



**Town of Clayton
Board of Adjustment Minutes
Wednesday, April 20, 2022 @ 6:00 PM
Council Chambers**

BOARD PRESENT:

Marty Bizzell
Thomas Antoine
Jim Perricone
Rebecca Berry
Bob Satterfield
John Saluppo
Richie Wiggins

STAFF PRESENT:

Planning Director Ben Howell
Planner II Aaron Prichard
Planner I Bruce Venable
Deputy Town Clerk Heidi Holland

TOWN COUNCIL LIASION:

Avery Everett

BOARD MEMBERS ABSENT:

1 CALL TO ORDER

- a) Board Chair Bizzell calls session to order at 6:00 pm

2 ADJUSTMENT OF THE AGENDA

3 APPROVAL OF MINUTES

- a) Draft Minutes

Draft minutes from March 16, 2022 will be presented for approval at the following meeting in May.

ACTION: Approval or Denial of Draft Minutes

Motion: Board Member
Second: Board Member
Vote: Unanimous

4 PUBLIC HEARINGS

- a) 2022-50-VAR Geiger Workshop Shed Variance
Presenter: Aaron Prichard, Planner II

2022-50-VAR Geiger Workshop Shed Variance

Aaron Prichard – Planner II Presented to the Board on item 2022-50-VAR Geiger Shed Variance.

2022-50- VAR:

David and Karen Geiger are seeking a variance from the following code section 155.308(B)(2).

The applicant is requesting a variance from the prohibition on the placement of accessory structures forward of the front façade of a principal structure as outlined in Section 155.308(B)(2). The property is zoned R-E, so the provision for a variance in B-1 zoning districts, does not apply.

The Geigers built a shed structure in a non-approved area of their property.

Mr. Prichard listed the findings of fact that must be met by the applicant when seeking a Variance.

Provided below are the findings of fact and applicant and staff comments as presented in the Staff Report.

Findings of Fact:

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

Applicant Response:

A strict application of the ordinance would unreasonably limit my ability to use the property given the location of my home structure as well as the layout of my property. Additionally, a strict application would result in me expending funds to tear down the existing structure which is unduly burdensome given the lack of hazardous conditions which the ordinance is designed to prevent.

Staff Commentary:

Since the workshop is already present, this application constitutes an “after-the-fact variance.” Accordingly, if the variance is denied, the applicant will accumulate daily fines until the structure is removed or relocated to an area of the site that complies with the UDC. The fines and expenses needed to deconstruct the workshop would constitute a hardship, but not an unnecessary hardship. Staff does not believe that the cost of bringing a violation into compliance with the UDC is a compelling enough reason to grant a variance.

2. 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.

Applicant Response:

The property is located in the Town's ETJ and is unique in that it contains six acres which is not surrounded by other properties to be burdened by this variance. The issue is the location of my primary structure is on the back most part of the property. This limits the location where I can put accessory buildings. The size of the property does not warrant strict application of the ordinance given that the nature of the ordinance is to protect against aesthetic concerns and safety concerns. This shed is surrounded by wooded areas, abuts no public right of way, and is not visible from the main thoroughfare. A strict application does not make sense for this size property. Further, the house was built on the far back of the lot. The reason being is due to perk issues. Builder required Owners to build house in that location on the lot which left no room for accessory buildings on the back of the lot behind the main dwelling unit.

Staff Commentary:

It is true that the home is located toward the rear of the property, and that the property is in a rural area, is wooded, and is located on a large lot. However, the location images submitted by the applicant appear to show significant space on the lot that is unwooded both to the side and rear of the home. Barring any factors such as topography, hydric soils, or stream buffers, any of those areas would be suitable to accommodate the workshop and would comply with the UDC.

3. 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.

Applicant Response:

N/A

Staff Commentary:

The hardship was self-created. There are other areas on site where the workshop could have been constructed that comply with the UDC, but the workshop was built in its present location, which triggered the violation.

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

Applicant Response:

If the variance is granted, the shed is still screened from the road and in a position where any noise or activity will not disturb or endanger the neighbors.

Staff Commentary:

A setback is defined under Article 8 of the UDC as "a line delineating the minimum allowable distance between the property line or right-of-way line and a building on a lot, within which no building, significant development, or other structure

shall be placed except as otherwise provided.” An accessory structure is defined under Article 8 of the UDC as “a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. A subordinate dwelling unit, garage, carport or storage shed are all examples of accessory structures.”

The intent of prohibiting an accessory structure from being placed forward of the principal structure is to ensure that the accessory structure in question remains and is shown to be incidental and subordinate. The degree to which setback violations occur may vary, however. For example, a variance request to place a workshop entirely in front of a home, which is the case here, is more egregious than placement of a workshop to the side and slightly forward of a home. Staff does not believe the current location of the workshop constitutes a threat to public safety, but it does not comply with the spirit, purpose, or intent of the ordinance.

STAFF RECOMMENDATION:

Staff recommends denial of the variance, based upon the Findings of Fact listed above.

Mr. Prichard finishes his presentation.

APPLICANT TESTIMONY:

The Applicants hired outside counsel Whitney Hosey to present their case before the Board. All were sworn in by staff. Counsel proceeded to outline that the Geiger’s were not looking to circumvent any town ordinances but were simply unaware of that codes that would prevent them from building their structure forward of their main building. The Geigers are also unable to build their structure in any other location due to unsuitable land and septic fields. Counsel Hosey reiterated that the Geigers met 3 of the 4 findings of fact as laid out by Mr. Prichard in his presentation, but that due to the unusual topographic issues facing the Geiger property. This along with the fact that this shed poses no safety concerns which they believe to be the ultimate point of having these codes in place. And since the Geigers fit 3/4 criteria, they believe the Board should grant them this Variance.

Nearby neighbors provided sworn testimony to support the Geiger’s claims that the land has many areas that seem unsuitable to be built upon and that the current site of the shed is neither unsightly nor is it a burden on nearby property owners.

Board Members asked the applicant the following questions:

1. When was the shed in question built?
2. Did the applicant apply for the proper permits prior to construction?
3. Is this hardship self-created?

The applicants response to each of these were as follows:

1. The shed was built in October 2021.

2. The Geigers were unaware of needing any particular permits prior to being cited for a zoning compliance violation. They spoke with town staff about applying for an after the fact permit and have decided to first seek the variance at this time.

3. Yes, this hardship was self-created, but not intentionally, at no time did the Geigers set out to break or disregard any of the Town's code. The applicant suggest that even had they had known about the requirements beforehand they would still have to appear before this board to ask for a variance to put their shed in its current location. Due to the property's flooding and soil issues the applicant's still believe that the site selected was the most appropriate site for the shed due to these address concerns and to ensure safety.

When questioned further by the Board members if the applicant could prove there was no other possible spot for the shed, counsel informed the Board that they could not present that evidence at this time but would be happy to gather such evidence for future meeting should the Board be prepared to grant the Geigers a continuation.

The Board agrees to continuing the public hearing portion of this case and officially leave the public hearing open until a later date when the meeting can be concluded.

**Board Member Perricone motions for a continuation for May 18, 2022.
Seconded by Board Member Satterfield**

ACTION: Motion for Continuation Until May 18, 2022

Motion: Board Member Jim Perricone

Second: Board Member Bob Satterfield

Vote: Unanimous

5 OLD BUSINESS

6 PLANNING DIRECTOR REPORT

a)

Director Howell announced the creation of steering committee for the current Unified Development Code rewrite project "Codify Clayton"

Board members will be busy with that committee

The Planning Department is still looking to hire a "Land Development Specialist"

The Planning Department has their review RFQs for the new Downtown Masterplan. Staff are planning to interview consultants in the following weeks.

The Planning Department is currently reviewing other RFQ(s) for another small area plan for the I 42 area.

These steering committee meetings will take place during regularly scheduled Board of Adjustment meeting times.

7 ADJOURNMENT

- a) Motion to adjourn by Board Chair Bizzell,

 Motion: Board Member Marty Bizzell
 Second: Board Member Bob Satterfield
 Vote: Unanimous

Chair

ATTEST:

Clerk to the Board