

**Smithfield Board of Adjustment  
Minutes  
Thursday, December 13, 2007  
6:30 P.M., Town Hall, Council Room**

**Members Present:**

John Parrish (Chairman)  
Paul Worley (Vice-Chairman)  
Eddie Foy  
Chap Ragland  
Martha Wooten

**Members Absent:**

**Staff Present:**

Mark Helmer  
Latanya Merritt

Chairman Parrish opened the public meeting.

**APPROVAL OF MINUTES FROM SEPTEMBER 27, 2007.**

Ms. Wooten made a motion that was seconded by Mr. Foy to approve the minutes as written. The vote was unanimous.

All persons wishing to speak were duly sworn.

**BA-07-09 David C Scott:** Mr. Helmer stated that the applicant is requesting a variance to allow for multiple residential dwellings on a single lot. The applicant is also requesting a four-foot variance to the required 10 foot side yard building setback. The property is located on the north side of Hillcrest Road approximately 150 feet southwest of its intersection with Packing Plant Road. The property is located within an R20-A (Residential-Agricultural) zoning district. The property is further identified as NCPIN# 168207-59-8774.

Mr. Helmer stated that the applicant is seeking a variance to Article II, Section 201.5, Application of Regulations, that prohibits more than one principle building on a single lot of record when not an approved multi-family, duplex, or manufactured home park development. The site in question has two existing class b manufactured homes as shown on the site plan. The applicant needs the variance to replace one of the aging manufactured homes.

Mr. Helmer stated that the petitioner is also requesting a 4-foot variance to the required 10 foot side yard setback for the replacement on an existing class b manufactured home.

The standard building setbacks within an R-20A (Residential-Agricultural) zoning district include a front building setback of 30 feet on all sides adjacent to a public

right-of-way, a 10 foot building setback on the sides and a rear building setback of 25 feet. Approval of the requested variance will permit the structure to be placed on the lot as proposed on the attached site-plan.

The Board of Adjustment is requested to review the petition and take action in accordance with the Findings of Fact for a 4 foot variance to the required 10 foot side yard building setback and a variance to allow two principle buildings on a single lot of record.

Mr. Foy asked if it possible to replace an existing structure with another structure just like it.

Mr. Helmer stated that an existing non-conforming structure couldn't be expanded or enlarged.

Mr. Helmer stated that the only way a non-conforming structure can be replaced in this case is to remove one of the structures and then the other one can be replaced.

Mr. Helmer stated that there are two structures on one lot, which makes it nonconforming.

Mr. Foy asked if the issue was two structures on one lot, or the variance to the building setbacks.

Mr. Helmer stated that Article 2, Section 201 says that no more than one principle building can be erected on a single lot of record.

Town Attorney Bob Spence stated that the grandfather concept is to move the neighborhood up.

Mr. Foy asked if the Board does not grant the variance, and they leave a non-conforming structure on the property, what would happen.

Mr. Spence stated that the minimum housing code would be implemented.

Mr. Spence stated that otherwise you end up compromising your code.

Chairman Parrish opened the public hearing.

Attorney David F. Mills, being duly sworn stated that he represented the applicant, David Scott. Mr. Mills presented the Board with an aerial photo of the applicant's property and surrounding areas.

Mr. Mills pointed out surrounding properties on the aerial photo and stated that granting a variance in this incident would not compromise the zoning ordinance,

this is an area that is already zoned commercial, industrial and, partially residential. Therefore, there is no compromise.

Mr. Mills stated that a variance is not being granted to allow for a use that is not permitted as a conditional use in the district involved.

Mr. Mills stated that the applicant is asking for a permitted use. We're asking to replace a class b mobile home with a class b manufactured home for continued residential purposes and is a conditional use permitted under Sections 307.1 and 601.1 of the Zoning Ordinance.

Mr. Mills stated that a variance is possible.

Mr. Mills stated that Mr. Hines once owned the property, and due to Mr. Hines declining health, the property was granted to Mr. Scott so he would be able to better assist Mr. Hines.

Mr. Mills state that granting the variance will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located, in that the manufactured house he seeks to locate on the property is a permitted conditional use.

Mr. Mills read from the Principle Building Section of the Ordinance, and stated the term structure has been left out of the presentation on behalf of the planning department.

Mr. Mills stated that the terms in the Ordinance are ambivalent. There are two interpretations and, the Board must adopt the interpretation in the interest of the landowner.

Mr. Mills, attorney for Mr. David C. Scott, asked Mr. Scott if he agreed with the statements that were made on his behalf and if they were true.

Mr. David Scott stated yes.

Mr. Mills stated that he would answer any questions the Board might have.

Being no other comments, Chairman Parrish closed the public meeting.

Mr. Foy made a motion that was seconded by Ms. Wooten to move to the Finding of Fact. The Vote was unanimous.

Finding of Fact:

- (a) There are exceptional conditions pertaining to the particular piece of property in question because of factors such as its shape, size, or

- topography, that are not applicable to other lands or structures in the same district, or there is a peculiar characteristic of an establishment which makes the parking and/or loading requirements of this ordinance unrealistic; *all members stated true.*
- (b) Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located; *all members stated true.*
  - (c) A literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located; *all members stated true.*
  - (d) The requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare; *all members stated true.*
  - (e) The special circumstances are not the results of actions of the applicant; *all members stated true.*
  - (f) The variance requested is the minimum variance that will make possible the legal use of the land, building, or structure; *all members stated true.*
  - (g) The variance is not a request to permit a use, which is not a permitted or conditional use in the district involved; *Mr. Ragland, Ms. Wooten, and Mr. Worley all stated true. Mr. Foy and Chairman Parrish stated false.*

After reviewing the Finding of Fact, Ms. Wooten made a motion that was seconded by Mr. Ragland and Mr. Worley to approve the variance. Mr. Foy and Chairman Parrish voted no. The vote was not unanimous therefore, the variance was denied.

**Old Business.**

There were none.

**New Business.**

There were none

**Adjournment.**

Being nothing further, Mr. Worley made a motion that was seconded by Ms. Wooten to adjourn. The vote was unanimous.