

**Town of Siler City Board of Adjustment
November 10, 2008 Meeting Minutes**

The Siler City Board of Adjustment met on Monday, November 10, 2008 at 7:17 p.m. Ethel Coble called the meeting to order. Ms. Coble asked for a motion to approve the minutes of April 14, 2008. *Motion made by Richard Caviness, Harold Hart seconded, followed by unanimous consent.*

Members Present

Ethel Coble, Chair
Harold Hart, Vice Chair
Richard Caviness
Arnold Headen
Mickey Pore
Dan McMasters
Vicky Tobar
JP Joyner, Alternate (Not Voting)
Patty Poe, Alternate (Not Voting)

Members Absent

Staff Present

Jack Meadows, Planning Director
Joel J. Brower, Town Manager
William C. Morgan, Town Attorney
Dee Lee Thompkins, Administrative Support Specialist

BUSINESS SESSION

Agenda Item III - Variance Request – Carol Bruner

Ms. Coble explained to the members that all testimony given tonight will have to be sworn in. Mr. Meadows and Carol Bruner were then sworn in.

Mr. Meadows reported that Carol D. Bruner requests a variance from the Table of Permissible Uses of the UDO to allow a mobile home 16' x 80' within the R-6 zoning district. The subject property is located at 1110 Dodge Street and is further identified as Tax Parcel Number 14384. Mr. Meadows added that the previous owner of the property was Shirley Alston. Mr. Meadows explained that the subject property had a single wide mobile home that had burned in July 2008. Richard Caviness asked if the burned mobile home was still on the property. Mr. Meadows replied that the remnants were still there as of last week. Harold Hart asked if the mobile home had been condemned before or after the fire. Mr. Meadows stated that the mobile home had been condemned before the fire.

Mr. Meadows stated that the 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 October 24, 2008;
2. A sign was posted on October 24, 2008; and
3. An ad was placed in The Chatham News in the October 30, 2008 and November 6, 2008 editions of the paper.

Mr. Meadows explained that on June 8, 2008, Ms. Bruner submitted an email asking if a mobile home was permitted at the property referenced above. After receiving the email Town Staff researched the property and determined the following:

1. Mobile homes less than 22 feet wide are not permitted within the R-6 zoning district per the UDO's Table of Permissible Uses - minutes from Board meetings attached;
2. The water service to the subject mobile home had been discontinued since October 13, 2000. Therefore, the mobile home had been abandoned/ discontinued for more than 180 days and without any intention to reinstate the nonconforming use. In conclusion, the property thereafter shall only be used for conforming purposes per §117 of the UDO; and
3. The mobile home on the property had been condemned by the Town's Inspections Department prior to June 6, 2008.

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Mr. Meadows reported that after discussing the matter with the Town Attorney, Town Staff called Ms. Bruner on June 11, 2008 and suggested the following options for the subject property:

1. Obtain a zoning permit for a single family site built home;
2. Obtain a zoning permit for a single family modular home;
3. Obtain a special use permit from the Board of Adjustment for a single family manufactured home greater than 22 feet wide; or
4. Appeal Staff's decision to the Board of Adjustment.

Mr. Meadows stated that on October 1, 2008, Staff received a variance application from Ms. Bruner.

Mr. Meadows reported that on October 7, 2008, Staff sent Ms. Bruner a letter listing items that should be addressed prior to scheduling the public hearing. The items listed in the letter were not addressed by Ms. Bruner.

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. It may reach these conclusions if it finds that:

1. If the applicant complies strictly with the provisions of the ordinance, he or she can make no reasonable use of his property.
2. The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public.
3. The hardship relates to the applicant's land, rather than personal circumstances.
4. The hardship is unique, or nearly so, rather than one shared by many surrounding properties.
5. The hardship is not the result of the applicant's own actions, and
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.

Mr. Meadows stated that staff recommends that the following conclusions (1), (2), (3), (4), and (6) can not be found for the following reasons:

1. The applicant can make reasonable use of the property because there are other options - site built home, modular home, or mobile home wider than 22 feet;
2. The hardship is not unique because all other properties zoned R-6 within the Town's jurisdiction do not permit mobile homes less than 22 feet wide;
3. The hardship does not relate to the applicants land; and
4. The variance will authorize the initiation of a nonconforming use of land - mobile home is not permitted within the R-6 zoning district

Mr. Meadows explained that if the variance is approved, then Staff would like to recommend the following conditions:

1. Record an access easement to the subject property prior to a zoning permit;
2. Record a sewer line easement from the subject property to the Town Sewer Main prior to a zoning permit;
3. Record a water line easement from the subject property to the Town Water Main prior to a zoning permit;
4. The mobile home must meet the required building setbacks for the zoning district; and
5. The driveway/access easement shall not be located within the floodplain.

Discussion

Harold Hart asked does the property have to have an easement because it does not join the Town's water and sewer lines. Mr. Meadows explained that the property would have to have an easement. He added that Ms. Bruner owns the adjoining property and she would be able to access the Town's water and sewer. Mr. Meadows reported that Ms. Bruner owns Village Mobile Home Park which was formerly Snipes Mobile Home Park.

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Applicant Carol Bruner addressed the Board explaining that the intent of purchasing this property was to improve it as she has done with the adjoining property. She stated that she purchased the property when it went into tax foreclosure thinking it was something that she could improve. Ms. Bruner added that the previous owner's brother lived in this mobile home until it burned down. Ms. Bruner said she allowed him to live there after she purchased the property. She explained that she purchased the property with the understanding that since there was a single wide mobile home on the property that she could replace it with another. Ms. Bruner added that this was what she was looking for from a financial point when she purchased the property. She wanted to replace the mobile home with a single wide mobile home which was consistent with the neighborhood.

Ms. Bruner stated that she had addressed 1 thru 6 objectives on the application and she would like to give her prospective on those:

1. If the applicant complies with the provisions of the ordinance, he can make no reasonable use of his property. Ms. Bruner responded that the economics and practicality of putting a double wide or stick built house on this lot would not be feasible because all of the adjoining properties have single wide mobile homes. She added that economically and the practicality of putting an \$80,000 house on a \$6,000 lot, which is what the lot is valued at, would not make sense with the economics of today's real estate.
2. The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public. Ms. Bruner responded she is open to anyone with information from the public about the burden of a single wide mobile home on this lot. She added that the point is that it is in this location, it can be improved, and that is what she wants to do.
3. The hardship relates to the applicant's land, rather than personal circumstances. Ms. Bruner responded that on this particular lot the front and rear lots are vacant and it is actually a land locked situation. She added that the reason she looked at this lot was for an opportunity to clean it up and to facilitate a single family dwelling to people who could afford this type of housing. The property was unique because she could run water, sewer, and the driveway to her adjacent property. She stated that the hardship is that the property is land locked and not very functional for an independent lot because to put a house for \$80,000 on it to resale is just not functional.
4. The hardship is unique, or nearly so, rather than one shared by many surrounding properties. Ms. Bruner responded that it is land locked except that she can use her adjacent property for a driveway, water and sewer. She stated that she has a gentleman that works for the city that is interested in this lot because it is unique. The property is wooded, in a very quiet area, and she would like to see that continue with someone on this lot.
5. The hardship is not the result of the applicant's own actions. Ms. Bruner responded that she did not know that the mobile home was going to burn down. She stated that she understood that there was a 180 day window based on previous ordinance information that she had. She referenced to page 16 of the agenda which referenced Commissioner Siler asking if an existing singlewide home is destroyed by fire would the owner be able to replace it with another singlewide in the same location under the purposed changes. Ms. Bruner stated that Mr. Rogers responded that based on existing nonconforming use policy, the homeowner would be able to replace the unit. Ms. Bruner added that she is asking to replace the single wide mobile home with the same type of situation which is much more functional to the size of the lot.
6. The variance will neither result in the extension or a nonconforming situation in violation of Article VIII nor authorize the initiation of a nonconforming use of land. Ms. Bruner stated that lastly the variance will not need to result in the extension of the nonconforming situation in violation which authorizes the initiation of a nonconforming use of the land. She explained that it is not an extension or initiation because there was a single wide actually being used there by a member of the family that previously owned this property.

Ms. Bruner added that as far as the condemnation she was the person that asked Mr. McLaurin about condemning the property because the activity had changed considerably there and she was concerned. Ms. Bruner explained that during this time she was also talking about putting another mobile home there. She planned to install a newer model and upgrade the lot. She added that just after that is when the mobile home burned down. Ms. Bruner then asked the board to consider those pieces of information and she has some pictures of the area.

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She added that she has a letter from her attorney who will do a deeded easement and she has that document here tonight. She stated she also has a plat that will show the recorded easements to the adjacent property.

She added that it is her intent that she keeps both of the properties together and manage them actively. She stated that she is very active in the property that she owns and is there every week. She explained that she has families living in her mobile homes that work and are actively involved in the community. Ms. Bruner added that she just hopes this will be an opportunity for another family. Ms. Bruner then thanked the board for their time.

Harold Hart said he noticed there has not been a water account at this address since 2000 and he wanted to know if someone had been living there without water and electricity. Ms. Bruner stated unfortunately she thought so.

Mr. Hart then asked if the fire was suspicious. Mr. Joel Brower stated he thought someone was charged with arson and someone was injured but he was not sure. Mr. Meadows reported that the fire report stated "unoccupied, abandoned, condemned dwelling, one injury to Marcus Nettles of Station 7 sprained knee".

Dan McMasters asked if staff recommended the variance with the five conditions. Mr. Meadows stated that staff recommends to deny the variance. He added that if the board wishes to approve it and not follow staffs recommendation then he would suggest that they add those five conditions.

With no further discussion, Ms. Coble directed the board to their worksheet to go through each finding.

Variance Worksheet

1. If the applicant complies strictly with the provisions of the ordinance, he can make no reasonable use of his property.

Mr. Morgan asked if he could address the board. He informed the members that if any of the criteria is not met as you go down the list on the worksheet you do not have to go any further. Mr. Morgan stated that variances typically say how close something can be. He added that in his opinion the problem with this variance is it is trying to rewrite the table of permissible uses in the ordinance.

Mr. Hart asked Mr. Morgan if the board would be setting a precedent if they approve this variance. Mr. Morgan answered that yes they would and this would be called a use variance and they are usually not allowed because you are allowing something the Town Board has not allowed.

He then reviewed with the board #6 on their worksheet. Mr. Morgan then asked Mr. Meadows to review his recommendation with the Board again. Mr. Meadows read staff's recommendation again.

Mr. Headen stated that this board does not have permission to change the table of uses. He added if we vote to approve this variance then this board is overruling the Town Board.

Mr. Morgan explained that Ms. Bruner does have other options. He asked Mr. Meadows if Ms. Bruner could appeal staff decision. Mr. Meadows stated that Ms. Bruner had thirty days to appeal and the time had run out for her to appeal his decision. Mr. Morgan informed the board that they did need to proceed and not let the variance die because lack of a motion.

Motion was made by Arnold Headen, Harold Hart seconded, and the Board voted 6-1 (Dan McMasters voted no) to deny the variance and found that: if the Applicant complies strictly with the provisions of the ordinance, then he or she can make reasonable use of the Property because there are other options (site built home, modular home, or a mobile home wider than 22 feet).

Motion was made by Harold Hart, Arnold Headen seconded, and the Board voted 6-1 (Dan McMasters voted no) to deny the variance and found that: 1) the hardship is not unique because all other properties zoned R-6 within the Town's jurisdiction do not permit mobile homes less than 22 feet wide; 2) the hardship does not relate to the Applicant's land; and 3) the variance will authorize the initiation of a nonconforming use of land (mobile home is not permitted within the R-6 zoning district).

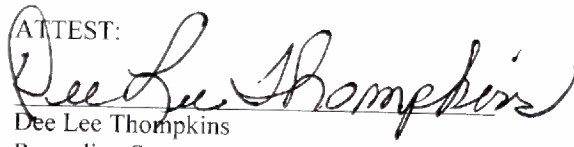
Agenda Item IV - Other Business

Mr. Meadows asked the board if they would be interested in doing a workshop. The members added that they would like to have a workshop on a Tuesday night.

With no further business, *motion was made by Mickey Pore, Dan McMasters seconded, followed by unanimous consent for adjournment at 8:05 p.m.*



Ethel Coble
Chair

ATTEST:


Dee Lee Thompkins
Recording Secretary