

**Town of Siler City Board of Adjustment  
April 9, 2012 Meeting Minutes**

The Siler City Board of Adjustment met on Monday, April 9, 2012 at 7:28 p.m. Harold Hart called the meeting to order. Mr. Hart asked for a motion to approve the minutes of March 12, 2012. *Motion made by Mickey Pore, seconded by JP Joyner, followed by unanimous consent.*

**MEMBERS PRESENT:** Mary Harris, Harold Hart (Chair), JP Joyner, Wallace Matthews, Dan McMasters, and Mickey Pore (Vice Chair)

**MEMBERS ABSENT:** Curtis Brown, Dacia Hayes, and Patty Poe

**STAFF PRESENT:** Joel J. Brower (Town Manager), Jack Meadows (Planning Director), William C. Morgan (Town Attorney), and Dee Lee Thompkins, (Administrative Support Specialist)

**VARIANCE WORKSHOP:** Mr. Morgan stated that the variance is the most difficult item the board item to address. Variances are the very reason that the board of adjustment exist. A zoning variance allows a property owner to use property in a way that would not otherwise be allowable under the terms of the zoning ordinance. Variances serve as a safety valve that allows certain types of adjustment to be made when the rules fail to fit unanticipated situations. Variances should deal with truly unique and unusual situations. Nevertheless, the standards for obtaining a variance are very strict. Variances are unusual forms of dispensation and are rather rarely appropriate. The Siler City Board of Adjustment and all other board of adjustments struggle with the findings. Approving a variance is hard because it is supposed to be hard. The power to grant a variance can be subject to substantial abuse if not carefully administered. Variances should not serve as a substitute for an amendment to the zoning ordinance.

When practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall have the power to vary or modify any of the regulations or provisions so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. No change in permitted uses may be authorized by variance. Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the board.

Beyond defining the degree of hardship required, courts have imposed four additional qualifications related to the hardship. These qualifications related to the hardship. These qualifications reflect a judicial policy of limiting variances to extraordinary, nonroutine circumstances and preventing abuse by forcing zoning boards to focus on objective factors related to the property involved, not on the personal situation of the petitioner.

The first qualification requires that the hardship result from the application of the ordinance itself. For example, a hardship caused by a restrictive covenant, the personal situation of the applicant or the convenience of the owner does not qualify the owner for variance consideration. Variances requested in response to an owner's handicapped condition present a particularly difficult decision. While the courts have traditionally, and consistently, held that the health of the owner cannot be the basis of the hardship, some more recent decisions allow grater flexibility to consider variances as a reasonable accommodation for persons with handicaps.

The second qualification holds that the hardship must be related to the specific property involved. The classic justification for a variance is that the unique physical conditions of the property involved-such as a steep slope or the presence of wetlands-make it impractical to meet the precise setbacks required by the ordinance. The fact that the owner of the parcel subject to the variance petition owns other developable property nearby is irrelevant, as the variance must be considered strictly in relation to the property, not the owner of the property.

The third qualification is that the practical difficulties or substantial hardships must not be self-induced or self-created. The hardship cannot be the result of the applicant's own action, such as an unintentional violation, buying the property for an unpermitted purpose and then seeking a variance, or selling part of a parcel and seeking a variance to develop the remainder. Several states allow variances when there has been a good faith mistake by the owner, but if there is any negligence or bad faith involved, the variance is generally to be denied.

**Board of Adjustment**

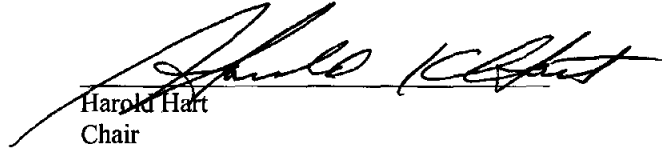
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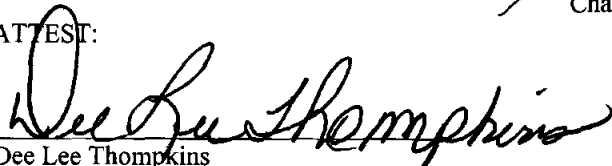
The fourth qualification requires the hardship to be peculiar or unique to the property involved. The reasoning here is that if the hardship is common to a number of properties, a zoning amendment, not a variance, is the proper remedy.

Mr. Morgan then reviewed the variance worksheet. He stated that you should always give a factual reason for your conclusion and that you can always add conditions to the variance. Mr. Morgan added that the board members should base their decision on what the evidence states, not on cost or convenience.

**ADJOURNMENT:** With no further business, Mr. Hart asked for a motion to adjourn. *Motion made by Dan McMasters, seconded by Mary Harris, followed by unanimous consent.* Adjourned at 7:50 p.m.

  
Harold Hart  
Chair

ATTEST:

  
Dee Lee Thompkins  
Recording Secretary