

Board of Adjustment
Thursday, December 3, 2015
7:00 PM
Hood Room, Matthews Town Hall

AGENDA

- I. CALL TO ORDER
- II. INVOCATION
- III. APPROVAL OF MIINUTES
- IV. VARIANCE REQUEST: BA 2015-5, Rear Yard Variance, 1400 Four Lakes Dr
- V. ADJOURNMENT

**MINUTES
BOARD OF ADJUSTMENT
THURSDAY, JULY 9, 2015
HOOD ROOM, MATTHEWS TOWN HALL**

PRESENT: Chairman Jim Jiles, Members Jim Mortimer, Cecil Sumners, and Jeanne Moore; Alternate Member Peter Tuz; Attorney Robert Blythe; Senior Planner Jay Camp and Zoning Technician/Deputy Town Clerk Betty Lynd

ABSENT: Member Jerry Meek; Alternate Members Gary Smith and Thomas Lawing.

CALL TO ORDER/INVOCATION:

Chairman Jiles called the meeting to order at 7:03 p.m. and gave the invocation.

Mr. Jiles also noted that the appeal scheduled as Item 5 on the agenda was rectified at the staff level and was therefore struck from the agenda.

APPROVAL OF THE MINUTES:

Ms. Moore noted a misspelling of Mr. Sumners name in the attendance portion of the first page.

Mr. Jiles made a motion to approve the May 7, 2015 minutes as amended. Mr. Mortimer seconded the motion and the vote was unanimous.

At this time, Mr. Peter Tuz was designated as a voting member for tonight's meeting.

SWEARING IN:

Senior Planner Jay Camp and applicant Mr. Julius Milani were sworn in.

VARIANCE REQUEST: BA2015-2, 400 S. FREEMONT STREET

STAFF REPORT:

Mr. Camp stated that this request consisted of two variances. The first variance is a 5 foot encroachment into the 50 foot rear setback. The second variance is a 3 foot encroachment into the 10 foot side setback. These variances will allow for renovations on an existing home. The home was constructed in 1952 and possibly moved on the property in the 1970s or 80s. The property is currently zoned R-12 and does conform to Town regulations. The property is adjacent to the Alexander unopened right-of-way. There are some driveway encroachments on neighboring properties, which is something the Town Board can grant. From a zoning perspective, staff is fine with the driveway encroachments because driveways are not considered structures. The owner has provided a survey as well as entered into the record some additional information such as a floorplan that shows the additions and encroachments.

Mr. Sumners asked if the neighbors next door have a driveway that comes onto Alexander Street. Mr. Camp stated that was correct. Mr. Sumners stated that gave a buffer between Mr. Milani's home and the neighboring home across the street. Mr. Camp stated there was some distance between structures.

Mr. Jiles asked if other driveways encroached onto the right-of-way. Mr. Camp stated there are a few. The Town has rarely on occasion abandoned right-of-way and it is then split between adjacent property owners. The Town typically doesn't have justification to do this, but it is a right of the citizen to request. That would be the only alternative to the variance of the side yard.

Mr. Julius Milani of 400 S. Freemont Street came forward to speak. He stated the home used to sit where Aldi currently resides. The property is nearly an acre now. The property used to be smaller, therefore the home was oriented towards the side of the property. There is significant sloping and a creek on the property which limited his options for adding on to the structure. They had considered a second-story renovation, but a contractor advised against it due to the age of the home and the extensive foundation work that would be required. The side yard encroachment would include a master bathroom and master bathroom. In the rear of the property there is a retaining wall that we would like to build up against. Mr. Milani stated that he worked from home with three children and that is their main desire for wanting to grow the home and provide additional space. The elevation will be for a craftsman style home in order to compliment the Downtown Master Plan.

Mr. Mortimer asked how many square feet are the additions. Mr. Milani stated that the front addition would be 750 square feet and the rear would be between 350-400 square feet. Mr. Moritmer asked how big the additions would be without the rear setback. Mr. Milani stated the rear room would be 60 square feet smaller.

Mr. Tuz asked if Mr. Milani knows where the flood zone is for the creek on the property. Mr. Camp pulled up the property to show the swim buffers for the creek on Polaris. Mr. Jiles asked if the construction will be within the flood zone. Mr. Milani stated that it would not. The additions would not impact the driveway on the property either. Mr. Mortimer asked about the deck in the rear of the home. Mr. Milani stated the deck is in conformity, but the existing deck would be removed.

DELIBERATION:

Mr. Sumners stated that the distance between homes is large and Alexander Street will not be greatly impacted with this variance. Mr. Jiles stated that the only potential issue he foresees is the side yard variance should Alexander Street be opened. There is no guarantee that it could not be opened in the future. Mr. Moritmer and Ms. Moore both stated that they did not expect Alexander Street to be developed at all. There was further discussion concerning unopened right-of-ways.

Ms. Moore asked if there were any neighbors present at the meeting. Mr. Dale Schell of 441 S. Freemont Street, was sworn in and showed his home's location on the map. Ms. Moore asked if all the neighbors were informed. Mr. Camp stated a sign had been placed at the property and all adjacent property owners were sent a notification letter. Mr. Milani also stated that he received signatures from all the neighbors as well and should be included in the application.

Mr. Moritmer stated that he wanted to comment on the rear setback variance. The applicant could build a significantly large great room without the variance. Ms. Moore stated the applicant must have a reason for wanting that extra square feet. Mr. Milani said the extra space would allow for a door and built-in cabinets for storage for their three kids.

Mr. Milani stated that there was 85 feet in between his home and the neighbor due to Alexander Street.

Mr. Tuz asked what the front setback would be. Mr. Milani stated it was 30 feet.

Mr. Jiles stated that the property could be expanded without the variances. Ms. Moore stated the presented plan is what the homeowner would like to do. Mr. Mortimer stated that the board should consider the town setbacks and why they are put into place.

Findings of Fact

1. There would be unnecessary hardship from strict application of the ordinance.
2. Hardship results from the conditions that are peculiar to the property, without granting the variance.

3. The hardship did not result from actions taken by the applicant or property owner.
4. The requested variance is consistent with the spirit, purpose, and intent of the title, because public safety is secured and justice is achieved.

Mr. Jiles made a motion to approve the variance of a reduction of 3 feet to the rear yard setback based on the above findings of fact. Mr. Sumners seconded the motion and the motion carried unanimously.

Mr. Jiles made a motion to approve the variance of a reduction of 5 feet to the side yard setback based on the above findings of fact. The unused right-of-way will not be affected. Ms. Moore seconded the motion and the motion carried unanimously.

UDO OVERVIEW AND UPDATE

Mr. Camp reviewed the UDO's current structure and contents for the board. He also stated that staff is available at any time for questions concerning the UDO or its application.

ADJOURNMENT:

Mr. Jiles made a motion to adjourn the meeting at 8:19 p.m. The motion was seconded by Ms. Moore and carried unanimously.

Respectfully submitted,

Betty Lynd
Zoning Technician/Deputy Town Clerk

**Matthews Board of Adjustment
 Variance Request for 1400 Four Lakes Dr
 December 3, 2015**

Summary of Request

The applicant requests a variance of 15' to the rear yard to allow for construction of a new home.

Background

The property at 1400 Four Lakes Drive, further identified as tax parcel 19328201, is .489 acres according to a survey provided with the application. The site is zoned R-15 and is bordered by other R-15 single family zoned properties as well as commercial zonings. The R-15 category mandates a minimum lot size of 15,000 square feet while this lot totals 21,310 square feet. Due to the irregular, triangular shape of the site, the buildable footprint is reduced but still remains usable. The applicant has indicated a 50' x 50' proposed building footprint for the proposed home.

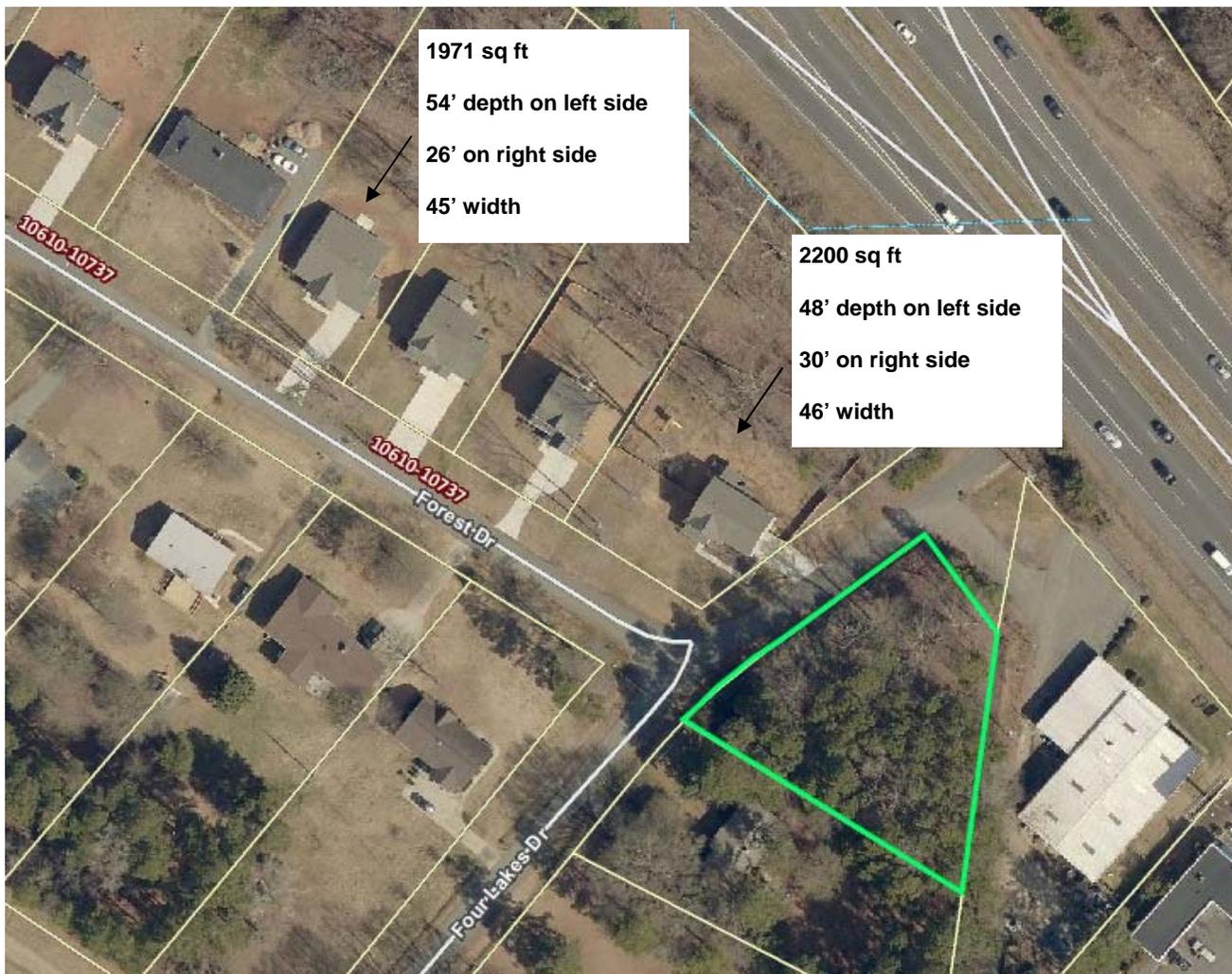
Unified Development Ordinance Requirements

Below are the standards for the R-15 District:

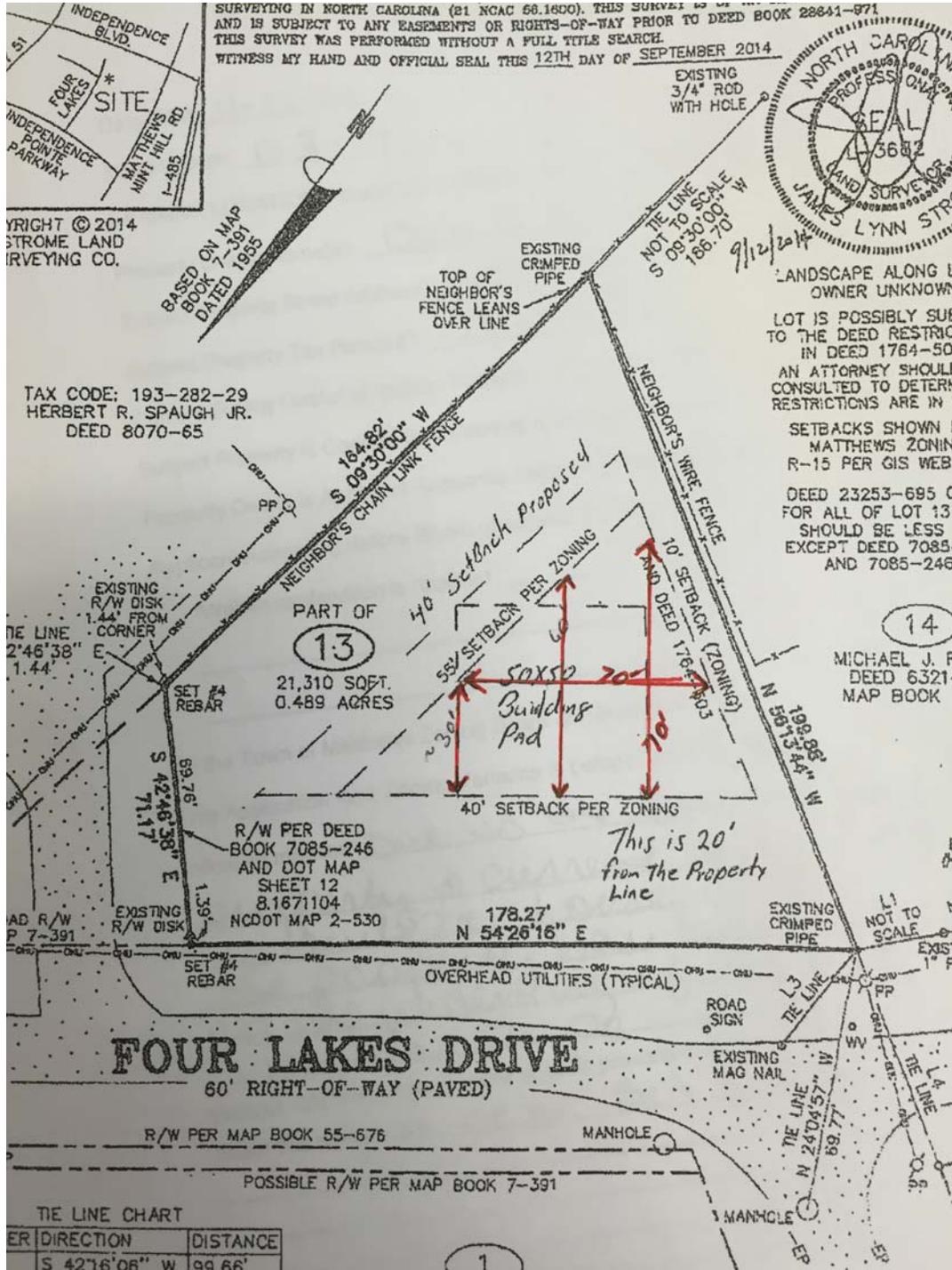
155.604.1 TABLE OF DIMENSIONAL STANDARDS					
	RESIDENTIAL TRADITIONAL ZONING				
	R-20	R-15	R-12	R-9	R-6
Minimum lot area (sq ft)	20,000	15,000	12,000	9,000	1
Minimum overall development area (sq ft or ac)	NA	NA	NA	NA	
Maximum overall development area (sq ft or ac)	NA	NA	NA	NA	
Area for each additional dwelling unit (sq ft)	NA	NA	NA	NA	
Minimum lot width (ft)	90	80	70	60	
Minimum width when a corner lot (ft)	90	80	70	60	
Minimum front setback (ft)	50	40	35	30	
Maximum build-to line (ft)	NA	NA	NA	NA	
Minimum side yard, interior (ft)	12	10	10	8 & 6	
Minimum corner side yard (streetside) (ft)	12	10	10	10	
Minimum rear yard (ft)	60	55	50	45	
Maximum building height (ft)	35	35	35	35	

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The aerial image below shows several recently constructed homes on the block. Most of these homes feature dimensions of 35' to 45' in depth and about 45' in width. Without a variance, this lot could accommodate a home with a depth of about 35' on the left side and 50' or more on the right side where the buildable area is deeper. The lot width allows for a home up to about 60' to 70' in width depending upon the footprint.



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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.

The builder could elect to use a different floorplan that is designed to fit within the constraints of the site.

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.)

Although the property is not a typical, rectangular lot, the fact that it is oversized allows for more flexibility in placement of a home.

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 owner is actively engaged in selecting a home plan for the site.

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

A reduction in the rear yard reduces the spacing between the proposed home and the adjacent property. The intent of the rear yard requirements is to allow for adequate open space behind the home and adequate spacing from nearby structures.

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.