



Lenoir Board of Adjustment

Agenda • September 27, 2021

Meeting Information

Location

City /County Meeting Room
905 West Avenue
Lenoir, NW 28645

Time

5:30 p.m.

Board Members

Sharon Bryant, Chairperson

Leah Hamilton, Vice-Chair

Lucy McCarl

James Bradshaw

Tim Scobie

Jeff Church, Alternate

Welcome!

We are glad you have joined us for tonight's meeting. The Lenoir Board of Adjustment is a quasi-judicial board comprised of citizen members appointed by the City Council in accordance with G.S. 160A-388. The Board of Adjustment is tasked with hearing variance requests and appeals of land development decisions by administrative officials.

In order to grant a requested variance, a 4/5 majority of the Board must find that the requested variance satisfies four related standards established by state statutes – competent, material, and substantial evidence in the record must support findings that:

1. The ordinance creates an unnecessary hardship
2. The hardship is peculiar to the property
3. The hardship is not self-created, and
4. The requested variance meets the intent of the ordinances, upholds public safety, and achieves substantial justice.

Each decision of the Board will be reduced to writing and be signed by the Chair, and shall become effective upon delivery of the signed decision to the applicant, property owner, and to any person who has submitted a written request for a copy.

Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-140Z. A petition for review shall be filed with the Clerk of Superior Court within 30 days of the effective date of the board's decision.

General Rules of Order

If you wish to appear before the Board, please fill out an Appearance Request Form and give it to the Recording Secretary. Anyone who wishes to appear before the Board must be sworn in prior to delivering testimony or entering other evidence into the record. When the Chairperson recognizes you, state your name and address and speak directly into the microphone. ROBERT'S RULES OF ORDER govern the conduct of the meeting.

OPENING SESSION

- Determination of a Quorum
- Call to Order
- Consideration of January 25, 2021 Minutes

REGULAR AGENDA

1. Clayton Homes of Conover

Applicant: Clayton Homes of Conover

Owner: Teresa Minton

Location: 1516 Dulatown Road

V# 1-21 Variance to section 710; Special Front Yard Requirements

Recommended Action: Staff recommends approval of the variance request.

Order of Proceedings:

- Swearing in of applicant, staff, and all others who wish to provide testimony.
- Staff summary of request, opportunity for cross examination
- Testimony by applicant, opportunity for cross examination
- Testimony by others, opportunity for cross examination
- Closing of the Evidentiary Hearing/Board deliberation (discussion of four standards)/entertainment of motions
- Call for a vote

ADJOURNMENT

**MINUTES
BOARD OF ADJUSTMENT MEETING
January 25, 2021
5:30 PM**

LOCATION: Virtual

VIA TELECONFERENCE:

James Bradshaw, Sharon T. Bryant, Mac Martin, Leah Hamilton, Lucy McCarl, Tim Scobie

STAFF PRESENT VIA TELECONFERENCE:

Jenny Wheelock, Hannah Williams, Lauren McKinney

A quorum was established and Chairperson Bryant called the meeting to order.

MINUTES:

Board Member Scobie moved approval of the meeting minutes of November 23, 2020. Board Member McCarl seconded the motion, which was voted upon and passed by unanimous vote.

NEW BUSINESS:

1. Adoption of Joint Rules of Procedure

Chairperson Bryant asked the board for any discussion on the Joint Rules of Procedure.

Board Member McCarl made a motion to adopt the Joint Rules of Procedure for the Board of Adjustment as submitted. Board Member Scobie seconded the motion, which was voted upon and passed unanimously.

2. Nomination and Election of Officers

Board Member Martin nominated Sharon Bryant for the Chair position of the Board of Adjustment.

Board Member Scobie nominated Leah Hamilton for the Vice-Chair position of the Board of Adjustment.

The board unanimously elected the nominated chair and vice-chair for new two year terms, to start February 2021.

ADJOURNMENT:


There being no further business to be brought before the Board, Chairperson Bryant adjourned the meeting at 5:55 p.m.

Sharon T. Bryant, Chair

Jenny Wheelock, Planning Director

LOCATION MAP/AERIAL PHOTOGRAPH



 Subject Property
1516 Dulatown Rd
(Parcel addresses and owner information shown for all properties required to receive notice of these proceedings.)

SUMMARY

Owner
Chris Moretz, grantee and heir of listed owner, Teresa Martin Minton

Applicant
Clayton Homes Conover

Location
North side of Dulatown Rd, west of Bluebird Lane and east of a Duke Power ROW (+/- 1.8 acres).

NC PIN
2748119953

Project Planners
Hannah Williams, CZO
Jenny Wheelock, AICP, CZO
Updated September 13, 2021

Applicant's Request:
The applicant is requesting a 7 ft. variance to the front yard standards for R-R, as established in Sec. 800, Table A, and modified by Sec. 710 "Special Front Yard Requirements in Developed Areas."

The applicant desires to replace the existing owner-occupied single wide manufactured home on the property with a new single wide manufactured home, in the same location (and for the same owner). The existing (and proposed) front yard setback is only 18 ft., where a minimum of 25 ft. is required.

Staff Recommendation:
Approval of the requested variance. See draft findings, page 4.

Public Comment: Notices were mailed to adjacent property owners on September 17, 2021. A sign was posted on the subject property advertising the evidentiary hearing on September 17, 2021.

*****This request is quasi-judicial. You should not discuss this case with decision makers outside of the scheduled public hearing*****

ZONING MAP



BACKGROUND AND ANALYSIS

Intent of Variances

When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment must allow for a variance from the ordinance standards creating the hardship, when specific factors are found to be true (see findings for specific standards).

Subject and Surrounding Properties

The 1.8-acre subject property is located in the City's Extra-territorial Jurisdiction (ETJ) and is zoned R-R (Rural Residential). This property is not served by sanitary sewer — the existing septic drain field is located immediately behind the existing home, limiting the ability to push the home back to meet the required setback (without impacting the drain field or needing to relocate the septic system). While the property is larger than many of the surrounding lots, the elevation drops approximately 110' from Dulatown Rd. north to the back of the lot (see topographic map, page 5).

All of the surrounding properties are in the same R-R zone and in the ETJ, and are developed with single family homes, including several other singlewide manufactured homes. The homes on the north side of Dulatown Rd are all located close to the street, due to the way the land drops off to the north — most are setback approximately 20-25 ft., but some are as close as 10 ft.

Intent of the Zoning District

R - R (Rural Residential) District is intended to maintain the character of the residential areas in the City's extraterritorial jurisdiction for low density single family residences and compatible uses, in areas where public or community water or public sewer may not be available. Doublewide manufactured homes and singlewide replacements are allowed by-right within the R-R zone.

REQUESTED VARIANCE & RELEVANT CODE CITATIONS

Relevant Ordinances/Staff Analysis

Section 800, Table A: Zoning District Regulations requires a 40 ft. front yard setback for new development within the Rural Residential zoning district. However, in areas that are already developed, there is some built-in relief for by-right setback reductions as follows:

710 Special Front Yard Requirements in Developed Areas

The front yard requirements of this ordinance shall not apply to any lot where the average front yard on already built upon lots located wholly or in part within one hundred (100) feet on each side of such lot and within the same block and zoning district and fronting on the same street as such lot, is less than the minimum, but not less than the average of the existing setbacks on the developed lots; provided however, the front yard on such lot shall not be less than one half of the required front yard.

When staff analyzed the existing setbacks within 100 ft. of the subject property, the average front yard was 25 ft. By applying Section 710, the variance needed to allow the project to move forward is a reduction of 7 ft. (as opposed to 22 ft. if we only applied Sec. 800).

DRAFT FINDINGS

No variance shall be approved unless a 4/5 majority of the Board of Adjustment finds that:

1. An unnecessary hardship is created from the strict application of the ordinance.

Staff Response: The R-R zoning designation allows for Class B (single-wide) manufactured homes as replacements for existing single-wide homes. The current home sits on the graded section of the property. To apply the 25' setback (or the 40' setback) would change the entire layout of the property and require more work than necessary, or precludes this owner from utilizing a by-right provision to upgrade his home. The strict application of the ordinance makes the replacement of an aging home financially infeasible, creating unnecessary hardship.

2. The unnecessary hardship is peculiar to the property.

Staff Response: The existing site layout was designed around the constraints peculiar to this property, namely the steep slope of the land. Those constraints haven't changed. Sanitary sewer is not available in this area, and will not be for the foreseeable future. The hardship created by the application of the ordinance is peculiar to the property, because the steep slope and existing septic system are the primary factors inhibiting compliance.

3. The hardship is not self-created.

Staff Response: The proposed replacement will maintain the existing non-conforming conditions on the site, which were in place long before the current owner held title. The hilly topography of the area is a natural boundary that constricts buildable area on the site, and others in the area. These limitations are out of the control of the property owner and are not self-created.

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Staff Response: The requested variance would allow for the property owner to update his housing without changing the entire configuration of the lot. The adjacent lots to the east and west are also singlewides with less than the required front yard for the R-R district, so the requested variance is not out of character with the surrounding development patterns.

In many ways, the standards of the Rural Residential district ensure that low-density single-family development is visually compatible in residential neighborhoods. However, strict adherence to the required front yard setback does not substantially change the existing form of this area, and its enforcement makes redevelopment of this lot more costly than it needs to be. While in most instances these standards protect neighborhoods by adding consistency and aesthetically pleasing layouts for residential lots, on this particular property the proposed encroachment is a functional and affordable solution.

By granting the variance, substantial justice is achieved by allowing the owner to place a permitted, single-wide manufactured home on his R-R zoned property, allowing a current resident of Dulatown an updated home on the property where he currently resides. No public safety issues result from the placement of the singlewide with 18 foot front setbacks, since the current home has been in place for decades.

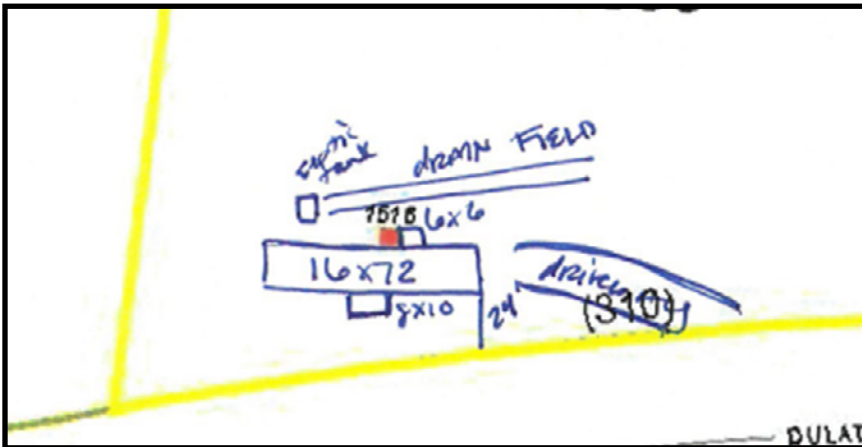
SITE CONSTRAINTS (TOPOGRAPHY AND SEPTIC DETAILS)



Source: Caldwell County GIS

Green lines = 5' contours

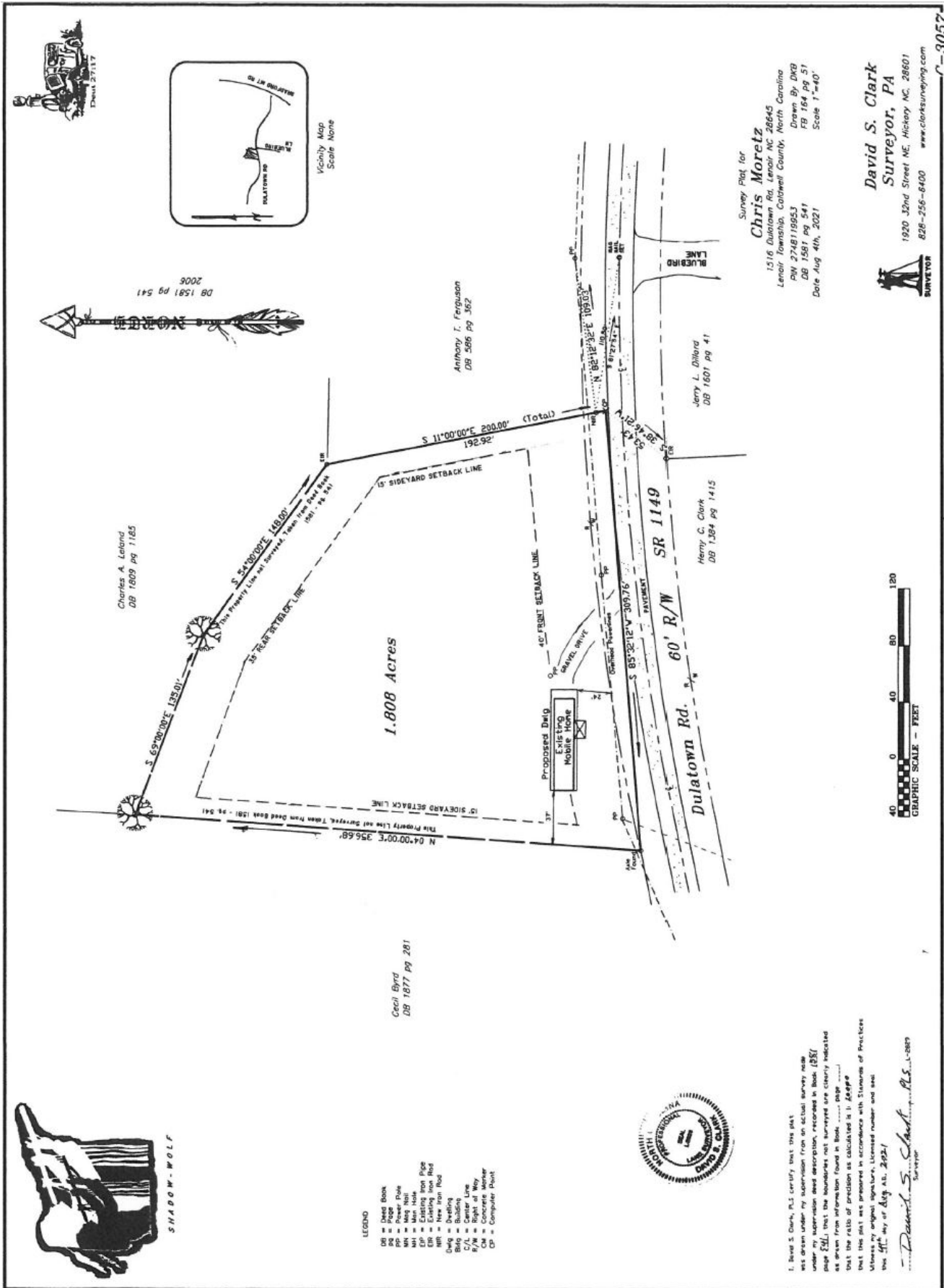
Red lines = 25' contours



Drawing provided by applicant.

(not to scale — shows general location of septic tank and drain field behind the existing home)

SURVEY OF EXISTING CONDITIONS



- LEGEND**
- DB = Deed Book
 - PG = Page
 - MS = Monument
 - MI = Iron Nail
 - MI = Iron Pipe
 - MI = Existing Iron Pipe
 - MI = Existing Iron Stake
 - MI = New Iron Stake
 - MI = New Iron Pipe
 - MI = New Iron Stake
 - MI = Dwellings
 - MI = Buildings
 - MI = Structures
 - MI = Right of Way
 - MI = Concrete Marker
 - MI = Computer Point

Charles A. Leblond
DB 1809 pg 1165

DB 1581 pg 541
2006

Anthony T. Ferguson
DB 586 pg 362

Jerry L. Dilard
DB 1601 pg 41

Henry C. Clark
DB 1384 pg 1415

Cecil Boyd
DB 1877 pg 281

Survey Plat for
Chris Moretz
1516 Dula town Rd, Lenoir NC 28645
Lenoir Township, Caldwell County, North Carolina
PW 274819953
DB 1581 pg 541
Date Aug 4th, 2021
Scale 1"=40'

David S. Clark
Surveyor, PA
1920 32nd Street NE, Hickory, NC, 28601
828-256-8400
www.clarksurveying.com



I, David S. Clark, PLS certify that this plat was drawn under my supervision from an actual survey made under my supervision and description, recorded in Book 1857 page 281, that the boundaries not surveyed are clearly indicated as drawn from information found in Book 1857 page 281 and that the ratio of precision as calculated is 1: 40000. Unless my original signature, licensed number and seal are present on this plat, it is void.

David S. Clark
Surveyor

3057

SITE PHOTOS



Above: Existing site of mobile home



View of driveway and slope to the rear of property

PROPOSED CLASS B REPLACEMENT MANUFACTURED HOME

THE BREEZE

22SSR16723AH

1,128 Square Feet

3 Beds / 2 Baths

16 x 72



APPLICANT'S RESPONSE TO VARIANCE STANDARDS

An unnecessary hardship is created from the strict application of the ordinance. Whenever there is regulation, there is some level of necessary hardship and inconvenience shared by all of the community. An applicant must show *unnecessary* hardship, that is greater than a mere inconvenience or a preference for a more lenient standard. Cost of compliance may be a factor, but cost is not determinative. The hardship must come from the application of the ordinance. *Note: Prior to 2013, the City of Lenoir held that a hardship did not meet this standard unless the applicant showed no reasonable use of the property without the variance. This strict standard is no longer allowed under state statutes.*

Home site graded before current ownership. There is not another area on property for home to be located

The unnecessary hardship is peculiar to the property. The hardship must be peculiar to the property, not general to the neighborhood or community. Such peculiar characteristics might arise, for example, from the location of the property, size or shape of the lot, or topography or water features on the site. Hardships that result from personal circumstances may not be the basis for granting a variance. The board is looking at the nature of the property and the land use ordinances, not the nature of the applicant and their circumstances.

The topography of the property does not allow for home site or septic to be relocated.

The Hardship is not self-created. The hardship must not result from actions taken by the applicant or property owner. Ignorance of the law is a self-created hardship — variances requested due to the owner's failure to obtain appropriate building and zoning permits prior to construction will not be approved. However, purchasing a property with knowledge that circumstances exist that may justify the granting of a variance is not considered a self-created hardship.

Septic was installed prior to taking ownership of the property.

The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. Where an ordinance expresses a clear intent, the variance cannot subvert that intent. The variance cannot harm public safety, even if the request meets the "unnecessary hardship" test. And the Board must ensure that substantial justice is achieved in the issuance of each variance — the board will consider issues of fairness for the community, neighbors, and prior applicants in their decisions.

Location of home can not be moved due to grade and location of existing septic. Existing septic also can not be relocated due to space and shape of property.