

Town of Indian Trail



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PLANNING AND DEVELOPMENT DEPARTMENT BOARD OF ADJUSTMENT MINUTES

May 19, 2016
06:30 P.M.

Call to Order

Roll Call

The following members of the governing body were present:

Board Members: Daniel Takah, Shirley Howe, Christopher Chopelas, Robert Thurbon, Patrick O'Connor, Kat Miller, and John Eigenbrode.

Present but not Voting: None.

Absent: Tripp Melton, and Keith Merritt- Town Attorney.

Staff Members: ~~Kevin~~ Icard-Senior Planner, and Pam Good-Board Secretary

Approval of Minutes - March 24, 2016

Motion to approved as written by Member Chopelas, seconded by Member O'Connor. Vote to approve was unanimous.

Swearing in of new members- Kat Miller- alternate seat #1, John Eigenbrode-alternate seat #3.

Public Hearings- none.

Other Business- Training -Variance Standards: What is hardship? And when is it unnecessary?

Staff Kevin Icard presented an overview of a variance

- What is a Variance, General
- Unnecessary Hardship from Strict Application
- Peculiar to the Property
- Not Self-Created Hardship
- Ordinance Purpose, Public Safety and Substantial Justice
- No Use Variance

The applicant must provide evidence that is:

Competent – Adjective

1. Having suitable or sufficient skill, knowledge, experience, etc. for some purpose; properly qualified
2. Adequate but not exceptional

Substantial – Adjective

1. Of ample or considerable amount, quantity, size, etc
2. Of solid character or quality; firm, stout, or strong

Relevant – Adjective

1. Bearing upon or connected with the matter in hand, pertinent

Unnecessary Hardship

- 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.

Previous vs. Current Requirements

- 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.

Unnecessary hardship must be peculiar to the property, not just the neighborhood or community and must be because of the nature of the property not the nature of the applicant and their circumstance.

Use Variance

Standards

- 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)).

Nonconforming Uses

- If the use is already permitted on the property, a variance to allow the expansion of the permitted use is permissible.
- 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.

Staff Icard presented examples of cases that were not allowable variances.

Discussion followed.

Staff Icard stated that variances should be very hard to grant; the majority should be denied.

Conclusion

- making decisions is hard job
- how much hardship is enough to grant
- is justice being served
- preserve the spirit of the ordinance.

Try not to let emotions decide. Slow down on decisions

Discussion followed regarding present examples of properties that have small setbacks. Members and Staff also discussed zero lot lines.

Adjournment

Motion to adjourn by Member Thurbon, seconded by Member Howe, Vote to adjourn was unanimous. Meeting adjourned at 7:35pm

Chairman: Daniel Takah

Date: July 28-2016

Secretary: Pamela J. Wood

