Zoning Board of Adjustment
Town of Maggie Valley
Town Hall Flossie White Room
Thursday, July 21st, 2016
5:30pm

Members Present:	Chairman Bill Banks, Marion Hamel, John Judge, Candace Way
Members Absent:	Allen Alsbrooks, Caroline Greene
Staff Present:	Town Planner Andrew Bowen, Town Clerk Vickie Best and Executive Assistant Shelly Coker
Others Present:	Mayor Pro Tem Janet Banks, Jim and Norma Heffron

Opening of Meeting

Chairman Banks called the meeting to order at 5:30pm on Thursday, July 21st, 2016 in the Flossie White Room of Town Hall.

Public Comment

No public comments were presented.

Approval of June Meeting Minutes

MARION HAMEL MADE A MOTION TO APPROVE THE MINUTES AS PRESENTED. CANDACE WAY SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

Residential Setback Variance Request for Lot 66 in Brannon Forest

Planner Bowen mentioned this is the second Request for Variance for Lot 66 Brannon Forest (7697-66-9140, Claude James Heffron/TR and Norma L Heffron/TR), as the property owners received a previous request for variance along with an extension, which has expired.

Staff Review (Town Planner, Andrew Bowen)

Under oath, Planner Bowen provided the following summary of information:

Planner Bowen drew attention to the aerial view in the packet (see attached). The adjoining property owners shown on the map were not present. The property has unique limitations as there is a natural curve of the stream towards the back of the lot and the road right of way in the front.

Town Process for Granting a Variance:
Variances. Before the Zoning Board of Adjustment may grant a variance, it shall make the following three findings which shall be recorded in the permanent record of the case and shall include the factual reasons on which they are based.

A. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this chapter. In order to determine that there are practical difficulties or unnecessary hardships, the Board must find that all five of the following conditions exist.

1 If the applicant complies with the provisions of this chapter, the applicant can secure no reasonable return from nor make reasonable use of the property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Board in granting a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of this chapter that will make possible the reasonable use of the property.

In pursuing this variance, Mr. Heffron is only trying to utilize his land in order to build a home. In no way would granting this variance help to secure a higher profit for the applicant as first, this is to be his primary residence and not a spec home for sale and second, this is truly the smallest home that he can build on the lot due to HOA restrictions on home square footage. Brannon Forest HOA has given their approval. Mr. Heffron is planning on building the smallest house that can be built and his land was purchased before annexation by the Town of Maggie Valley.

2 The hardship results from the application of this chapter to the property, rather than from other factors such as deed restrictions or other hardship.

The only reason that Mr. Heffron is seeking a variance is because of the setback constraints set forth in the Town's Land Development Ordinance. As you can see from the letter provided in the appendices, the Homeowners Association has granted full permission for Mr. Heffron to move forward with his plans. Setback variances have been given from the HOA and this Board earlier.

3 The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.

As seen in the plat, Mr. Heffron's lot is highly constrained by a natural curve of the stream that runs towards the back of his property and the road right-of-way in the front. With these two factors combined with a first floor square footage restriction enforced by the Brannon Forest HOA, the developable portion of the land is too shallow to not have some leeway on the part of setback requirements.
This lot is a strange shaped property. Mr. Heffron is trying to best utilize the Town's regulations and the HOA's guidelines.

4 The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates this chapter, or who purchases the property after the effective date of this chapter and then comes to the Board for relief.

Mr. Heffron bought this piece of property prior to Brannon Forest being annexed into the Town, thus it is not any fault of the applicant that the Town's restrictions have been placed on the property after purchasing. The lot was purchased thirteen years ago.

5 The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the

restriction, then granting a variance would be a special privilege denied to others and would not promote equal justice.

This hardship is indeed particular to the applicant's property. While there are common lots with like proximities to the creek and road right-of-way (provided in the appendix) all other homes were built and granted variances by the HOA prior to annexation. Mr Heffron is trying to hold to neighborhood aesthetics.

B. The variance is in harmony with the general purpose and intent of this chapter and preserves its spirit. That is, the applicant is not seeking to establish, to expand, or to extend in area a nonconforming use. Moreover, the existence of a nonconforming use in the same or in any other zoning district shall not constitute a reason for granting the requested variance.

It is the Planner's view that by granting this variance, nor the Planning Board or the ZBOA would be stepping out of bounds in terms of the general purpose and intent of the Town's Land Use Development Ordinance. While Mr. Heffron will be closer to both the right-of-way and the small stream, there are many homes within Brannon Forest with analogous distances. Mr Heffron is trying to conform to Residential Use with the right of way and the creek.

C. In granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The Board shall not grant a variance if it finds that doing so would alter the essential character of the neighborhood, materially diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, or general welfare.

By granting this variance it is the opinion of the planner that the construction of the home would not alter the character of the neighborhood, or adversely affect neighboring property values. Mr Heffron is trying to maintain the flow of the neighborhood. This property is in a curve.

Planner Bowen's Recommendation to Zoning Board:

As Mr. Heffron has been granted a variance from the Town before (provided in appendix) and this current plan is smaller than the original home permitted by the Town, I can see no reason to not grant the variance.

Planning Board Recommendation:

Upon reviewing the information provided in the packet, the Planning Board decided with a 3 to 1 vote to formally advise the ZBOA to grant Mr. Heffron's variance request.

Applicant Presentation (Applicant: Jim Heffron)

Under oath, Jim Heffron provided the following information:

The lot in question was purchased in 2003 and in 2005 there were many neighborhood variances granted to other property owners. He spoke of the realtor mentioning the stream and showed the Board members a diagram of the property's buildable area.

Mr Heffron discussed the purchase price of $33,000 not including a $1,500 well fee. Taxes, both county and town, and fees to the HOA plus mowing charges have created a burden. He spoke of the dimensions of the house and trying to fit it on the lot. Posts for the porch will be closest to the stream. The house will cost around $300,000 to build and he will not be able to recoup his costs.

Mr Judge asked about the square footage of the home. Mr Heffron answered, just under 1900 sq ft. Planner Bowen mentioned that the sediment requirements will be met for erosion control. Also, re-sodding will occur after construction.

Mr Heffron's neighbor received a variance to be 7.25' from the property line. Another neighbor has a rock embankment on Mr Heffron's property line.

He estimates that half of the houses were granted variances.

Public Comment

Mrs Heffron mentioned they bought the lot before other houses were there.

Zoning Board Discussion

Chairman Banks asked if there was any more discussion. There was none.

JOHN JUDGE MADE A MOTION TO GRANT THE VARIANCE AS REQUESTED. MARION HAMEL SECONDED. MOTION CARRIED UNANIMOUSLY.

Planner Bowen mentioned a joint meeting with the Planning Board. Chairman Banks mentioned the Civil Penalty. Marion Hamel asked what could be done to assist. Planner Bowen invited everyone to the Ordinance Workshops with the Planning Board, every second Thursday at 5:30pm.

Meeting Adjournment

ON MOTION OF CANDACE WAY WITH ALL IN FAVOR, THE MEETING ADJOURNED AT 6:05PM.

Chairman Bill Banks _____

Executive Assistant Shelly Coker _____