

## **IREDELL COUNTY ZONING BOARD OF ADJUSTMENT**

The Iredell County Zoning Board of Adjustment met at a regularly scheduled meeting on Thursday, August 17, 2023 at 6:00 p.m. in the Commissioners Meeting Room of the Iredell County Government Center (Old Courthouse) at 200 S. Center Street in Statesville, NC.

### MEMBERS PRESENT

Tim Johnson, Chairman  
Trey Robertson  
Bob Dellinger  
Mac McCombs  
Bill Brater  
Don West

### STAFF PRESENT

Rebecca Harper  
Cindy Nicholson

### MEMBERS ABSENT

David Aman, Vice-Chair  
John Allen

*Chairman Johnson called the meeting to order.*

### **ELECTION OF OFFICERS:**

Mr. McCombs nominated Tim Johnson as Chairman. Mr. Brater seconded motion and all were in favor.

**VOTE: 5-0**

Mr. McCombs nominated David Aman as Vice-Chair. Mr. West seconded motion and all were in favor.

**VOTE: 6-0**

**Minutes:** Mr. Dellinger made a motion to approve the minutes from the April 20, 2023 meeting. Mr. McCombs seconded motion and all were in favor.

**Chairman Johnson declared the public hearing open.** He then swore/affirmed those wishing to speak concerning the following case.

Ms. Harper presented the following case:

### **BOA CASE NO. 230817-1 Gordon & Frankie May (Owner/Applicant)**

### **EXPLANATION OF THE REQUEST**

The applicant is requesting relief of 1 foot from the required peak height per Section 15.3 A.3.a. of the Iredell County Land Development Code to allow a non-conforming home located in the 50 foot buffer to be replaced with a home with a peak height of 15.5 feet.

**OWNER/APPLICANT**

**Owner/Applicant:** Gordon & Frankie May  
102 Culpeze Rd  
 Mooresville, NC 28117

**PROPERTY INFORMATION**

**LOCATION:** 102 Culpeze Road in Mooresville, NC; more specifically identified as PIN# 4637037589.

**DIRECTIONS:** Brawley School Road, right on Blume Road, left on Culpeze Road, on right.

**SURROUNDING LAND USE:** This property is surrounded by residential uses and Lake Norman.

**SIZE:** The property is .77 acres.

**EXISTING LAND USE:** The property currently has a home on it.

**ZONING:** The property is currently zoned RR (Resort Residential).



**FINDINGS OF FACT**

1. The request is for relief of 1 foot from the required peak height per Section 15.3 A.3.a. of the Iredell County Land Development Code to allow a non-conforming home located in the 50 foot buffer to be replaced with a home with a peak height of 15.5 feet.
2. The property is .77 acres located at 102 Culpeze Road in Mooresville, NC; more specifically identified as PIN# 4637037589.
3. The property is currently zoned RR (Resort Residential).
4. The application was filed on 6/22/23.
5. The adjoining property owners were notified on 7/24/23.
6. The property was posted on 7/24/23.

## STAFF COMMENTS

The applicant would like to replace the current non-conforming structure on the property, two manufactured homes that are connected, with a stick built home. The existing structure was established in 1975 and is non-conforming because it does not meet the current rear setback requirement. Our code will allow the replacement of the structure provided that a. the replacement does not project further into the setback or create any new non-conformities with respect to setbacks and cannot exceed the existing structure's peak height for any portion of the setback, b. replacement of any portion of the structure inside the required yard must stay within the footprint of the original structure, and c. permits are pulled and construction started within six (6) months following removal of the original structure. The applicant's proposal stays within the original footprint but proposed height is 1 foot above the existing peak height. The applicant is therefore asking for relief of the peak height requirement to allow an additional one foot in height for the new structure. The septic system is located between the home and the road.

## EXHIBITS

|                  |                      |
|------------------|----------------------|
| Staff Exhibit 1. | Variance Application |
| Staff Exhibit 2. | Survey               |
| Staff Exhibit 3. | Section 15.A.3.a.    |
| Staff Exhibit 4. | Zoning Map           |
| Staff Exhibit 5. | 2022 Aerial Map      |

## QUESTIONS FROM BOARD TO STAFF

Mr. West said he was under the impression that the Planning Department staff has the authority to approve this type of situation within 12" administratively. Ms. Harper said in a setback case, staff does. This is a variance regarding height.

Mr. Robertson asked if the survey was corrected, to make the property boundary the 760 contour, the entire building would in conformity. Ms. Harper said yes. If the property line and the 760 line were the same, it wouldn't be in any setback. Mr. Robertson asked if the Register of Deeds (ROD) the authority to change the survey. Ms. Harper said no. What used to happen, Duke Power would allow someone to buy these portions similar to this. She said Duke Power no longer sells in situations as this. Mr. Robertson asked if there is any method of correction of this survey. Ms. Harper said no.

Mr. West asked if anyone has inspected this property, to see if the new home would hinder the lake view for neighbors. Ms. Harper said no, the home hasn't been built. The applicant is coming before this Board to get a variance before starting construction. Mr. Robertson said it doesn't seem as though surrounding neighbors' view would be hindered at all from the aerial view that is shown on the presentation. Ms. Harper said everyone around has a clear view from their own property. There are also trees already there on the property.

Mr. Brater asked since the posting, has there been any calls from neighbors. Ms. Harper said none. A sign was posted and adjoining owner letters were sent with no calls.

Mr. Robertson said he had a procedural question for Ms. Harper. Based on the size of the neighboring homes, he would assume the applicants would prefer to have a larger/taller home. Therefore, since the survey is truly the issue, is there a way to give conditional approval of a structure of a certain height, which would allow the applicants to design a house more akin to the homes next to them. Ms. Harper said no. This meeting for the application has already been advertised. It has been posted on the website. This request is what was sent to the adjoining owners for a variance of one foot. If any changes were made, it would have to go back through the process and be re-advertised, and start over. Ms. Harper said this Board is voting on what the applicant is requesting.

Mr. McCombs asked Ms. Harper if the applicant can change the grade of the land on both ends. Ms. Harper asked Mr. McCombs if he is asking in order to accommodate the difference. If so, Mr. McCombs needs to ask the applicant that question.

Chairman Johnson asked if there were any further questions for staff. There were none.

Chairman Johnson then called the applicant, Mr. Gordon May to the podium.

#### **THOSE SPEAKING FOR THE REQUEST**

Mr. Gordon May, 102 Culpeze Road, Mooresville presented a packet to the Board at this time (Exhibit 1), containing pictures of the surrounding homes next to his property. He said his father purchased the existing place while he was in high school, and it has been used as a weekender location for 45 years. Mr. May said he and his wife have retired and would like to construct a permanent residence on this parcel. He said they live there currently, but wants to remove the trailers that are currently there, and build a home. Mr. May said he is 5'10" and stand flat-footed and touch his ceiling. He said they would like to have 10' high ceilings in the new home.

Mr. May said he would be happy to pay another \$500 and come before the Board to ask for a bigger/taller home, as mentioned by Mr. Robertson.

Mr. May referenced with question earlier from Mr. McCombs about grading deeper to achieve the height. He said if he goes down any deeper, it would turn the foundation walls into basement walls, therefore it becomes cost prohibitive.

Mr. May said they have four children, and multiple grandchildren. They need to build at least a 2500 square foot home in order to house the entire family for holidays/Christmas. Mr. May said with the pie-shaped lot, there isn't enough room to build a home plus a septic system that would pass inspection with setbacks. He said he has been working with Mr. Todd from the Planning Department, on what type of house he could build. He said Mr. Todd suggested getting a survey done first, that shows the exact dimensions/height of the house.

Mr. May said they are at the mercy of this Board. He said they have been down every avenue possible. Survey lines/setbacks will not be changed. They are only requesting the ceiling height be allowed. Based on the pictures he provided to the Board, he assured the Board with this build, they will not block anyone's view to the water.

Mr. West asked Mr. May if he were to get approval tonight, would he then come back later for a different variance. Mr. May said no. Mr. Dellinger said to Mr. West, he understood Mr. May to say if the deed/survey could be changed he would gladly pay another \$500. Mr. May said he has been through all the normal channels with Duke Power (he noted that Duke Power does not maintain the property either). He said he has paid \$10,000 for limestone boulders on Duke Power's shoreline in order to keep the property from eroding further. Also, as the shoreline was eroding, a large maple tree was going to fall on his dock, and he hired a tree company and paid \$1,000 to have the tree cut down. He said there is an old law that states if you maintain a property for more than 25 years, you can claim it. He said he has hired an attorney to claim that land. The attorney informed Mr. May he can't claim the land, because Duke Power still says it's under water, and part of the nuclear project, which is exempt from that law.

Chairman Johnson asked if there were any further questions for Mr. May. There were none.

Mr. May said the 35' setback is a survey mistake, but is a property line. He asked is there any way he could get the 35' setback removed in order to build whatever he wanted. Ms. Harper said no. The 35' setback is a zoning requirement, not anything this Board has any purview regarding. Ms. Harper said that is a standard rear setback on any lot in this jurisdiction.

Chairman Johnson then closed the public hearing.

Ms. Harper entered the Staff Report and PowerPoint presentation into the record.

Chairman Johnson asked if there was any further discussion.

Mr. Robertson asked staff, since this is a unique situation, and he feels within the spirit, purpose, and intent of the regulation, the appropriate course of action would be to table the request. In order to allow the applicant to update the request. The footprint is conforming within 50' of the water line, even though the lines on the drawing don't say that. Hypothetically, as long as it meets zoning regulations, the applicant has every right to build a home/height that matches what his neighbors have. Mr. Robertson said he feels it would look a bit odd, and be unfair to neighbors if the applicant built a lean-to, when the next door neighbor's homes are similar to French chateaus. At this time, Mr. Robertson made a Motion to table the request.

Ms. Harper said this is the request of the applicant and that is what is before this Board to vote on. Ms. Harper said he has spoken with Mr. Todd and was given his options. This is what Mr. May has chosen to do with the one foot variance. Ms. Harper said it isn't up to the Board to tell Mr. May to table the request, and then come back to build something bigger. The role of this Board is to review the four Findings of Facts on what is presented before the Board, and make a determination on the request submitted. Mr. Dellinger said if it were to be tabled, it could potentially be months, and still might not be approved.

Mr. Robertson asked if he could ask Mr. May a question. Ms. Harper said the Chairman has closed the public hearing already, but could reopen if he so chooses. Mr. Robertson said he feels that would be the right course of action. Mr. Robertson said for justice to truly be done in this situation, a 75 year-old survey mistake is what is causing this. The applicant thought he was doing the right thing in asking for just a one-foot variance. Ms.

Harper told Mr. Robertson he isn't allowed to say that, and makes it seem as though he is biased in this case, and end up dismissing himself from the situation. The job of this Board is to vote only on the presented evidence as to what the applicant has asked for. Not to recommend that the applicant ask for something else. Mr. Dellinger said he feels it would be an injustice to the owner to prolong what they have already brought before this Board. Mr. May said they aren't going to build for a couple of years, and has all the time in the world, but was afraid to ask for anything more. Mr. Dellinger said this Board needs to act on what is presented before them tonight, and nothing more.

Chairman Johnson said he agrees, the purview of this Board is to make a determination on what is presented currently before this Board. Chairman Johnson clarified if the applicant would choose to come back at a later time, they will not lose the variance that is requested tonight if approved. Ms. Harper said no they won't. Chairman Johnson said they will know they at least have this, and if they choose to revisit it later, they can. Ms. Harper noted there would be no guarantee they would get more than what is already requested.

Ms. Harper said Mr. May has made the effort to comply the best he can with the county requirements, with a very little bit of a variance. The goal of a non-conforming section is to remove the non-conformities, not to let them continue or get bigger. Mr. Dellinger said he would like to give credit to Mr. May to follow the proper procedures to begin with, and not going ahead and then ask for forgiveness after the fact.

Mr. Robertson then withdrew his Motion to table the request.

### **The Board went over the Variance check sheet**

1. An unnecessary hardship would result from the strict application of the regulation.

|            |      |  |
|------------|------|--|
| Robertson: | TRUE | Not granting would cause an unnecessary hardship |
| Dellinger: | TRUE | So minimal, it won't affect view                 |
| Johnson:   | TRUE | Testimony and survey provided                    |
| McCombs:   | TRUE | Hardship due to a survey mistake                 |
| Brater:    | TRUE | No unnecessary hardship                          |
| D. West:   | TRUE | Testimony of witness/staff                       |

**TRUE BY A VOTE OF 6-0**

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography.

|            |      |   |
|------------|------|---|
| Robertson: | TRUE | Unique situation to this property         |
| Dellinger: | TRUE | Based on circumstances/evidence presented |
| Johnson:   | TRUE | Peculiar nature of property               |
| McCombs:   | TRUE | Hardship due to unusual size/shape of lot |
| Brater:    | TRUE | Peculiar lot, size, and topography        |
| D. West:   | TRUE | Testimony given                           |

**TRUE BY A VOTE OF 6-0**

3. The hardship does not result from actions taken by the applicant or property owner.

- Robertson: TRUE No action of owner based off of survey
- Dellinger: TRUE Regulations have changed
- Johnson: TRUE Not a result of owner's actions; inadequacies of survey
- McCombs: TRUE No action of owner
- Brater: TRUE Duke Power's regulations in part
- D. West: TRUE Owner did nothing to cause this

**TRUE BY A VOTE OF 6-0**

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

- Robertson: TRUE Based on provided survey and applicant's testimony
- Dellinger: TRUE No evidence to effect the public in anyway
- Johnson: TRUE Testimony by applicant & staff report
- McCombs: TRUE Consistent with the spirit & purpose of regulation
- Brater: TRUE Applicant has done upkeep thus far to prevent issues
- D. West: TRUE No security issues involved

**TRUE BY A VOTE OF 6-0**

**DECISION:** Mr. Dellinger made a motion to **APPROVE** the Variance based on the Findings of Fact and the evidence submitted. Mr. McCombs seconded said motion. Motion passed.

**VOTE: 6-0**

Ms. Harper noted there would be a meeting in September 2023.

Chairman Johnson asked for a motion to adjourn.

Mr. Robertson made a motion to adjourn, seconded by Mr. McCombs.

**ADJOURNMENT:** There being no further business, Chairman Johnson declared the meeting adjourned at 6:35 pm.

\_\_\_\_\_  
Cindy Nicholson, Administrative Assistant

\_\_\_\_\_  
Date Read and/or Approved

DATE FILED IN THE MINUTE BOOK BY THE CLERK: \_\_\_\_\_. NOTE: THE APPLICANT HAS THIRTY [30] DAYS FROM THIS DATE TO APPEAL THE DECISION BY THE BOARD.