



David Snider, Chairman  
Thomas Snyder, Vice Chairman  
Reta Berman  
Dan Boone  
Richard Robinson  
Michael Schutrum  
Raymond Kudlak, Alternate 1  
Ryan Cuomo, Alternate 2  
Jonathan Melvin, Alternate 3

### *Minutes of the Board of Adjustment*

**Regular Board Members Present:** Vice Chairman Thomas Snyder, Reta Berman, Richard Robinson, and Michael Schutrum.

**Regular Board Members Absent:** Chairman David Snider and Daniel Boone.

**Alternate Board Members Present:** Raymond Kudlak (Alternate 1), Ryan Cuomo (Alternate 2), and Jonathan Melvin (Alternate 3).

**Planning Staff Present:** Matthew Carter, Planning Technician, and Michelle V. Haines, Secretary.

### *Roll Call, Determination of Quorum*

Thomas Snyder determined quorum and called the Board of Adjustment hearing to order at 6:30 p.m.

### *Approval of the Minutes*

\* made a Motion to Approve the Minutes of October 13, 2009 meeting, and \* seconded the Motion. The vote was unanimous.

### *Case #V09-06 Called*

\*, hereinafter also referred to as "Applicant", and Lisa McCarter, Planner I, were sworn in prior to giving testimony.

### *Planning Staff Testimony*

Lisa McCarter gave the preliminary statement of the case to the Board and entered the facts, findings and conclusions into the record through verbal testimony and written documentation (see attached Exhibit "A"), which is incorporated herein by reference, as follows:

#### BACKGROUND:

1. The subject property is zoned Rural (R), and is located at 6536 Cashion Road. The property is currently being used as a single family home.
2. The property is 8.26 acres.
3. The parcel is located within the Protected Area – 1 Watershed Boundary.
4. The Huntersville Zoning Ordinance requires that the average lot width shall be at least 120', but in no case less than 100'.

5. The applicant currently has 219' of road frontage. Since lot size must average 120', the applicant lacks 21' required to subdivide the property and meet the minimum lot width requirement.
6. The current owners purchased the property on May 8, 2006.
7. A text amendment was approved on May 15, 2006, modifying the R & TR density, open space & other development standards, which included changing the average lot width to the existing requirements of "at least 120 feet, but in no case less than 100 feet" from the previous requirement when the home was purchased that "lot width shall average at least 100 feet, but in no case shall be less than 80 feet wide."
8. On September 9, 2009 the applicant applied for a variance from the minimum lot width in order to subdivide their property into two lots (see Exhibit 2).

STAFF FINDINGS:

Article 11.3.2 f, Standards for Granting a Variance of the Huntersville Zoning Ordinance:

1. That practical difficulties or unnecessary hardships, as defined below, would result from the strict application of these regulations and *all must be met*:
  - a. The difficulty or hardship would result only from these regulations and from no other cause, including the actions of the owner or previous owners of the property  
Staff Findings of Fact:
    1. The property at 6563 Cashion Road is located within the Rural zoning district. That district requires lots to average 120' of street frontage and 1 acre in area.
    2. The owners purchased the property on 5/8/2006. On 5/15/2006 a text amendment was approved which changed the average lot width from 100 feet in the Rural zone to 120'.
    3. The applicant's property has 219' of frontage on Cashion Road and is 8.26 acres in size. The applicant wants to subdivide their property into two lots. The applicant cannot subdivide their property because the lot width has to average at least 120 feet; but in no case less than 100 feet. Given the current lot width on Cashion Road, the proposed subdivision would average 109.5 feet per lot.
    4. There is more than enough land area to subdivide the property into two lots as the ordinance requires lots to average at least 1 acre each and the applicant's proposed subdivision would average 4.13 acres per lot.
  - b. The difficulty or hardship is peculiar to the property in question and is not generally shared by other properties classified in the same zoning district and/or used for the same purposes.  
Staff Finding of Facts:
    1. There are 462 parcels in the Rural zone that are 8 acres or more. GIS mapping by Mecklenburg County does not identify how much street frontage these lots have. However, there are two properties in the immediate vicinity that have the area required to subdivide but inadequate lot widths.
  - c. The difficulty or hardship resulting from the application of these regulations would prevent the owner from making reasonable use of the property. The fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not be considered as grounds for granting the variance.  
Staff Finding of Facts:
    1. The property is current being used for a single family residence.
    2. The ordinance would allow an accessory dwelling to be built on the property as long as it meets the requirements in Article 9.1, however it must have the same owner as the principal dwelling.

3. The property could currently be divided by exempt subdivision if the new lot were a bona fide gift (property gifted to someone and not sold). Exempt subdivisions are not required to meet the zoning ordinance criteria but would require at minimum a 15' exclusive easement for access.
2. The variance is consistent with the objectives and policies of any adopted plan for the district or area covering the property, any other adopted written policies governing land development, and the construction and improvement of public facilities, and the general intent of these regulations.

Staff Findings of Facts:

1. Article 3.2.1.d.2.a states in the Rural zoning district the lot size must average 120' and if the property were subdivided the resulting average would be 109.5'.
  2. The proposed use for the requested lots would be single-family, which is in accordance with the Rural zoning district.
3. That the public safety and welfare have been protected and substantial justice done.

Staff Findings of Facts:

1. Staff has not identified anything that would endanger public safety or welfare.

STAFF CONCLUSIONS:

The property owners are seeking a variance from Article 3.2.1.d.2.a which requires the average lot width to be a least 120', but in no case less than 100'. The property currently has 219 feet which is 21 feet less than required to subdivide. The property is currently being used as a single family residence, and can continue to be used as a single family residence if the variance is not granted. The request does not meet all of the findings of fact, therefore staff does not support the variance request. However, staff recognizes that the minimum lot width requirements were changed after the applicant purchased the property which prevents them from being able to subdivide their property.

*Applicant Testimony*

The Chairman called the Applicant.

The Chairman asked if there were any other questions for Staff or the Petitioner. No further questions were made.

*Board Conclusions*

The period for public discussion was closed by the Chairman, and the Board publicly discussed the case, as follows:

*Findings of Fact*

The Board made the following findings of fact and conclusions:

\* made a **Motion to Deny** the variance based on the following findings of fact and conclusions. \* seconded the Motion.

The vote was unanimous. The variance was denied.

\*\*\*\*\*

*Other Business*

*Adjourn*

There being no further business, the meeting was adjourned.

Approved this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

\_\_\_\_\_  
David H. Snider, Chairman

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Michelle V. Haines, Secretary

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