



**TOWN OF MIDWAY
BOARD OF ADJUSTMENT MINUTES
TUESDAY, NOVEMBER 24, 2020**

**MINUTES OF MIDWAY BOARD OF ADJUSTMENT MEETING HELD ON TUESDAY,
NOVEMBER 24, 2020 AT 5:00 P.M. MIDWAY TOWN HALL, 426 GUMTREE ROAD, MIDWAY,
NORTH CAROLINA**

CALL TO ORDER

Chairman James Smith called the meeting to order.

Board of Adjustment members present were: Charles Waddell, Jamie Hester, James Smith, Carl Tuttle, Paula Hill, and alternate member Richard Miller. Absent: None.

Town Manager Tammy Michael, Deputy Clerk Tammy Robertson and Davidson County Zoning Officer Lee Crook were present. Absent: Town Clerk Linda Hunt.

ADOPT AGENDA

On motion by Board member Jamie Hester, seconded by Board member Carl Tuttle, the Board voted unanimously to approve the agenda as presented.

PUBLIC HEARING

VARIANCE

REQUEST BY EILEEN M. WOOD FOR A FENCE HEIGHT VARIANCE IN A RS, LOW INTENSITY RESIDENTIAL DISTRICT

Davidson County Zoning Officer Lee Crook presented a variance request by Eileen M. Wood for a fence height variance in a RS, Low Intensity Residential District. Said property is located on the east side of Tro Tod Drive approximately three hundred twenty-five feet north of the Noralin Drive intersection. Property is further described as Midway Township, Tax Map 14, Lot 86 containing .94 acre more or less.

The public hearing was advertised in *The Dispatch* on November 6, and November 13, 2020 as required by law.

In order to grant a variance, there are five required findings that must be met. The findings are located in *The Town of Midway's Zoning Ordinance in Section 7.11 (B) Findings Required:*

A variance may only be allowed by the Board of Adjustment in cases involving practical difficulties or unnecessary hardships when substantial evidence is provided in the official record that supports each of the following findings:

1. That the alleged hardships or practical difficulties are unique and singular as regards to the property of the person requesting the variance and are not those suffered in common with other property similarly located.
2. That the alleged hardships and practical difficulties, which will result from failure to grant the variance, extend to the inability to use the land in question for any use in conformity with

the provision of the Ordinance and include substantially more than mere inconvenience and inability to attain a higher financial return.

3. That the variance, if allowed, will not substantially interfere with, or injure the rights of others whose property would be affected by allowance of the variance.
4. That the variance is in harmony with this Ordinance and serves the general intent and purpose.
5. The allowing of the variance will result in substantial justice being done, considering both the public benefits intended to be secured by this Ordinance and the individual hardships that will be suffered by a failure of the Board to grant a variance.

The Board of Adjustment would need to vote affirmatively on all five of the findings and since the hearing is quasi-judicial, a four-fifths vote of the Board would be required in order to grant the variance.

Eileen M. Wood, first being duly sworn, stated that the fence is needed to provide privacy around the hot tub. The hot tub is located on a raised cement patio behind the house. The cement patio is twenty inches above ground in front (east) and twelve inches above the ground on the side (south). The land gradually slopes down away from the house and patio.

Installing a six-foot high fence would in effect be four foot four inches high and five feet high on the side, therefore, giving no privacy to the hot tub users because of its raised seating. An eight-foot fence would allow privacy to its users.

Board of Adjustment Chairman James Smith asked if anyone else in the audience wished to speak for or against the variance request. There were no additional comments.

On motion by Board member Jamie Hester, seconded by Board member Charles Waddell, the Board of Adjustment voted unanimously to open the Public Hearing.

Chairman James Smith read each finding of fact and Board of Adjustment members voted on whether or not each finding of fact had been satisfied.

Findings of Fact:

1. That the alleged hardships or practical difficulties are unique and singular as regards to the property of the person requesting the variance and are not those suffered in common with other property similarly located.

Finding of fact passed by a 5-0 vote.

2. That the alleged hardships and practical difficulties, which will result from failure to grant the variance, extend to the inability to use the land in question for any use in conformity with the provision of the Ordinance and include substantially more than mere inconvenience and inability to attain a higher financial return

Finding of fact passed by a 5-0 vote.

3. That the variance, if allowed, will not substantially interfere with, or injure the rights of others whose property would be affected by allowance of the variance.

Finding of fact passed by a 5-0 vote.

4. That the variance is in harmony with this Ordinance and serves the general intent and purpose.

Finding of fact passed by a 5-0 vote.

5. The allowing of the variance will result in substantial justice being done, considering both the public benefits intended to be secured by this Ordinance and the individual hardships that will be suffered by a failure of the Board to grant a variance.

Finding of fact passed by a 5-0 vote.

On motion by Board member Jamie Hester, seconded by Board member Charles Waddell, the Board of Adjustment voted unanimously to approve a fence height variance in a RS, Low Intensity Residential District as presented.

ADJOURNMENT

On motion by Board member Carl Tuttle, seconded by Board member Charles Waddell, the Board voted unanimously to adjourn the meeting at 6:11 p.m.

James W. Smith, Chairperson

Tammy H. Robertson, Deputy Clerk