



Town of Sunset Beach
Board of Adjustment

Meeting Minutes December 14, 2016
9:00 am
DRAFT

Members Present: Vice Chair Peter Scott, Leon August, Larry Hershoff, Larry Sweeney, Veronika White

Members Absent: Jim Strandquist

Staff Present: Richard Hathcock GIS Planner; Cindy Nelson, Secretary

Others Present: Town Attorney Grady Richardson, Town Council Member John Corbett

Vice Chair Peter Scott called the meeting to order, established that a quorum was present; and the Pledge of Allegiance was recited by all in attendance.

Amend or Approve Agenda: VICE CHAIR PETER SCOTT ASKED FOR A MOTION TO APPROVE THE AGENDA WITH NO AMENDMENTS. MOTION MOVED BY LARRY HERSHOFF WITH A SECOND MADE BY LEON AUGUST. MOTION WAS CARRIED UNANIMOUSLY.

At this time the following were sworn in:

Town GIS Planner; Richard Hathcock, Resident Gerald Strickland, Applicant Dan Davis

Continuances or Withdrawal Request: None

Consideration of Approval of Minutes

Consideration of approval for minutes from the July 13, 2016 meeting. Vice Chair Peter Scott asked if the Rules of Procedure had been amended per conversation at the last meeting. They were amended and will be presented to the Board for consideration at the next meeting. WITH THAT, VICE CHAIR PETER SCOTT ASKED FOR A MOTION TO APPROVE THE MINUTES. MOTION TO APPROVE THE MINUTES WAS MADE BY VERONIKA WHITE. SECOND WAS MADE BY LEON AUGUST. MOTION CARRIED UNANIMOUSLY, WITH

THE EXCEPTION OF LARRY HERSHOFF WHO ABSTAINED FROM THE VOTE AS HE WAS NOT PRESENT FOR THE JULY 13TH MEETING.

Appointment of Chairperson and Vice Chairperson: LARRY HERSHOFF MADE A MOTION TO ELECT PETER SCOTT AS CHAIRPERSON. SECOND WAS MADE BY VERONIKA WHITE. PETER SCOTT ASKED FOR A MOTION TO ELECT LEON AUGUST AS VICE CHAIRPERSON. MOTION MOVED BY LARRY HERSHOFF. SECOND WAS MADE BY VERONIKA WHITE. BOTH MOTIONS WERE CARRIED UNANIMOUSLY.

Old Business: None

New Business

a. Variance Request: BOA-16-04; Daniel Davis, seeks a Variance to reduce the rear setback by 8 feet and 3 inches for the lot located at 526 Fairway Drive West.

Leon August made note that he received a phone call from a citizen with concerns about the request being heard today. Leon advised her to contact the Planning and Zoning Department to give facts on the case.

Larry Hershoff made note that he is friends with the applicant and discussed the case with him before he was appointed to the Board of Adjustment. He continued that he had a duly sworn duty to make a decision either way regardless of the friendship.

Town Attorney Grady Richardson said that given these two statements, if you don't feel there is a conflict of interest which would prevent you from performing the duties of your office, we could proceed without issue.

Richard Hathcock presented the case to the Board members as is highlighted in the Staff Report:

- The inspections department was notified that a deck was being built, and it was found the deck was being constructed without a permit.
- The building inspector and he did a site visit. They measured the setbacks and found that the deck encroached into the setbacks by 8' 3".
- A letter was sent to the applicant/homeowner with notice of the violation.
- Contractor applied for a permit.
- The permit application was denied as the deck encroached into the setbacks and was now found to be non-conforming as the original deck was non-conforming.

Applicant Dan Davis was invited to present his case. Mr. Davis represented himself by stating the following:

- My deck encroaches on the setback which is less than my adjacent neighbors.
- The rear of my property borders the golf course with no neighboring homes there.
- The Sea Trail Masters Association has granted me a variance.

- The facts answer yes to all of the questions showing hardship. Please consider my request for a variance.
- My documentation includes photos of my deck and how it sits in relation to my neighbors.

Discussion between the Board and Mr. Davis:

Veronika White asked Mr. Davis what the original deck dimensions were. Mr. Davis could not provide the exact measurement. Mr. Davis described the shape of the original deck.

Leon August: Is the deck smaller than the one that was there?

Mr. Davis: No, this deck is bigger, and it is wider than the original deck.

Mr. Davis handed out two pictures of the current deck. Chairperson Scott marked the pictures as Applicant Exhibit 1.

Attorney Richardson asked Mr. Davis if there were measurements of the prior deck.

Mr. Davis answered that he did not have the measurements; however he handed out a hand drawn picture of what the original deck looked like. Attorney Richardson marked this as Applicant Exhibit 2.

Larry Hershoff provided a property card from the Brunswick County Tax Records. He passed the property card to the Board members for review. The property card gave the measurements of the original deck. Attorney Grady Richardson said the burden of proof is upon the applicant to present whatever materials may help him in his case. Attorney Richardson marked the Property Card as Exhibit E. Note: Exhibit E was not submitted to the Secretary for minute keeping purposes.

Chairperson Scott: The deck has been expanded sideways and to the rear and there is no knowledge of how big the original deck was?

Mr. Davis answered those measurements are not available. He added that the house was built in 1983 and there may not have been setback requirements in effect at that time.

Larry Sweeney asked Mr. Davis what the rear setback was for Sea Trail. Mr. Davis answered that it was 30'.

Gerald Strickland; 308 Heather Drive gave input. He stated that he is on the ARB for Sea Trail. He verified that Mr. Davis's house is right on the rear yard setback and so even the old deck was in violation of setbacks. Mr. Davis built a nice, expensive ground level deck. The ARB did not feel that this infringed on the golf course or on any adjoining properties. And this deck does not extend as far back as his neighbors. Sea Trail determined that it fits in well with the environment and is not a nuisance. Mr. Davis was misled by his contractor who told him a building permit would not be required.

Attorney Richardson asked if adjacent property owners were notified. When the answer was yes, he continued to say that no one from his neighborhood came in to testify on the applicants behalf. Mr. Strickland added that the adjoining neighbors would have no complaint as their decks extended further out.

Larry Hershoff: What was the cost of the deck? Mr. Davis answered that the cost of the deck was \$8,000.

Chairperson Scott opened the public hearing.

With no public comments, the public hearing was closed.

CHAIRPERSON SCOTT ASKED FOR A MOTION TO CLOSE THE PUBLIC HEARING. MOTION WAS MOVED BY LEON AUGUST. SECOND WAS MADE BY LARRY HERSHOFF. MOTION CARRIED UNANIMOUSLY.

Board deliberation as follows:

- UDO allows for repairs to nonconforming structures. This goes beyond repairs.
- The hardship is on the applicant and the hardship is not peculiar to the property.
- This issue could have been avoided if the proper approvals were obtained through permitting.
- The width of the deck is in line with the house.
- Does create additional impervious surface.
- Would precedent be set for others if this variance were granted?

Attorney Richardson highlighted the facts of the case and then brief discussion ensued on impervious surfaces, and what the impact would be of granting this variance, as well as setting a precedent.

Larry Hershoff asked for the record: Could the Board of Adjustment grant the variance conditioned on a fine as a fine was imposed on Mr. Davis for building the deck without ARB approval by Sea Trail?

Attorney Richardson answered that the Board of Adjustment could not do so and the only two choices were to approve or deny the variance request, both without qualification.

Attorney Richardson answered and said the law restricts the Board in what it is allowed to do, no matter how you may feel for the applicant. With that he read from one of his desk books, reading it into the record, "Even though zoning regulations may be burdensome on property owners, The Board of Adjustments authority is limited under the law". Attorney Richardson said this Board is confined by the law to follow the Findings of Fact. Ultimately the property owner is responsible to make sure the contractor he hired is performing his duties as he was supposed to.

More deliberation ensued amongst the Board.

Chairperson Scott said there is not a hardship that is peculiar to the applicant's lot. Although, there is nothing wrong with this deck and it is along the golf course, the concern is that granting a variance is a terrible precedent and the UDO has regulations for handling non-conforming uses. Repairs could have been made as it was; however, they expanded it and restructured it. The adjacent properties have non-conforming decks that could be repaired. The hardship is a direct result of the applicant as he expanded a non-conforming use. The requirements for granting a variance cannot be reasonably met in this case.

More deliberation ensued. The Board was sympathetic to the applicant's case and some felt that three of the four hardships in the Findings of Fact might be met with the exception of meeting the third hardship- "The hardship did/did not result from action taken by the applicant".

Attorney Richardson said you must grant or deny the variance based on all four Findings of Fact. The applicant could appeal the decision if the Board denies the variance.

CHAIRPERSON SCOTT ASKED FOR A MOTION ONE WAY OR ANOTHER. LEON AUGUST MADE A MOTION TO DENY THE VARIANCE BASED ON THE FACT THAT THE HARDSHIP IS THERE BUT THE APPLICANT DID NOT FOLLOW PROPER PROCEDURES. A SECOND WAS MADE BY LARRY SWEENEY. MOTION CARRIED WITH 5/5'S OF THE VOTE TO DENY THE VARIANCE.

The applicant stated he would not appeal the decision.

Administrative Items:

A. Director and Staff Comments- Richard Hathcock said he will work to revise the Rules of Procedure for the next meeting.

B. Board Member Comments and Request for Future Agenda Items

Discussion went forth on whether or not to cancel the January 11, 2017 meeting. At this time there is nothing on the agenda. The 30 day requirement to submit an application has passed.

CHAIRPERSON SCOTT ASKED FOR A MOTION TO CANCEL THE JANUARY 11, 2017 MEETING. MOTION WAS MOVED BY LARRY HERSHOFF WITH A SECOND MADE BY VERONIKA WHITE. MOTION CARRIED UNANIMOUSLY.

Adjournment- 10:15 am. CHAIRPERSON SCOTT ENTERTAINED A MOTIONED TO ADJOURN. MOTION MOVED BY LARRY HERSHOFF. SECOND WAS MADE BY LARRY SWEENEY. MOTION CARRIED UNANIMOUSLY.

Town of Sunset Beach
Board of Adjustment

Chairperson Peter Scott

Submitted by:

Cindy Nelson Board of Adjustment Secretary

***Minutes from the July 13, 2016 meeting were approved at the December 14, 2016 meeting.