

Town of Dallas Board of Adjustment Meeting

Agenda

Thursday, May 16, 2019

To be held at Fire Station Community Room at 6:30 pm

The following agenda is proposed:

1. Call to Order
2. Roll Call of Members Present; Declaring a quorum as present (must have at min. 6 seated)
3. Invocation or Moment of Silence
4. Pledge of Allegiance to the Flag
5. Announcements/Introductions
6. Approval of Agenda with Additions or Deletions
7. Approval of Minutes- Sept. 20, 2018
8. New Business
 - a) Zoning Variance Application V2019-01: 315 Willis St, Dallas NC 28034
9. Adjournment

MINUTES

Town of Dallas

BOARD OF ADJUSTMENT

Meeting of September 20, 2018

The meeting was called to order at 7:00 PM by Chairman Curtis Wilson.

The following members were present: Curtis Wilson, Chair, Glenn Bratton, John Beaty, Tim Farris, David Jones, Alternate Reid Simms, Alternate Gene Brown

Members absent: John O' Daly, Eric Clemmer

Also present: Tiffany Faro, Director of Development Services, Johnny Denton, Town Engineer

There was an invocation lead by Chairman Wilson and pledge of allegiance.

Approval of Agenda: A motion by Glenn Bratton was made and seconded by Tim Farris to approve the agenda for this meeting, and the motion was adopted unanimously.

Approval of Minutes: A motion by Reid Simms was made and seconded by Glenn Bratton to approve the minutes as presented. The motion was adopted unanimously.

New Business:

1) Variance Request: 130 W Trade St

Tiffany presented this Variance Request on behalf of the Town, explaining the current ordinance requirements, and the impact it would have in the event that new construction were to take place at that location. The Board discussed the request and how it aligned with the Town Center Plan. Glenn Bratton made a motion to approve the variance with the following consistency statement:

The amendment is consistent with the adopted Town Center Plan, as keeping the existing façade location in the event of new construction is sensitive to the overall goal of historic preservation, and the overall historic character of the Town Square. The amendment is reasonable and in the public interest because it maximizes possible restaurant/retail square footage in the Town's Central Business district, respects the building's relationship to abutting properties, and does not have a significant impact to public health or safety.

The motion was seconded by Tim Farris, and approved unanimously.

Other Business and Adjournment:

Reid Simms made a motion to adjourn, seconded by Tim Farris, and approved unanimously.

Respectfully Submitted,

Approved:

Tiffany Faro, Development Services Director

Curtis Wilson, Chairman

TOWN OF DALLAS

ZONING VARIANCE APPLICATION

Application No. V2019-01

Date: 5-3-2019

To the Town of Dallas Board of Adjustment:

I, DEAN CARPENTER & Bobby Wilson, hereby request a variance to the requirements of Section 153.022 of the Dallas Zoning Ordinance for the following reason(s):
The current terms cause the area within the setbacks to be too small to build a house on, due to street/right of way across the front of the property. However, there are houses on both sides of the property. We simply want to build a new house matching the other two.

Street Address/location of the subject property: 315 Willis St. Dallas NC

Parcel ID #: 131748

Current Zoning District: _____ Current Use of the Property: _____

Property Owner: Dean Carpenter Properties LLC

Address of the property owner: 3013 Dallas Cherryville Hwy. Dallas NC 28034

Contact Telephone: 704-922-9800 Email: dean@carpentersrealestate.net

Applicant: Bobby E. Wilson

Applicant Address: 12427 Toscana Way #208 Charlotte NC 28273

Applicant Contact Telephone: 704-460-0499 email: BWViper2011@gmail.com

Relation to Property Owner: BUYER OF LOT

Statement by applicant: (In the space provided, or on a separate sheet, state what reason(s) you have for the requested variance be granted.)
We want to build a new house at 315 Willis St. (1072 sqft). There used to be a house there, but all that's left is the front porch. There are houses on both sides of the property that are built within the same setbacks that we need to build in. We simply want to build a home that will help the appearance of Willis St, get rid of the old porch (which is an eyesore and a safety hazard) and will bring in more revenue for the town of Dallas. Under the current form you can't fit even a small house on the lot, which renders the lot pretty much useless. Homes on either side are 1000 - 1200 SF

TOWN OF DALLAS

ZONING VARIANCE APPLICATION

Please answer the following questions. Attach additional pages as needed.

1. Describe how complying with the literal terms of Chapter ^{10-1102V} 153, Section 22 (Appendix A) of the ordinance will prevent the applicant from securing a reasonable return from, or make reasonable use of, his property.

The property is zoned R12, however the property is very small. It has a street right of way going across the front of the property; under the current term the setbacks start at the right of way, which renders the property too small for a house.

2. Does the hardship or practical difficulties of which the applicant cites would result from unique circumstances related to the applicant's land, such as natural features or topography?

No, the hardship is a result of the lot being rendered unbuildable due to the fact that under the current terms, the setback must start at the right of way instead of the property line, that only leaves 25' between the front and rear setbacks, which isn't enough space to build a house that would match other homes in the area.

3. Is the hardship a result of the applicant's own actions?

No, the property line comes to almost the exact center of the street, which pushes the front setback way to far back to fit a house on.

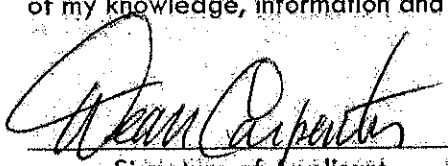
4. If granted, will the variance request be in harmony with the general purpose and intent of the ordinance and preserve its spirit?

Yes, as it will match the other houses on either side. There was once a house at 315 Willis St, but all that remains is the old front porch, which is an eyesore. We simply want to build a nice new home where the old one use to be.

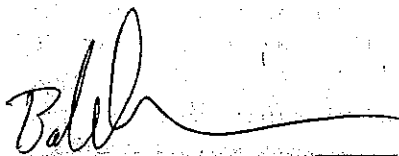
5. If granted, will the variance request will secure the public safety and welfare and do substantial justice?

Absolutely Yes! We would be getting rid of the existing porch, which is a current safety issue, and build a nice new home that will be similar to the surrounding homes. It will help the appearance of the neighborhood and generate a little more revenue for the town of Dallas.

I certify that all the information presented by me in this application is accurate to the best of my knowledge, information and belief.



Signature of Applicant



Signature of Applicant

Submitted as completed, including the required \$300 fee, this 3rd date of

MAY, 2019.

Staff: 

PLAT NORTH: PB 8 PG 92

NOTES:

- SURVEY BASED ON PHYSICAL EVIDENCE
- NO FEATURES LOCATED OTHER THAN AS SHOWN
- PROPERTY MAY BE SUBJECT TO RECORDED OR UNRECORDED EASEMENTS NOT OBSERVED
- NO TITLE SEARCH PERFORMED BY THIS FIRM.
- PROPERTY MAY OR MAY NOT BE IN A FLOOD ZONE, UNLESS SPECIFIED ON SURVEY, UPON REQUEST.
- ANY UNDERGROUND UTILITIES SHOWN CANNOT BE FULLY VERIFIED BY THIS FIRM UNLESS UNCOVERED FOR VISUAL INSPECTION.
- THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF TITLE ABSTRACT. THE SURVEYED PROPERTY IS SUBJECT TO ANY EXISTING EASEMENTS, RIGHTS OF WAY, RESTRICTIONS, SETBACK LINES, BURIED UTILITIES, PIPES, TANKS, MINERAL RIGHTS AND LANDFILLS WHETHER OR NOT SHOWN ON THIS PLAT OR WHETHER OR NOT RECORDED IN PUBLIC RECORDS.
- R/W SHOWN SUBJECT TO NC DOT VERIFICATION

LEGEND

- IRON PIN FOUND
- IRON PIN SET
- UNMARKED POINT



DEAN CARPENTER
4428-932

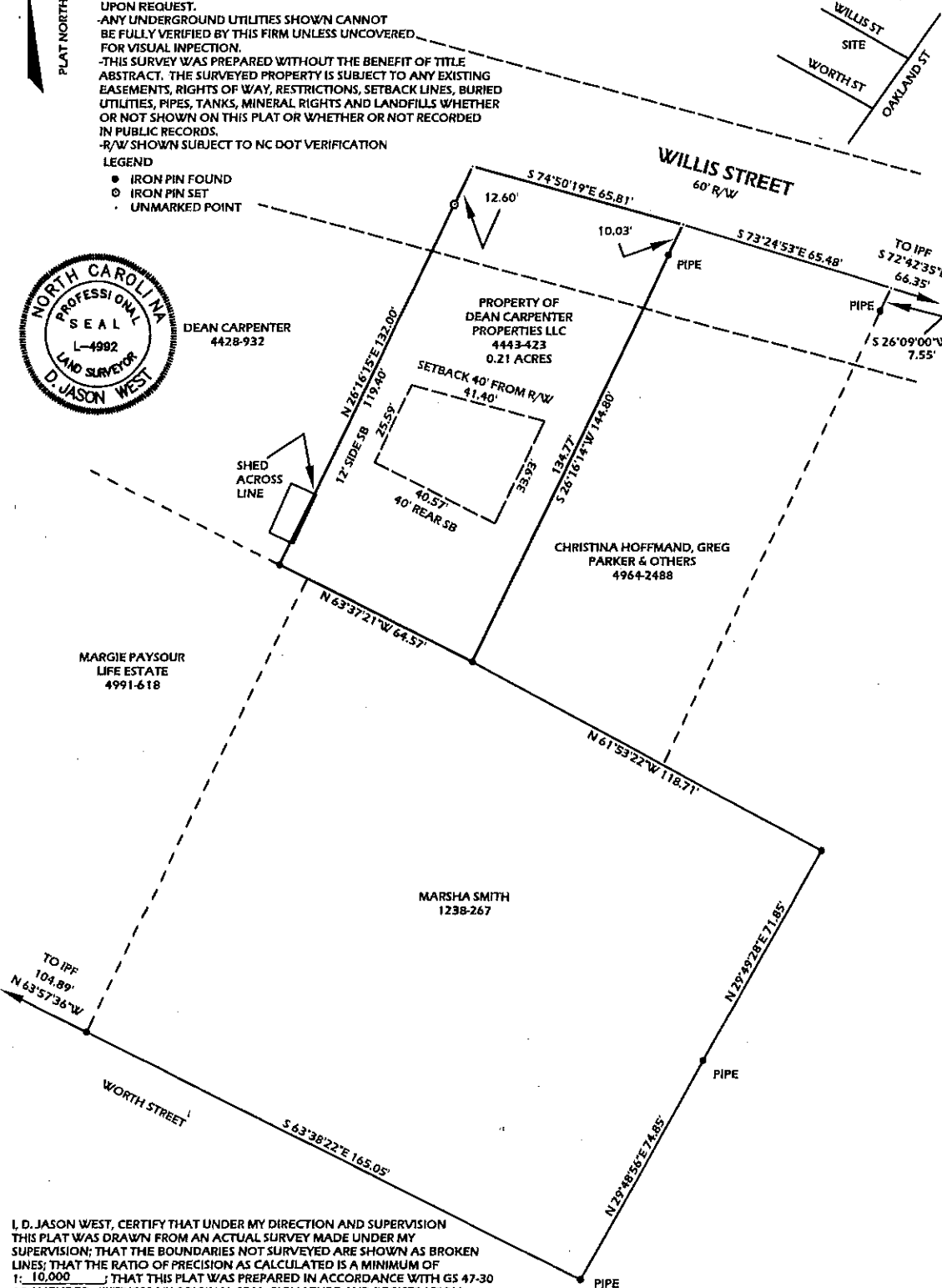
PROPERTY OF
DEAN CARPENTER
PROPERTIES LLC
4443-423
0.21 ACRES

CHRISTINA HOFFMANN, GREG
PARKER & OTHERS
4964-2488

MARGIE PAYSOUR
LIFE ESTATE
4991-618

MARSHA SMITH
1238-267

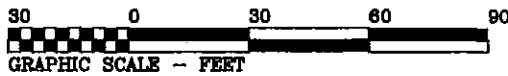
SURVEY FOR: BOBBY WILSON		
LOCATION: DALLAS TWP., GASTON COUNTY, NC		
PARCEL ID: 131748		
DATE: MAY 2, 2019		
SCALE: 1"=30'		DRAWN BY: DJW
FILE: WILLISRD.DWG		
LED FORD & WEST LAND SURVEYING & MAPPING, P.L.L.C. 228 E. DOUBLE SHOALS ROAD LAWNDALE, NC 28090 704-312-6039 DJWEST@CHARLOTTE.TWCBC.COM		

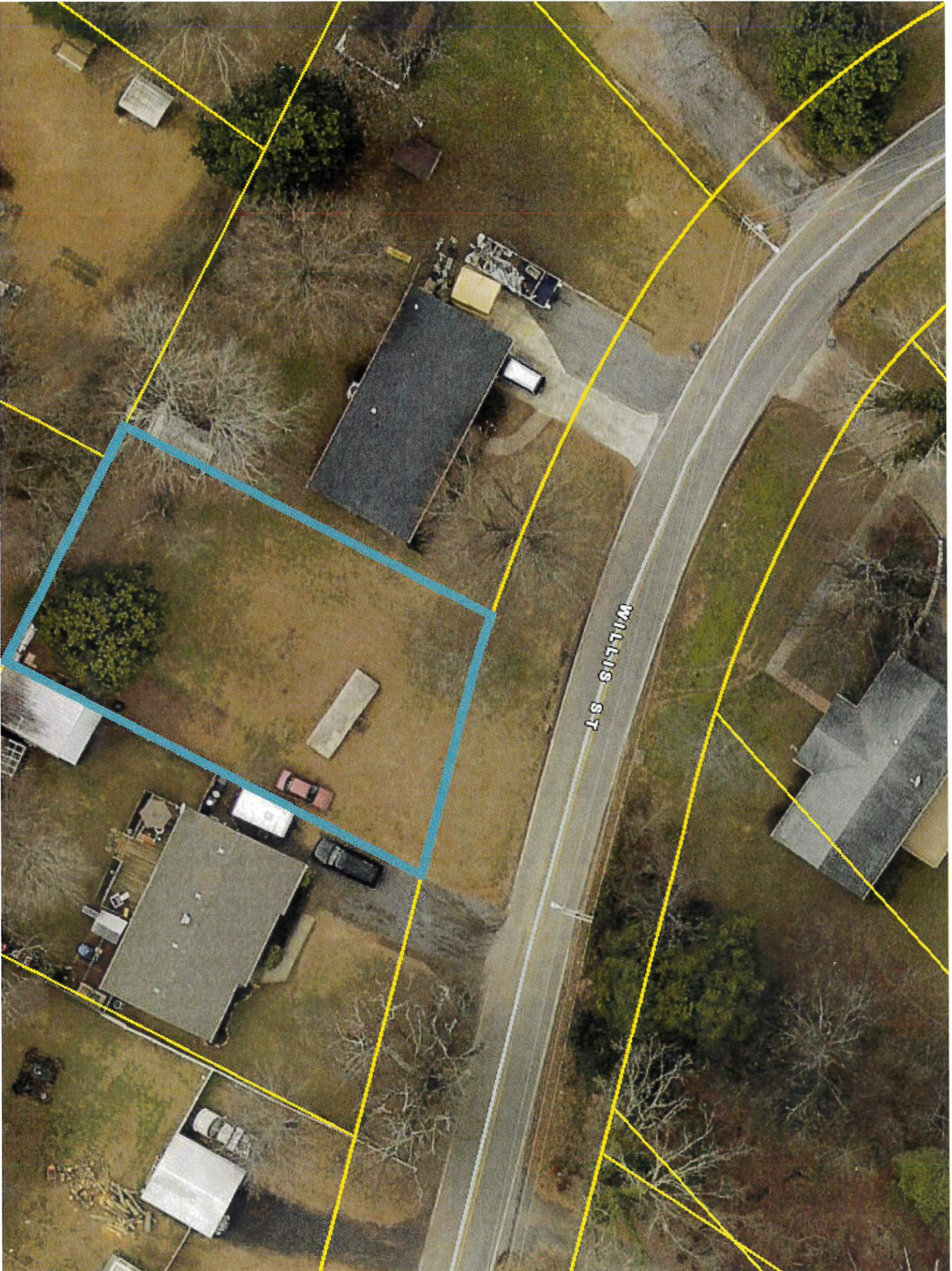


I, D. JASON WEST, CERTIFY THAT UNDER MY DIRECTION AND SUPERVISION THIS PLAT WAS DRAWN FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION; THAT THE BOUNDARIES NOT SURVEYED ARE SHOWN AS BROKEN LINES; THAT THE RATIO OF PRECISION AS CALCULATED IS A MINIMUM OF 1: 10,000; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH GS 47-30 AS AMENDED. WITNESS MY ORIGINAL SEAL, SIGNATURE AND REGISTRATION NUMBER THIS

2 DAY OF MAY, 2019

NCPLS L-4992





WILLIS ST

Coates' Canons Blog: Variance Standards: What is hardship? And when is it unnecessary?

By Adam Lovelady

Article: <https://canons.sog.unc.edu/variance-standards-what-is-hardship-and-when-is-it-unnecessary/>

This entry was posted on May 27, 2014 and is filed under Land Use & Code Enforcement, Quasi-Judicial Decisions, Zoning

Generally, development regulations like zoning and subdivision standards apply equally to all properties. But sometimes a particular property is unfairly burdened by the general rules, creating an unnecessary hardship for the owner. The general statutes authorize the local board of adjustment to grant a variance from the rules in those limited circumstances. But what is an unnecessary hardship? Recent amendments to the state statute clarify what can (and what can't) qualify as unnecessary hardship. This blog explores those new standards.

General Statute section 160A-388(d) sets forth the standards for granting a zoning variance (The standards also may be applied to subdivision and other development regulation). These mandatory standards apply to zoning variances for all counties and municipalities in the state, and the new standards override any contrary ordinance provisions that may have been in place prior to 2013. For a summary of the other changes to the board of adjustment statute, see this blog from my colleague David Owens.

Under the new statute a board of adjustment *shall* vary the provisions of the zoning ordinance if strict application of the ordinance would create unnecessary hardship. In order to obtain the variance, the applicant must show all of the following:

- Unnecessary hardship would result from the strict application of the ordinance
- The hardship results from conditions that are peculiar to the property
- The hardship is not a self-created hardship

Additionally, the applicant must show that the variance will

- Be consistent with the intent of the ordinance
- Secure public safety
- Achieve substantial justice

Finally, the statute prohibits any use variance.

To be sure, a variance is not a free pass from regulations or a tool to subvert the zoning ordinances. In order to obtain a variance, the applicant bears the burden of providing competent, substantial and relevant evidence to convince the decision-making board that the property meets all of the statutory standards for a variance. Merely showing some hardship is insufficient.

Let's consider each of the standards in more detail.

Unnecessary Hardship from Strict Application

Whenever there is regulation, there is some level of necessary hardship and inconvenience shared by all of the community. An applicant for a variance must show *unnecessary* hardship. What is enough hardship? Unfortunately, there is no simple formula. It is determined on a case-by-case basis. That is why the board of adjustment holds a quasi-judicial hearing and considers the evidence presented.

The hardship must be more than mere inconvenience or a preference for a more lenient standard. Cost of compliance may be a factor, but cost is not determinative. It is not enough for an applicant to say that development will cost more in order to comply. The applicant must show the substantial and undue nature of that additional cost as compared to others



subject to the same restriction.

Under the old statutes, many jurisdictions applied a standard that the applicant must show that there is no reasonable use of the property without a variance. Under current statutes, that stringent standard is no longer allowed. A property owner can prove unnecessary hardship, even if the owner has some reasonable use of the property without the variance.

Peculiar to the Property

The unnecessary hardship must be peculiar to the property, not general to the neighborhood or community. Such peculiar characteristics might arise, for example, from location of the property, size or shape of the lot, or topography or water features on the site.

Imagine a lot that narrows dramatically toward the front yard and where the side yard setbacks prohibit the property owner from building an addition. The hardship (not being allowed to build an addition) flows from the strict application of the ordinance (the setback) and is peculiar to the property (because of the shape of the lot). A variance may be appropriate if the owner presents evidence to show she meets all of the standards.

By contrast, a variance is not the appropriate remedy for a condition or hardship that is shared by the neighborhood or the community as a whole. Consider that same narrowing lot. If all of the houses on the street shared that hardship, a variance would not be appropriate. Such conditions should be addressed through an ordinance amendment.

Hardships that result from personal circumstances may not be the basis for granting a variance. The board is looking at the nature of the property and the land use ordinances, not the nature of the applicant and their circumstances. Bringing an elderly parent to live with the family, for example, is a change in personal circumstance, not a condition peculiar to the property.

The reverse is also true. An applicant's personal circumstances cannot be the basis for denying a variance. The board should consider the property, not the applicant's bank account and ability to cover the cost of the hardship. Moreover, the fact that the applicant owns property nearby is irrelevant to the consideration of whether this particular property deserves a variance (*Williams v. N.C. Dept. of Env. & Nat. Resources*, 144 N.C. App 479, 548 S.E. 2d 793 (2001))

Not Self-Created Hardship

You can't shoot yourself in the foot and then ask for a variance. The hardship must not result from actions taken by the applicant or property owner.

So what is self-created? Suppose a property owner sells part of a conforming lot and makes the remainder of the lot nonconforming. The hardship (limitations on the non-conforming lot) was self-created (by the owner selling the sliver off the parcel). The owner may not seek a variance for building on the substandard lot. Similarly, where an owner failed to seek zoning and building permits and then incorrectly placed foundation footings in the setback, the hardship is self-created. No variance is allowed. Ignorance of the law is no excuse.

What if the owner relied in good faith on seemingly valid surveys and obtained building permits? After construction began, a neighbor objected, citing a new survey and arguing that the foundation wall is within the setback. Is the owner's hardship self-imposed? Our North Carolina courts have held that hardships resulting from such good faith reliance on surveys and permits are eligible for a variance (*Turik v. Town of Surf City*, 182 N.C. App. 427, 642 S.E.2d 251 (2007)).

An important statutory provision applies here: "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." For example, if the original owner had a legitimate case for a variance, someone buying the lot from that owner would have the same legal position as the original owner. They could seek a variance. This rule aligns with the broader zoning concept that land-use permissions run with the land, and land-use decisions are based on the property and impacts of development, not based on the particular owner. Is this a loophole for an unscrupulous owner to overcome the limit on variances for self-created hardship by selling the property to a spouse or sham LLC? Maybe, but the requirement for substantial justice (discussed below) probably protects from someone gaming the system.



Restrictive covenants and other legal limitations *may* be a factor in determining hardship. Consider a property that has limited development ability due to a privately-imposed covenant for a street setback and a publicly-imposed stream setback. Can the owner seek a variance from the public stream setback? The NC Court of Appeals—interpreting a specific local ordinance—found that the board should consider physical *and* legal conditions of the property, including restrictive covenants (*Chapel Hill Title & Abstract Co., Inc. v. Town of Chapel Hill*, 362 N.C. 649, 669 S.E.2d 286 (2008)).

Let me emphasize that covenants and other legal limitations *may* be a factor. In that case, the decision was based on the local ordinance, and the decision pre-dated the statutory variance standards. A self-imposed legal limitation—like an easement across a property that limits buildable area—that was created after a zoning ordinance limitation became effective, could be viewed as a self-imposed hardship so that no variance should be granted.

Ordinance Purpose, Public Safety, and Substantial Justice

In addition to those standards for “unnecessary hardship,” the statutory standard for granting a variance requires the applicant to show that “[t]he requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.”

Where an ordinance expresses a clear intent, a variance cannot subvert that intent. But, alternatively, a variance may help to give effect to the ordinance intent. In one North Carolina case, an applicant was seeking a variance to allow an additional sign at a secondary entrance. Among other things, the ordinance purpose was to provide “adequate and effective signage,” “prevent driver confusion,” and “allow for flexibility to meet individual needs for business identification.” The purpose, the court found, called for the flexibility that the applicant sought, and the variance was allowed. (*Premier Plastic Surgery Ctr., PLLC v. Bd. of Adjustment for Town of Matthews*, 213 N.C. App. 364, 369, 713 S.E.2d 511, 515 (2011)).

The applicant also must show that the variance does not harm public safety. Even if an applicant met the standard for unnecessary hardship, a variance may be denied for public safety concerns. A property owner may prove an unnecessary hardship exists from limitations on on-site drives and parking for a commercial use. But, if neighbors presented expert evidence that the increased traffic and stormwater effects will harm public safety, the board may be justified in denying the variance.

Additionally, the statute requires the applicant to show that through the variance “substantial justice is achieved.” The concept of substantial justice raises issue of fairness for the community and neighbors. This concept echoes the requirement that hardship must be peculiar to the property—not shared by the community. If everyone bears this hardship, then one lucky person should not be relieved through a variance. Similarly, the justice standard draws upon a notion of precedence. Suppose Joe sought a variance last year and was denied. If Karl is seeking variance this year that is essentially the same request for a similar property, then the variance outcome should be the same.

The substantial justice standard also can play in favor of the applicant. If an applicant relies in good faith on a city permit, and that permit turned out to be wrongly issued, the applicant would have no vested rights in that mistakenly issued permit. Substantial justice might argue for allowing a variance for the applicant.

No Use Variance

North Carolina courts long ago established that use variances are not permitted, and that rule is now part of the statutory standards. If a land use is not permitted on the property, a variance cannot be used to, in effect, amend the ordinance and allow the use. If only single family residences are permitted in a district, a variance cannot permit a duplex (*Sherrill v. Town of Wrightsville Beach*, 76 N.C. App. 646, 334 S.E.2d 103 (1985)).

If the use is already permitted on the property, a variance to allow the expansion of the permitted use is permissible. So, for example, if a sign is permitted for a commercial property, a variance to permit an additional sign is allowable. It is an area variance, not a use variance. (*Premier Plastic Surgery Ctr., PLLC v. Bd. of Adjustment for Town of Matthews*, 213 N.C. App. 364, 713 S.E.2d 511 (2011)).



Conclusion

Making decisions about variances is a hard job. How much hardship is enough hardship? Is justice being served? Does the variance preserve the spirit of the ordinance? Rarely are there clear answers for these questions. Seeking those answers is the hard task of the board of adjustment. The applicant must present competent, material, and substantial evidence that they meet all of the standards. And the board must consider the issues on a case-by-case basis; they must weigh the evidence, apply the required statutory standards, and decide if a variance is warranted.

Links

- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-388
- canons.sog.unc.edu/?p=7155