

# IREDELL COUNTY ZONING BOARD OF ADJUSTMENT

The Iredell County Zoning Board of Adjustment met at a regular and duly advertised meeting on Thursday, February 21, 2013 at 7:00 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

Mike Johnson – *Chairman*  
Alan Boyce  
Robert Dellinger  
Nick Carrington  
A.K. Loyd  
Mac McCombs  
Steve Shoe

## STAFF PRESENT

Rebecca Harper, *Staff Planner*  
Alaina Dillard, *Clerk to Board*

## Members Absent

Roy West

*Chairman Johnson called the meeting to order and Mr. Dellinger had opening prayer.*

**MINUTES:** Mr. Dellinger made a motion to approve the December 20, 2012 meeting minutes. Mr. McCombs seconded said motion and all agreed. **VOTES: 7-0**

*Chairman Johnson declared the public hearing open. He then swore/affirmed in those wishing to speak in regard to the following cases:*

## **BOA CASE NO. 130707-1: James & Tamara Proffit (owner), David Mcmillan (applicant) – Variance:**

Mrs. Harper presented the staff report:

The applicant is requesting relief of 1.3 feet from the 30-foot rear setback requirement, per Chapter 3, R 20, to allow an existing covered porch built in 2007 to be located 28.7 feet from the rear property line.

**LOCATION:** 146 Prestwood in Mooresville; more specifically identified as PIN # 4644-19-0557.

**DIRECTIONS:** Hwy 115 south, right on Langtree Road, left on Gudger Road, right Bridgeport Drive, left Prestwood Lane, on the right.

**SURROUNDING LAND USE:** This property is surrounded by residential uses.

**SIZE:** The property is .64 acres.

**EXISTING LAND USE:** The property is being used for residential purposes.

**ZONING:** The property is currently zoned PRD (Planned Residential Development).



## FINDINGS OF FACT

1. The property is .64 acres located at 146 Prestwood Lane, Mooresville N.C.; more specifically identified as PIN# 4644-19-0557.
2. The request is for relief of 1.3 feet from the 30-foot rear setback requirement, per Chapter 3, R 20 Planned Unit Development, to allow an existing covered porch built in 2007 to be located 28.7 feet from the rear property line.
3. The property is currently zoned PRD (Planned Residential Development).
4. The application was filed on 11/26/12.
5. The adjoining property owners were notified on 1/4/13.
6. The property was posted on 1/4/13.
7. The legal notice was run on 1/4/13 & 1/11/13.

#### **QUESTIONS BY THE BOARD TO STAFF:**

Chairman Johnson asked for some clarification on the timeline which the home was built. Mrs. Harper stated that property was zoned PRD in 1987 and the home was built after that. Mrs. Harper clarified that an uncovered deck or porch could extend into the setback up to three feet and that when the original porch was built it was in compliance.

Chairman Johnson asked what the restrictions for the impervious area would be on this site. Mrs. Harper stated that with residential development minimum lot was used not the 24% impervious coverage rule. Chairman Johnson asked if the patio was built after 1994, it would not have been compliant. Mrs. Harper stated yes but the home was built in 1990.

#### **THOSE SPEAKING FOR THE REQUEST:**

**David McMillian**, applicant, stated that he recently sold the home. He stated that he reduced the size of the patio substantially. He stated that there was an uncovered covered porch there. He stated that the porch is facing south and it was very hot. Mr. McMillian stated he spoke with local builders and chose to have Brian Clodfelter built a roof over the deck and reroofed the home at the same time. He stated that he had spoken with someone on the review committee in the neighborhood and was informed that he must run the changes through the architectural review committee. He stated that when he put a presentation together and called the builder to obtain a copy of the building permit, Mr. Clodfelter stated that no permit had been pulled. Mr. McMillian stated that at that time a permit was obtained. He stated that the encroachment was discovered when the survey was done. Mr. McMillian stated that when the home was sold, money was put in escrow to fix the 3square foot encroachment if necessary.

**Rocky Proffit**, current home owner, stated that he felt like the encroachment was not done on purpose. He stated that he would hate to see a lot of resources expended to fix the encroachment.

Mr. Dellinger asked if a title search was done by an attorney when he purchased the home. Mr. Proffit stated that the survey showed the encroachment prior to the title search.

**Mary Webb Johnston Richards**, real estate agent, stated that all the previous testimony had been very truthful and thanked the Board of consideration of the request.

#### **STAFF COMMENTS:**

The property at 146 Prestwood Lane was part of a Planned Residential Development which required the developer to go through the process of rezoning the property. The rezoning request was approved by the Board of Commissioners on December 14, 1987. A site plan with a 30-foot setback for lakefront lots was approved as part of the request. The Planned Residential Development (PRD) is now called a Planned Unit Development (PUD) in the Land Development Code; however, the process is still the same. Therefore, we have referenced Chapter 3, R 20 for Planned Unit Developments as the section in the code that allows this type of development.

The porch in question was originally not a covered porch. The applicant had a builder put a cover on the porch in 2007. Permits were not pulled at that time. The applicant and previous owner, Mr. McMillan, found out that the roof addition needed to go through the architectural review for the homeowners association from a neighbor. During the process of getting the homeowners association approval, a copy of the building permit was needed. When he asked for a copy of the permit from the builder, he was told there was not a permit. He then got his zoning permit on September 9, 2010 and the building permit was issued on September 14, 2010. The Certificate of Occupancy on the porch cover was approved on October 1, 2010.

The variance request came about when the owner put the house on the market and a survey showed that the porch was not in compliance. The survey shows that the covered porch extends 1.3 feet into the setback. Due to the angle, only 3 square feet of the covered porch extends into the setback. The request is considered a minor watershed variance because it does not require relaxation of more than 10% of the 30 foot State buffer requirement. This means that the Board of Adjustment record will **not** be required to be sent to the Environmental Management Commission for review, if the Board approves the request.

***Chairman Johnson declared the public meeting closed.***

**The Board went over the Variance check sheet:**

1. If the applicant complies with the provisions of the Ordinance, he can secure no reasonable use of the property.

|             |      |
|-------------|------|
| Boyce:      | TRUE |
| Carrington: | TRUE |
| Dellinger:  | TRUE |
| Johnson:    | TRUE |
| Loyd:       | TRUE |
| McCombs:    | TRUE |
| Shoe:       | TRUE |

**TRUE BY A VOTE OF 7-0**

2. The hardship of which the applicant suffers results from unique circumstances related to the applicant's property.

|             |      |
|-------------|------|
| Boyce:      | TRUE |
| Carrington: | TRUE |
| Dellinger:  | TRUE |
| Johnson:    | TRUE |
| Loyd:       | TRUE |
| McCombs:    | TRUE |
| Shoe:       | TRUE |

**TRUE BY A VOTE OF 7-0**

3. The hardship is not a result of the applicant's own actions.

|        |      |
|--------|------|
| Boyce: | TRUE |
|--------|------|

Carrington: TRUE  
Dellinger: TRUE  
Johnson: TRUE  
Loyd: TRUE  
McCombs: TRUE  
Shoe: TRUE

**TRUE BY A VOTE OF 7-0**

4. The variance will be in harmony with the general purpose and intent of the Ordinance and preserve its spirit.

Boyce: TRUE  
Carrington: TRUE  
Dellinger: TRUE  
Johnson: TRUE  
Loyd: TRUE  
McCombs: TRUE  
Shoe: TRUE

**TRUE BY A VOTE OF 7-0**

5. The granting of the variance will not be injurious to the neighborhood, or otherwise be detrimental to public welfare.

Boyce: TRUE  
Carrington: TRUE  
Dellinger: TRUE  
Johnson: TRUE  
Loyd: TRUE  
McCombs: TRUE  
Shoe: TRUE

**TRUE BY A VOTE OF 7-0**

**DECISION:** Mr. Dellinger made a motion to **APPROVE** the Variance based on the Finding of Fact and the evidence submitted. Mr. Carrington seconded said motion and all agreed. **VOTES: 7-0**

**OTHER BUSINESS:**

**Lynn Niblock**, Director of Code Enforcement and Special Projects, was present to answer questions and explain how setbacks are verified during the inspection process. Mr. Niblock explained that in the past five years the Board had heard five variance cases because of setback encroachments. He stated that out of the five, two were started before building permits were issued. Mr. Niblock stated that one of the other cases, the setback requirements were entered wrong on the zoning permit that was issued. Mr. Niblock shared the following data: In 1998 there were 1,952 single family projects with 54,536 inspections. In 2006 there were 2,657 permits for single family projects with 99,786 inspections. In 2007 there were 2,789 single family projects with 99,638 inspections. In 2009 there were 1417 single family projects with 62,844 inspections. Mr. Niblock stated that when the calculations are done, the accuracy rate would be 99.999%. He stated that in recent years the Code Enforcement Department had added a separate setback inspection. Mr. Niblock stated that now all builders were required to establish the property lines.

Mr. Dellinger stated that one case that came to mind was that the property owner stated he was told by one of the inspectors that the setback was from the property line and not the right of way of the road. Mr. Niblock stated that as a general rule the property line and the right of way line are one in the same. However on some of the older roads, the deeds read to the center line of the road and they do not have a right of way line.

**ADJOURNMENT:** There being no further business, Chairman Johnson declared the meeting adjourned at 8:20 p.m.

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*Alaina S. Dillard/Planning Support Specialist*

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*Date Read and/or Approved*

**DATE FILED IN THE MINUTE BOOK BY THE CLERK: FEBRUARY 27, 2013. NOTE: THE APPLICANT HAS THIRTY [30] DAYS FROM THIS DATE TO APPEAL THE DECISION BY THE BOARD.**