

**Town of Siler City Board of Adjustment
December 13, 2010 Meeting Minutes**

The Siler City Board of Adjustment met on Monday, December 13, 2010 at 7:00 p.m. Harold Hart called the meeting to order and gave the invocation. Mr. Hart asked for a motion to approve the minutes of October 12, 2010. *Motion made by Wallace Matthews, JP Joyner seconded, followed by unanimous consent.*

MEMBERS PRESENT: Richard Caviness, Harold Hart (Chair), Dacia Hayes, JP Joyner, Wallace Matthews, Dan McMasters, and Vicky Tobar

MEMBERS ABSENT: Patty Poe and Mickey Pore (Vice Chair)

STAFF PRESENT: Joel J. Brower (Town Manager), Jack Meadows (Planning Director), William C. Morgan (Town Attorney), Dee Lee Thompkins (Administrative Support Specialist), and David M. Rooks, III (Board of Adjustment Attorney)

APPEAL – LOUISE ADCOCK: Mr. Hart explained that all testimony given tonight will have to be sworn in. Louise Adcock, Jack Meadows, William Morgan, Jimmy Tysor, and Nancy Tysor were sworn in. Mr. Hart declared the public hearing open.

Planning Director's Report: Mr. Meadows reported that on November 3, 2010, Town staff received an appeal of an administrator application from Mrs. Adcock. Mrs. Adcock appeals the decision of the administrator in reference to Article XII Density and Dimensional Regulations, Section 170 Building Setback Requirements of the Town's Unified Development Ordinance (UDO). The subject property is located at 116 White Oak Drive and is further identified as tax parcel number 15137. The subject property is zoned R-10 and the building setback along East Cardinal Street is 35 feet. The decision made by the administrator is that an existing 11.6 feet by 14.2 feet uncovered deck (which is nonconforming due to the fact that it does not meet the 35 feet building setback) cannot be replaced by a proposed 11.67 feet by 14.5 feet covered and enclosed handicap accessible screened porch.

Mr. Meadows explained that Mr. David Ritter (General Contractor) submitted a zoning permit application the week of September 13-17 of 2010 for an 11.67 feet by 14.5 feet covered and enclosed screened porch at 116 White Oak Drive. Town staff contacted Mr. Ritter and explained that the zoning permit application could not be approved because the proposed addition was less than 35 feet from the right-of-way along East Cardinal Street.

Mr. Meadows stated that on September 22, 2010, Mrs. Adcock made an office visit. Town staff explained to Mrs. Adcock that the existing uncovered deck is a nonconforming structure because the existing deck is only 14.8 feet from the right-of-way of East Cardinal Street. If Mrs. Adcock would like to replace the uncovered deck with a new uncovered deck of the same size or smaller, then Town staff would be obliged to issue a new zoning permit. However, if Mrs. Adcock desires to replace the uncovered deck with a covered and enclosed handicap accessible screened porch, then the Town's UDO does not allow Town staff to issue a zoning permit.

Mr. Meadows reported that Town staff interprets that the UDO allows new construction beneath an existing roof even if the existing structure does not meet required building setbacks. However, Town staff interprets that the UDO does not allow new construction if the proposed addition includes a new roof structure and does not meet required building setbacks.

Mr. Meadows said furthermore, Section 170 of the UDO specifically allows building setback exceptions for uncovered decks but does not allow an exception for covered and enclosed additions. An uncovered deck is allowed to protrude up to eight feet into the required building setback. If Town staff allowed a roof to be placed over an existing deck, then Town staff has essentially allowed the applicant to side step the Town's UDO. The intent of the UDO is to allow an exception for an uncovered deck but not a covered screened porch. If the Board of Adjustment finds that the Town has misinterpreted the UDO, then Town staff believes that Sections of the UDO including but not limited too Section 114 and 170 must be amended.

Mr. Meadows noted that the proposed covered and enclosed handicap accessible screened porch is 11.67 feet by 14.5 feet which is slightly larger than the existing uncovered deck 11.6 feet x 14.2 feet.

Mr. Meadows reported that proper notification for this public hearing has been completed as follows: (1) Written notice was mailed to the applicant and neighboring property owners within 150 feet of the subject property on November 23, 2010; (2) A sign was posted at the subject property on November 30, 2010; and

(3) An ad was placed in The Chatham News in the December 2, 2010 and December 9, 2010 editions of the paper.

Staff Recommendation: Mr. Meadows reported that staff recommends that the Board of Adjustment affirm the decision of Town staff. The decision made by Town staff is that an existing uncovered deck which is nonconforming due to the fact that it does not meet the 35 feet building setback cannot be replaced by a proposed covered and enclosed handicap accessible screened porch.

Discussion: Mr. McMasters asked Mr. Meadows if he is saying that Section 170 would allow her to build the deck. Mr. Meadows answered no. He replied that section 170 of the ordinance will let a person build an uncovered deck if it protrudes only eight feet into the required building setback. Mr. McMasters then asked how much was Mrs. Adcock protruding into her setback. Mr. Meadows answered that she is 14.8 feet from the right-of-way on East Cardinal Street (deck protrudes 20.2 feet into the required building setback).

Mr. Joyner asked could Mrs. Adcock build a new deck. Mr. Meadows stated that she could build a new deck but not one with a roof and walls. Mrs. Tobar asked Mrs. Adcock if she considered a sunroom. Mr. Meadows explained that a sunroom has roof therefore the interpretation would be the same. Mr. Matthews asked if anyone that lived at the home was handicap. Mrs. Adcock answered no but stated that they were getting on up in age.

Nancy Tysor (731 East Raleigh Street) explained that she owns a house at 113 White Oak Drive. She said that she was not happy with a Town decision about her property but she was abiding by the rules. She thinks everyone should be treaded alike and fairly. Mr. Morgan explained that Ms. Tysor's situation was different because hers involved a text amendment. He added that an appeal is a different process.

Louise Adcock explained that they want to make an addition to a deck which is already attached to their house. The deck will not have walls but will be screened-in. She added that their exiting deck needs to be replaced. They thought this would be a good addition and make their house look nicer. By it being handicap accessible it would be something they could use as they grow older. She would like the Planning Board to consider this because it is handicap accessible and she thinks that is important. In the top of the proposed addition there will be exposed beams and a ceiling fan. The proposed addition would cost \$20,000.00. She told the board that when she had the property surveyed it showed that her property line was ten feet into the paved surface on White Oak Drive.

Mrs. Hayes asked Mrs. Adcock if she thought this would increase the value of her property. Mrs. Adcock stated that she thought it should. Mrs. Hayes then asked did she think it would decrease the value of property in her neighborhood. Mrs. Adcock responded that she did not think so.

Mr. Joyner asked if the setbacks included what was under the street on her property. Mrs. Adcock explained that the property line that is under the street is on White Oak Drive and the proposed porch is on East Cardinal Street. Mr. Meadows explained that the Town measures from the property lines or right-of-way. He added that she has corners on her property along Cardinal Street and White Oak Drive. The property line is drawn between those two corners. He stated that this is how the Town measured the setbacks and determined how far she was from the property line.

Mrs. Tobar asked Mrs. Adcock if she has pictures. Mrs. Adcock shared a picture with board. Mrs. Tobar then asked if this could be considered remodeling. Mr. Meadows explained that the exiting deck is a structure and it devotes a certain amount of space, but when you add the roof and screened porch you now have a larger area of space devoted. He added that the non-conforming section of the ordinance does not allow you to enlarge the space.

Mr. McMasters stated that he is amazed that this has been going on since September. Mrs. Adcock replied that they had to wait on a survey. Mr. Meadows stated that they needed the survey for the variance application. Mr. McMasters then wanted to know what the board could do so she can build her room. Mr. Meadows replied that the ordinance could be amended but that would take several meetings and ultimately the Town Board would have to approve the amendment.

Mr. Meadows added that the interpretation by staff has been made many times. Mrs. Adcock is not the first applicant that has been told the same information about adding onto a home that does not meet the setbacks.

Mrs. Hayes stated that not everyone appeals like Mrs. Adcock. Mr. Meadows answered that was right. Mr. Meadows stated he had tried to give Mrs. Adcock some other options like locating the deck in a different location on the property. Mr. McMasters asked if the board agrees with staff, then Mrs. Adcock can do nothing. Mr. Meadows stated that Mrs. Adcock has also made an application for a variance. Mr. Hart asked if there were any more questions or if anyone else would like to speak. Mr. Hart then declared the public hearing closed.

Board's Decision: Mr. McMasters asked what happens if we overturn Mr. Meadows' decision. Mr. Rooks answered that if the board votes to overturn Mr. Meadows' decision then that would mean that Mr. Meadows' interpretation of the ordinance is incorrect and Mrs. Adcock would be allowed to proceed. Mr. Hart asked if there is a motion to confirm or overturn staff's decision. *A motion to overturn staff's decision was made by Dan McMasters, Dacia Hayes seconded. Dan McMasters, Dacia Hayes, JP Joyner and Vicky Tobar voted to overturn staff's decision on the appeal. Harold Hart and Wallace Matthews voted nay. Richard Caviness abstained.* Mr. Rooks stated that the vote failed because of a lack of votes. The board would need six votes (four-fifths majority) to overturn the decision of the staff.

VARIANCE – 116 WHITE OAK DRIVE – LOUISE ADCOCK: Mr. Hart explained that all testimony given tonight will have to be sworn in. Louise Adcock, Jack Meadows, and William Morgan were sworn in. Mr. Hart declared the public hearing open.

Planning Director's Report: Mr. Meadows explained that the variance application is separate from the first application. Mrs. Adcock is asking for a variance from Section 170 Building Setback Requirements of the UDO. The ordinance requires that the proposed addition which is a handicap accessible screened porch be 35 feet from the property line. The variance request is to reduce the required building setback along East Cardinal Street from 35 feet to 14.8 feet (a 20.2 feet or 57.7% reduction). The request is for a proposed 11.67 feet by 14.5 feet covered and enclosed handicap accessible screened porch at 116 White Oak Drive.

Mr. Meadows stated that a variance may be granted by the board of adjustment if it concludes that strict enforcement of the ordinance would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done.

Staff Recommendation: Mr. Meadows stated that staff recommends that the following conclusions (1), (2), (4), and (6) cannot be found for the following reasons: (1) The applicant can make reasonable use of the property. The property is currently being used as a single family dwelling. In addition, there is a 23 feet by 28 feet area in the rear yard of the property where the proposed addition can meet all building setbacks. The applicant currently has 2 covered porches, an enclosed glass porch, and a full screen porch. (2) The hardship is one suffered by neighbors and the general public. Many property owners within the Siler City planning jurisdiction are unable to construct additions to their dwellings due to proximity to the street right-of-way. (4) The hardship is shared by many surrounding properties. Many surrounding properties are unable to construct additions to their dwellings due to proximity to the street right-of-way (drawing attached). (6) The variance will result in the extension of a nonconforming situation in violation of Article VIII. The existing single family dwelling, uncovered deck, and attached carport/garage do not meet the required 35 feet Building setback along East Cardinal Street. Therefore, the proposed structure would be an extension of a nonconforming.

Discussion: Mrs. Tobar asked Mrs. Adcock would she be willing to locate the enclosed screen porch on another area of her property. Mrs. Adcock stated that is not feasible for them to do that because there is space in the front where the existing deck is and it needs to come down and be replaced. She went on to explain if they try to locate the enclosed porch on the back of their house they would not be able to exit their home onto the porch. Mrs. Adcock added they would like to improve their property by replacing their existing deck with a screened-in porch that would be handicap accessible. She also added that they were spending money to help the economy.

Mrs. Tobar asked Mrs. Adcock if she would consider making the deck smaller. Mrs. Adcock answered that the deck was not that large and they were not going any larger than the existing deck. Mr. Meadows reported that DOT had a lot of right-of way along Cardinal Street and Mrs. Adcock had contacted DOT to see if they would consider moving the right-of-way to give her more room but DOT would not. With no further comments Mr. Hart closed the public hearing and referred the board to their worksheet.

Variance Worksheet

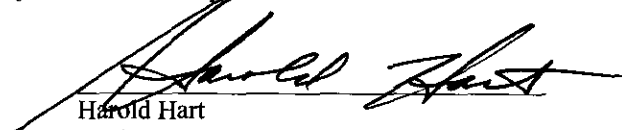
1. If the applicant complies strictly with the provisions of the ordinance, he can make no reasonable use of his property. *Dan McMasters moved to approve, seconded by JP Joyner, followed by unanimous consent. Reason for conclusion The applicant can make no reasonable use of her property*
2. The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public. *Dan McMasters moved to approve, seconded by JP Joyner, followed by unanimous consent. Reason for conclusion Hardship by applicant not by her neighbors*
3. The hardship relates to the applicant's land, rather than personal circumstances. *Dan McMasters moved to approve, seconded by Wallace Matthews, followed by unanimous consent. Reason for conclusion Hardship relates to applicant's land*
4. The hardship is unique, or nearly so, rather than one shared by many surrounding properties. *Dan McMasters moved to approve, seconded by JP Joyner, followed by unanimous consent. Reason for conclusion Is unique*
5. The hardship is not the result of the applicant's own actions. *Dan McMasters moved to approve, seconded by JP Joyner, followed by unanimous consent. Reason for conclusion _____.*
6. The variance will neither result in the extension of a nonconforming situation in violation of Article VIII nor authorize the initiation of a nonconforming use of land. *Dan McMasters moved to approve, seconded by JP Joyner, followed by unanimous consent. Reason for conclusion _____.*
7. Are there any reasonable conditions that the Board wishes to add? *Dan McMasters moved to approve the condition that applicant must secure all necessary permits, seconded by Dacia Hayes, followed by unanimous consent.*

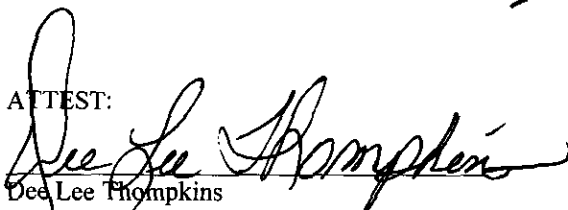
The variance request was granted.

SPECIAL USE PERMIT WORKSHEET: Mr. Meadows reported that he had revised the special use permit worksheet after the October workshop. He hoped the new worksheet would be simpler.

PLANNING ACTIVITY UPDATE: Mr. Meadows reviewed the planning activity update memo with the board members.

MEETING ADJOURNED: With no further business, motion was made by JP Joyner, Dan McMasters seconded, followed by unanimous consent for adjournment at 8:05pm.


Harold Hart
Chair

ATTEST:

Dee Lee Thompson
Recording Secretary