



**Town of Clayton
Board of Adjustment Agenda
Wednesday, April 17, 2024 @ 6:00 PM
Council Chambers**

THE BOARD OF ADJUSTMENT MEETING WILL BE HELD IN PERSON.

ANY MEMBER OF THE PUBLIC IS INVITED TO THE ATTEND THE MEETING.

THE PUBLIC MAY VIEW THE LIVE MEETING ON THE TOWN'S YOU TUBE CHANNEL:

<https://www.youtube.com/TownofClaytonNC>

1. CALL TO ORDER

- a. Roll Call for Attendance
Presenter: Conrad Olmedo, Planning Director

2. ADJUSTMENT OF THE AGENDA

3. APPROVAL OF MINUTES

- a. March 20, 2024 Board of Adjustment Minutes
[March 20, 2024 DRAFT Minutes](#)

4. PUBLIC HEARINGS

5. OLD BUSINESS

- a. 2023-102-VAR Carport Variance: Review and Approval of the Findings of Fact
Presenter: Conrad Olmedo, Planning Director
[Proposed Final Order 2023 - 102 VAR](#)

6. NEW BUSINESS

7. ADJOURNMENT



Town of Clayton
Board of Adjustment Minutes
Wednesday, March 20, 2024 at 6:00 PM
Council Chambers
111 E. Second Street

Board Members Present:

Richie Wiggins
Joseph Warta
Thomas Antoine
Rebecca Berry
Jim Perricone
Marty Bizzell

Staff Present:

Ruth Anderson, Council Member
Conrad Olmedo, Planning Director
Heidi Holland, Town Clerk
Attorney Francis Rasberry

Board Members Absent:

None

1 CALL TO ORDER

- a) Conduct a Role Call to Establish Attendance and a Quorum
Presenter: Staff

Chair Bizzell called the meeting to order at 6:02 p.m. Mr. Olmedo conducted role call.

2 ELECTION FOR CHAIR AND VICE CHAIR

- a) Elect New Chair and Vice Chair for the Board of Adjustment.
Presenter: Conrad Olmedo, Planning Director

Nominations were made for chair and vice-chair. Board Member Berry motioned for Marty Bizzell to remain Chair, seconded by Board Member Antoine. Board Member Perricone motioned for Thomas Antoine to remain Vice-Chair, seconded by Board Member Wiggins.

Nominate Board Chair, Marty Bizzell was Nominated

RESULT:	CARRIED 6-0
MOVER:	Rebecca Berry
SECONDER:	Thomas Antoine
YES:	Richie Wiggins, Joseph Warta, Thomas Antoine, Rebecca Berry, Jim Perricone, and Marty Bizzell
NO:	None

Nominate Vice-Chair, Thomas Antoine was Nominated

RESULT:	CARRIED 6-0
MOVER:	Jim Perricone
SECONDER:	Richie Wiggins
YES:	Richie Wiggins, Joseph Warta, Thomas Antoine, Rebecca Berry, Jim Perricone, and Marty Bizzell
NO:	None

3 ADJUSTMENT OF THE AGENDA

- a) There were no adjustments of the agenda.

4 APPROVAL OF MINUTES

- a) February 21, 2024 Board of Adjustment Minutes
Presenter: N/A

Approve, Amend, or Deny

RESULT:	CARRIED 6-0
MOVER:	Thomas Antoine
SECONDER:	Joseph Warta
YES:	Richie Wiggins, Joseph Warta, Thomas Antoine, Rebecca Berry, Jim Perricone, and Marty Bizzell
NO:	None

5 OLD BUSINESS

- a) 2023-162-VAR Aldi Setback Variance - Findings of Fact and Conclusions
Presenter: Board Attorney

Attorney Rasberry discussed the approval of the final order in the most recent decision which included findings and conclusions on this item. This item was discussed at the February meeting. Board Member Perricone recused himself from voting on this item at the February meeting.

Motion to Approve Findings of Fact and Conclusions

RESULT:	CARRIED 5-0
MOVER:	Rebecca Berry
SECONDER:	Joseph Warta
YES:	Richie Wiggins, Joseph Warta, Thomas Antoine, Rebecca Berry, and Marty Bizzell
NO:	None
ABSTAINED:	Jim Perricone

6 EVIDENTIARY HEARINGS

- a) 2023-102-VAR 103 Quail Ct. Carport Variance
Presenter: Bruce Venable, Planner I

Attorney Rasberry provided details on an evidentiary hearing and the Town Clerk swore those in that wished to offer testimony. Mr. Olmedo provided a summary of this item. This is a variance requested to allow a carport to remain in front of the front line of a principal structure. Location is 103 Quail Court, Clayton; property size is approximately 1.19 acres, zoning is RLL. This application was submitted before the UDO was adopted, the UDC criteria is being applied. Shared were the findings of fact, which are included in the agenda packet.

Applicant is seeking variance from code section 155.308.B.2.b. This property is not in the B-1 zoning district. The applicant asserts that due to the location of their septic tank and field, relocating the accessory structure is not feasible. Shared was a rough schematic site plan, provided by the applicant, that shows the property and approximate location of the septic tank. Shared was an aerial view and street view of the property.

Shared was project history of this case. Provided to the board and applicant this evening is a copy of the notice of violation letter showing the sections in violation as well as a copy of the lien. Chair Bizzell asked if the property is in the city limits or ETJ; Mr. Olmedo stated he would confirm this. Board Member Warta stated on the notice of violation it was highlighted up to two accessory structures may be permitted, he asked if there was a second structure. Mr. Olmedo stated it was highlighted to inform the applicant in case they were exceeding that number. Board Member Berry asked if a deck is considered an accessory structure; Mr. Olmedo stated in his opinion an attached deck would not be. Board Member Perricone asked if we know if the applicant was advised at the time their permit was denied that there was an option to file a variance? Mr. Olmedo stated he did not have the answer to that question; the applicant could be able to provide that information.

Chair Bizzell asked if the carport is within the setbacks? Mr. Olmedo stated the front setback would not be applicable to this structure. Asked was if there was a better representation of the septic tank and carport size; Mr. Olmedo stated the site plan was a good faith effort from the applicant to demonstrate the property.

Applicant Lakesha Terrell, owner of the property, was present. She discussed the locations of the septic tank, drainage field, carport, creek and natural spring on the property. She stated the contractor who built the carport said she did not need a permit; she stated she is unfamiliar with the permit process. Discussed was the communication for receiving the notifications for the violations and the lien on the property. She stated she paid her fines over the phone on June 29, 2023. She stated she received an email stating everything was fine. She was told she would receive a call setting up a meeting; she did not hear anything else from anyone. The next communication heard was a lien was put on her house.

Board Member Perricone asked the applicant if there are any other structures on the property. She stated when they moved to the property, there was a greenhouse in the backyard but that has been removed. It was stated the carport was built in 2020. She discussed the carport was built because of her migraines.

Discussed were the setbacks. Mr. Olmedo stated for the principal structure there is a 35' front yard setback, 15' side yard setback and 30' rear yard setback. Regarding

accessory structures, the UDC states not to be within 10' of a property line but not in front of a principal home. He stated based on the aerial map, it would be approximately 20' from the top left corner of the carport to the property line, the top north of the property line is approximately 65' and the carport is approximately 620 sq. ft. in size.

Clayton resident Katie Regal, neighbor of the applicant, was present in support of Ms. Terrell. Kevin Terrell, husband of Ms. Terrell was present and spoke. He stated he hired a surveyor to identify where the septic tank is located.

Mr. Olmedo distributed to the Board information on the property in question shown that it is located in the ETJ, sheet on the accessory structure and use code sections from the UDC, information on the RE district dimensional standards, and an aerial image which shows the setback of the existing carport. Board Member Berry asked if the lack of a carport is a hardship? Attorney Rasberry stated he did not think it's a presumption of a hardship, but this would be up to the board.

Each findings of fact were read and there was further discussion on these.

Motion To Approve 2023-102-VAR

RESULT:	CARRIED 5-1
MOVER:	Jim Perricone
SECONDER:	Joseph Warta
YES:	Richie Wiggins, Joseph Warta, Thomas Antoine, Jim Perricone, and Marty Bizzell
NO:	Rebecca Berry

7 ADJOURNMENT

- a) With nothing further, the meeting was adjourned at 7:20 p.m.

RESULT:	CARRIED 6-0
MOVER:	Jim Perricone
SECONDER:	Thomas Antoine
YES:	Richie Wiggins, Joseph Warta, Thomas Antoine, Rebecca Berry, Jim Perricone, and Marty Bizzell
NO:	None

Duly adopted this the 17th day of April, 2024

Marty Bizzell, Chair

ATTEST:

Heidi L. Holland, CMC, NCCMC
Town Clerk

March 20, 2024
Minutes

103 QUAIL COURT, CLAYTON
VARIANCE APPROVAL
CASE BOA 2023-102 VAR

TOWN OF CLAYTON BOARD OF ADJUSTMENT
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

This application for a variance from Sections 155.308(b)(2) of the Town of Clayton Unified Development Code (the “UDC”) came before the Clayton Board of Adjustment (the “BOA”, or “Board”) on March 20, 2024, for an evidentiary hearing. Upon consideration of the testimony of witnesses, documentary evidence received at the hearing, the variance application with attachments and related materials, exhibits, and all other evidence present at the hearing, the BOA finds that the Variance should be granted. In support thereof, the Board makes the following Findings of Fact and Conclusions of Law, and Decides as follows:

FINDINGS OF FACT

1. The property at issue (the “property”) consists of a residential lot, 1.19 acres in size, improved with a single residential structure and outbuildings. The property is located at 103 Quail Court in the ETJ area of Clayton.
2. The property is zoned R-6 and R-8.
3. The Application was submitted, and the case presented, by Ms. Lakesha Harrell and her husband, owners of the subject property.
4. This matter arose prior to the Town’s adoption of its revised and recodified unified development ordinance. Accordingly, the case is adjudicated under applicable provisions of the previous Unified Development Code.
5. Situated on the property is an accessory building in the form of a carport for the storage of vehicles, yard maintenance equipment, and similar items. The carport is 30’ x 21’ x 6’. As noted in the Staff Report, Section 155.308(B)(2) of the Town of Clayton UDC provides:

“No accessory structure shall extend in front of the front line of the principal structure, except in the B-1 zoning district where the Board of Adjustment may approve a Variance for an accessory use or structure to be placed in any yard other than the rear yard.”

6. As the accessory structure has already been constructed, this is an “after-the-fact” application for a variance, to allow the accessory structure to remain on the property.

7. This case was heard and the application for variance was considered by the Board as an initial application, and as though the accessory structure had not been already constructed.
8. The principal residential is located and fronts on the cul-de-sac end of Quail Court to the west. The residence is located approximately 110 feet from Quail Court. and the accessory structure is located approximately 50 feet from the front property line.
9. The property owners testified that the carport was built to provide storage for their automobile and yard maintenance equipment, and that accessibility of the carport from the existing driveway was needed.
10. The property owners further testified that, in building the accessory structure, they had no intention to violate the Town's ordinance, but were unaware of the requirement for a permit, and the UDC requirement for accessory structures to be located to the rear of the principal structure.
11. According to testimony of the owners, a natural spring is located in front of the residence structure, which prevented location of the carport to the south and rear of their residence.
12. The owners further testified that the areas north and to the rear of their residence were the location of their septic tank and drain fields.
13. The owners submitted in their application and at the hearing aerial photos and a plot plan of the property.
14. From evidence submitted, it appears that few, if any, alternative areas were available on the site and to the rear of the residence for the location of the carport.
15. No testimony or other evidence was presented in opposition to the requested variance.

FINDINGS AND CONCLUSIONS OF LAW

Pursuant to the foregoing and UDC Sections 155.716 (F), the Board of Adjustment makes the following further Findings and Conclusions, and renders its Decision, as follows:

The Application/Property Owner produced competent, material, and substantial evidence to show that:

- i. Unnecessary hardship would result from the strict application of the ordinance; and

- ii. The hardship results from conditions that are peculiar to the property, such as location, size, or topography; and
- iii. The hardship did not result from actions taken by the applicant or the property owner; and
- iv. 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.

DECISION

BASED ON THE FORGOING, Variance Request 2023-102 hereby Granted.

This is ____ day of April 2023.

Marty Bizzell
Chairman, Town of Clayton Board of Adjustment