



HOLLY  
SPRINGS  

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North Carolina

# BOARD OF ADJUSTMENT

7:00 p.m.

Tuesday, August 13, 2019

Town Hall, Council Chambers, 128 South Main Street

## Board of Adjustment Members

Jay Marinko  
*Chairperson*

Erin Paré  
*Vice-Chairperson*

Timothy Forrest  
Lisa Semmens  
Morgan Wiley

### *Alternate Members:*

Jeremy Hudson - ETJ Alternate  
Cody Loughridge  
Vacant

### Holly Springs Town Hall

P.O. Box 8  
128 South Main Street  
Holly Springs, NC 27540

Planning Board Clerk's Office  
Phone: 919-557-3908  
Email:  
[HSPlanning@hollyspringsnc.us](mailto:HSPlanning@hollyspringsnc.us)







# Board of Adjustment

## Meeting Agenda

**Tuesday, August 13, 2019**

**7:00 pm**

**Town Hall- Town Council Chambers • 128 S. Main Street**

1. Call to order
2. Roll call
3. Pledge of Allegiance
4. Invocation
5. Agenda Adjustment
6. Minutes
  - a. April 9, 2019 Minutes
7. Training
8. Other Business
  - a. Modification of meeting days and times
9. Adjournment





THE TOWN OF

Board of Adjustment Meeting Packet

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*Holly Springs*

**Item #6a**

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Department of Planning & Zoning

128 S. Main Street • P.O. Box 8 • Holly Springs, NC 27540 • (919) 557-3908  
[www.hollyspringsnc.us/planning](http://www.hollyspringsnc.us/planning) • [HSPlanning@hollyspringsnc.us](mailto:HSPlanning@hollyspringsnc.us)



Town of Holly Springs  
BOARD OF ADJUSTMENT MEETING MINUTES  
Tuesday, April 9, 2019 - 7:00 p.m.

**Agenda Item #1, 2, 3 & 4:**

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The Board of Adjustment of the Town of Holly Springs met for their regularly scheduled meeting on April 9, 2019 in the Council Chambers, 128 South Main Street. At 7:00 after determining a quorum was present, Vice Chairman Marinko called the meeting to order.

**Staff Members Present:** Melissa Sigmund, Principal Planner  
Matt Beard, Planner I  
Caleb Allred, Associate Planner  
Paul Allen, Assistant Town Attorney  
Kathy Carlisle, Board of Adjustment Clerk

**The Board completed roll call.**

**Members Present:** Jay Marinko, Vice Chairperson  
Tim Forrest  
Erin Paré  
Lisa Semmens  
Morgan Wiley

**Alternate Members Present- Non Voting:**

**Members Absent:** Vacant, Chairperson  
Jeremy Hudson  
Tom McKay

The Board held a moment of silence.

**Agenda Item #5: Agenda Adjustment**

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The Board requested the appointment of Chair and Vice-Chair to be considered after Item 8a.

**Agenda Item #6: Minutes**

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**a. February 12, 2019 Minutes**

**Motion:**

Motion to approve the February 12, 2019 Minutes.

**Motion by:** Ms. Paré

**Second by:** Mr. Forrest

**Action:** *The Board of Adjustment voted in favor of the Motion. (5-0-0)*

## **Agenda Item #7: Appointment of Chair and Vice-Chair**

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### **Motion:**

Motion to appoint Jay Marinko as Chairperson.

**Motion by:** Mr. Forrest

**Second by:** Ms. Wiley

**Action:** *The Board of Adjustment voted in favor of the Motion. (5-0-0)*

### **Motion:**

Motion to appoint Erin Paré as Vice-Chairperson.

**Motion by:** Mr. Marinko

**Second by:** Mr. Forrest

**Action:** *The Board of Adjustment voted in favor of the Motion. (5-0-0)*

## **Agenda Item #8: Variance**

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### **a. 19-VAR-02 716 Morton Farm Rd**

Mr. Beard reviewed the staff report with the Board.

Variance 19-VAR-02 requested by Michael McDonald to allow for a Variance from the Unified Development Ordinance Section 2.04 B. 5. c. Minimum Yards and Minimum Building Setbacks to allow for a decrease in the rear setback from 25' to 13' to allow the current deck to be replaced for the property located at 716 Morton Farm Rd, Wake County PIN 0658396691.

### **Swearing-In**

Matt Beard, Planner I  
128 S Main St  
Holly Springs NC 27540

Caleb Allred, Associate Planner  
128 S Main St  
Holly Springs NC 27540

Michael McDonald  
716 Morton Farm Rd  
Holly Springs NC 27540

Mr. Beard reviewed the staff report with the Board and entered the report as evidence.

Vice Chairman Marinko opened the Public Hearing.

### **Testimony:**

Mr. McDonald provided the Board with a statement as to the reason for this request. He indicated the deck was existing when the home was purchased. He further indicated that the intent was to replace the deck in the future. In the meantime, a portion of the deck collapsed



and a patch repair was made. Upon applying for building permit, the applicant was informed of the setback issue. The applicant provided a notarized letter of support from neighbor located at 217 Crossfire Rd (Exhibit #8a(1) for the Board's consideration stating there are in support of the applicant's desire to rebuild their existing deck.

Mr. Forrest asked about the elevation of the home. Mr. Beard indicated he was unfamiliar with the elevation. Mr. Allen indicated the elevation shifts from 382 to 364. Mr. Marinko asked where 217 Crossfire Road property is located. Mr. McDonald stated it is located behind his home. Ms. Wiley asked if there was any landscape buffering. Mr. Mc Donald provided the Board with clarification on the landscape buffer.

Vice Chairman Marinko closed the Public Hearing.

**Motion:**

Motion to close the public hearing.

**Motion by:** Ms. Paré

**Second by:** Mr. Forrest

**Action:** *The Board of Adjustment voted in favor of the Motion. (5-0-0)*

**Board Deliberation:**

The Board did not deliberate on the proposed variance.

**Findings of Fact:**

A *variance* may be granted by the Board if competent and substantial evidence is presented by the applicant which persuades the Board to either reach each of the following conclusions independently or be reasonably able to meet these conclusions upon implementation of conditions by the Board:

- 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.**

The board has found as a fact that that verbal testimony provided supports the Petitioner's written response as follows:

- 1. Desire to rebuild deck existing prior to purchase, as deck was built in compliance*
- 2. Based on site conditions, safety is an issue, sliding glass door suggests that a deck was original to the new home construction, and owner should receive benefit of "grandfathering."*
- 3. Hardship to relocate pilings for a new deck or stairway from existing locations*
- 4. Use of back yard as currently enjoyed would be discontinued based on inability to replace deck*

- 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.**

The board has found as a fact that that verbal testimony provided supports the Petitioner's written response as follows:

1. *The property has topographic characteristics, shape and size that would, under current ordinance not allow for the replacement of the deck*
2. *Topography of lot with slope and shape of lot limits the placement of the home such that a deck could not be replaced within the correct setback.*

**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.**

The board has found as a fact that that verbal testimony provided supports the Petitioner's written response as follows:

1. *The deck was there when the homeowner purchased the home*
2. *The deck was shown on the original plot plan submitted with the application*

**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.**

The board has found as a fact that that verbal testimony provided supports the Petitioner's written response as follows:

1. *Replacement of the deck would ensure a safe and secure structure on the rear of the house allowing for proper egress*
2. *Based on the material evidence, substantial evidence submitted, it is in the best interest of the homeowner to maintain the deck.*

**Motion (Findings of Fact)**

Motion to not accept nor adopt the findings of fact for Variance Petition #19-VAR-02 as determined based upon competent, material, and substantial evidence presented and entered into the record and reduced to writing.

**Motion by:** Ms. Wiley

**Second by:** None

**Motion does not pass due to lack of second motion.**

Motion to accept and adopt the findings of fact for Variance Petition #19-VAR-02 as determined based upon competent, material, and substantial evidence presented and entered into the record and reduced to writing.

**Motion by:** Ms. Wiley

**Second by:** Mr. Forrest

**Action: The Board of Adjustment voted in favor of the Motion. (4-1-0) (Dissent: Ms. Paré)**

**Motion (Conclusion of Law on Variance Petition)**

Based upon the Board's Findings of Fact, I move to approve Variance 19-VAR-02 requested by Michael McDonald to allow for a Variance from the Unified Development Ordinance Section 2.04 B. 5. c. Minimum Yards and Minimum Building Setbacks to allow for decrease in the rear setback from 25' to 13' to allow the current deck to be replaced for the property located at 716 Morton Farm Rd, Wake County PIN 0658396691.s

**Motion by:** Ms. Wiley

**Second by:** Mr. Forrest

**Action:** *The Board of Adjustment voted in favor of the Motion. (4-1-0) (Dissent: Ms. Paré)*

*Ms. Paré's denial is based on the evidence presented, although factual, does not support the ordinance.*

**Agenda Item #9: Other Business**

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The Board did not have any Other Business to discuss.

**Agenda Item #10: Adjournment**

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**Motion:**

Motion to adjourn.

**Motion by:** Mr. Marinko

**Second by:** Mr. Forrest

**Action:** *The Board of Adjustment voted in favor of the Motion. (5-0-0)*

**Time:** 8:47p

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Kathy Carlisle  
Board of Adjustment Clerk