



Town of Maggie Valley

Phone 828-926-0866 3987 Soco Road Maggie Valley, NC 28751

Zoning Board of Adjustment

Regular Meeting
Thursday, May 16, 2024
Town Hall Boardroom
5:30 PM

1. Call to Order
2. Appointment of Shelly Clement as Full Member of the ZBOA
 - a. Oath of Office
3. Appointment of Amber Patterson as Alternate Member of the ZBOA
 - a. Oath of Office
4. Disclosure of Conflicts/Ex parte Communication
5. Approval of Agenda
6. Approval of Minutes
 - a. January 18th 2024
7. New Business
 - a. Variance Request for 54 Enchanted Way
 - b. Amendment to Board Rules and Procedures
 - Review of New Terms
8. Other Business
9. Adjourn



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On February 13th, 2024, the Board of Aldermen voted to appoint Shelly Clement as a full member of the Zoning Board of Adjustment.

Mrs. Clement Patterson will fill the vacant seat of one of the full members, Jared Lee.

Appointment of Zoning Board of Adjustment Full Member: Shelly Clement

A motion was made by Alderman Tim Wise to appoint Mrs. Shelly Clement to the Zoning Board of Adjustment. The motion carried unanimously.



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On April 9th, 2024, the Board of Aldermen voted to appoint Amber Patterson as a alternate member of the Zoning Board of Adjustment.

Mrs. Patterson will fill out the vacant seat of one of the alternate members that moved to being a full member, David Carriker.

Appointment of Zoning Board of Adjustment Alternate Member: Amber Patterson

A motion was made by Alderman John Hinton to appoint Mrs. Amber Patterson to the Zoning Board of Adjustment. The motion carried unanimously.

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Town of Maggie Valley
Regularly Scheduled Zoning Board of Adjustment Meeting
January 18, 2024
Minutes

Members Present: Marion Hamel, Tinker Moody, Jared Lee, David Carriker

Members Absent: Chairman Bill Banks, Charlotte Ruiz

Staff Present: Town Planner, Sam Cullen, Assistant Town Planner, Noah Taylor, Town Manager Vickie Best

Others Present:

1. Call to Order

Vice Chair Hamel called the meeting to order at 5:41 pm on January 18, 2024.

A quorum was established.

2. Letter of Resignation from Eve Barrett

Planner Cullen presented the letter of resignation as written. There were no questions.

3. Appointment of David Carriker as Full Member of the ZBOA

Planner Cullen read that the Board of Aldermen appointed David Carriker as a full member at the October meeting.

a. Oath of office

David Carriker was sworn in as a full member of the ZBOA on January 18, 2024, at 5:42pm by Town Manager Vickie Best.

4. Disclosure of Conflicts/ Ex parte Communication

Vice Chair Hamel asked if there were any conflicts of interest on the agenda for anyone. There were none.

5. Approval of Agenda

Vice Chairman Hamel asked if there was any discussion on the agenda. There was none. She then asked for a motion to approve the agenda.

David Carriker made the motion to approve the agenda for the January 18th meeting. Tinker Moody seconded. Motion carried unanimously.

6. Approval of Minutes

Vice Chair Hamel asked if there were any corrections to the minutes. There were none.

Vice Chair Hamel asked if there was any more discussion. There was none. She then asked for a motion to approve the minutes.

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Town of Maggie Valley
Regularly Scheduled Zoning Board of Adjustment Meeting
January 18, 2024
Minutes

David Carriker made a motion to approve the minutes of the July 20, 2023, ZBOA Meeting. Jared Lee seconded the motion. Motion carried unanimously.

7. New Business

a. Variance Request, 302 Silver Leaf Circle

Vice Chair Hamel stated that the Zoning Board of Adjustment acts like a Court of Law. The Board takes sworn testimony and deals in fact.

The following individuals were sworn in:

1. Sam Cullen, Town Planner
2. Agent representing Miroslaw Rutz (Slawomir Stachura)

Planner Cullen gave a report including background information. The request from the homeowner is to the left side setback, from the adopted 10 feet for R-2 medium density zoning district to 4 feet, which equals a 6-foot variance. The applicant would like to save the existing house pad to build on, due to slope and erosion concerns. The location of the house pad was originally set at the present location due to these concerns. He stated that the surrounding lots are residential with similar land characteristics. He stated that with a very small unbuildable lot next to this variance, the foundation would still set 15.5 feet from the next homeowner's property line. The unbuildable lot was originally part of the lot in question before it was subdivided.

Vice Chair Hamel asked the agent representing the property owner to speak.

The agent stated that the property owner does not seek any special requests besides the 6-foot variance and that the information provided by Planner Cullen is accurate.

David Carriker asked about the adjoining small lot. Planner Cullen explained that it is unbuildable and therefore would allow the foundation to sit 15.5 feet from the next buildable lot.

Vice Chair Hamel asked about adjoining property owners' concerns.

Planner Cullen stated that there was one, and he addressed the concerns of the property owner due to a misunderstanding.

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Town of Maggie Valley
Regularly Scheduled Zoning Board of Adjustment Meeting
January 18, 2024
Minutes

Vice Chair Hamel thanked the agent for addressing the questions.

Vice Chairman Hamel asked the board to review the application. The board read the applicants' responses. They found there to be a hardship imposed if the variance should be denied. And found the variance to uphold the spirit and intent of the ordinance of Maggie Valley.

Vice Chair Hamel asked if there was any more discussion. There was none. She then asked for a motion to approve the variance.

Jimmy Moody made a motion to grant the Variance, David Carriker seconded. Motion carried unanimously.

b. Amendment to Board Procedures and Policy

Planner Cullen stated the background information. He stated that the General Statutes changed in title, which include changing from 160A to 160D, and therefore the change needs to be reflected in the board's policy as well.

He offered to answer any questions. There were none.

Vice Chair Hamel asked if there was any more discussion. There was none. She then asked for a motion to approve the amendment.

A motion to approve the amendment to the Boards Procedures and Policy was made by David Carriker and seconded by Tinker Moody. Motion carried unanimously.

Marion Hamel asked about an update for the Planning and Zoning Board vacancies.

Planner Cullen stated for the Planning Board a member is up for reappointment and one is stepping down when his appointment is up. He stated that both boards have applicants, and they will be interviewed by the Board of Aldermen at the next regular meeting.

Vice Chair Hamel asked if Planner Cullen thinks the timeline between meetings will stay the same.

Town of Maggie Valley
Regularly Scheduled Zoning Board of Adjustment Meeting
January 18, 2024
Minutes

Planner Cullen stated that two cases could be upcoming but no confirmation yet. He stated that there could be deadtimes and busy times.

8. Other Business

There was no old business discussed.

9. Adjourn

David Carriker made a motion to adjourn at 6:18pm, Tinker Moody seconded the motion. Motion carried unanimously.

Vice Chairman, Marion Hamel

Town Planning Assistant, Noah Taylor



Zoning Board of Adjustment Staff Report

54 Enchanted Way Variance Request

Subject: Variance to Rear Setback.

Applicant: Rush

Meeting Date: 5/16/24

Property Address: 54 Enchanted Way.

Summary Information:

Application Date: 4/17/24

Zoning District: R-4

Proposed Development: Single Family Home and Deck

Background:

The planning department was approached by Mr. Rush, located at 54 Enchanted Way, seeking information on building a new single-family home on an existing lot. After review, it was determined he must seek a variance if he wishes to proceed with this project.

Mr. Rush would like to build on the existing lot but due to the Egress and Ingress, Mr. Rush decided to apply for a variance to have the rear of the house closer to an existing retaining wall, to allow for parking at the front of the structure. Due to the slope of the lot and existing surrounding structures, the only allowable place for parking is at the bottom of the lot off the neighboring RV Park. Mr. Rush will build a deck with stairs to access the parking below.

Surrounding Properties:

All surrounding properties are used as residential/vacant. The properties adjacent to the requested setback variance is already built out or the lot is bigger than 15 acres.

Items Entered as Evidence:

- Application
- Plat of the property
- Site Plan
- Town of Maggie Valley UDO by reference

Variance Requested:

The applicant is seeking a 10-foot variance to the rear setback, resulting in a 0 foot setback for an uncovered portion of the deck.



Limited Property Access

House with
walk way deck
to parking



Difficult Access for ingress and egress



Application Number: _____

Applicable Fee: _____



**TOWN OF MAGGIE VALLEY ZONING BOARD OF ADJUSTMENT
GENERAL APPLICATION FORM**

Permit or Relief Requested: _____ Appeal _____ Variance _____ Special Exception

Applicant: Jeff Rush Owner: Jeff Rush

Address: 54 Enchanted Way Maggie Valley Address: 5651 Heather Dr. Randleman
NC 27317

Telephone: 336-307-6577 Telephone: 336-307-6577

Legal Relationship of Applicant to Property Owner:

Owner

Purpose of Request:

To reduce the building setback on the topside/back of the property

Property Location:

54 Enchanted Way Maggie Valley, N.C 28751
(Street Address)

Parcel Number: 7686-16-2925 Lot Size: 0.112 Zoning District: R4

Number of Buildings Proposed: 1 Gross Floor Area of Proposed Buildings: 580sf

Total Square Footage of Land to Be Disturbed: 580sf Estimated Cost of Project: \$65,000.

- ATTACH SITE SPECIFIC PLAN DESCRIBING REQUEST
- APPROPRIATE FEE MUST ACCOMPANY ALL APPLICATIONS
- ATTENDANCE or REPRESENTATIVE IS REQUIRED AT ALL BOARD MEETINGS

Jeff Rush
Signature of Applicant

4-17-2024
Date



Application No. _____

TOWN OF MAGGIE VALLEY ZONING BOARD OF ADJUSTMENT

APPLICATION FOR A VARIANCE

This petition to the Board of Adjustment is for a **VARIANCE** from the literal provisions of the Zoning Ordinance. Strict application of the ordinance prohibits using the parcel of land as described in the attached General Application Form and site specific development plan. The relief requested is from the following provisions of the Zoning Ordinance:

Section number(s)

Factors Relevant to the Issuance of a Variance

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. In order for a variance to be granted, the applicant must be able to demonstrate that all of the following requirements are met. In the spaces provided, please indicate the facts that you intend to show and the arguments that you intend to make to convince the Board of Adjustment that it can properly reach the required conclusions.

1. Indicate how an unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

Access to property has been reduced due to the
overbuild and encroachment of neighboring structures
and landscapings.

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2. Indicate how the hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. Unique personal or family hardships are irrelevant since a variance, if granted, runs with the land.

The buildable location is limited to the other three
setback requirements and reduced access. Adjoining farm,
landscaping and site scapes.

3. Indicate how the hardship did not result from actions taken by the applicant or the property owner. 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.

By reducing the back of the lot setback the house can be
constructed 5'-0" from the face of the existing
retaining wall. A wooden walk deck will be constructed
from the back door to the parking area at the retaining
wall.

4. Indicate how the requested variance is consistent with the spirit, purpose, and intent of the ordinance. Show how the request represents the least possible variation from the ordinance.

The property line is 2' in front of the existing wall.

I am requesting a variance of 7'-0" which would place
the back of the house 5'-0" from the face of the
retaining wall at the drive/parking area.



5. Indicate how the requested variance will maintain the public safety and welfare and do substantial justice. Demonstrate how the request will not be injurious to the neighborhood. State facts and arguments to show that, on balance, if the variance is approved, the benefit received by the Applicant will substantially outweigh the harm suffered by the public.

By requesting this variance it would significantly
reduce the land disturbance by a simple wooden cross walk
deck. The other option would be to build a set of steps
down the sloping terrain and creating a hazardous
accessibility issue.

I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information, and belief.

I acknowledge that withdrawal of this application after notice has been made will result in forfeiture of any application fees associated with said application.

Jeff Rush
Signature of applicant

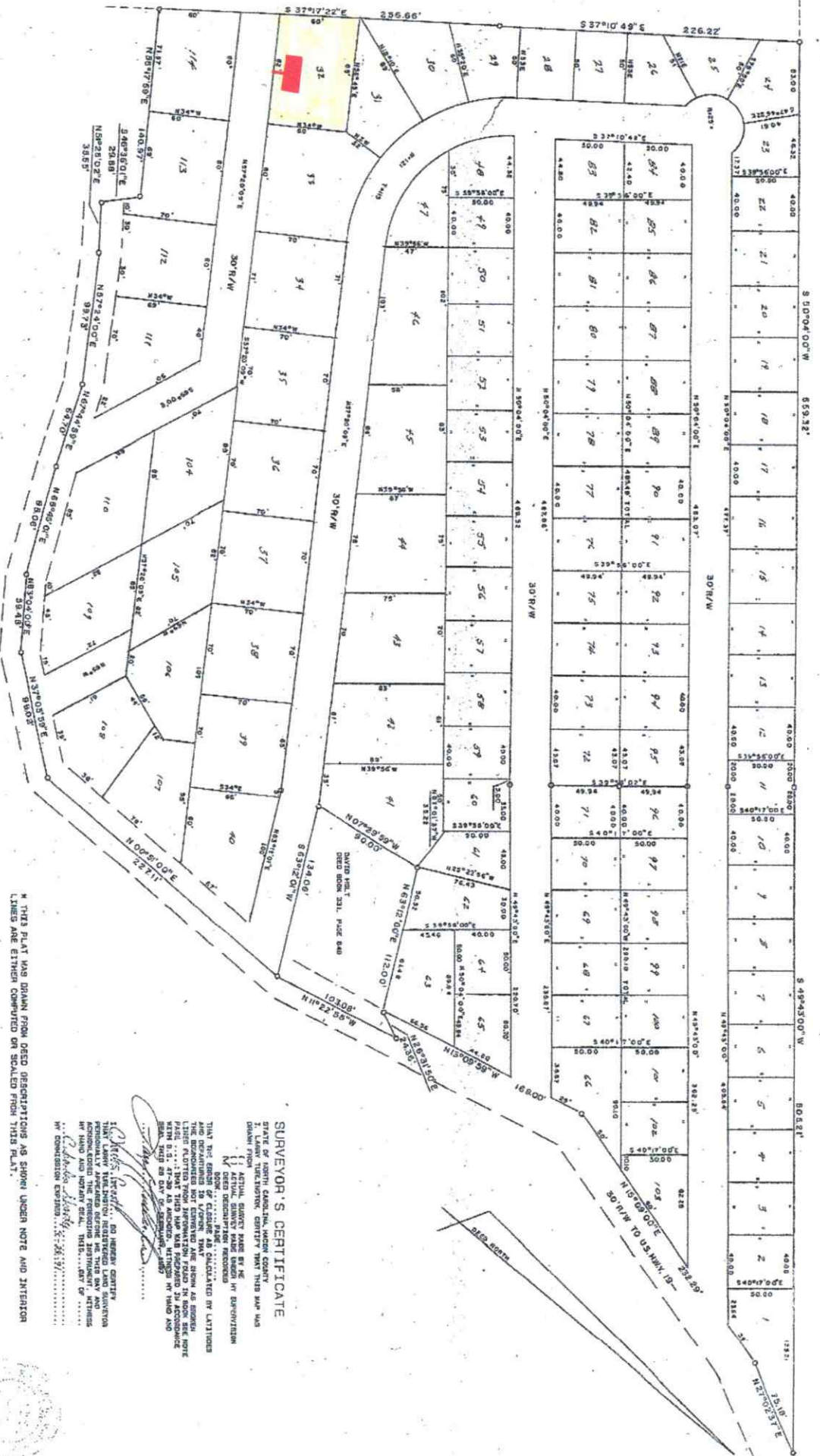
4-17-2024

Date

Jeff Rush
54 Enchanted Way
Maggie Valley, N.C.
28751

Upon receipt of this application, the Board of Adjustment will schedule a hearing. All witnesses at the hearing shall provide sworn testimony and the Board may only base their conclusion on the testimony heard at the hearing. The Board of Adjustment is authorized to subpoena witnesses and compel the production of evidence. Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely, is guilty of a Class 1 misdemeanor.

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NOTE:
DEED REFERENCE PAGE 886
DEED BOOK 313, PAGE 813
DEED BOOK 316, PAGE 694
DEED BOOK 317, PAGE 623
DEED BOOK 310, PAGE 498

TOTAL 9.47 ACRES
AREA BY COORDINATES



KYLE EDWARDS SUBDIVISION

All Roads Right

* THIS PLAT WAS DRAWN FROM DEED DESCRIPTIONS AS SHOWN UNDER NOTE AND INTENTION
LINES ARE EITHER COMPUTED OR SCALED FROM THIS PLAT.

SURVEYOR'S CERTIFICATE

I, John H. Hester, Surveyor, do hereby certify that the above described land is situated in the County of Franklin, State of North Carolina, and that the same is more particularly described in the foregoing plat, which is a true and correct copy of the original plat on file in my office, and that the same is a true and correct copy of the original plat on file in my office, and that the same is a true and correct copy of the original plat on file in my office.

PROPERTY OF
KYLE EDWARDS

SCALE 1"=50'
DATE 2-28-87

IVY HILL TOWNSHIP, HAYWOOD COUNTY,
NORTH CAROLINA

TUNSTALL LAND SURVEYING, INC.
498 DA HWY. FRANKLIN, NC. 28734



Application No. 240417002

TOWN OF MAGGIE VALLEY ZONING BOARD OF ADJUSTMENT

APPLICATION FOR A VARIANCE

This petition to the Board of Adjustment is for a **VARIANCE** from the literal provisions of the Zoning Ordinance. Strict application of the ordinance prohibits using the parcel of land as described in the attached General Application Form and site-specific development plan. The relief requested is from the following provisions of the Zoning Ordinance:

152.03

Section number(s)

Factors Relevant to the Issuance of a Variance

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. In order for a variance to be granted, the applicant must be able to demonstrate that **all** of the following requirements are met. In the spaces provided, please indicate the facts that you intend to show and the arguments that you intend to make to convince the Board of Adjustment that it can properly reach the required conclusions.

1. Indicate how an unnecessary hardship would result from the strict application of the ordinance.

It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

2. Indicate how the hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. Unique personal or family hardships are irrelevant since a variance, if granted, runs with the land.

3. Indicate how the hardship did not result from actions taken by the applicant or the property owner. 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.

4. Indicate how the requested variance is consistent with the spirit, purpose, and intent of the ordinance. Show how the request represents the least possible variation from the ordinance.

5. Indicate how the requested variance will maintain the public safety and welfare and do substantial justice. Demonstrate how the request will not be injurious to the neighborhood. State facts and arguments to show that, on balance, if the variance is approved, the benefit received by the Applicant will substantially outweigh the harm suffered by the public.

I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information, and belief.

I acknowledge that withdrawal of this application after notice has been made will result in forfeiture of any application fees associated with said application.

Upon receipt of this application, the Board of Adjustment will schedule a hearing. All witnesses at the hearing shall provide sworn testimony and the Board may only base their conclusion on the testimony heard at the hearing. The Board of Adjustment is authorized to subpoena witnesses and compel the production of evidence. Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely, is guilty of a Class 1 misdemeanor.



Application No. 240417002

Town of Maggie Valley Zoning Board of Adjustment

ORDER GRANTING/DENYING A VARIANCE

The Board of Adjustment for the Town of Maggie Valley, having held a public hearing on May 16th, 2024, to consider application number 240417002, submitted by Jeffrey Rush,

a request for a variance to use the property located at 54 Enchanted Way in a manner not permissible under the literal terms of the Zoning Ordinance, specifically section(s), 152.03 Density Table, and having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

1. It is the Board's CONCLUSION that, if the applicant complies with the literal terms of the ordinance, the applicant will suffer an unnecessary hardship.
2. It is the Board's CONCLUSION that the hardship of which the applicant complains does result from unique circumstances related to the applicant's land.
3. It is the Board's CONCLUSION that the hardship is not the result of the applicant's own actions.
4. It is the Board's CONCLUSION that, if granted, the variance will be in harmony with the general purpose and intent of the ordinance and will preserve its spirit.
5. It is the Board's CONCLUSION that, if granted, the variance will secure the public safety and welfare and will do substantial justice.

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE be GRANTED,

Ordered this 16th day of May, 2024.



Chairman, Zoning Board of Adjustment

Clerk

Note: If you are dissatisfied with the decision of this Board, an appeal may be taken to the Superior Court of Haywood County within 30 days after the date this order was served.

RULES OF PROCEDURE
ZONING BOARD OF ADJUSTMENT
TOWN OF MAGGIE VALLEY
NORTH CAROLINA

I. GENERAL RULES

The Zoning Board of Adjustment shall be governed by the terms of Chapter 160D-302 of the General Statutes of North Carolina and by the Zoning Ordinance of Town of Maggie Valley.

II. MEMBERSHIP AND TERMS

A. Members.

The Board of Adjustment shall consist of seven (7) members. All Seven (7) members of the Board of Adjustment shall be residents of the Town of Maggie Valley and be appointed by the Board of Aldermen of the Town of Maggie Valley. At no time shall more than five members vote in any meeting or hearing; additionally, no Alternate member shall vote on any issue before the Board unless the Alternate is standing in for a regular member.

B. Terms

For the initial appointments to the Board of Adjustment, the Town of Maggie Valley shall appoint one member for a 1-year term, two members for a 2-year term, two members for 3-year terms, and two alternate members for three-year terms. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Each successive appointment of members to the Board shall be for a term of 3 years. Members may be appointed for any number of successive terms.

III. OFFICERS AND DUTIES

A. Chairman.

A chairman shall be elected by the full membership of the Board of Adjustment from among its regular members. The chairman will preside over the Board for a term of one year and until his successor is elected, beginning on July 1, and he shall be eligible for re-election. The chairman shall decide on all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the Board in session at the time. The chairman shall appoint any committees found necessary to investigate any matters before the Board.

B. Vice Chairman

A vice chairman shall be elected by the Board from among its regular members in the same manner and for the same term as the chairman. He/she shall serve as acting chairman in the chairman's absence, and at such times he/she shall have the same powers and duties as the chairman.

C. *Secretary*

A secretary shall be appointed by the chairman of the Board, either from within its membership or from outside, to hold office during the term of the chairman and/or until a successor secretary has been appointed. The secretary shall be eligible for reappointment. The secretary, subject to the direction of the chairman and the Board, shall arrange for all public notices required to be given, shall notify members of pending meetings and their agenda, shall notify parties to cases before the Board of its decision on such cases, and shall generally supervise the clerical work of the Board. The secretary shall keep the minutes of every Board meeting in a permanent volume. The minutes shall show the record of all important facts pertaining to each meeting and hearing, every resolution acted on by the Board, and all votes of members of the Board on any resolution or on the final determination of any question, indicating the names of members who are absent or fail to vote. If the secretary is chosen from outside the Boards membership, he/she shall not be eligible to vote on any matter.

D. *Clerk*

The Clerk shall be appointed to the Board of Adjustment by the Board of Alderman. The clerk shall perform such tasks as the chairman may assign and shall perform all of the duties of the secretary until such time as the chairman appoints a secretary to the Board. The clerk will not be eligible to vote on any matter.

IV. ALTERNATE MEMBERS

Alternate members of the Board shall be required to attend all meetings. Alternate members shall have the same ability to enter into the discussion of all issues brought in front of the Board. At no time shall more than five members vote in any meeting or hearing; however no Alternate member shall vote on any issue before the Board unless the Alternate is standing in for a regular member.

V. RULES OF CONDUCT FOR MEMBERS

Members of the Board may be removed for cause by the Board of Aldermen, including violation of the rules stated below.

- A. Faithful attendance at the meetings of the Board of Adjustment is required in order to maintain membership on the Board, and members who miss 3 consecutive meetings, or four (4) regular meetings in a calendar year, automatically forfeit membership. A member terminated for lack of attendance may appear before the Board of Aldermen and request reinstatement.
- B. No Board member shall take part in the hearing, consideration, or determination of any case in which he is personally or financially interested.
- C. No Board member shall vote on any matter that decides an application or appeal unless he has attended the public hearing on that application or appeal.
- D. No Board member shall discuss any case with any parties' thereto before the public hearing on that case; provided, however, that members may receive and/or seek information pertaining to

the case from any other member of the Board, its secretary, or clerk before the hearing.

- E. Members of the Board shall not express individual opinions on the proper judgment of any case with any parties thereto before that case is determined. Violation of this rule shall be cause for dismissal from the Board.
- F. ***Removal for conflict of interest on individual matters will be by a 4/5 vote by the full Board, with all alternate members included as part of the full Board.***

VI. MEETINGS

A. *Regular Meetings.*

Regular meetings of the Board shall be held on the third Thursday of each month at 5:30 p.m. in the Board room of the Town Hall; provided that meetings may be held at any other convenient place in the Town if the chairman so directs before the meeting.

B. *Special Meetings.*

The chairman may call special meetings of the Board at any time. At least forty-eight (48) hours written notice (including electronic mail) of the time and place of special meetings shall be given, by either the Secretary or the Chairman, to each member of the Board. Public notice shall be given for specially called public hearings as required by the General Statutes and Section VI, C, 2 of these rules.

C. *Cancellation of Meetings.*

If there are no appeals, applications for special use permits or variances, or other business for the Board, or if so many regular and alternate members notify the secretary that they cannot attend that a quorum will not be available, the chairman may dispense with a regular meeting by giving written (including electronic mail) or oral notice to all members not less than twenty-four (24) hours before the time set for the meeting.

D. *Quorum.*

A quorum for routine administrative decisions and for deciding an appeal from a decision, order, requirement, or determination of the Building/Zoning Code Enforcement Officer, or an application for a special exception, shall consist of three members of the Board. However, a quorum needed for the Board to pass on any question relating to an application for a variance will require no less than 4 members to be present in order to have a 4/5's vote of the Board. It would be most fair to the applicant to only have a full Board hear these matters, using alternates to replace any absent regular members.

E. *Voting.*

All regular members may vote on any issue unless they have disqualified themselves for one or more reasons. A member of the board shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change,

undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection. The required vote to decide appeals and applications shall be as provided in Section VI, D, 4. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such member. In all other matters the vote of a majority of the members present and voting shall decide issues before the Board.

F. *Conduct of Meetings.*

All meetings shall be open to the public. The order of business at regular meetings shall be as follows:

- (a) roll call
- (b) approval of minutes of the previous meeting
- (c) reports of committees
- (d) unfinished business
- (e) new business
- (f) hearing of cases
- (g) consideration and determination of cases heard

VII. APPEALS AND APPLICATIONS

A. *Types of Appeals.*

The Board shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the Building/Zoning Code Enforcement Officer, it shall also hear and decide all matters referred to it or on which the Zoning Ordinance of the Town of Maggie Valley requires it to pass. In deciding appeals, the Board may hear both those based on an allegedly improper or erroneous interpretation of the ordinance and those based on alleged hardship resulting from strict interpretation of the ordinance.

B. *Procedure for Filing Appeals.*

No appeal shall be heard by the Board unless notice thereof is filed within thirty (30) days after the interested party or parties receive notice of the order, requirement, decision, or determination by the Building/Zoning Code Enforcement Officer. The applicant must file his application for a hearing with the Building/Zoning Code Enforcement Officer respectively, who shall act as clerk for the Board in receiving this notice. All applications shall be made on the form furnished for that purpose, and all information required thereon shall be complete before an appeal may be considered as having been filed.

C. *Hearings.*

1. *Time.*

After notice of appeal is received, the Clerk shall schedule the time for the hearing. If the application is received at least twenty working days prior to the next scheduled regular hearing, the applicant will be heard at that scheduled meeting. If application is received after

that time it will be heard within 38 days or sooner from the filing of such notice of appeal. At the discretion of the chairman, special hearings may be called only after giving proper public notice.

2. *Notice.*

Notice of hearings shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the Town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. Such notices shall state the location of the building or lot if applicable, the general nature of the question involved in the appeal, and the time and place of the hearing.

3. *Conduct of the Hearing.*

Any party may appear in person, by agent, or by attorney at the hearing. The order of business for each hearing shall be as follows:

- (a) the chairman, or such person as he shall direct, shall give a preliminary statement of the case
- (b) the applicant shall present the evidence and arguments in support of his application
- (c) persons opposed to granting the application shall present the evidence and arguments against the application
- (d) both sides shall be permitted to present rebuttals to opposing evidence and arguments
- (e) the chairman shall summarize the evidence that has been presented, giving the parties opportunity to make objections or corrections

Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to considerations of such evidence as would be admissible in a court of law. The Board may view the premises before the hearing, but the facts indicated by such inspection shall be disclosed at the public hearing and made part of the record. All witnesses before the Board shall be placed under oath, and the opposing party may cross-examine them.

4. *Rehearings.*

An application for a rehearing may be made in the same manner as an application for an original hearing. Evidence in support of the application shall initially be limited to what is necessary to enable the Board to determine whether there has been a substantial change in the facts, evidence, or conditions in the case. The Board shall deny the application for rehearing if, from the record; it finds that there has been no substantial change in facts, evidence, or conditions. If the Board finds that a change has occurred, it shall thereupon treat the request in the same manner as any other application.

D. Decisions.

1. *Time.*

Decisions by the Board shall be made not later than thirty (30) days from the time of the hearing. This is a maximum time limit, normally decisions will be made at the meeting with which the hearing was held.

2. *Form.*

Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The Board's final decision shall be shown in the record of the case and entered in the Board's minutes and signed by the secretary/clerk and the chairman. Such record shall show the reasons for the determinations, with a summary of the evidence introduced and the findings of fact made by the Board. When a variance is granted, the record shall state in detail any exceptions, difficulty, or unnecessary hardship upon which the appeal was based and which the Board finds to exist. The decision may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from. When an exception, special use permit, or conditional use permit is granted, the record shall state in detail any facts that support findings required to be made before such permit is issued. The record shall state in detail what, if any, conditions and safeguards the Board imposes in connection with granting of a variance or an exception, special use permit, or conditional use permit. A separate record of the decision in each case shall be prepared, filed in the Town Clerk's office and furnished to the parties as specified in Subsection 5.

3. *Expiration of Permits.*

Unless otherwise specified, any order or decision of the Board granting an exception, special use permit, conditional use permit or a variance shall expire if the applicant does not obtain a building permit, certificate of occupancy, or comply with the terms of the variance, special use permit, or conditional use permit to a substantial completion within Six (6) months from the date of the decision.

4. *Voting at Hearings.*

The concurring vote of four-fifths of the Board members shall be necessary to grant a variance from the ordinance provisions. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

5. *Notice and Public Record of Decisions.*

A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the ordinance specifies. The written decision shall be signed by the chair or other duly authorized member of the board. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to

the date the decision becomes effective. Such notice may be physically picked up from the town clerk's office once the decision becomes effective. The person required to provide notice shall certify that proper notice has been made. A copy of the decision shall also be filed in the Town Clerk's office at Town Hall. The decision shall be a public record, available for inspection at all reasonable times.

VIII. SUCCESSION

When vacancies occur on the Board, vacancies will be filled by a vote of the remaining Board from available Alternate members to fill the vacancies. The Board will then proceed to interview candidates to present to the Board of Aldermen for appointment to the Board as an Alternate member.

IX. AMENDMENTS

These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than 4/5 members of the full Board of Aldermen, provided that such amendment be presented in writing at a regular or special meeting before the meeting at which the vote is taken.

Adopted this 9th day of November 2004. Amended the 13th day of September 2018.
Amended the 18th day of January 2024. Amended the ### day of #### 2024.

Chairman, William Banks

Attest:

Assistant Town Planner, Noah Taylor

STATE OF NORTH CAROLINA
COUNTY OF HAYWOOD
TOWN OF MAGGIE VALLEY

RESOLUTION #24-09 TO
AMEND TERM LIMITS OF THE
TOWN OF MAGGIE VALLEY
BOARD OF ADJUSTMENT

WHEREAS, pursuant to North Carolina General Statute § 160D-302, the Town of Maggie Valley Board of Aldermen has, through Ordinance 9, established a Board of Adjustment;

WHEREAS, the Board of Aldermen, in order to prevent the term of the Board of Adjustment from expiring at inconsistent times, desires to modify the term expiration of the Board of Adjustment;

WHEREAS, pursuant to Ordinance 1084 and North Carolina General Statute § 160D-302, each member shall be appointed for a three-year term; and

WHEREAS, the new term commencement and expiration shall be as follows:

Board Seat	Current Board Member	Modified Term Expiration	Subsequent Term Period
1	Clement, Shelly	03/2027	03/2027 – 03/2030
2	Banks, Bill	03/2025	03/2025 – 03/2028
3	Hamel, Marion	03/2025	03/2025 – 03/2028
4	Moody, Jimmy	03/2025	03/2025 – 03/2028
5	Carrier, David	03/2026	03/2026 – 03/2029
Alternate 1	Ruiz, Charlotte	03/2026	03/2026 – 03/2029
Alternate 2	Patterson, Amber	03/2027	03/2027 – 03/2030

NOW THEREFORE, BE IT RESOLVED by the Town of Maggie Valley Board of Alderman that the Board of Adjustment of the Town of Maggie Valley shall have the term commencement and expiration as stated herein above.

ADOPTED AND PASSED by unanimous vote of the Town of Maggie Valley Board of Alderman, at its regularly scheduled meeting held on the 16th day of May 2024.

TOWN OF MAGGIE VALLEY

By: _____
Mike Eveland, Mayor

ATTEST:

_____(SEAL)
Kathy Johnson, Town Clerk