

# Board of Adjustment

## Application for Variance from the Davidson Planning Ordinance

Appeals and Variances shall follow the rules and procedures set out in NCGS Section 160D-705. Additionally, see Section 14.18 of the Davidson Planning Ordinance (DPO).

We, Kenneth and Karin Menkhaus, hereby petition the Board of Adjustment for a variance from the requirements of the Town of Davidson Planning Ordinance, because pursuant to the Planning Director's interpretation, I am prohibited from using the parcel of land described in this application in a manner I have proposed.

## Project Information

*Please attach additional documentation if necessary*

Name of Project: 646 Dogwood Lane disability-related variances

When completing this application, please keep in mind the following are not cause for a variance: 1) Other nonconformities or conforming uses of land or structures in the same or other planning areas; 2) A request for a particular use expressly, or by inference, prohibited in the planning area; 3) The fact the property may be used more profitably with a variance; or 4) The need for the variance is self-created.

Tax Parcel(s): 00311503

Acreage: 0.406

Existing Planning Area (and Overlay District, if applicable):

Village Infill Planning Area/ Blue Overlay District

Master Plan or Conditional Plan (if applicable):

N/A

**VARIANCE:** I/We, request a variance from the following provisions of the Planning Ordinance:

Drive-through carport or porte-cochère:

DPO 2.2.4.D.3 that states, "The total of both side setbacks shall be equal to or greater than 30 percent of the lot width at the front building line; however no side setback shall be less than five feet."

Detached Garage:

DPO 4.5.8.B.5 that states, "Any accessory structure with street-facing doors shall have a maximum overall width of 25 feet."

The proposed porte-cochère would reduce the side setback from 32 to 16 feet, resulting in a total side setback of 20.8% of the width of the property. This would require a variance of 11.5 feet.

Our proposal to build a 2.5 car garage would have a width of 35 ft, requiring a variance of ten feet.

FINDINGS OF FACT: The Board of Adjustment ("The Board") is a quasi-judicial board, which means it functions similarly to a court or judge. The Board has limited discretion in deciding whether to grant a variance, and must determine a case based on four findings of fact presented as sworn evidence or testimony at the hearing. Calls or conversations with board members outside the hearing are not permitted, and must be disclosed if they occur, and may be grounds for overturning any decision made by the board.\* Below are findings of fact the Board must determine in the affirmative before it can issue a variance from the ordinance. The applicant bears the burden of providing competent, substantial and relevant evidence to convince the board that the property meets the statutory standards for a variance. When completing the findings of fact questions keep in mind the following are not cause for a variance: 1) Other nonconformities or conforming uses of land or structures in the same or other districts; 2) A request for a particular use expressly, or by inference, prohibited in the planning area; 3) The fact the property may be used more profitably with a variance; or 4) The need for the variance is self-created.

- 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.

We have designed, and hope to build, a fully handicap-accessible home on our property at 646 Dogwood Lane. Our decision to sell our current residence (at adjacent 650 Dogwood Lane) and build an accessible home is necessitated by the fact that I have been diagnosed with ALS or Lou Gehrig's disease, which is a progressive neurological disease that has weakened my legs and that will eventually completely paralyze me. This diagnosis requires a home built to

accommodate a spectrum of accessibility features to allow us to manage different stages of the disease over time.

The two variances we bring to the Board of Adjustment for its consideration are both critical features supporting accessibility and mobility.

The first, a two and a half car detached garage, is required to allow us to store and charge a low speed vehicle (LSV) (a licensed golf cart), which is now my main means of transportation to and from work at Davidson College. I use the LSV to drive up to the entrance of the building where I teach and to other sites on campus where I need to go as part of my work. It gives me invaluable mobility for work (I use the college's pathway from North Thompson to Baker Parking lot to easily and quickly access the campus from home). For as long as I can continue to work at the college, the LSV will be an essential assistance technology for me. Without that garage space, we would be forced to devote half of the garage to storage of the LSV, leaving us with only one space for our cars.

The second variance request, to exceed the side set-back allotment, is required for us to include a porte-cochère above the driveway that will allow for protected wheelchair on-loading and off-loading from an adapted, wheelchair accessible van directly to a ramp into the side of the home. This adaptation is for later stages of the disease progression, when I will be dependent on a modified van and a power wheelchair. Onloading and offloading a patient in a 300 pound power wheelchair is difficult and slow, and requires significant space for the ramp attached to the van. A drive-through carport area covering the driveway next to the home and its wheelchair ramp is the ideal solution for this challenge, and is a central accessibility feature for the planned home. Without the porte-cochère, power wheelchair accessibility linking the home to van would be compromised, and would require us to undertake the slow task of offloading and onloading me in a power wheelchair while exposed to the weather.

- 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. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability

As noted above, both of these variances we seek are directly tied to accommodation for my current and future disability associated with ALS or Lou Gehrig's disease. The extra .5 garage space is to store and charge the Low Speed Vehicle on which I rely for mobility to, from, and at my work at adjacent Davidson College. The proposed drive-through carport which necessitates a variance on the side setback is essential for sheltered handicap van on-loading and off-loading at the site of the wheelchair ramp leading into the home.

We anticipate that you may ask why we are building a fully handicap accessible home, and seeking variances to that end, when an ALS diagnosis is normally associated with very short life expectancy – usually only 3 years after symptom onset. The answer is that I appear to be part of a minority of ALS cases -- about one in ten -- who have an unusually slow progression form of the disease, and who in consequence live 10 or more years with the disease. I am already in my 5<sup>th</sup> year since diagnosis and am still able to walk with a cane or walker. This slow trajectory has led my neurologist to conclude I am likely to live many more years with the disease, and has led us to opt to build a home that can accommodate a lengthy period of gradually worsening disability.

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 hardship we face is due to a disease diagnosis, not due to an act on our part.

The property we own at 646 Dogwood Lane was purchased in 2013, long before the ALS diagnosis, and has been used as a rental property for the past nine years. The current 70 year old home there is, in the assessment of multiple contractors we approached, unsuitable for renovation for the level of accessibility we need, so we have received permission from the town to demolish it and build an accessible home. The need for a .5 garage space to store and charge the LSV on which I rely, and a porte-cochère for sheltered on-loading and off-loading from accessible van to the wheelchair ramp into the house, are both central features of the design to make the home and property fully handicap accessible and supportive of my mobility outside the home.

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 variances we seek would not reduce the property values of nearby homes or detract from the beauty of Dogwood Lane. They would advance the town's commitment to reasonable accommodation for disability needs, and add to the stock of homes in town that facilitate the town's goal of encouraging aging in place. We hope that both the interior and exterior accessibility designs of the home will be of great value not only for us as we navigate an

uncertain journey with ALS, but for future owners of the property who may have family members with disabilities and/or with age-related mobility restrictions.

\*Meeting packets may be distributed to the applicant and board prior to the hearing

TRANSCRIPT NOTICE

If a verbatim transcript of the Board of Adjustment hearing on this matter is requested, the production of said transcript shall be at the expense of the applicant.

APPEAL OF THE DECISION OF THE BOARD OF ADJUSTMENT

Any decision made by the Board of Adjustment may be appealed to Superior Court within thirty (30) days of the date of receipt of the Order of the Board by the applicant.

*I/We hereby dispose and say that the information contained herein and herewith is true and accurate to the best of my/our knowledge and that this application shall not be scheduled for official consideration until all of the required contents are submitted in proper form to the Planning Department.*



Signature of Applicant

6/2/22

Date

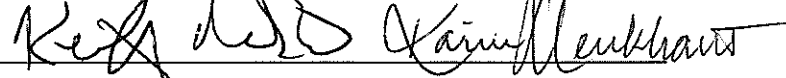
Signature of Property Owner (if different from applicant)

### Application Requirements

Name of Project: 646 Dogwood Lane disability-related variances

Date Received	Item
Click or tap to enter a date.	Application fee per Town of Davidson Fee Schedule (Due upon submittal of application).
Click or tap to enter a date.	Contact Information (Included in Form).
Click or tap to enter a date.	Application Request (Included in Form).
Click or tap to enter a date.	Description of the Request (Included in Form).
Click or tap to enter a date.	Findings of Fact (Provided by the Board of Adjustment to the applicant, following the public hearing).
Click or tap to enter a date.	Scaled Site Plan on 11"x17" media, including notations of all variance requests (Due upon submittal of application).
Click or tap to enter a date.	Names, mailing addresses and tax parcel identification of all adjacent property owners, including properties either abutting or directly across a street, alley, or other vehicular right-of-way.
Click or tap to enter a date.	Notice to neighboring property owners (Unsealed, stamped, addressed letter containing notices to all property owners due upon submittal of application, with the town as the return address).
Click or tap to enter a date.	Additional requirements as listed below:

As the applicant, I hereby confirm that all the required materials for this application are authentic and have been submitted to the Town of Davidson Planning Department.

  
 Applicant's Signature

6/2/22  
 Date

### Contact Information

Name of Project: 646 Dogwood Lane disability-related variances



### Applicant's Information

Name: Kenneth and Karin Menkhaus

Email: kemenkhaus@davidson.edu

Mailing Address: 650 Dogwood Lane Davidson NC 28026

Click or tap here to enter text.

Business Phone: 704 894-2291 Mobile Phone: 704 572-0357

### Property Owner's Information

*(If different from applicant)*

Name: N/A

Email: Click or tap here to enter text.

Mailing Address:

Click or tap here to enter text.

Business Phone: Click or tap here to enter text. Mobile Phone: Click or tap here to enter text.

### Attorney's Information

*(If parties have legal representation)*

Name: N/A

Email: Click or tap here to enter text.

Mailing Address: Click or tap here to enter text.

Business Phone: Click or tap here to enter text. Mobile Phone: Click or tap here to enter text.

## Hearing Process

Name of Project: 646 Dogwood Lane disability-related variances

This process is drawn from GS 160D-705, the State Statute governing appeals and variances.

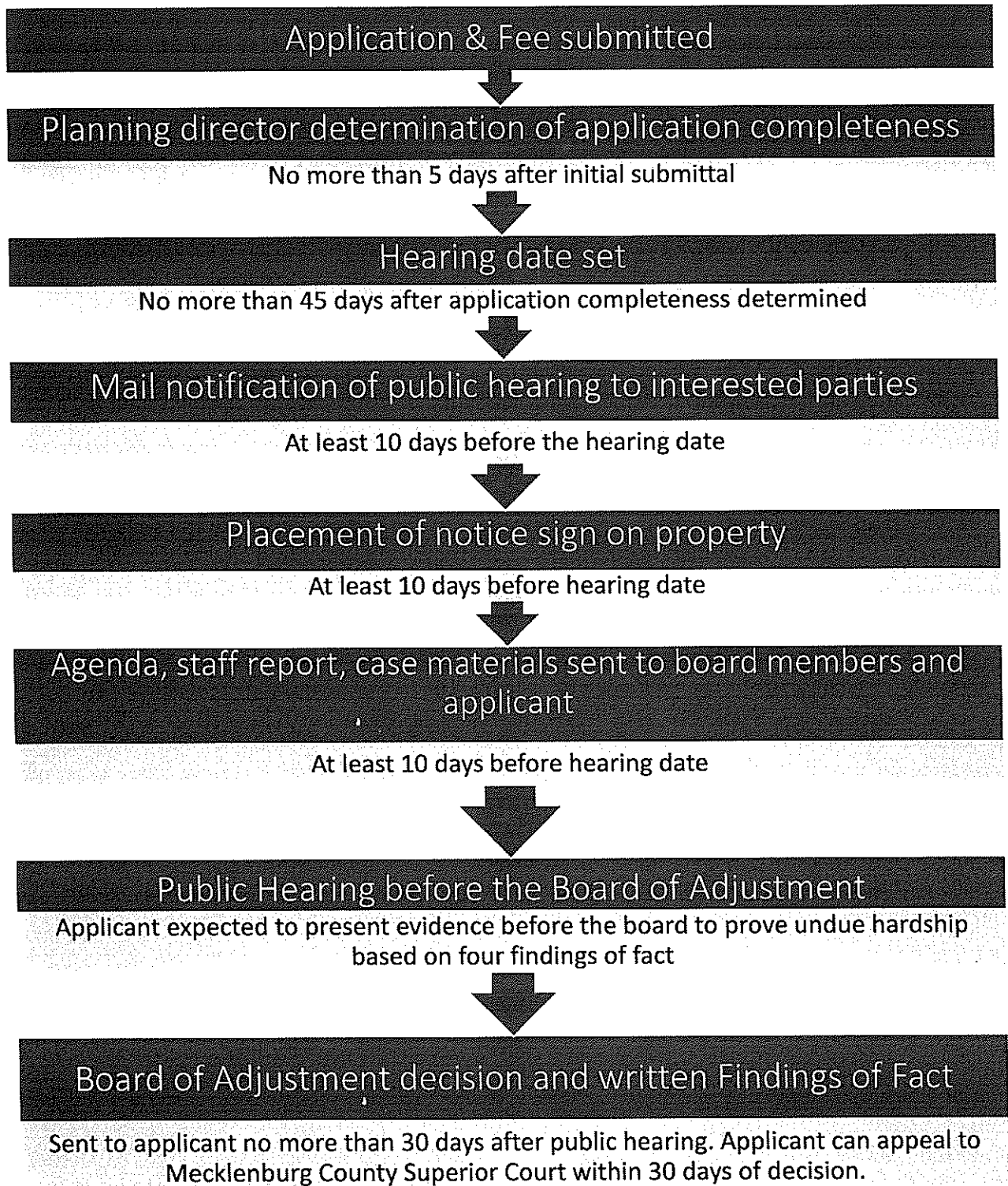
Date Completed	Action
Click or tap to enter a date.	Application and Fee submitted
Click or tap to enter a date.	Planning director determination of application completeness (no more than 5 days after initial submittal).
Click or tap to enter a date.	Hearing Date Set (No more than 45 days after application completeness is determined)
Click or tap to enter a date.	Mail notification of Public Hearing to Interested Parties (At least 10 days before the hearing date)
Click or tap to enter a date.	Placement of notice sign on property (At least 10 days before the hearing date)
Click or tap to enter a date.	Agenda, Staff Report, Case Materials sent to board members and applicants (At least 10 days before the hearing date)
Click or tap to enter a date.	<b>Board of Adjustment Public Hearing:</b> Applicant is expected to present evidence to the board to prove undue hardship, based on the four findings of fact laid out in GS160D-705. Anyone presenting evidence at the public hearing shall be sworn in by the chair.
Click or tap to enter a date.	Board of Adjustment Decision and Written Findings of Fact (Sent to applicant no more than 30 days after the public hearing).

### APPEAL OF THE DECISION OF THE BOARD OF ADJUSTMENT

Any decision made by the Board of Adjustment may be appealed to Superior Court within thirty (30) days of the date of receipt of the Order of the Board by the applicant.

## Board of Adjustment Hearing Process - Flowchart

Name of Project: 646 Dogwood Lane disability-related variances



## Contiguous Property Owners

In the table below (or in an attached document), please list the names, mailing addresses and tax parcel identification of all contiguous property owners, including properties either abutting or directly across a street, alley, or other vehicular right-of-way.

Property Address	Tax Parcel ID	Owner/Entity Name	Mailing Address
See attached			

## Menkhaus 646 Dogwood Lane Variance Request

### Neighbors

Property address	Tax parcel ID	Owner/entity name	Mailing address
641 Dogwood Lane	00315613	Tim and Stella Stroud	641 Dogwood Lane Davidson NC 28036
640 Dogwood Lane	00315504	Frances Howie	PO Box 243 Davidson NC 28036
639 Concord Road	00315515A	Trustees of Davidson College	PO Box 7166 Davidson NC 28036
639 Concord Road	00315515B	Carl Yerger Jr	639 Concord Road Davidson NC 28036
653 Concord Road	00315517	Anthony and Kim Clark	653 Concord Road Davidson NC 28036
645 Concord Road	00315516	Jared and Amy Wagner	645 Concord Road Davidson NC 28036
650 Dogwood Lane	00315502	Kenneth and Karin Menkhaus	650 Dogwood Lane Davidson NC 28036
647 Dogwood Lane	00315614	Samuel and Candice Spencer	PO Box 1027 Davidson NC 28036
655 Dogwood Lane	00315628	Stier Nemechek Properties LLC	PO Box 1547 Mooresville NC 28115
646 Dogwood Lane	00315503	Kenneth and Karin Menkhaus	646 Dogwood Lane Davidson NC 28036