



MINUTES

Board of Adjustment

May 29, 2008 ~ 7:00 p.m.
❧ Town Chambers ❧

Whereas, there was a Regular Meeting scheduled for Tuesday, May 13, 2008, at 7:00 p.m. The following members responded as available to attend this meeting: David Snider, Reta Berman, Steve Bomgardner, Michael Sheaffer, Michael Schutrum, and Thomas Snyder. Margie Ebner and Carolyn Lawson would not be available.

Whereas, given that only six (6) members were able to attend the March 13, 2008 meeting the applicant was given the option to continue the matter until the next available time when a seven (7) member board, or more, would be present.

Whereas, the case was continued on the request of the applicant to Thursday, May 29, 2008, at 7:00 pm.

Board Members Present on May 29, 2008: Chairman David Snider, Steve Howard, Vice Chairman, Steve Bomgardner, Margie Ebner, Carolyn Lawson, Michael Schutrum, Michael Sheaffer, and Thomas Snyder.

Board Members Absent: Reta Berman

Planning Staff Present: Lisa McCarter, Planner, and Michelle V. Haines, Secretary.

Chairman Snider called the Board of Adjustment hearing to order at 7:00 p.m.

Approval of the Minutes

Thomas Snyder moved to approve the Minutes of the April 8, 2008 meetings, and Steve Bomgardner seconded the Motion. The vote carried unanimously.

The matter of Case #V08-06, concerning the property zoned Rural (R) located at 11111 Arthur Auten Road was recognized as being continued until the next regularly scheduled meeting on June 10, 2008.

Case #V08-07 Called

Kathleen Jaeck, applicant and property owner, and Lisa McCarter were sworn in prior to giving testimony concerning the matter of Variance #V08-07.

Planning Staff Testimony

Lisa McCarter gave her preliminary statement of the case to the Board and entered her facts, findings and conclusions into the record through verbal testimony and written documentation, as follows.

BACKGROUND:

1. The subject property is zoned Rural (R), and is located at 11230 Johnson-Davis Road. There is currently a single family home on the property constructed in 1968 and it is not located in a subdivision.
2. The property is located in the Mountain Island Lake Critical Area 4 which requires a 100' undisturbed buffer from the 648' contour line of Mountain Island Lake.
3. On April 14, 2008, the applicant filed for a variance from 100' undisturbed buffer requirement so that she may construct a new doorway and porch. The current front door is flush with the ground and is subject to corrosion. The proposed entryway would be elevated from the sidewalk to protect from rain damage.

STAFF FINDINGS:

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

- 1) Before granting a variance, the Board of Adjustment shall have made the following findings:
 - (a) That practical difficulties or unnecessary hardships, as defined in subparagraph 2) below, would result from the strict application of these regulations; and

The home on the property was constructed in 1968 prior to the undisturbed buffer regulations. The home is located entirely within the 100' undisturbed buffer.

- (b) That 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; and

The Town intends the property to be used for a single family residential dwelling and the applicant's proposal is consistent. The current front door is flush with the sidewalk. In speaking with Mecklenburg County Code Enforcement Staff, although it is not required to elevate a front door according to NC Building Code, it is recommended so that water will not enter through the front door.

Also, the front porch request is in accordance with Article 4 which states;

“E. Porches should form a predominant motif of house designs, and be located on the front or to the side of the dwelling. When attached to the front, they shall extend over at least 15% of the front façade.”

The proposed porch would be over more than 15% of the front façade.

- (c) That the public safety and welfare have been protected and substantial justice done.

Granting this variance would not threaten safety or welfare, and would prevent water damage to the front door.

- 2) Only the following three conditions shall constitute a practical difficulty or unnecessary hardship 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; and

The 100' undisturbed buffer requirements did not exist at the time the home was constructed.

- (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; and

The home was originally a mobile home that has been renovated through the years. Surrounding properties have entryways located outside of the 100' undisturbed buffer and would be able to construct new entryways (see aerial photo above).

- (c) The difficulty or hardship resulting from the application of these regulations would prevent the owner from making a 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.

The current nature of the front door is subject to corrosion since it is flush with the sidewalk, and the property slopes approximately 20 foot from the front to rear (see 10 foot contour lines on photo below).

STAFF CONCLUSIONS:

The property is currently being used for a single family residence, and can continue to be used for a single family residence if the variance is not granted. However, Staff would support a variance if the applicant develops a mitigation plan approved by Mecklenburg County Water Quality Program since the request would allow the front entryway to be elevated to protect it from damage caused by rain and drainage.

Applicant Testimony

Kathleen Jaeck, applicant and owner, presented argument in support of her application for a variance. She stated that the land slopes down and water runs and puddles at the front door, and that a porch will keep the water off the front door. The homeowners will install guttering with the new addition, which will assist in run off and protect the front door of the home, and they will utilize rain barrels.

Steve Bomgardner asked the applicant how she felt about a mitigation plan from Mecklenburg County, and are they prepared to do what is recommended. Kathleen Jaeck stated that they have begun transplanting shrubbery and doing improvements, and that they are looking forward to working with the County to help improve property with further landscaping.

Carolyn Lawson questioned the location and distance of the home to the lake frontage. The applicant explained that the front of the home (non-lakeside) is approximately 80' with a concrete walkway abutting the house and front door.

There were no persons present to oppose and present argument against the application. Both sides were permitted to present rebuttals to opposing testimony.

Board Conclusions

The period for public discussion was closed by the Chairman, and the Board publicly discussed the case with further input and clarification from the applicant and planning staff concerning the amount of variance request and hardship.

Steve Bomgardner stated that this request is a minor impact and issue, and as long as the County does a mitigation plan with the homeowner he would be inclined to approve the request. Margie Ebner and Mike Sheaffer agreed with this position.

Carolyn Lawson was inclined to include in any motion that the structure pre-dates the 100' buffer, and that mitigation could be some multiple of square footage of the addition. However, this may be in contrast to the mitigation plan instituted by Mecklenburg County.

After discussion, Mike Sheaffer made a **Motion to Approve** the variance subject to mitigation with Mecklenburg County, and based upon the following Findings of Fact:

Findings of Fact

- .1 The Board of Adjustment has made the following findings:
 - a) That practical difficulties or unnecessary hardships, as defined in subparagraph 2) below, would result from the strict application of these regulations; and

The property was constructed in 1968 prior to the undisturbed buffer regulations. The home is located entirely within the 100' undisturbed buffer.
 - b) That 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; and

The Town intends the property to be used for a single family residential dwelling and the applicant's proposal is consistent. The current front door is flush with the sidewalk. Mecklenburg County Code Enforcement Staff recommends elevating the front door so that water will not enter the home. Also the front porch request is consistent with Article 4 which states that porches should form a predominant motif of house designs, and be located on the front or to the side of the dwelling. When attached to the front they shall extend over at least 15% of the front façade. The proposed porch would be over more than 15% of the front façade.
 - c) That the public safety and welfare have been protected and substantial justice done.

Public safety and welfare would not be affected, and granting this variance would prevent water damage to the front door.
- .2 Only the following three conditions shall constitute a practical difficulty or unnecessary hardship 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; and

The 100' undisturbed buffer requirements did not exist at the time the home was constructed.

- 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; and

The home was originally a mobile home that has been renovated through the years. Surrounding properties have entryways located outside the 100' undisturbed buffer and would be able to construct new entryways.

- c) The difficulty or hardship resulting from the application of these regulations would prevent the owner from making a 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.

The current nature of the front door is subject to corrosion since it is flush with the sidewalk, and the property slopes approximately 20 feet from the front to the rear.

Thomas Snyder **seconded the Motion to Approve**. The members voted on the Motion by showing of hands. In favor of the **Motion to Approve** was unanimous.

Other Business:

David Snider opened the Board to any new business to which there was no new business brought. He then clarified with the Secretary the next scheduled meeting being June 10, 2008, at 7:00 p.m.

There being no further business, the meeting was adjourned at 7:17 pm.

Approved this ____ day of _____, 2008.

David Snider, Chairman

Michelle V. Haines, Secretary