

**GUILFORD COUNTY
BOARD OF ADJUSTMENT
AUGUST 5, 2014**

The Guilford County Board of Adjustment met in regular session on August 5, 2014 in the Blue Room of the Old Guilford County Courthouse, Greensboro, North Carolina.

MEMBERS PRESENT: Ditra Miller, Chair; Robert Lawler, Jr.; Willie Johnson; Larry Standley; and Frank Havens.

STAFF PRESENT: Tiffany Burch and Dervin Spell, Planning Department.

Roll Call of attendees was taken.

Chair Miller welcomed everyone to the meeting and explained the policies and procedures of the Guilford County Board of Adjustment.

Swearing-in of staff:

Tiffany Burch and Dervin Spell were sworn as to their testimony during the proceedings.

Swearing-in of anyone speaking in favor of the requests:

Janice Martin, Juhann Waller, and Frenche Gilbert were sworn as to their testimony during the proceedings.

Swearing-in of anyone speaking in opposition to the requests:

There was no one present speaking in opposition to the requests.

HEARING OF THE CASE:

Case Number 14-07-GCPL-03278: Janice Martin requests a variance of 22.4 feet from the minimum street setback established by the Guilford County Development Ordinance 4.4-1(A) Dimensional Requirements to expand her non-conforming single-family dwelling. The minimum street setback from a right-of-way line for a major thoroughfare in the AG, Agricultural zoning district, is 50 feet. The applicant indicates that the proposed addition will be built on the right side of the existing dwelling on the lot and will be 27.6 feet from the current right-of-way. The property is located at 3523 Huffine Mill Road in Greensboro, North Carolina 27249. Tax parcel number 0101944, in the Washington Township **(GRANTED)**

Mr. Spell presented the case and reviewed materials distributed to members in their agenda packets. He provided a PowerPoint presentation describing the property.

Janice Martin, 3523 Huffine Mill Road, stated that she will be meeting the side setbacks. She will not be going beyond the side setback and is asking for a variance in the front. Her designer, Juhann Waller, was present to answer technical questions.

Juhann Waller, 524 South Elm Street, stated that the applicant is requesting a front variance from the front setback due to the right-of-way that was acquired from Ms. Martin by NCDOT (North Carolina Department of Transportation) to widen Huffine Mill Road for roadway improvements. Ms. Martin would like to build an addition onto the house. Her intent is to maintain the character of the neighborhood by having the addition meet or be adjacent to the existing front edge of the house.

Responding to questions, Ms. Martin explained that the subject property previously belonged to a deceased brother who began construction on the home. Before the home was finished, NCDOT purchased the tract of land for the right-of-way. Ms. Martin completed the construction of the home. She indicated that NCDOT allowed her to complete construction of the home.

Referring to material distributed to members, Mr. Lawler said that after the home was started, the City changed their designated Huffine Mill Road as a thoroughfare and expanded the right-of-way which allowed NCDOT to acquire it.

There was no one speaking in opposition to the request.

Mr. Lawler moved that the Board of Adjustment for Guilford County, having held a public hearing on August 5, 2014 to consider Case Number 14-07-GCPL-03278, submitted by Janice Martin, a request for a variance to use the property located at 3523 Huffine Mill Road, Greensboro, North Carolina 27249 in a manner not permissible under the literal terms of the ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the following findings of facts and draws the following conclusions: (1) It is the Board's conclusion that unnecessary hardship will result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. This conclusion is based on the finding of fact that the right-of-way was moved following the construction of the structure; (2) It is the Board's conclusion that the hardship does result from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. This conclusion is based on the finding of fact that the right-of-way was moved; (3) It is the Board's conclusion that the hardship does not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. This conclusion is based on the finding of fact that the right-of-way had been moved by designating Huffine Mill Road as a thoroughfare moving the right-of-way; and (4) It is the Board's conclusion that the requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. This conclusion is based on the finding of fact that the right-of-way had been moved after the construction of the house and out of the control of the property owner. Therefore, on the basis of all the foregoing, it is ordered that the application for a variance be granted, seconded by Mr. Johnson. The Board voted unanimously 5-0 in favor of the motion. (Ayes: Miller, Lawler, Standley, Johnson, Havens. Nays: None.)

Mr. Havens questioned if it was necessary to add any language to the motion that is subject to or contingent with this not being in conflict with DOT (Department of Transportation) regulations. Mr. Lawler indicated that he was amenable to amending the motion. During discussion, Mr. Standley pointed out that DOT does not have any jurisdiction that regulates anything beyond the right-of-way. Mr. Spell agreed and commented that usually DOT regulates what is in the right-of-way. Members agreed that since DOT has no jurisdiction beyond the right-of-way, it was not necessary to add language to the motion subject to conditions.

HEARING OF THE CASE:

Case Number 14-07-GCPL-03321: Frenche G. Gilbert is requesting a variance of 2 feet from the side yard setback requirement of 10 feet established by the Guilford County Development Ordinance 4.4-1(A), Dimensional Requirements, to allow for the existing 20 feet by 27 feet carport to remain at its current location. The property is zoned RS-50, Residential Single-Family. The property is located at 3095 NC Highway 150 East in Browns Summit, North Carolina 27214. Tax parcel number 0130301, in the Monroe Township. **(DENIED)**

Mr. Spell presented the case and reviewed materials distributed to members in their agenda packets. He provided a PowerPoint presentation describing the property.

Frenche Gilbert, 3095 NC Highway 150 East, Browns Summit, North Carolina, has been a resident at this address since 2001. He has added a pool adjacent to the house on the right side and in 2013 he put in a slab for a carport. This year he got estimates from contractors for a carport with the intention of keeping the spirit of the property and increasing its value. The contractor told Mr. Gilbert that he did not need a permit to build a carport. Mr. Gilbert regrets not doing due diligence to secure the permits. He received the violation notice along with information as to how the situation could be rectified. He informed members that he is in possession of a letter from his neighbors stating their opinion about the carport and the structure in general. In the spirit of compliance, he asked the Board to consider granting a 2 foot variance to the right side of the property. He plans to build an attachment to the side of the house making it part of the dwelling as well.

Responding to questions, Mr. Spell explained that the attachment will be helpful to the applicant. Part of the carport currently extends in front of the house; therefore, the breezeway attachment will actually make the carport part of the house. It is not in keeping with regulations for the carport to extend in front of the house. Mr. Lawler pointed out that two problems exist for the homeowner. Not only does the carport not meet the side setback, it also extends in front of the house.

It was determined that the letter from Mr. Gilbert's neighbor is not admissible as evidence in a quasi-judicial hearing. The letter might be considered hearsay because the letter was not certified. In addition, the neighbor is not present to testify and answer questions.

Mr. Spell stated that the applicant does not have permits to build the attachment. Mr. Gilbert indicated that his plan was to get the variance approved before going through the permitting process.

Members commented that a condition could be placed on the request to guarantee that an attachment is added to make the carport part of the house.

Mr. Lawler asked staff what other conditions might be considered appropriate should this application move forward. In addition to requiring the attachment, Mr. Spell stated that the Board could consider conditioning the application to meet local, state, and federal regulations as well. Ms. Burch commented that the applicant will remain in violation until the issues are resolved.

Mr. Gilbert confirmed for Mr. Johnson that the neighbors were notified of the request. He reiterated that his neighbors were very supportive of the variance.

Responding to a question from Mr. Johnson, staff indicated that this case was generated from an internal complaint that a structure had been built without a permit.

There was no one speaking in opposition to the request.

Mr. Lawler moved that the Board of Adjustment for Guilford County, having held a public hearing on August 5, 2014 to consider Case Number 14-07-GCPL-03321, submitted by Frenche Gilbert, a request for a variance to use the property located at 3905 NC Hwy 150 East, Browns Summit, North Carolina 27214 in a manner not permissible under the literal terms of the ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the following findings of fact and draws the following conclusions: (1) It is the Board's conclusion that unnecessary hardship will not result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. This conclusion is based on the finding of fact that the property owner failed to exercise due diligence in pursuing the process for obtaining the proper building permits and zoning application; (2) It is the Board's conclusion that the hardship does not result from conditions that are peculiar to the property such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. This conclusion is based on the finding of fact that there were other opportunities in adjoining the carport to the house and that the homes were not preceded by the property owner; (3) It is the Board's conclusion that the hardship does result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. This conclusion is based on the finding of fact that the property owner did own the property and it was his actions in building the structure without the proper permits and zoning permits that created the hardship; (4) It is the Board's conclusion that the requested variance is not consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. This conclusion is based on the finding of fact that the property owner did not exercise due diligence in pursuing the proper permit and we, as the Board, can set a precedence by granting variances based upon the property owner's not exercising due diligence and being responsible for obtaining the permits. Therefore, on the basis of all the foregoing, it is ordered that the application for a variance be denied subject to all the aforementioned items that the property owner did not exercise due diligence in obtaining the proper permits and zoning permits, seconded by Mr. Standley. The Board voted unanimously 5-0 in favor of the motion. (Ayes: Miller, Lawler, Standley, Johnson, Havens. Nays: None.)

Staff explained that a vote by the Board of "yes" in this matter represented denial of the request while a vote of "no" was representative of opposing denial. Members voted a second time to confirm their unanimous vote in favor of denial of the request.

There was a discussion among Board members regarding contractors failing to explain the necessity of permits to homeowners. They noted that this seems to be a recurring problem when variance requests are heard and a solution to the problems needs to be found. Mr. Johnson commented that communicating the need for permits should be included on the contractor exam. He brought up the possibility that the homeowner in the last case may be able to purchase 2 feet from his neighbor to be in compliance with the side setback requirement. He could also attach the carport to the house and satisfy the remaining violation. Mr. Spell pointed out that the neighbor could only sell 2 feet of his property if it was ascertained his property would not fall out of compliance as well. Mr. Havens noted the problem of setting a precedent by arbitrarily granting variances based on the fact the Board feels compassion for an applicant who has stumbled into the situation. Mr. Johnson pointed out that precedents will not be set because each case is heard based on its own unique facts.

APPROVAL OF MINUTES FROM THE MAY 6, 2014 MEETING:

Mr. Standley moved approval of the minutes of the May 6, 2014 meeting as written, seconded by Mr. Lawler. The Commission voted unanimously 5-0 in favor of the motion. (Ayes: Miller, Lawler, Standley, Havens, Johnson. Nays: None.)

ADJOURNMENT:

Mr. Standley moved to adjourn the meeting, seconded by Mr. Johnson. The Commission voted unanimously 5-0 in favor of the motion. (Ayes: Miller, Lawler, Standley, Havens, Johnson. Nays: None.)

There being no further business before the Board, the meeting adjourned at 7:00 p.m.

Respectfully submitted,

Ditra Miller, Chairman

Dervin Spell, Secretary