

**IN THE MATTER OF THE APPLICATION OF Janet Hilliard,
Applicant,**

To the

**HENDERSON COUNTY BOARD OF ADJUSTMENT,
Permit Authority**

ORDER DENYING VARIANCE V-12-01

The **HENDERSON COUNTY BOARD OF ADJUSTMENT** having held a quasi-judicial public hearing on August 29, 2012 to consider the application submitted by **Janet Hilliard**, to request a Variance, makes the following FINDINGS OF FACTS and draws the following CONCLUSIONS:

FINDINGS OF FACT

1. A quasi-judicial public hearing was held by the Henderson County Board of Adjustment on variance V-12-01. A quorum of 5 members was present at the meeting.
2. Approval of the variance request was made by Hunter Marks and seconded by Tony Engel. The vote was 3 in favor of the motion and 2 against. Quasi-judicial decisions require 4 votes in favor and as such this motion failed and a variance could not be granted. .
3. Janet Hilliard, hereinafter referred to as the "Applicant" is the owner of the subject property. The subject property is located on 7741 Brevard Rd with a PIN of 9528175335. As a result, the Applicant was made a party to this action. Because of the applicant's poor health, the applicant was represented by her ex-husband, Mr. Hilliard, at this proceeding. This substitution was approved by the Board.
4. Toby Linville is the Zoning Administrator for Henderson County. As an agent of Henderson County, Mr. Linville was made a party to this hearing.
5. Notice of a quasi-judicial public hearing, pursuant to the Ordinance, the Henderson County Code 200A-338 was duly and timely given. This notice included legal advertisements in The Hendersonville Tribune newspaper on August 16 and August 23, notice sent by first class mail to the applicants and the adjacent property owners.
6. The Applicant's variance request is not inconsistent with the Notice of Public Hearing produced, published, and posted for the quasi-judicial proceeding in that the notice contemplated the size and scope of the variance request.
7. Upon inquiry by the Chairman of the Zoning Board of Adjustment, no party objected to any other persons or entities made parties to this action being a party to this action.
8. All parties and all witnesses presented by any party were sworn as witnesses in this proceeding on August 29, 2012.
9. Without objection from any party, the Board of Adjustment received into evidence a memorandum from Toby Linville. No party disputed any of the information contained in this evidence and the Zoning Board of Adjustment finds all the information contained in the memorandum and its attachments to be credible and to be fact for the purpose of this hearing. Mr. Linville also entered the Applicant's application and site plan into evidence.
10. The subject property is 1.65 acres, located on 7741 Brevard Rd and has a PIN of 9528175335.
11. The property is zoned residential (R2R).
12. The variance application is for reduction in the side yard setback by 3.5 feet as shown on the site plan that was submitted by the Applicant.
13. The applicant requested a variance so that the applicant can possibly subdivide and sell the property.

14. Staff does not recommend a variance for this application because there is a reasonable use that can be made from the property without a variance and there are no unique features of the land requiring a variance.
15. Currently the applicant lives in the home and leases the warehouse building for additional income.
16. The application had gone to the Technical Review Committee at their August meeting and the Committee refused to recommend the project.
17. The property has a residence, two shops, a studio, and a guest house.
18. The applicant has owned the property either in her name or with her ex-husband for at least the last 16 years.
19. The structures were put in place prior to the Land Development Code.

CONCLUSIONS

1. All parties, and all persons entitled to notice, have been given proper notice of this hearing and afforded the right to be heard.
2. All parties were properly sworn in before the Board of Adjustment and all evidence presented herein was under oath, and was not objected to by any party. All evidence relied upon in this Order was credible and reliable.
3. Henderson County Code 200A-334 grants the Board of Adjustment the jurisdiction to hear and make variance decisions.
4. In quasi-judicial decisions, four votes must be made to approve a variance request.
5. This case did not receive four votes in favor of the variance.
6. The evidence suggested the following conclusions under factors for a variance:
 - a. The variance does not change the district boundaries from the Official Zoning Map.
 - b. The reason for the request is possibly to make the property more profitable because the intent of the variance is to allow the applicant to subdivide.
 - c. A possible hardship is that the requirements of the Land Development Code prevent the applicant from subdividing the property according to the site plan.
 - i. A reasonable return can be gotten from the property in its current state.
 - ii. There are no unique circumstances related to the land.
 - d. The variance is in harmony with the spirit and intent of the law because the buildings were in existence prior to the setback requirements of the Land Development Code.
 - e. The variance will have no affect on protecting the public safety and welfare.
 - f. The variance will have no affect on substantial justice.

Based on the foregoing FINDINGS OF FACT and CONCLUSIONS drawn, the HENDERSON COUNTY BOARD OF ADJUSTMENT deems the Variance to be **DENIED**.

IT IS THEREFORE ORDERED by the HENDERSON COUNTY BOARD OF ADJUSTMENT as follows:

The Applicant's Variance has been DENIED.

ORDERED this the 29th day of August, 2012

THE HENDERSON COUNTY BOARD OF AJUSTMENT

By: _____
Jim Phelps, Chairman

ATTEST:

Todd G. Taylor
Secretary to the Zoning Board of Adjustment