

IREDELL COUNTY ZONING BOARD OF ADJUSTMENT

The Iredell County Zoning Board of Adjustment met at a regularly scheduled meeting on Thursday, May 20, 2021 at 6:00 p.m. in the Commissioners Meeting Room of the Iredell County Government Center (Old Courthouse) at 200 S. Center Street in Statesville, NC.

MEMBERS PRESENT

Roy West, Chairman
Bob Dellinger, Vice-Chair
Bill Brater
David Aman
Tim Johnson
John Allen
Don West

STAFF PRESENT

Rebecca Harper
Rich Hoffman
Cindy Nicholson
Jake Lowman

Chairman West called the meeting to order.

Minutes: Mr. Allen made a motion to approve the minutes from the April 15, 2021 meeting. Mr. Aman seconded motion and all were in favor.

Chairman West declared the public hearing open. He then swore/affirmed those wishing to speak concerning the following cases.

Ms. Harper presented the following case:

BOA CASE NO. 210415-1 Gary Miller (Owner), Richard Lovette, (Applicant)
(continuation from April 15, 2021)

EXPLANATION OF THE REQUEST

The applicant is requesting relief of 14.29 feet from the 35-foot front setback per Section 2.7 of the Iredell County Land Development Code to allow a proposed new home to be located 20.71 feet from the front property line.

OWNER/APPLICANT

Owner: Gary Miller
603 Mazeppa Rd.
Mooresville, NC 28115

Applicant: Richard Lovette
6615 Fairway Point Dr.
Charlotte, NC 28269

PROPERTY INFORMATION

LOCATION: 165 Hogan Lane in Mooresville, NC; more specifically identified as PIN# 4627752601.

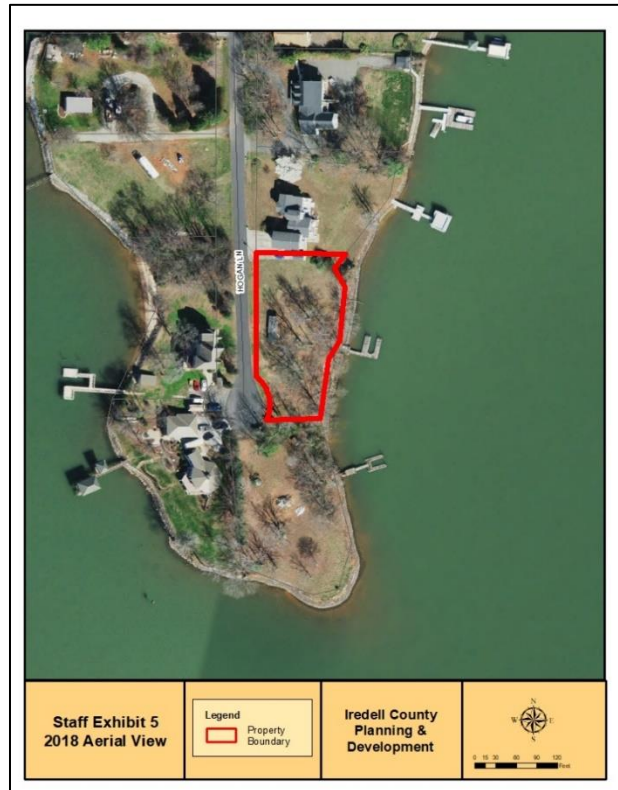
DIRECTIONS: Highway 150 west, left on Paradise Peninsula Road, left on Greenbay Road, right on Hogan Lane, near the end on the left.

SURROUNDING LAND USE: This property is surrounded by residential uses and Lake Norman.

SIZE: The property is .616 acres.

EXISTING LAND USE: The property currently has an accessory structure on it.

ZONING: The property is currently zoned RR (Resort Residential).



FINDINGS OF FACT

1. The request is for relief of 14.29 feet from the 35-foot front setback per Section 2.7 of the Iredell County Land Development Code to allow a proposed new home to be located 20.71 feet from the front property line.
2. The property is .616 acres located at 165 Hogan Lane in Mooresville, NC; more specifically identified as PIN# 4627752601.
3. The property is currently zoned RR (Resort Residential).
4. The application was filed on 3/3/21.
5. The adjoining property owners were notified on 3/22/21.
6. The property was posted on 3/22/21.

STAFF COMMENTS

The property is located near the end of a cul de sac. The building envelope is narrow on this lot. The proposed home has been located closer to the road rather than the lake to keep it out of the buffer.

EXHIBITS

Staff Exhibit 1.	Variance Application
Staff Exhibit 2.	Survey
Staff Exhibit 3.	Section 2.7
Staff Exhibit 4.	Adjoining Owners and Zoning Map
Staff Exhibit 5.	2018 Aerial Map

QUESTIONS FROM BOARD TO STAFF

Mr. Don West asked Ms. Harper how the setback is enforced?

Ms. Harper said once the permit is issued, it will be listed on the permit itself and the inspector that comes out will check the footings to make sure they meet the appropriate setbacks.

Chairman West asked if there were any further questions for staff.

There were no further questions for staff.

At this time, Chairman West asked for those wanting to speak in favor of the request to come forward.

THOSE SPEAKING FOR THE REQUEST

Mr. Drew Lovette, current owner of 165 Hogan Lane, said the reason for the 15 feet to now 9 feet was to keep some trees on-site, in which they were hoping to save. The trees have now been nixed. They are currently dealing with the setback for the new septic system they will have to put in, as well as the building envelope shrinking, as well as some erosion issues they are having.

Chairman West asked Mr. Lovette to clarify if the trees were really the issue or is he possibly wanting to put in a swimming pool or something.

Mr. Lovette said the trees are now off the table, and would have been more difficult to try and keep the trees fertilized and taken care of 15 feet from the house. It was originally a request from his wife, since there would not be many trees, and be fairly empty on the front of the house.

Chairman West said that was not one of the Board's requirements to take the trees down.

Ms. Harper said no, but it was part of the reason it was pushed forward originally, was because of the trees in the back. Mr. Lovette is now saying he is taking those trees down, and pull the house back a little compared to what he had requested originally last month.

Chairman West asked if there were any further questions for Mr. Lovette.

There were no further questions for Mr. Lovette.

Chairman West then called Mr. Rob Whyte to come forward.

Mr. Rob Whyte, 6600 Hawks Nest Drive, builder for Mr. Lovette, came forward and said the house plan has been shifted to include all the things that were mentioned/advised at the April meeting.

Chairman West asked if there were any further questions for Mr. Whyte.

There were no further questions for Mr. Whyte.

Chairman West asked Ms. Harper if she had any further comments.

Ms. Harper entered the staff report, the revised survey, and the PowerPoint into the record.

Chairman West closed the public hearing.

The Board went over the Variance check sheet

1. There are special circumstances or conditions affecting the property such that the strict application of the provisions of the Ordinance would cause unnecessary hardship.

Johnson:	TRUE	Applicant exhausted all efforts to make compliant
Aman:	TRUE	Applicants willingness to work with restrictions given
Dellinger:	TRUE	Applicant trying to get in compliance near as possible
D. West:	TRUE	Exceptions made by homeowner to make all fit
R. West:	TRUE	Owners willingness to accommodate concerns
Brater:	TRUE	Corrections made by owner and contractor to fit
Allen:	TRUE	Shape of lot is irregular & change of setbacks prior

TRUE BY A VOTE OF 7-0

2. The circumstance giving rise to the need for the variance are peculiar to the parcel and are not generally characteristic of other parcels in the County's jurisdiction.

Johnson:	TRUE	Extremely tight building envelope
Aman:	TRUE	Peculiarity of lot, building envelope
Dellinger:	TRUE	Peculiar situation with narrow lot
D. West:	TRUE	Unusual shaped lot; not characteristic of other parcels
R. West:	TRUE	Lake lots done by Duke; county established ordinances later
Brater:	TRUE	Peculiarity of lot & circumstances have been corrected
Allen:	TRUE	Peculiar shape lot

TRUE BY A VOTE OF 7-0

3. The hardship suffered is NOT a result of the applicant's or property owner's own actions.

Johnson:	TRUE	Applicant has done everything in his power to conform
Aman:	TRUE	Applicant used input from Board and adjusted to fit
Dellinger:	TRUE	Size & configuration of lot
D. West:	TRUE	Setbacks changed after lot was made
R. West:	TRUE	Lake lots done by Duke; county established ordinances later
Brater:	TRUE	Crescent/Duke is to blame
Allen:	TRUE	Setbacks changed after the fact many years later

TRUE BY A VOTE OF 7-0

4. The granting of the variance will be consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured and substantial justice is achieved.

Johnson:	TRUE	Consistent with the spirit/purpose/intent of ordinance
Aman:	TRUE	Would be consistent with spirit/purpose/intent of ordinance
Dellinger:	TRUE	No effect on public safety & justice achieved for the owner
D. West:	TRUE	Deviation in front w/power lines at least 20 feet from house
R. West:	TRUE	No neighbors in attendance against request; similar to area
Brater:	TRUE	Would be consistent with spirit/purpose/intent of ordinance
Allen:	TRUE	Public safety would be unaffected & justice achieved

TRUE BY A VOTE OF 7-0

DECISION: Mr. Dellinger made a motion to **APPROVE** the Variance based on the Findings of Fact and the evidence submitted, along with new submission of facts. Mr. Johnson seconded said motion. Motion passed. All were in favor.

VOTE: 7-0

Ms. Harper presented the following case:

BOA CASE NO. 210520-1 Martha Williams (Owner/Applicant)

EXPLANATION OF THE REQUEST

The applicant is requesting relief of 4.2 feet from the 15-foot side setback per Section 2.8 of the Iredell County Land Development Code to allow an existing deck addition to remain 10.8 feet from the side property line.

OWNER/APPLICANT

Owner/Applicant: Martha Williams
105 Wild Harbor Rd
 Mooresville, NC 28117

PROPERTY INFORMATION

LOCATION: 105 Wild Harbor Road in Mooresville, NC; more specifically identified as PIN# 4626900430.

DIRECTIONS: Brawley School Road, left on Great Point Drive, at the corner of Wild Harbor Road.

SURROUNDING LAND USE: This property is surrounded by residential uses and Lake Norman.

SIZE: The property is .799 acres.

EXISTING LAND USE: The property currently has a single-family house on it.

ZONING: The property is currently zoned R20 (Single-Family Residential).



FINDINGS OF FACT

1. The request is for relief of 4.2 feet from the 15-foot side setback per Section 2.8 of the Iredell County Land Development Code to allow an existing deck addition to remain 10.8 feet from the side property line.
2. The property is .799 acres located at 105 Wild Harbor Road in Mooresville, NC; more specifically identified as PIN# 4626900430.
3. The property is currently zoned R20 (Single-Family Residential).
4. The application was filed on 4/5/21.
5. The adjoining property owners were notified on 4/26/21.
6. The property was posted on 4/26/21.

STAFF COMMENTS

The zoning permit was issued on 7/23/19 with the correct setbacks listed on the permit. The certificate of occupancy was issued on 10/9/19. The owner states in his application that the builder marked the property boundary and 15-foot setback based on an architect's drawing. The drawing had the house shown at a different angle causing the discrepancy in the location of the property boundary. The setback violation was discovered when a recent survey was done for the sale of the property.

EXHIBITS

Staff Exhibit 1.	Variance Application
Staff Exhibit 2.	Survey
Staff Exhibit 3.	Section 2.8
Staff Exhibit 4.	Adjoining Owners and Zoning Map
Staff Exhibit 5.	2021 Aerial Map

QUESTIONS FROM BOARD TO STAFF

Chairman West shared concerns regarding the many variances presented before the Board recently. He questioned why the county isn't making sure there isn't any setback encroachments prior to issuing the CO.

Ms. Harper said in this particular instance, the builder marked the property line based on the architect's drawing. Therefore, when the inspector was on site, the builder and the inspector were under the assumption the property line was a little bit different than what it actually was, not necessarily faulting the county or the applicant. It was an error in the process getting the proposed addition drawn up by the architect and getting it built on site.

Mr. Aman said he does not agree. He questioned what the building inspector's job is.

Ms. Harper said if the builder marks it incorrectly, which is her understanding as to what happened in this instance, the inspector is relying on what the builder marked on site.

Mr. Aman said the architect didn't certify anything in the site plan.

Ms. Harper said she understands that, but the building inspector was going on what he had from the builder at the time.

Chairman West said it is like another case recently before the Board. The applicant did everything right, now they have to come before the Board and pay. He looks at it like contributory negligence.

Mr. Aman said there were multiple failures that have occurred obviously. Ultimately, the person with the say-so, is the building inspector.

Chairman West said he is a contractor, and when he pays for a building permit, there is a fee included for checking specifically for setbacks, and it's not being done.

Mr. Aman suggested there needs to be some training.

Ms. Harper said they have tried to come up with options within the county code to try and minimize the number of these requests that come through, which it has. The department has written letters based on the Curative Provision for Banks and Surveyor's, which has minimized the number actually coming to this Board. Unfortunately, this particular case does not fall within the criteria in the county code. The only recourse was to apply for a variance. Banks won't loan money on a lot that does not comply with setbacks. Therefore, there was no choice other than go through this process.

Chairman West asked if there were any further questions for staff.

There were no further questions for staff.

At this time, Chairman West asked Mr. Matt Benton to come forward and speak on behalf of the request.

THOSE SPEAKING FOR THE REQUEST

Mr. Matt Benton, Law Office of Ralston, Benton, Byerly, & Moore, 335 N. Center Street, Statesville, is representing Martha Williams (Applicant). Mr. Benton said Ms. Williams could not attend this meeting due to being in the medical field and unavailable at this time.

Mr. Benton said as shown, there is a 4.2 feet encroachment over the setback on the side. There is a long distance with a wooded buffer between this house and the neighbor. The lot shape is also not a normal shape. The Williams' hired an architect in 2019 along with Cypress Builders to come and build this covered structure, and applied for a permit July 23, 2019 and setback inspection that passed on July 26, 2019.

This house is currently under contract, and the closing date has already come and gone, therefore, this is a special circumstance. The seller and the buyer are hoping after this meeting, they can close at the bank.

Chairman West asked if there were any questions for Mr. Benton.

There were no questions for Mr. Benton.

Chairman West asked Ms. Harper if she had any further comments.

Ms. Harper entered the staff report and PowerPoint into the record.

Chairman West closed the public hearing.

The Board went over the Variance check sheet

1. There are special circumstances or conditions affecting the property such that the strict application of the provisions of the Ordinance would cause unnecessary hardship.

Johnson:	TRUE	Homeowner was issued a CO by the county
Aman:	TRUE	Building permit issued that wasn't completely investigated
Dellinger:	TRUE	Discrepancies that county approved
D. West:	TRUE	Fault to be with the county & architect
R. West:	TRUE	Contributory negligence on county, architect/builder
Brater:	TRUE	County forced owner to ask for forgiveness rather than permission
Allen:	TRUE	Confusion between architect, builder & county inspector

TRUE BY A VOTE OF 7-0

2. The circumstance giving rise to the need for the variance are peculiar to the parcel and are not generally characteristic of other parcels in the County's jurisdiction.

Johnson:	TRUE	Conflicting information regarding case
Aman:	TRUE	Nothing peculiar, only bungling of the process
Dellinger:	TRUE	Encroachment being so minor, not affecting much
D. West:	TRUE	Enough said
R. West:	TRUE	Process was bungled; intent was not to mislead
Brater:	TRUE	Conflicting information regarding case; attorney testimony
Allen:	TRUE	Inspection failed to find encroachment and gave CO

TRUE BY A VOTE OF 7-0

3. The hardship suffered is NOT a result of the applicant's or property owner's own actions.

Johnson:	TRUE	Owner attempted to do the right thing w/hiring architect and got a permit from the county
Aman:	TRUE	Owner trying to do everything right & unraveling in process
Dellinger:	TRUE	Misconception of information
D. West:	TRUE	Owner did everything properly
R. West:	TRUE	Lake lots done by Duke; county established ordinances later
Brater:	TRUE	No evidence of owners own actions causing issue
Allen:	TRUE	Architect/builder/inspector failed to find error prior to building

TRUE BY A VOTE OF 7-0

4. The granting of the variance will be consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured and substantial justice is achieved.

Johnson:	TRUE	Consistent with the spirit/purpose/intent of ordinance
Aman:	TRUE	Granting of variance will provide substantial justice
Dellinger:	TRUE	Consistent with ordinance; no public safety involved
D. West:	TRUE	Small granting of variance & would be no public safety issue
R. West:	TRUE	No neighbors in attendance against request; similar to area
Brater:	TRUE	Public safety secured & substantial justice would be achieved
Allen:	TRUE	In spirit of ordinance & justice would be achieved w/variance

TRUE BY A VOTE OF 7-0

DECISION: Mr. Allen made a motion to **APPROVE** the Variance based on the Findings of Fact as presented. Mr. Don West seconded said motion. Motion passed. All were in favor.

VOTE: 7-0

ADJOURNMENT: At this time, Chairman West declared the meeting adjourned at 6:39 pm.

Cindy Nicholson, Administrative Assistant

Date Read and/or Approved

DATE FILED IN THE MINUTE BOOK BY THE CLERK: _____. **NOTE: THE APPLICANT HAS THIRTY [30] DAYS FROM THIS DATE TO APPEAL THE DECISION BY THE BOARD.**