

BOARD OF ADJUSTMENT

MINUTES

Thursday April 25, 2013

The Blowing Rock Board of Adjustment met on Thursday, April 25, 2013 at 5:30 p.m. Members present were Chairman Ron Oberle, Mark Klein, Jerry Starnes, Annie Whatley and Dr. Charles Davant. Staff present was Planning Director Kevin Rothrock, Town Attorney Allen Moseley and Administrative Assistant Tammy Bentley.

Chairman Ron Oberle called the meeting to order at 5:30 p.m.

APPROVE MINUTES:

Mr. Klein made a motion to approve the minutes from May, 2010. Mr. Starnes seconded the motion. All were in favor of the motion.

New members Joe Papa, Terry Story, and Suzanne Wilson were sworn to the Board.

Chair Oberle informed the Board that he no longer wanted to serve as Chair and asked the Board for nominations for Chair. *Ms. Whatley made a motion to nominate Mr. Klein for Chair, seconded by Mr. Starnes. All were in favor of the motion.*

Chairman Klein asked for nominations for Vice Chair. *Dr. Davant made a motion to nominate Annie Whatley, seconded by Chairman Klein. All were in favor of the motion.*

Chairman Klein assumed the meeting.

Kevin Rothrock, Mr. Miller and Mr. Pat Cartwright were sworn in for testimony to the Board.

Mr. Rothrock gave the staff report to the board in reference to Variance #2013-01:

Steven and Catherine Miller are requesting a street setback variance of 3.1 feet to allow a window overhang and an entryway roof to remain as currently constructed. The applicable setback for this property is 25.1 feet from the property line along Valley View Road. The setback was reduced on the lot through Section 16-12.4.7 of the Land Use Ordinance. The property is located at 727 Valley View Road and is further identified by Watauga County PIN 2807-65-9006-000.

The Millers were granted an administrative setback reduction based on the topography of the lot, from 40 feet to 25.1 feet. The zoning permit issued required a foundation survey and that all eave overhangs comply with the applicable setback.

Mr. Rothrock informed the Board that the maintenance deck encroachment on the side of the building was not being considered in this hearing.

Dr. Davant asked if the awning retracted. Mr. Rothrock stated no.

Ms. Whatley and Chairman Klein asked if Exhibit C was the approved site plan. Mr. Rothrock confirmed that it was. Mr. Rothrock also informed the Board that the ground level step would not be considered in the setback requirement, but that the roof overhang, a significant part of the structure, would be considered in the setback. Ms. Whatley asked why there was a survey in 2012 if the house was completed in 2010. Mr. Rothrock said he would let the applicant answer. Dr. Davant confirmed with Mr. Rothrock that the porch and awning were encroaching in 2010. Chairman Klein asked Mr. Rothrock if the front setback issues were discovered in the 2012 survey. Mr. Rothrock informed the Board that the Building Inspector had discovered the maintenance decks after the 2010 final inspection and there was no building permit issued for the decks. Planning staff responded that the decks were constructed contrary to the zoning permit and had to be removed. An October, 2012 survey revealed the encroachment of the maintenance decks as well as the front entryway and window overhang.

The Board discussed issues regarding the maintenance deck. Ms. Whatley reminded the Board that the maintenance deck was not part of the hearing.

Ms. Whatley asked if the front elevation was different when permitted. Mr. Rothrock said that he did not review the building plans. Mr. Starnes said that the porch appears on the original plan. Mr. Rothrock responded yes, but it appears to have been built out further.

Ms. Whatley voiced concern that the decks came to light two years after completion and asked how long after a building is completed does Staff go looking for issues. Mr. Rothrock responded that Staff did not typically look for issues on completed structures. Mr. Starnes pointed out that the encroachment was self-reported.

Chairman Klein opened the floor to the public.

John Turner, attorney, spoke for the applicants. He said that the variance is for the front only because the Millers intend to correct the maintenance decks, either by coming into compliance or removal of the decks. The Millers now own the lot on the North side of the property and plan to remove the maintenance deck on the side adjoin the Cartwright's property. He also pointed out that the porch dimensions on Exhibit G, the as-built survey, are basically the same as on the site plan. The problem appears to be that the builder set the house very slightly forward from what the Millers and Planning and Inspections approved. The overhang was added at the insistence of the builder for architectural integrity. He stated that the mistake was on the builder's part. He told the Board that he thought it would be

appropriate to grant the variance as requiring removal of the overhang and entryway would be an accomplishment of form over substance. Mr. Turner informed the Board that Mr. Craver, a neighbor of the Millers, had sent a letter supporting granting the variance. Mr. Starnes asked Mr. Moseley if the letter could be evidence. Mr. Moseley responded that it would be good to have it in the file, but it could not be evidence.

The Board confirmed with Mr. Rothrock that the front entryway and overhang encroachments were discovered as a result of the discovery of the maintenance decks that were built without a building permit and built contrary to the zoning permit issued for the construction of the house.

Mr. Miller, the applicant, told the Board that they had approved everything except Exhibit C with the builder. He said that the maintenance decks were added later at the request of the builder and that both issues with the maintenance decks will be addressed. Mr. Miller said that the south deck would be removed and the property line would be adjusted so that the north deck complies with the setbacks, or that deck would also be removed. He informed the Board that he was unaware of the front encroachment until it was revealed in the 2012 survey. He allowed the builder to add the overhang as an architectural element, but was not given any drawings.

Mr. Pat Cartwright, neighbor of the Millers, spoke to the Board. He said that in general he feels that setbacks need to be adhered to by everyone. He also said that he wished the encroachment was discovered earlier, but regardless of the time of discovery, he strongly feels that removal of the porch and overhang would be a detriment to that house and the entire neighborhood.

Ms. Whatley made a motion to close the public hearing, seconded by Dr. Davant. All were in favor of the motion.

The Board discussed the issues and what guidelines must be met to approve the request. Mr. Moseley said that the Board had to state guidelines as set forth in section 16-5.2 of the Towns land use code as listed below:

- a) Strict enforcement of the regulations would result in practical difficulties or unnecessary hardships to the applicant for the variance. **Dr. Davant made a motion to find for the applicant. Mr. Starnes seconded. All members were in favor of the motion.**
- b) The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit. **Mr. Starnes made a motion to find for the applicant. Dr. Davant seconded. All members were in favor of the motion.**
- c) In the granting of the variance the public safety and welfare have been secured and substantial justice has been done. **Dr. Davant made a motion to find for the applicant. Ms. Whatley seconded. All members were in favor of the motion.**

Mr. Starnes made a motion to grant the variance being in agreement with section 16-5.2. Mr. Rothrock said the variance is for 3.1 feet. Mr. Starnes clarified his motion to reflect granting the 3.1 feet variance in agreement with Section 16-5, Dr. Davant seconded the motion. All were in favor of the motion.

There was other discussion and comments from the board after the decision.

Other Business

Mr. Rothrock asked the Board members if they could attend a BOA workshop on May 3, 2013 in Asheville. Chairman Klein asked Mr. Papa, Ms. Wilson and Mr. Story if they could attend. Mr. Papa and Ms. Wilson both responded that they would not be able to attend. Mr. Story can attend.

Mr. Rothrock asked the Board if they wanted to change their meeting time from 7 p.m. to 5:30 p.m. *Mr. Oberle made a motion to change the meeting start time to 5:30 p.m. Mr. Starnes seconded. All were in favor of the motion.*

Ms. Whatley made a motion to adjourn. Dr. Davant seconded the motion. All members were in favor of the motion.

Adjourn

With no further business, the Board adjourned at 6:45 p.m.

Mark Klein, Chairman

Tammy Bentley, Administrative Assistant