

**Minutes of the Special Meeting of the  
Board of Adjustment**

**Friday, June 3, 2016  
2:00p.m.**

Chairman Kilby called the meeting to order at 2:03 p.m.

**ROLL CALL**

**Present:** John Kilby, Chair  
Ronald Erickson  
David Lusk, Seated Alternate  
Melvin Owensby  
Rick Stockdale, Alternate

**Absent:** David Butts  
Mark Hoek  
Lyn Weaver, Alternate  
Stephen Webber, Council Liaison

**Also Present:** Clint Calhoun, Erosion Control Officer  
Michelle Jolley, Recording Secretary  
Ron Morgan, Fire Chief  
Sheila Spicer, Zoning Administrator

**APPROVAL OF THE AGENDA**

Mr. Lusk made a motion to approve the agenda as presented. Mr. Stockdale seconded the motion. All voted in favor.

**HEARINGS**

- (A) ZV-2016006, a request from Bruce & Julie Sutton for a variance from §92.206(L)(5) of the Zoning Regulations to allow the grade of a driveway to exceed 25%. The property (Tax PIN 217282) is located at 337 Snug Harbor Circle, Lake Lure, NC 28746.

Ms. Spicer, Chief Morgan, Mr. Calhoun, Bruce and Julie Sutton, Marshall Seay, the contractor, and Robert Mitchell, adjacent property owner at 322 Snug Harbor Circle, were sworn in. Mr. Mitchell stated he would like to speak but would not be requesting standing. Chairman Kilby disclosed he had discussion with Ms. Spicer regarding the guidelines for handling the case. There were no other ex-parte communications or conflicts of interest to disclose. The Board felt they could reach a fair and unbiased decision. Mr. Sutton did not wish to challenge the Board for cause.

Ms. Spicer presented the case. She pointed out Mr. Mitchell called her on May 26 and they had a lengthy discussion. She stated she explained to him what it meant to request standing in the case. Mr. Mitchell reconfirmed he would not like to request standing for the case.

Ms. Spicer stated she received a call from Bob Mitchell, neighboring property owner, on May 26 asking about the request. Ms. Spicer explained the request and also explained to him that the only way he could appeal the decision of the Board would be to request standing at the hearing. She stated Mr. Mitchell mentioned that the Sutton's have a gravel driveway and when it rains, their water runoff and gravel drain across his property.

Ms. Spicer presented the case. She pointed out that the property does meet the Mountain & Hillside Development regulations. She noted the regulations that pertain to driveways. She mentioned there is already a driveway on the property, but it does not meet the Town's standards. The driveway was constructed after the Mountain & Hillside Regulations, in 2013. She stated she could not approve the Certificate of Zoning Compliance (CZC) until the standards for Mountain & Hillside Development regulations were met. She explained the regulations on the grades of the driveway and what is allowed. She noted that 25% grade is the maximum for approval at staff level. She explained that there have been conversations with the contractor, surveyor, Mr. Morgan, Mr. Calhoun, and herself about how to bring the driveway into compliance. She noted they were contacted by the Suttons shortly after stating the changes would be cost prohibited. She stated they expressed frustration because they had obtained a permit from the Town in 2013 and are now being told it does not meet certain standards. Ms. Spicer conveyed they did not receive zoning approval in 2013, only a land disturbance permit. Now that they want to build, they have to meet the regulations. She explained to them that they could either request a variance for the driveway they have now or bring it into compliance with the Town's regulations. She stated they chose to ask for a variance.

Ms. Spicer referred to the second finding of fact, the last sentence in the application. She mentioned she assumes they are referring to a current ongoing project. However, she stated that project is not a driveway; it is a construction entrance. She explained their parking will be at the road and the construction entrance will be closed off after construction.

Ms. Spicer explained that after the last Board of Adjustment meeting, Commissioner Webber came by her office and suggested doing some research on the portion of the regulations pertaining to Mountain & Hillside Development regulations. Ms. Spicer mentioned she went back to when the Mountain & Hillside Development regulations were adopted in 2008 and read over the minutes. She noted that the Zoning & Planning Board (ZPB) first started discussing the regulations on May 29, 2008; however, the standards for streets and driveways did not go into

discussion at that time. She stated that a subcommittee was appointed to discuss the regulations pertaining to driveways. She pointed out that Paula Jordan, Amos Gilliam, Clint Calhoun, and Ron Morgan were on that committee. The June 17<sup>th</sup> and July 15<sup>th</sup> ZPB minutes were the only minutes regarding the regulations pertaining to driveways. She read over a section of the minutes from June 17<sup>th</sup> regarding driveways. She then read from a section of the July 15, 2008 minutes regarding regulations concerning driveways and streets. She noted there was a memo from Mike Egan, attorney, dated June 11, 2008. There was also an email from Chief Morgan to Shannon Baldwin, Community Development Director, dated June 10, 2008 about reviewing the standards for driveways. She asked that the email from Mr. Baldwin be entered as a staff exhibit and provided to Chairman Kilby. Ms. Spicer read the email.

Ms. Spicer stated she spoke with Mr. Sutton on May 26, 2016 to confirm the meeting date. Mr. Sutton advised her that his contractor felt they could get the driveway down to a 26% grade. However, he stated he would still like to request a grade of more than that. She stated she also received a call from Mr. Mitchell. Mr. Mitchell explained to her that gravel from the Sutton's gravel driveway drains into his culvert and did not think that gravel should be allowed. Ms. Spicer conveyed to him that in accordance with the regulations, the Sutton's driveway would be required to be paved. Ms. Spicer noted she also explained to Mr. Mitchell about party status and standing at the hearing. Ms. Spicer stated she received a call from Nancy Buser, adjacent property owner at 153 Laurel Lane, on May 27, 2016 asking for details on the request. She noted that Ms. Buser had no further questions. Ms. Spicer asked Ms. Buser if the Sutton's had requested an easement for the portion of their driveway that runs along Ms. Buser's property. Ms. Buser stated no. She noted it would be easier to get to the Sutton's property by crossing her property. However, she stated she already has an easement with another property owner, which has caused problems, and stated they would not be allowing any more easements. Ms. Spicer stated that Mr. Sutton called again this morning verifying the time of the meeting. She explained they had discussion on the slope of the property. Mr. Sutton noted that his contractor stated there is a 30% slope. Ms. Spicer conveyed she ran the slope analysis again and came up with 35% slope. She asked Mr. Sutton if the latest site plan was the current plan and he stated yes.

Mr. Erickson asked Chief Morgan if a fire truck could get up the steep incline. Chief Morgan stated that it depends on the circumstances and he could not verify if all fire trucks could. He noted that curvature and slope of the driveway makes it difficult. He explained DOT allows up to an 18% grade. He stated the fire department tries to stick to that as well; however, they may go beyond that on properties with driveways before the regulations on driveways were adopted. He stated they have fought fires where they have had to park fire trucks at the street, which makes it very difficult to reach the hoses to the house. He noted that everything they need is in the truck and it is an extreme burden on the fire fighter. He stated getting a fire truck up the Sutton's driveway would be beyond what they would expect.

Ms. Spicer noted the driveway would have to have a pavement width of 12' and is required to be paved. Mr. Stockdale asked if the Town would be held liable if the Sutton's were ever injured coming down their driveway because of water or ice. Ms. Spicer stated that would be a question for the Town attorney. Chairman Kilby felt that Mr. Mitchell's concern about gravel and water runoff would be satisfied with the Sutton's driveway being paved. Ms. Spicer noted that Tony Hennessee, Public Works Director, also inspected and approved the plans for the driveway.

Mr. Owensby asked why there was no zoning review done in 2013. Ms. Spicer answered there was no zoning permit therefore no zoning review was required. She stated this is the first time they have applied for a CZC. She assumed the purpose of the Land Disturbance Permit was for the driveway. She noted she has had conversations with the Sutton's in the past and has kept all of her conversation notes. She stated there was nothing in her notes concerning driveway standards. Chairman Kilby requested keeping the hearing open and allowing the Sutton's to answer any questions.

Bruce Sutton, 337 Snug Harbor Circle, stated they bought in property in May, 2013 and had to make a few repairs due to fallen trees. He mentioned they also wanted to construct a driveway on the property and filed for a Land Disturbance Permit. He explained they found the best location on the property for the driveway and spoke with the current neighbor at the time to ask for permission to move their driveway 20 feet onto their property. He stated that the neighbor was not interested. He mentioned they met with Mr. Calhoun on the site in 2013. On April 15<sup>th</sup>, a contractor came out and suggested putting in two culverts with a collections box for runoff. He noted he then spoke with Mr. Calhoun again. He also spoke with Mr. Hennessee on August 15<sup>th</sup> who felt the basin would work great. Mr. Calhoun inspected the driveway in September and suggested spreading seed and sod on places that were disturbed by equipment. He stated on October 3<sup>rd</sup>, he had a question about the collections box and asked Mr. Hennessee to take a look at it. Mr. Hennessee stated that everything looked good with it. Mr. Sutton conveyed he did not know he needed a CZC. In 2014, he stated he submitted a contour to Ms. Spicer and she suggested a survey, which he had done. Mr. Seay, the contractor, mentioned that a CZC was not approved and he could not perform any work until one was obtained. He stated he then came in to speak with staff who explained everything to them.

Mr. Sutton pointed out that they have also bought the neighboring lot. He explained that by extending the driveway into the neighboring lot meant changing the slope of the lot, which would tear up more of the hill and would be very costly. He noted he would then be disturbing even more land, which they did not want to do. He mentioned they have looked at the footprint of the driveway with the surveyor and contractor to see what could be done. He stated that Mr. Morgan was concerned with a portion of the driveway that is at a 30% slope or more. He mentioned he would like to make the slope as small as possible for Fire and EMS. He noted he spoke with contractors today about the temporary construction driveway he referred to in his application. He stated the driveway at the neighboring property is at 29% grade and did not feel they were asking for any special privileges. He noted the variance would help to reduce even more disturbance to the hillside. He felt it would be in harmony with the intent of the regulations. He again conveyed that extending his driveway into his neighboring lot would disturb even more property, which they did not want to do. He explained that they are not causing the problem; the topography of the land causes a hardship and they have to work with what they have. He stated they put the location of the driveway in the only place it could go and there is no way to diminish the slope. Commissioner Kilby noted that there are driveways that do not meet Mountain & Hillside Development regulations in the community, which were grandfathered in. He felt that the Sutton's would be allowed the same privileges.

Mr. Seay, General Contractor, stated that another topo was done with the surveyor. In meeting with the surveyor and licensed grading contractor, they felt confident in that they would re-grade the driveway, widen the driveway, and prepare and inspect to concrete the driveway. He conveyed that he met with Chief Morgan on site earlier and mentioned creating a pull off on the left side of the driveway to allow fire and EMS vehicles to pull a third of the way up the driveway. He stated that he as well as the surveyor are confident they could get the grade down to 25-27%. He stated they are confident that they could construct a driveway, work with the grade, recheck it, re-pour it, have it inspected, and could also lower the grade at the top of the driveway in the process.

Commissioner Kilby referred to the map included in the plans. The Board had no questions regarding the map. Mr. Stockdale mentioned it appears the bigger issue is at the top of the driveway. Ms. Spicer asked Mr. Seay if the topo she has and the Board has is current and he stated yes. Ms. Spicer noted that if the Board granted a variance of up to a 27% grade, they would need something stating it could not exceed 27%. Mr. Stockdale asked about the pull-off area the contractor spoke of. Mr. Morgan noted they looked at several potential options with Ms. Spicer and noted that the driveway gets more level the closer to the top. He mentioned the problem is more with grade of the bottom of the driveway. He conveyed that if they could get them to the last curve of the driveway, that's what he would request. He asked that the contractor provide the Board with a proposed finished grade. Ms. Spicer confirmed it would be good to have a final plan of the driveway. Mr. Seay pointed out there was never a plan created from the surveyor for the driveway. He noted he did have the surveyor recheck the driveway and met with him as well as the grader this week, who stated they were confident they could get the driveway between 25-27%. He stated that Don McEntire, surveyor, requested 10 foot intervals and Ms. Spicer stated the topo requirements are two foot intervals. He pointed out that Mr. McEntire stated he could do a 25-27% grade at 10 foot intervals. Within that 10 feet there may be some areas more than 25-27%; however, this should not have an impact on vehicles. He stated he would pull the gravel uphill, re-grade, and pull the gravel back down without retaining walls. Ms. Spicer asked why they felt they could not do a 25% grade. Mr. Seay stated he could be held at a 25-27% grade, but would definitely need all of that. He noted as the responsible party, he did not feel comfortable going with a grade below that.

Mr. Sutton explained that they have reviewed several options and do not have hard plans because it has taken them awhile to evolve to what they have proposed today. He mentioned he did not want to disturb any additional land. He felt that adding a pull-off area would help with emergency vehicles.

Mr. Lusk asked if there was a way to cut out the curve to reduce the grade. Mr. Seay mentioned yes, possibly, but noted the only way to be certain is with engineer drawings. Mr. Owensby asked if there was a reason Mr. Sutton could not comply and would need the variance. Mr. Sutton stated it would require disturbing a lot more of the hillside and he did not think it would be possible or within the spirit of the ordinance by not disturbing more of the land. Ms. Sutton stated they are trying to get the grade down as close to 25% as they can. Chairman Kilby explained that the Board needs to have a definitive number to make a decision on granting the variance. Ms. Spicer concurred. Chairman Kilby conveyed that he drove up the driveway and did not feel there would be a big difference between 25- 26% grade in regards to ice. He felt there

was room at the bottom of the driveway to correct some of the concerns. He conveyed that the Zoning Regulations regarding slope guidelines should be addressed at some point to deflect the burden on staff and the Board. Ms. Spicer noted this has been addressed before and mentioned that staff is open to any suggestions.

Mr. Owensby asked the Sutton's if they could give a number on the total grade of the driveway. Mr. Sutton stated 26%; however, he would like 27% to have a little wiggle room. Chairman Kilby noted there may be areas that exceed 25%, but they would have to provide a definitive answer for the purpose of the variance request. Ms. Spicer noted that she and Chief Morgan have concerns with a portion of the driveway that has a grade up to 36%. She noted there are different slopes throughout the driveway. She explained that if the whole driveway was brought down to a 27% grade, the entire driveway would be at even steeper. She asked Chief Morgan which he preferred. Chief Morgan pointed out that a fire truck may not be able to make the transition coming from the road onto the driveway, which immediately goes to a 25% grade. He did not want that to be overlooked. He mentioned he would like the transition from the road to the driveway at a lesser grade so that the fire trucks can transition. He stated that areas of the driveway that exceed from 18-36% in a short distance is very difficult for a fire truck.

Mr. Sutton noted his calculations on paper show the first two sections of the driveway are 17% grade, which would then exceed to a 23% grade. He stated they could re-grade the section that is 36% down to 25-27%. Chief Morgan noted that a pull-off area would be nice; however, a re-grading of the driveway would be even better. He noted his concern is more the transition at the bottom of the driveway. Mr. Sutton stated they would re-grade where the driveway is at 27% and the rest of the driveway would not exceed 27%. Commissioner Kilby stated this satisfies the issue with the fire trucks. Mr. Sutton stated they would be repaving the driveway and would add grooves into it. He added that the driveway drains well at this point and heavy rains in the past had caused runoff.

Commissioner Kilby suggested a condition added to the motion to not exceed 27% grade of the driveway. Ms. Spicer suggested adding not to increase the grade of the driveway. There were no issues or concerns raised from anyone regarding the suggested motion.

Robert Mitchell, 332 Snug Harbor Circle, directly across from the Sutton's driveway, addressed the Board. He stated he wanted to attend the meeting to make sure the variance would not be approved as a gravel driveway. He felt that a concrete driveway with grooves would be needed for that slope. He noted the Sutton's had done a good job with the runoff and erosion problems and appreciated that they did not cut down the trees. He asked that they leave the rhododendrons because they help absorb water. He also asked that they take the water from the roof and put into the land and not allow runoff to go down the driveway. He mentioned the drains that were put into the bottom of the driveway are much better than the drainage the Town put in years ago.

Chief Morgan suggested the condition state that the driveway be at a 25% grade, where possible, and the sections that cannot stay at 25% grade to not to exceed 27% grade.

There was no further discussion, so Mr. Owensby made the following motion:

With regard to Case Number ZV-2016006, Mr. Owensby moved the Board to find that the applicants have demonstrated that unnecessary hardship would result from carrying out the strict letter of §92.040 of the Zoning Regulations and, further, have demonstrated compliance with the standards for granting a variance contained in §92.088 of such regulations. Accordingly, he moved the Board to grant the requested variance in accordance with and only to the extent represented by the application, with the condition that the driveway not exceed 27% but strive to stay at 25%. Also the grade of the entrance to the driveway shall not be increased from what is shown on the topographic survey submitted with the variance application.

Mr. Erickson seconded the motion. Mr. Erickson, Mr. Lusk, Mr. Owensby, and Chairman Kilby voted in favor.

Mr. Owensby voted yes, that the hardship was not brought on by the property owners. Mr. Lusk and Mr. Stockdale voted yes, in accordance with the condition. Mr. Erickson voted yes and felt the owners demonstrated a hardship was endured from the topography of the land. Chairman Kilby voted yes as well.

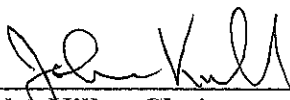
The variance was approved with the added condition. Ms. Spicer explained that the property owners will be required to submit a topo of the driveway showing it meets all of the conditions of the variance before receiving the permit.

#### **ADJOURNMENT**

Mr. Stockdale made a motion seconded by Mr. Owensby to adjourn the meeting. All voted in favor.

The meeting was adjourned at 3:31 p.m. The next regular meeting is scheduled for Tuesday, June 28, 2016 at 1:00 p.m.

**ATTEST:**

  
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John Kilby, Chairman

  
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Michelle Jolley, Recording Secretary

