

MEMORANDUM

TO: Chapel Hill Board of Adjustment

FROM: Ben Hitchings, Director, Planning and Development Services
Jake Lowman, Planner II

SUBJECT: 913 Kings Mill Road: Dimensional Variance
(PIN 9788-90-7846, Project #18-081)

DATE: September 6, 2018

Attached for your consideration is an application for a variance from dimensional regulations in the Kings Mill/Morgan Creek Neighborhood Conservation District design standards, in Appendix B, Division 3.3 of the Chapel Hill Land Use Management Ordinance.

INTRODUCTION

The applicants, Lew and Susan Kellogg, are requesting a dimensional variance from the minimum street setback. The subject property is located at 913 Kings Mill Road at the intersection of Laurel Hill Road (Attachment 4). The property is in the Residential-1 (R-1) zoning district and the Kings Mill/Morgan Creek Neighborhood Conservation District (CD-3) and the Orange County Property Identifier Number is 9788-90-7846.

The attached applicant's materials include an application form, narrative, statement of justification, presentation, site plan and elevations, survey and area map (Attachment 4).

EXISTING CONDITIONS

The 0.71-acre subject lot is in the Residential-1 zoning district and the Kings Mill/Morgan Creek Neighborhood Conservation District. The lot has a single-family home on it with gravel driveways on both Laurel Hill Road and Kings Mill Road. The lot generally slopes downward to the northeast, and the vegetation is principally hardwood trees with mixed landscape plantings.

BACKGROUND

August 1, 2018: Application submitted for a Dimensional Variance by Lew and Susan Kellogg.

July 13, 2005: Subject property acquired by property owners, Lew and Susan Kellogg.

DESCRIPTION OF VARIANCE REQUEST

Property line setbacks on the subject lot are regulated by the Kings Mill/Morgan Creek Neighborhood Conservation District design standards, in Appendix B, Division 3.3 of the Chapel Hill Land Use Management Ordinance (LUMO), which have more restrictive setbacks than the underlying Residential – 1 zoning district. The applicants are requesting a dimensional variance to encroach 10 feet into the 50-foot Laurel Hill street setback, on the eastern property line. The proposed encroachment is to accommodate a proposed two-story porch and deck. These improvements are shown on the attached site plan (Attachment 4).

DISCUSSION

If the variance is granted for the proposed construction, the applicants would be required to obtain a Residential Zoning-Building Permit from the Town, prior to beginning construction. Also required would be appropriate application materials with dimensional details related to property setbacks. In addition, an as-built survey would be prerequisite to a receiving a Certificate of Occupancy, to verify that the construction doesn't exceed the variance granted.

PROCEDURE

Section 4.12.2 of the Land Use Management Ordinance addresses variances from dimensional regulations. In order to grant the variances, the Board of Adjustment must make the following findings:

- A. When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall have the power to vary or modify any of the regulations or provisions of the ordinance so that provisions of the ordinance upon a showing of all of the following:
 - 1. 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. 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.
 - 3. The hardship did not result from actions taken by the applicants 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. 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.

If the Board is able to make all the above findings for the requested dimensional variance, based on the evidence presented at the hearing, the Board may approve the variance request for the subject lot. If the Board fails to make one or more of the above findings, the Board must deny the request. The Board may also choose to approve a lesser extent for a requested variance or fewer than total number of requested variances.

RECOMMENDATION

Staff Recommendation: We recommend that the Board of Adjustment review the variance request.

Resolution A would approve the Dimensional Variance request.

Alternative Resolution A would approve the Dimensional Variance request, without chair summary.

Resolution B would deny the Dimensional Variance request.

Attachments:

1. Resolution A, approving the dimensional variance request.
2. Alternative Resolution A (without chair summary), approving a dimensional variance request.
3. Resolution B, denying the dimensional variance request.
4. Applicant's materials including application form, narrative, statement of justification, presentation, site plan and elevations, survey and area map.
5. Area map of subject lot.

RESOLUTION A - APPROVING DIMENSIONAL VARIANCE

RESOLUTION APPROVING AN APPLICATION FOR VARIANCE FROM DIMENSIONAL REGULATIONS ON PROPERTY LOCATED AT 913 KINGS MILL ROAD (PIN 9788-90-7846, PROJECT #18-081)

WHEREAS, having reviewed the applicant's argument and various documents and other evidence submitted at the hearing on this matter, and having heard public comment on the application, the Board of Adjustment finds as facts those facts summarized by the Chair at the conclusion of the Board's hearing of this matter and hereby incorporates them by reference as Board Findings of Fact; and finds that such facts are supported by competent, material, and substantial evidence presented to the Board; and

BE IT RESOLVED by the Board of Adjustment of the Town of Chapel Hill that, having considered the requested variance from dimensional regulations, at 913 Kings Mill Road, requested by Lew and Susan Kellogg, to encroach 10 feet into the 50 foot Laurel Hill Road street setback, on the eastern property line, to accommodate a two-story porch and deck in accord with the improvements on the attached site plan, and identified as Orange County Property Identifier Number 9788-90-7846, the Board makes the following findings:

1. Unnecessary hardship would result from the strict application of the ordinance.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography.
3. The hardship did not result from actions taken by the applicants or the property owner.
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.

BE IT FURTHER RESOLVED that the Board hereby approves the application for a dimensional variance from setback regulations in the Kings Mill/Morgan Creek Neighborhood Conservation District, in accord with the plan listed above and the following conditions, deemed necessary to achieve the purposes of the dimensional regulations and to ensure that the requested variance at 913 Kings Mill Road is the minimum variance necessary to afford appropriate relief:

1. That the applicants shall obtain a Residential Zoning-Building Permit for construction on a single-family zoning lot.

Signed - Board of Adjustment Chair, James Bartow

This, the 6th day of September 2018.

ALTERNATIVE RESOLUTION A - APPROVING DIMENSIONAL VARIANCE

RESOLUTION APPROVING AN APPLICATION FOR VARIANCE FROM DIMENSIONAL REGULATIONS ON PROPERTY LOCATED AT 913 KINGS MILL ROAD (PIN 9788-90-7846, PROJECT #18-081)

WHEREAS, having reviewed the applicant's argument and various documents and other evidence submitted at the hearing on this matter, the Board of Adjustment finds as facts those uncontested, submitted by the applicants at the Board's hearing of this matter and hereby incorporates them by reference as Board Findings of Fact; and finds that such facts are supported by competent, material, and substantial evidence presented to the Board; and

BE IT RESOLVED by the Board of Adjustment of the Town of Chapel Hill that, having considered the requested variance from dimensional regulations, at 913 Kings Mill Road, requested by Lew and Susan Kellogg, to encroach 10 feet into the 50 foot Laurel Hill Road street setback, on the eastern property line, to accommodate a two-story porch and deck in accord with the improvements on the attached site plan, and identified as Orange County Property Identifier Number 9788-90-7846, the Board makes the following findings:

1. Unnecessary hardship would result from the strict application of the ordinance.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography.
3. The hardship did not result from actions taken by the applicants or the property owner.
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.

BE IT FURTHER RESOLVED that the Board hereby approves the application for a dimensional variance from setback regulations in the Kings Mill/Morgan Creek Neighborhood Conservation District, in accord with the plan listed above and the following conditions, deemed necessary to achieve the purposes of the dimensional regulations and to ensure that the requested variance at 913 Kings Mill Road is the minimum variance necessary to afford appropriate relief:

1. That the applicants shall obtain a Residential Zoning-Building Permit for construction on a single-family zoning lot.

Signed - Board of Adjustment Chair, James Bartow

This, the 6th day of September 2018.

ATTACHMENT 3

RESOLUTION B - DENYING DIMENSIONAL VARIANCE

RESOLUTION DENYING AN APPLICATION FOR VARIANCE FROM DIMENSIONAL REGULATIONS ON PROPERTY LOCATED AT 913 KINGS MILL ROAD (PIN 9788-90-7846, PROJECT #18-081)

WHEREAS, having reviewed the applicant's argument and various documents and other evidence submitted at the hearing on this matter, and having heard public comment on the application, the Board of Adjustment finds as facts those facts summarized by the Chair at the conclusion of the Board's hearing of this matter and hereby incorporates them by reference as Board Findings of Fact; and finds that such facts are supported by competent, material, and substantial evidence presented to the Board; and

BE IT RESOLVED by the Board of Adjustment of the Town of Chapel Hill that, having considered the requested variance from dimensional regulations, at 913 Kings Mill Road, requested by Lew and Susan Kellogg, encroach 10 feet into the 50 foot Laurel Hill Road street setback, on the eastern property line, to accommodate a two story porch and deck in accord with the improvements on the attached site plan, and identified as Orange County Property Identifier Number 9788-90-7846, the Board does not make the following findings:

1. Unnecessary hardship would result from the strict application of the ordinance.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography.
3. The hardship did not result from actions taken by the applicants or the property owner.
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.

BE IT FURTHER RESOLVED that the Board hereby denies the application for a dimensional variance from setback regulations in the Kings Mill/Morgan Creek Neighborhood Conservation District, at 913 Kings Mill Road.

Signed - Board of Adjustment Chair, James Bartow

This, the 6th day of September 2018.