

**MINUTES OF THE MINT HILL BOARD OF ADJUSTMENT**  
**October 24<sup>th</sup>, 2016**

The Mint Hill Board of Adjustment met in regular session on Monday, October 24<sup>th</sup>, 2016 at 6:30 p.m. in the John M. McEwen Assembly Room, Mint Hill Town Hall.

**ATTENDANCE**

Chairman: Gary Isenhour  
Vice Chairman: June Hood  
Members: Michael Weslake, Ronald Rentschler and Bobby Reynolds  
ETJ Members: Debi Powell and David Tirey  
Town Planner: Chris Breedlove  
Clerk to the Board: Candice Everhart

**CALL TO ORDER**

Chairman Isenhour called the meeting to order at 6:30 p.m., declared a quorum present and the meeting duly constituted to carry on business.

**ORDER OF BUSINESS**

**Approval of Minutes of August 29<sup>th</sup>, 2016 Regular Meeting:** Upon the motion of Mr. Reynolds, seconded by Mr. Rentschler, the Board unanimously approved the minutes of the August 29<sup>th</sup>, 2016 Board of Adjustment regular meeting.

**Reports of Committees, Members and Staff:** Mr. Breedlove stated, the case V16-6 from August was denied. John and I found out they can get what they want without a variance. Basically with that road frontage we require two acres and those two parcels together do not meet that. There is a question about when those parcels were subdivided. They were subdivided back in the 30s or 40s which precedes the Town so they are good to go to recombine the setbacks that way. We have not forgotten about training. With the Holidays coming up we are looking into training for the new year when we do not have a case to hear.

**Old Business:** None.

**New Business:**

- A. Discussion and Decision on Variance Request #V16-7, Filed by Marcia Nembhard, for Property Located at 4914 Magglucci Place, Tax Parcel #135-374-12, from Section 6.1 Table 2: Dimensional Requirements of the Mint Hill Unified Development Ordinance.**

*Mr. Isenhour asked the applicant and Mr. Breedlove to step forward and be sworn in. Do you swear or affirm that the testimony you are about to give is to the best of your knowledge so help you God? I do, stated Mrs. Nembhard and Mr. Breedlove.*

Mr. Breedlove stated, the applicant was wanting to sell the home. The survey for a perspective buyer found this encroachment of the rear porch. Everything prior to this shows the permits for the porch by Mecklenburg County and everything was signed off.

*Mr. Isenhour asked, is it only four and a quarter feet? Mr. Breedlove said, yes.*

Mrs. Nembhard said, we purchased this house nine years ago and about seven months later we added the porch. As you can see in your packet all of our documents were filed and the original builder added on the porch. Fast-forward to now and my concern is we had a buyer and we got to the point of the closing and after they did the survey they saw we were encroaching. Only one corner is actually encroaching the four feet, it's not the whole way across. In order to try and expedite the sale of the house we tried many different channels. I went to Mecklenburg and said we had no violations. When I came here they said I had no violations on record. The lawyer suggested we go to our neighbor and see if we could swap off the property and they said no. We also offered to purchase part of the property and they said no. I'm asking you to look at this and consider it and give us five foot allowance so we don't have to cut down the porch.

*Mr. Isenhour asked, when was the survey taken? Mrs. Nembhard said, September 8, 2016.*

*Mr. Weslake asked, is this the original location of the porch that he sketched or was it changed? Mrs. Nembhard said, nothing was changed. The builder sketched everything and he took the permits to Mecklenburg County. As far as I know nothing was changed and this is what he submitted for permits.*

*Mr. Isenhour said, if there are no further questions for the applicant we will now go into our fact finding portion of the hearing. Our variance tonight is to decide on variance request #VI16-7, Filed by Marcia Nembhard, for property location at 4914 Magglucci Place, Tax Parcel #135-374-12, form Section 6.1 Table 2: Dimensional requirements of the Mint Hill Unified Development Ordinance.*

**Unnecessary hardships would result from the strict application of the ordinance.**

*Mr. Weslake said, yes the hardships result from not being able to sell the property.*

*Mr. Reynolds said, yes the hardships result by restricting her from selling.*

*Mrs. Hood said, I agree.*

*Mr. Isenhour said, I agree. Unnecessary hardships would result by her having to tear down the porch.*

*Mrs. Powell said, unnecessary hardships would result from the strict application of the ordinance based on the hardship being that she could not sell her property in the current condition without a variance.*

*Mr. Rentschler said, I agree with Mrs. Powell.*

*Mr. Tirey said, I agree with Mrs. Powell.*

**The hardship results from conditions that are peculiar to the property, such as location, size or topography.**

*Mr. Tirey said, no the hardship doesn't result from the property, but it results from the builder and permitting.*

*Mr. Rentschler said, I agree.*

*Mrs. Powell said, the hardship results from conditions that are peculiar to the property such as the location, size and topography. The fact that only the left corner encroaches on the property shows there is an issue with the layout.*

*Mr. Isenhour said, I agree with Mrs. Powell.*

*Mrs. Hood said, I agree with Mrs. Powell.*

*Mr. Reynolds said, yes due to the location of the new porch as it was added.*

*Mr. Weslake said, the hardship isn't a result of the property. The hardship is a result of the error of the contractor.*

**The hardship did not result from actions taken by the applicant or the property owner.**

*Mr. Weslake said, the hardship is not a result of the applicant. It occurred when the contractor placed the porch in the setback.*

*Mr. Reynolds said, it was not a result of the applicant but the contractor.*

*Mrs. Hood said, I agree.*

*Mr. Isenhour said, I agree.*

*Mrs. Powell said, the hardship did not result from actions taken by the applicant or property owner. The hardship was a result of the contractor and inspector.*

*Mr. Rentschler said, I agree with Mrs. Powell.*

*Mr. Tirey said, I agree with Mrs. Powell.*

**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.**

*Mr. Tirey said, yes the variance requested would be consistent. Everything was signed off and permitted.*

*Mr. Rentschler said, I agree.*

*Mrs. Powell said, 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 because the applicant was innocent of any wrongdoing and only a small portion of the porch encroaches into the setback area.*

*Mr. Isenhour said, I agree.*

*Mrs. Hood said, I agree.*

*Mr. Reynolds said, I agree.*

*Mr. Weslake said, I agree.*

**Mrs. Powell said, in regards to Variance Request #V16-7, filed by Marcia Nembhard, for property located at 4914 Magglucci Place, Tax Parcel Number 135-374-12; requesting a variance to Section 6.1 Table 2: Dimensional Requirements; to reduce the minimum forty foot rear setback by five feet; I make a motion to approve this variance for the following reasons: Unnecessary hardships would result from the**

**strict application of the Ordinance in that without a variance, the property is not sellable. The hardship results from conditions that are peculiar to the property, as well as did not result from actions taken by the applicant in that the hardship results from the combination of the slope of the land and mistakes made by the builders and inspectors. Because the applicant was innocent of any wrongdoing and only a small portion of the back porch encroaches into the rear setback line a variance would be consistent with the spirit, purpose and intent of the ordinance, and public safety would remain secure. Mr. Reynolds seconded the motion and the Board unanimously agreed.**

**Other Business:** None

**Adjournment:** Upon the motion of Mr. Isenhour, seconded by Mr. Rentschler, and unanimously agreed upon, Chairman Isenhour adjourned the meeting at 6:52 p.m.

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Candice Everhart  
Program Support Assistant