

**Draft
Smithfield Board of Adjustment
Minutes
Thursday, January 30, 2020
6:00 P.M., Town Hall, Council Chambers**

Members Present:

Stephen Upton, Chairman
Mark Lane, Vice Chairman
David Johnson
Sarah Edwards

Members Absent:

Staff Present:

Stephen Wensman, Planning Director
Mark Helmer, Senior Planner
Julie Edmonds, Administrative Support Specialist

Staff Absent:

CALL TO ORDER

Approval of minutes from October 30, 2019

Sarah Edwards made a motion, seconded by Mark Lane to approve the minutes as written.
Unanimous

Approval of the 2020 Meeting Schedule

Mark Lane made a motion, seconded by Sarah Edwards. Unanimous

Mr. Upton swore in the gentleman that came to represent the applicant.

Mr. Helmer pointed out to approve a variance it requires four-fifths vote, which in this case is a majority vote. If for some reason things aren't going in the applicants favor, we need to give him the opportunity to have the case tabled or possibly withdrawn.

Public Hearing

BA-20-01 Christopher White: The applicant is requesting a variance to the Town of Smithfield Unified Development Ordinance, Article 8, Section 8.21.1 to allow for a reduction to the minimum lot width for property located within an R-10 (Residential) zoning district. The property considered for a variance are located on the north side of Stancil Street approximately 100 feet west of its intersection with Coats Drive and further identified as Johnston County Tax ID# 15088023.

Mr. Helmer stated that the applicant is seeking to divide a .52-acre tract of land into two separate parcels. The property considered for a variance is located within an R-10 (Residential) zoning district. In accordance with the Town of Smithfield Unified Development Ordinance, Article 8, Sections 8.2, R-10 Single-Family Residential District 8.2.1. Dimensional Requirements, all newly created lots require a minimum of 75 feet of lot frontage. The applicant is proposing a .254-acre tract of land with approximately 73.40 linear feet of lot frontage along Stancil Street. Therefor the applicant will require a 1.6 linear foot variance to the minimum lot width.

FINDINGS OF VARIANCE APPROVAL:

In order to approval a variance, the Board of Adjustments shall find all of the following provisions must be met (Staff's findings are in bold / italic):

4.10.2.2.1. 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 will result from the strict application of the Ordinance and the resulting lot created by the variance is generally consistent with other lots in the area in terms of lot width and lot area.**

4.10.2.2.2. 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 existing property is approximately 148 linear feet in width and is a peculiar size when compared to the majority of lots in the area. Granting the variance will produce a lot that is more in keeping with traditional lot size, width and density offered by the R-10 (Residential) zoning district.**

4.10.2.2.3. 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. **Land records suggest that the hardship is most likely created by limitations and inaccuracies of past surveys and not the result of actions taken by the applicant.**

4.10.2.2.4. 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. **Granting the variance will produce two (2) developable lots that are nearly consistent with the minimum lot standards of the R-10 (Residential) zoning district and will be in keeping with the spirit, purpose, and intent of the Ordinance. The variance will not impact public safety, and in is in the best interests of the public at large.**

RECOMMENDATION:

Planning Staff recommends the Board of Adjustment approve variance BA-20-01 based on the finding of fact:

Mr. Lane asked if there had been any opposition from adjoining property owners.

Mr. Helmer said no, he isn't aware of any.

Mr. Upton said he would like to combine the finding of fact with the motion to approve BA-20-01.

Sarah Edwards stated based upon satisfactory compliance with the above 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, I move to approve variance BA-20-01; seconded by David Johnson. Unanimous

Old Business

None

New Business
None

Annual Board of Adjustment Training

Board Training Outline

1. Quasi-Judicial
2. Qualified Evidence
3. Finding of Fact
4. Conditions
5. Voting Requirements
6. Conflict of Interest
7. Ex Parte Communications
8. Ethics

Town Attorney, Bob Spence presented the training session.

Quasi-Judicial should never be discussed with anyone prior to the hearing. It is set up for everyone to follow strict standards for everyone to meet the ordinance requirements. If you have a variance you must show hardship. Talking about the case prior to the hearing can disqualify it. You're supposed to present evidence to the fact that you have a hardship and the nature of the hardship.

Qualified Evidence is substantial, competent evidence. It must be within someone's knowledge or special expertise.

Findings of Fact are based on qualified evidence that supposedly show there's a competent basis in the record that we could find certain facts; namely that this was a minor variance of a distance of 1 foot to create these two lots. Findings of fact that are not competent would be if the distance would have an adverse effect in the neighborhood and you have no experts.

Conditions are allowed if based on standard in ordinance.

Mr. Wensman asked if you could condition a variance such as if you're going to grant a setback variance for fuel pumps against a property line and we request it is landscaped.

Mr. Spence yes, as long as it is rational.

Voting Requirements would require four-fifths of a vote and you must have a quorum.

Conflict of Interest is mostly financial and that a board member has a financial interest in the said project.

Ms. Edwards asked if it was a matter that was downtown related, because that could get financial for her as being the director of Downtown Development.

Mr. Spence said he thinks she should vote.

Ex Parte Communication means Board of Adjustments members are not allowed to discuss the case or gather evidence outside of the hearing. Only facts presented to the full board at the hearing may be considered.

Ethics is the principles of conduct governing an individual or group. Ethical behavior is not always easy to achieve.

Ms. Edwards asked if a decision the BOA makes is appealed it then goes to superior court?

Mr. Spence said yes.

Sarah Edwards made a motion to adjourn, seconded by Mark Lane. Unanimously Approved

The next Board of Adjustment will be February 27th at 6:00 pm.

A handwritten signature in black ink that reads "Julie Edmonds". The signature is written in a cursive, flowing style.

Julie Edmonds
Administrative Support Specialist
Town of Smithfield Planning Department