**DRAFT**

**Smithfield Board of Adjustment**

**Minutes**

**Thursday, February 25, 2016**

**6:30 P.M., Town Hall, Conference Room**

**Members Present: Members Absent:**

John Parrish, Chairman

Stephen Upton

Eddie Foy

Sarah Edwards

Michael Exum Johnson

Mark Lane

Paul Worley

**Staff Present:**

Mark Helmer, Senior Planner

Veronica Hardaway, Administrative Support Specialist

**CALL TO ORDER**

**APPROVAL OF MINUTES FROM JUNE 25, 2015.**

Stephen Upton made a motion, seconded by Paul Worley to approve the minutes as written. Unanimous.

**Public Hearings:**

After all persons giving testimony were duly sworn, John Parrish opened the public hearing.

**BA-16-01 Tommy and Jennifer Keen:**

Mr. Helmer stated the applicant is requesting a variance to the Town of Smithfield Unified Development Ordinance (UDO), Article 12, Table of Area, Yard and Height Requirements, Note 1, Location of Accessory Buildings, to allow for a detached garage to be constructed closer than 10 feet to property line and the size to exceed more than 10% of the gross lot area. The property considered for approval is located on the northeast side of the intersection of Will Drive and Sylvia Circle and further identified as Johnston County Tax ID# 15J11009D.

Mr. Helmer stated the applicant received a zoning permit and site plan approval on May 14, 2013 to construct a 760 square foot accessory structure located in the rear yard of a single family dwelling located at 102 Will Drive located within the RMH (Residential Manufactured Home) zoning district. The structure that was permitted included a new 20 foot by 20 foot storage building and an 18 foot by 20 foot carport. The permitted structure was to replace an existing 12 foot by 12 foot accessory structure. The permit allowed for the relocation of the unpermitted and nonconforming carport to a location that could be permitted. Since only one accessory structure is permitted in accordance with Article 10, Section 10-2, Note 5, Accessory Uses or Structures, the applicant agreed to attach the unpermitted carport to the proposed 20 foot by 20 foot accessory building as shown on the approved site plan.

Mr. Helmer stated the applicant received the building permit issued by Johnston County Building Inspections on May 16, 2013 for a 20 foot by 20 foot storage building and an 18 foot by 20 foot shelter. The applicant allowed the permit to expire but reactivated the permit on September 11, 2015.

Mr. Helmer stated the applicant received a stop work order by Johnston County Building Inspections when it was discovered that the applicant had constructed a 1, 007 square foot accessory structure that does not conform to Article 12, Section 12-1. Notes to the Table of Area, Yard, and Height Requirements Note 1. Location of Accessory Building which states that accessory buildings may occupy 10% of the gross lot area.

Mr. Helmer stated the constructed accessory structure is approximately 1, 007 square feet in size and located on an 8, 500 square foot lot. The maximum accessory structure permitted for this lot would be 850 square feet. Therefore a 157 square foot variance to the maximum accessory building size is required. A 4.47 foot variance to the rear accessory building setback is also requested.

Mr. Helmer stated the Town of Smithfield Board of Adjustment is requested to review the petition and make a decision on the variance request to allow for a reduction in the rear yard setback and 157 square feet of additional accessory building area.

John Parrish asked for questions or comments from the Board.

John Parrish asked Mr. Helmer if there was any opposition.

Mr. Helmer stated he was not aware of any.

Mr. Upton stated that there looks to be a stop work order on the site and asked if that was because it was not in compliance.

Mr. Helmer stated that was correct. Some mistakes were made on the ground and a stop order was initiated. The structure has not been followed by the approved plans.

Mr. Upton asked if there are any modifications that can be done to get this building in compliance.

Mr. Helmer stated it would be a very costly modification to bring it in compliance.

Mr. Foy asked what the side and rear setbacks mean on the plans.

Mr. Helmer stated that basically the plans were approved a bit bigger than original structure.

Mr. Foy asked how much the building setbacks are off by.

Mr. Helmer stated the rear of the building is off by .62, the side setbacks are met.

Mark Lane asked if there were two buildings that were put together to make the structure.

Mr. Helmer stated there were two additional structures that were not permitted.

Mr. Upton asked if the car port was moved.

Mr. Helmer stated that was correct, the car port is now gone.

Mr. Parrish stated the structure is 1,007 square feet when the permit was approved for 850 square feet. There is a 157 square foot variance.

Mr. Helmer stated that was correct.

Mr. Upton stated by the application the applicant knew they did not go according to plan.

Chip Hewitt, attorney for Mr. and Mrs. Keen, stated that when you read the application they are being truthful. Modifications to the building will be extremely costly.

Steve London, 1516 Yelverton Grove Road, stated he is a neighbor of Mr. and Mrs. Keen. He stated he does not have a problem with the structure and does not see it posing a problem with any of the surrounding neighbors.

Mr. Upton stated he appreciated comments regarding the structure; however the purpose of this meeting is to discuss the specifications.

Mr. Hewitt, stated the modular unit is set on a corner lot. He stated he is not disputing the specifications, there is a 157 foot overage. He stated Mr. and Mrs. Keen experienced a flood incident at their home October 16, 2015 which is why the storage area increased. He stated the concrete slab that was poured for the structure was over poured and the project was not being overseen due to Mr. and Mrs. Keen staying off site because of the flooding. Mr. Hewitt stated the square footage issue is not catastrophic. Neighbors have not showed up to speak against the structure, but rather one neighbor that spoke up and stated there was no problem with the structure. To date, the structure has not been completed; it’s just a matter of completing the interior.

Mr. Upton asked if the contractor had blueprints and if that was not a determination from the beginning.

Mr. Hewitt stated that by looking at the blueprint, you can see that the structure is too big.

Mr. Upton asked if the structure was being built for the use of house storage.

Mr. Keen stated nobody will be occupying the building. Half of the building will be used for storage and the other half will be used for leisure projects.

Paul Worley asked if the sealed set of plans are signed by the builder, if the builder would be at fault.

Mr. Helmer stated the plans submitted are generic engineered plans. If you look at the bottom of the site plans, it indicates a 20 x 20 structure.

Paul Worley asked who indicated a 20 x 20 structure.

Mr. Helmer stated it was personnel from building inspections.

Mr. Parrish asked if there is clearance to get out at the back door.

Mr. Keen stated yes there is.

Sarah Edwards stated that the flood event caused the need for this storage unit; however the permit was reactivated in September prior to the event.

Mr. Hewitt stated the permit had to be renewed and the flood event accelerated the need for the use of the structure.

Article 5, Section 5-2 of the Town of Smithfield Unified Development Ordinance requires applications for a variance to address the following findings. The burden of proof is on the applicant and failure to adequately address the findings may result in denial of application.

Stephen Upton made a motion, seconded by Eddie Foy to move to the Findings of Fact for a Variance. Unanimous.

**1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.**

Unnecessary hardship would result from the strict application of the ordinance because the structure will require extensive and costly modifications if the variance was denied. ***All members stated true.***

**2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.**

The hardship results from conditions that are peculiar to the property, such as location, size, or topography. The property is approximately 8, 500 square feet in area and building a 1, 007 square foot accessory structure would be all but impossible without the requested variance. ***All members stated true.***

**3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.**

The hardship did not result from actions taken by the applicant or the property owner. The applicant’s need of a variance to the principle building setbacks is being driven by the small lot size and not by an error in manufacturing or installation of the proposed structure. ***All members stated true.***

**4) 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.**

The requested variance is consistent with the spirit, purpose, and intent of the ordinance which attempts to be fair in its administration of the site development regulations. However, the Smithfield UDO limits the location of principle structures to no closer than 30 feet to a front property line and 10 feet to a side property line. This may be considered excessively restrictive the smaller the property is. Granting this variance will achieve justice and allow for improvements to the property through the construction of modestly sized additions. ***All members stated true.***

Based upon satisfactory compliance with the above four stated findings and fully contingent upon acceptance and compliance with all conditions as previously noted herein and with full incorporation of all statements and agreements entered into the record by the testimony of the applicant and applicant’s representative.

Eddie Foy made a motion, seconded by Stephen Upton to recommend approval of the request of a variance to allow for a reduction to the required minimum building setbacks for additions to existing single family dwellings located within an R-8 (Residential) zoning district.

**Old Business:**

**New Business:**

**Adjournment:**

Being nothing further, Eddie Foy made a motion, seconded by Paul Worley to adjourn.

Submitted this 25th day of February, 2016.

Veronica Hardaway

Administrative Support Specialist

Planning Department