



**Minutes of the Regular Meeting of the
Board of Adjustment**

**Tuesday, October 22, 2019
1:00 p.m.**

Chairman Hoek called the meeting to order at 1:00pm

ROLL CALL

Present:

**Mark Hoek
Melvin Owensby
David Lusk
Neil Gurney
Wyn Hardy- Alternate
Al Joyner- Alternate
Stephen Webber, Council Liaison**

Absent: Bill Bay, Lyn Weaver

**Also Present: Town Attorney, William Morgan
Brad Burton, Community Development Director
Mitchell Anderson, Development and Environmental Review Specialist
Sha'Linda Pruitt, Recording Secretary**

APPROVAL OF THE AGENDA

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

APPROVAL OF THE MINUTES FROM JUNE 25, 2019

Mr. Hardy made a motion to approve the minutes of the June 25, 2019. Mr. Owensby seconded the motion. All voted in favor.

HEARINGS

- (a) ZV-2019008, a 17'1" variance request from a 35' lake front-yard zoning setback requirement for the R-1 zoning district by James Sciandra at 141 Gentlewinds Lane in Lake Lure (Tax PIN 219240).

The parties Mr. Sciandra, Mr. Burton, and Mr. Anderson were sworn in

The board examined all ethical considerations and found that no board member has had any ex-parte communications with the applicant.

Mr. Sciandra opted not to challenge anyone on the board for cause.

Chairman Hoek opened the floor for staff presentations.

Mr. Anderson read the memo for the case.

James Sciandra is requesting a 17'1" setback variance from a 35 foot lake front-yard setback required for the R-1 zoning district for the property located at 141 Gentlewinds Lane in Lake Lure NC. The property tax pin is 219240.

Additional Information for the Board

- 1) James Sciandra submitted the application for a 17'1" variance on September 30, 2019.
- 2) Mr. Sciandra reports that the area of the requested variance is for a deck.

The Chairman asked whether anyone had any questions for Mr. Anderson and no one did. Chairman Hoek asked whether there were any comments from neighbors.

Mr. Anderson stated that Mrs. Jones initially contacted him with concerns however later she let it be known that her issue had been resolved.

Chairman Hoek opened the floor for the Statement of Applicant.

Mr. Sciandra explained the basis of his request for seeking a variance. He stated that his primary motivation is to be able to walk about safely in the house for his family. The topography of the land on this parcel only affords the footprint of the existing small 800 s.f. cabin. The walk ways

around the cabin are very narrow and create a tremendous safety hazard. There are large trees that limit mobility. A deck and railing will eliminate the safety hazard and afford outdoor space to enjoy the lake. There's a large Oak tree that we would like to preserve and build the rail around it.

Questions began by the board.

Mr. Hardy asked whether there was a reason Mr. Sciandra felt that he could not extend the railing that were on the south side of the house to the north? Do you need the 4ft semmetry?

Mr. Sciandra replied that doing such would be less economical.

Mr. Hardy asked does Mr. Sciandra need the 4ft semmetry?

Mr. Sciandra replied that at least 3ft is needed for a walkable space.

Mr. Hardy asked is it not possible to put in small railing ties similar to what you had on other parts of the property to level that area out to 3ft with going around the house there.

Mr. Sciandra replied again that doing such like a retention wall would be more expensive than the support pile for the actual deck on that would still create the same result. Trying to work around the tree makes it limited for deck space.

Mr. Hardy stated such would be a suitable alternative to the variance to consider. Mr. Hardy expressed that his only concern is whether Mr. Sciandra needs as large of a variance as he is requesting and if Mr. Sciandra had considered building a smaller deck.

Mr. Hardy posed asked the staff if a free standing deck not attached to the home not have any impact on the variance?

Mr. Burton provided an explanation as to the towns position in this variance request.

Discussion ensued."

Chairman Hoek opened the floor to anyone else who wanted to testify on this matter. No one accepted this invitation.

Mr. Morgan questioned if the ordinance addresses conversion of an existing structure into a heated space?

Staff answered no

The board suggested adding as a condition that this structure will always remain a deck and not one day be converted into a living space.

Mr. Morgan suggested taking a look at the application form to make sure that it's still relevant in helping the applicant since the applicant has the burden of proof. It's better to have it listed out what was relied on to make the decision rather than having the court dig through record. Some places have it set up to where they take a work sheet for each answer to help you zero in on which answer you found fault with. This gives greater support for each testimony.

Deliberations

SUGGESTED MOTION: VARIANCE

With regard to Case Number ZV-2018008, I move the Board to find that the applicants have demonstrated that unnecessary hardships exist as per the following testimony

Unnecessary hardships would result from the strict application of the regulations.

A literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.

DESCRIBE FOR THE RECORD:

The cabin is 81 years old and already nonconforming and a literal interpretation wouldn't allow the applicant to improve safety.

The hardships result from conditions that are peculiar to the property, such as location, size, or topography of the property. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question that are not applicable to other lands or structures in the same district.

DESCRIBE FOR THE RECORD:

Due to the topography that it be allowed because of the slope off to the lake.

The hardship did not result from actions taken by the applicant.

The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

DESCRIBE FOR THE RECORD:

The house is 81 years old and the applicant didn't build it he bought it as it was. The applicant can't be held at fault for that.

The requested variance is consistent with the spirit, purpose, and intent of the regulations; will secure public safety and welfare; and will preserve substantial justice.

Substantial justice is not achieved when granting the variance would be injurious to the neighborhood or to the general welfare.

DESCRIBE FOR THE RECORD:

By Mr. Sciandra being here today it demonstrates that he desires to be compliant with our regulations and to improve safety.

CONDITIONS:

It cannot be closed it must remain as a deck at all times. It must be built out as the drawings are set in completion because it will change the layout of the property.

Mr. Owensby read the motion as follows:

With regard to Case Number ZV-2018008, I move the Board to find that the applicants have demonstrated that unnecessary hardships exist as per the following testimony. Accordingly, I move the Board to grant the requested variance in accordance with and only to the extent represented by the application subject to the following two conditions:

- 1) Must be as built drawing at the completion of work
- 2) The deck must remain as a deck and not become a living space

Mr. Owensby gave the motion and Mr. Hardy gave the second. All voted in favor. The variance has been approved.

NEW BUSINESS

Liaison Stephen Webber recapped the Board Member Picnic. He also made mention that he will be absent for the next meeting

OLD BUSINESS

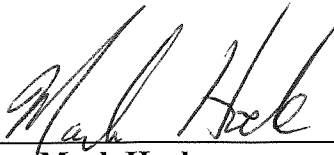
Mr. Burton stated that referring to the case on Sherwood drive that has been deferring for months now. He has been in communication with them as to the construction that occurred and now are awaiting a response.

Also for the Zoning and Planning meeting in November there will be a discussion on Net Neutrality and how that affects our current sign ordinance.

ADJOURNMENT

The Chairman asked for a motion to adjourn. Mr. Lusk gave the motion to adjourn and Mr. Owensby gave the second. All voted in favor. Meeting adjourned at 1:43pm

ATTEST:



Chairman Mark Hoek



Sha'Linda Pruitt, Recording Secretary

**STATE OF NORTH CAROLINA
RUTHERFORD COUNTY**

**BEFORE THE LAKE LURE
BOARD OF ADJUSTMENT
CASE NO. ZV-2019008**

**IN RE THE REQUEST OF JAMES SCIANDRA
FOR A ZONING VARIANCES**

STATEMENT OF THE CASE

This matter came before the Lake Lure Board of Adjustment on October 22nd, 2019 on the application of James Sciandra. Mr. Sciandra requested a 17'1" setback variance from a 35 foot lake front-yard setback required for the R-1 zoning district for the property located at 141 Gentlewinds Lane in Lake Lure NC. The property tax pin is 219240.

A quasi-judicial hearing was held on the aforementioned date. Mr. Sciandra, property owner, was present in person. The following persons were sworn as witnesses and presented testimony in this matter:

Brad L. Burton, Community Development Director
Mitchell Anderson, Development/Environmental Review Specialist
James Sciandra, Property Owner

TESTIMONY

Testimony in this case is accurately reflected in the minutes of the meeting of October 22nd, 2019.

FINDINGS OF FACT

Based on the above testimony, the Board makes the following uncontested findings of fact:

- (1) James Sciandra is the owner of the property identified by Tax PIN 219240 and located at 141 Gentlewinds Lane, Lake Lure, NC, which is zoned R-1.
- (2) The pre-existing non-conforming structure located at 141 Gentlewinds Lane was built prior to the zoning regulations being adopted.
- (3) James Sciandra wants to build a deck onto the non-conforming side of the structure, potentially increasing its non-conformity.
- (4) James Sciandra seeks variance of 17 feet and 1 inch into the 35 foot lake front-yard setback requirement.
- (5) The parcel at 141 Gentlewinds Lane has steep topography sloping off towards the lake, away from the house and proposed deck site.

CONCLUSIONS OF LAW

- (A) Due to the topography of the lot and the age of the primary structure, a literal interpretation wouldn't allow the applicant to improve safety. Unnecessary hardship would result from the strict application of §92.040 of the Zoning Regulations as it pertains to the encroachment of a structure into the lake front yard setback.
- (B) The hardships result from steep topography sloping off towards the lake which are considered an extraordinary and exceptional condition pertaining to the particular piece of property.
- (C) The applicant bought the house as it was. Therefore, the hardship did not result from the actions of the applicant.
- (D) The request, subject to the conditions as noted below, is consistent with the spirit, purpose, and intent of the regulations; will secure public safety and welfare; and will preserve substantial justice.

DECISION

Accordingly, the Board of Adjustment hereby authorizes the issuance of the zoning variance, subject to the conditions listed below, to James Sciandra for his property at 141 Gentlewinds Lane in Lake Lure, NC pursuant to § 92.086 of the Zoning Regulations.

CONDITIONS

- (1) The deck must remain as a deck and not become a living space
- (2) A post construction as-built survey must be submitted to the Town of Lake Lure prior to the issuance of a Certificate of Occupancy for Zoning Compliance.

Done this _____ day of October, 2019



Mark Hoek, Chair