Location
336 Whitefriars Lane

Ownership/Applicant
Brian Schley

Zoning
Existing: R-15

Use
Existing: Single Family

Request Summary
The applicant requests a public improvement variance in order to obtain a permit for a storage building that is approximately 3 or 4 feet into a SWIM buffer on their property.
- Applicant had a existing storage building when home was purchased more than 20 years ago.
- Existing shed was destroyed when a tree fell on it after the tornado last year.
- Applicant contacted Town of Matthews for building permit in order to rebuild the building but was told that Mecklenburg County handles all building permits for the Town.
- In contacting Mecklenburg County, applicant was told that he was allowed to building the building and have it inspected after the fact.
- New storage building used the same setback from the creek but was expanded toward the home.
- After the new storage building was finished, the applicant contacted Mecklenburg County for a permit and inspection.
- This is when it was determined that a permit may not be granted without a variance from the Town of Matthews because the building encroaches into the SWIM buffer.
- The Town UDO requires a SWIM buffer variance to be processed as a Public Improvement Variance rather than a zoning variance that is decided by the BOA.
- Surface Water Improvement and Management (SWIM) buffers are found in section 155.704.2 of the UDO.
- No building is permitted in the SWIM buffer which extends 50 feet from the stream or creek.
- Section 155.704.2.F.2 specifically deals with appeals and SWIM buffer variances:

2. VARIANCE PROVISIONS.
- a. When a difficulty or hardship would result from adherence to the buffer width requirements and/or buffer treatment standards, a request for subdivision variance may be filed with the Planning Board in compliance with the procedures of § 155.712.B. Such request shall not be deemed complete for consideration until a written report with recommended actions, including preferred mitigation techniques, from Mecklenburg LUESA is provided. It shall be the responsibility of the applicant requesting the SWIM buffer variance to obtain this report.
- b. The standards for granting a variance, as set out in § 155.712 of these regulations shall be met. Site specific mitigation plans using the techniques below, and approved by the designated agency, shall constitute conditions relating to the intent and standards of this Chapter, and may be attached to variance approval by the Town Board. Specifications for these mitigation techniques are provided in the Mecklenburg County Land Development Standards Manual, and provisions outlined for PCO compliance may also be applied, when determined to be appropriate by the Storm Water Administrator. These techniques are not construed to offset the requirement of § 155.704.C.3 for diffuse flow.
- The UDO directs SWIM buffer variances to go through the process described in Section 155.712.B, which is the Public Improvement Variance process:

- The Planning Board may review and make recommendations on requests for public improvement variances from the regulations of §§ 155.701, 155.702, 155.704, 155.707, 155.708, and 155.709. These recommendations shall be forwarded to the Town Board of Commissioners for final decision. Request for public improvement variances shall be governed by the following requirements and procedures.

- A. GENERAL. Where the Planning Board finds that unnecessary hardships or practical difficulties may result from strict compliance with these regulations and/or that the purposes of these regulations may be served to a greater extent by an alternative proposal, it may recommend, and the Board of Commissioners may authorize, variances to these regulations, provided that the public improvement variances shall not have the effect of nullifying the intent and purpose of these regulations. Approval of a public improvement variance shall be based on evidence in each specific case that:
  - 1. The relationship of the property to natural topography or to the nature of adjoining properties warrants relief from the standard in question; or
  - 2. The difficulty or hardship from the application of these regulations would prevent the owner from making reasonable use of the property; or
  - 3. The granting of a variance would permit the preservation of an historic structure or site; or
  - 4. The granting of a variance would permit the preservation of a mature grove of hardwood trees or a significant specimen tree.
1. The Applicant replaced a storage building that was partially within the Surface Water Improvement and Management (SWIM) buffer.
2. The applicant contacted Town of Matthews and Mecklenburg County to inquire and obtain building permit.
3. The applicant was advised by the County that it was permissible to rebuild the building and obtain inspections and permit after the fact.
4. The applicant was not made aware of the buffer until coming back to Mecklenburg County for a building permit.
5. Pursuant to the Matthews UDO a public improvement variance is the relief for the applicant in order to obtain a building permit.
6. The Planning Board is to make a recommendation to the Board of Commissioners.
7. Applicant’s narrative and photos are attached.
Brian Schley

336 Whitefriars Ln

Matthews NC 28105

To whom it may concern:

I am requesting a public improvement variance in order to obtain a permit for a storage building that is approximately 3 or 4 feet into a recently added swim buffer on my property.

Me and my wife Jane with our 2 sons have lived at 336 Whitefriars Ln Matthews for 20 years. Both of our son's went through the Matthews education system, Matthews elementary, Crestdale and Butler High School. Then both graduated from App. St. We love calling Matthews our home and are very proud of it. We have both been involved in continuing to making Matthew's a better place to live.

We have have had a storage shed in the same place in our yard since purchasing the home over 20 years ago. 50 or so feet below and to the right is a small creek. I have been told there was a zoning change made to my property 10 to 15 years ago called a swim buffer. We were never notified of this change and never asked to move the storage building. It is only a very small portion of the building in the swim buffer. I had no idea what it was for and honestly didn't get a proper definition from the 1st 4 people I discussed it with in planning and zoning. It's actually something I totally agree with and hope to see more of these kinds of moves to help our environment. A notification would have seemed to have made sense.

Unfortunately, during the tornado that came through, a tree fell on and destroyed the building. I decided to rebuild a storage workshop this past June. I contacted the Town of Matthews for obtaining a building permit and getting any zoning information as I wanted to make it a little larger. I was told that the office was closed to the public but I needed to contact Charlotte Mecklenburg for the building permit anyway. I contacted Charlotte planning and was informed that they were also closed to the public but that I was allowed to build a building and have it inspected after the fact, once things were back to normal. I used the same sideline closest to the creek and expanded it larger towards my home and away from any side or back setbacks. It is all correct. I had a nice discussion about what I could and could not due, gave my address to make sure I was within my rights to build this. I let them know it was not being built on a slab. It would not be used for vehicles at all. They said that was considered a moveable building and was permitted. I used the existing electric to the old shed and had a licensed electrician hook up the new lights and an exhaust fan. Not entirely comfortable, while on the phone with Charlotte planning, I was looking at the guidelines on line and it clearly stated you
can inspect this sort of building after the fact if everything was done correctly. Which we did.

If someone had looked up our property, came by, informed of where to put it, informed me the zoning had changed when they made it a swim buffer, I had as much room as needed to move 20 or 30 feet to the right away from a swim buffer that no one mentioned. There would have been absolutely no reason to build it there. It is a very small percentage inside the swim buffer, a few feet was the best guess of Gigi Mullett in Charlotte planning. Gigi was incredibly helpful and took the time to look into this very closely. I can’t say enough about her time and input to assist me in a simple mis-understanding. She agreed with my argument and helped me issue a building permit that is now being held up because it is the decision of Matthew’s on a swim buffer not Charlotte Meck’s decision. She informed me she would recommend her approval to anyone and to contact Matthew’s to resolve. I thank you again Gigi to take the time to help us fix this. I also want to thank Carlo and Rob In Matthews for there help in moving forward.

In summation, I did all my due diligence and proceeded correctly, asked for guidance from both Matthews and Charlotte. I had lots of other options, I could have turned it slightly, moved it a few feet to the right etc. (plenty of room) but decided the safe and best place to go was in the same spot. Unfortunately, here we are. I would think that something like this would just be grand-fathered in. In no way was I ever trying to hide anything on this project and is in plane site of the street for neighbor’s or anyone to see us building. It was built to pass any inspection and I had every intention of doing so.

Thank you for your time and I look forward to hearing from someone soon. I am available anytime to answer any questions and or inspect the building.

Brian Schley

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