

MINUTES
BOARD OF ADJUSTMENT
City of Burlington, NC
October 8, 2013

Members Present

City:

Mr. Ed Wilson, Chairman
Mr. Mike Gee
Mrs. Joyce Lance
Mr. Eric Grant
Mr. Chalmers Brumbaugh

Members Absent

ETJ:

Mrs. Sylvia Greeson

Also present was Mr. Joey Lea, Zoning Administrator and Mr. Chris Marland, Zoning Enforcement Officer.

Chairman Ed Wilson called the meeting of the Board of Adjustment to order at 8:30 a.m. Mr. Wilson stated the city representatives to the Board of Adjustment are appointed but the City Council. This is a quasi-judicial hearing. Everyone speaking before the Board should state their name, sign the log on the podium, and swear or affirm that everything they say is true to the best of their knowledge. Appeals of the Board's decisions may be taken to the Alamance County Superior Court. The City will state their position because of their knowledge of the case and the technical codes. The applicant will state their case, and then anyone from the public may speak. After the applicant and the public have presented all evidence the Board will then close the meeting to the public and discuss the case and vote. During this time no more evidence shall be admitted nor any other arguments made unless the Board wishes to ask the Applicant a question pertaining to the evidence already presented. Anyone that tries to make an argument or present any evidence at this time will be out of order. The Chairperson may order any individuals who willfully interrupt, disturb, or disrupt to leave; failure to comply with this order is punishable by imprisonment up to 6 months, a fine of \$250.00 or both. An affirmative four-fifths vote is required to grant a variance, special use or an appeal.

DUE PUBLICATION

Mr. Chris Marland, Zoning Enforcement Officer with the City of Burlington, stated, due notice and publication of this meeting of the Board of Adjustment has been made, and all contiguous property owners were mailed a notice advising of this meeting

SWORN TESTIMONY

Prior to testifying before the Board, each party was sworn in or affirmed that the testimony they were about to give was true to the best of their knowledge.

MEETING MINUTES

Chairman Ed Wilson stated the first item of business for today is going to be the approval of the minutes from the September 10th meeting. Did everyone receive their copy of the minutes? Are there any opposed changes? Board Member Mr. Mike Gee made a motion to approve minutes held from September 10, 2013 meeting. Board Member seconded the motion. The Board voted unanimously to approve the September 10, 2013 Meeting Minutes.

ITEM NO. 1:

CASE NO. 08-13 – VARIANCE (CITY)

Amanda Kirk

417 Circle Dr.

Alamance County Tax Map 92-391-20

§ Section 32.10.II (2)

Setbacks for Guest Houses

EVIDENCE PRESENTED:

Mr. Chris Marland stated, before we start today, I would like to introduce our Office Assistant for the Planning Department, Mrs. Kelly Peele. She has done the minutes for us and hopefully if she doesn't quit or run away she will keep doing those for us and eventually take over Secretary of the Board.

Mr. Chris Marland stated, the first case today is from Amanda Kirk on 417 Circle Drive. They are asking for a variance to the setbacks for guesthouses. What they have is an existing garage they want to convert into a guesthouse for an elderly mother. If you notice in your packages, on the site plan you can see where the existing garage is. Make sure you turn to the second page there is a little blow up of it. You can see the dimension better on there. What you notice is the front corner of the garage on the side is sitting at nine feet eight inches and where it needs to be is ten feet. The back is sitting at eleven feet where we are fine, and at the back corner it is sitting at six feet. So actually what they are asking for is a Variance of four inches on the side and four feet on the rear. I would like to let you know Mr. Chairman, as you know we have had some statute changes, we have not in the past had to put up a sign for a Variance.. This is the first time we had to do so. In doing so, we have received approximately twelve to fifteen phone calls about this case, some in opposition, and some not. What we have actually received is a lot of questions regarding can they rent it out. We have explained to them that, per code, they cannot rent out the guesthouse. Chairman Mr. Ed Wilson asked, that was the gist to most of the questions? Mr. Marland stated, yes sir.

Mr. Ben Russell stated, I am a licensed building contractor in North Carolina and I live here in Burlington. I am representing Ms. Kirk. She has contracted us to upfit her existing garage for a guesthouse. Let me introduce Ms. Amanda Kirk. She is the owner of the property and it is her mother that will be living in the guesthouse as it is called. There is a layout of the existing structure, and I refer to this only because when we applied for the permit to do an upfit, as you see in the layout, we did encounter the issue that Mr. Marland stated is in violation of the code, which is a ten foot setback. You did see the dimensions where they were nine foot eight inches and six foot. The six feet on the back which is four foot too close and obviously too close on both sides. Mr. Ben Russell asked Mr. Marland, am I correct to state that I think North Carolina building code is a three foot setback from a property? Mr. Chris Marland stated, yes State code allows that without a fire rated wall. Mr. Ed Wilson asked, what does that mean without a fire rating? Mr. Chris Marland stated, I'm not sure on a state building code. Zoning Administrator Mr. Joey Lea stated, the state building code will allow a residential structure to actually be right on the property line. If it is less than three feet from another structure the wall has to be fire rated. It does not allow structures closer than six feet without being fire rated. So technically, one structure could be three feet off the property line and the other one three feet off the property line as well. Now that is the state building code, our requirements are different, because we have setbacks for detached structures and single family dwellings which are greater than what the building code would require. The thing is, the structure where it sits meets the building code requirements. Mr. Ben Russell stated, it is a double wide brick and block construction so it is a rated wall. We are here again to ask for a variation in the ordinance which will allow us to proceed with the project. I would ask Ms. Kirk if she would like to say a few words on what she intend to use it for. We do know that it can't be rented out.

Ms. Amanda Kirk stated, my mother is 83 years old and currently lives in Chapel Hill. She has had a stroke I am trying to find a way to care for her the best I can and I need to get her closer to me to make it more sustainable. To convert this garage would mean she is a few feet away not 45 minutes. It would mean she is in a clean and safe environment where I can over see her daily activities. Her house in Chapel Hill is deteriorating to the point of it being unsafe with leaks in the ceiling and such. I need to get her somewhere clean and safe so we can make those repairs and put the house on the market. Chairman Ed Wilson asked, now as the property owner you are aware you cannot rent out this guesthouse? Ms. Amanda Kirk stated, it will never be rented. I have another older lady that is 20 years younger; my mother is 83 and my stepmother is 63, it will always be for family use. Board Member Mrs. Joyce Lance stated, this says that the present owner is Betty. Ms. Amanda Kirk stated, my mother bought the house and I live in it.

Mr. Ben Russell stated, we believe that the hardship here is the placement of the structure in 1937. I think there is obviously a practical difficulty in relocating that structure. We would have to totally tear down the building and rebuild and that isn't within Ms. Kirks means. That is what we believe the hardship is and it was there before her mother bought the property. We also believe that in regard to public safety and welfare there would be no issues because if the use was changed and in better hands the structure would be better looking as with now it looks a

little rough. It would be a much better looking structure and probably not degrade the property itself. Mrs. Joyce Lance asked, what is it used for now? Mr. Ben Russell stated, it is being used for storage. Mrs. Joyce Lance asked, what changes are you making to the exterior? Mr. Ben Russell stated, the only thing on the exterior would be painting or reworking some of the trim that is deteriorated, as far as the footprint we will not go outside that footprint. The larger front section will be the living area. The little kitchenette you see on the left side of the plans would be added to it and the utilities would be added and run from the main house underground; which would include the sewer tap, electrical and gas lines. Mrs. Joyce Lance asked, I'm focusing on the exterior for just a second, obviously you are improving the interior and since there was twelve to fifteen calls I'm just wondering from the neighbors stand point or just somebody driving through the neighborhood do you feel like the exterior will have an improved appearance or will it look pretty much the same? Mr. Ben Russell stated, I believe it will have an improved appearance because it is visible from the street, and as you can see, it is on the back of the lot. What you can see now is two overhead garage doors and there is a nonstructural separation between those two doors that will be removed. The building is brick but it will have clapboard siding and it will have an entrance that will have two windows that are the same as the windows on the side of the main residence. Chairman Ed Wilson asked, the garage doors face the street? Mr. Ben Russell stated, yes sir. Board Member Mr. Chalmers Brumbaugh asked, the exterior will look like the house? Mr. Ben Russell stated, yes sir. Mrs. Joyce Lance asked, so your testimony is that you feel like it will be an improved appearance? Mr. Ben Russell stated, yes ma'am. Board Member Mr. Mike Gee asked, if the variance is not granted is there any other options for making this work? Mr. Ben Russell stated, not on that property I believe without moving the structure. Mrs. Joyce Lance asked, is reducing the square footage of the living area an option? Mr. Ben Russell stated, it's already there so no that isn't an option.

Mr. Ed Wilson asked, the house was built in 1937 and what year did your mother buy the home? Ms. Amanda Kirk stated, 2007. Mr. Ed Wilson asked, you have not made any other changes to the garage area, so this was existing when you bought the house? Ms. Amanda Kirk stated, correct. Mr. Ed Wilson asked Mr. Joey Lea, the code was adopted in the 1970's is that correct? Mr. Joey Lea stated, 1972. Board Member Mr. Eric Grant asked, on this site plan somebody had written in a number of 2335, what does that represent? Mr. Ben Russell stated, that is the tax map that is showing the square footage of the residence. That is a question to the guest house being less than 30% of the main residences. Mr. Grant asked, so we are in compliance and under the 30%? Mr. Ben Russell stated, yes sir. Mr. Ed Wilson asked Mr. Marland, all the other plans meet all the other compliances expect for the two setbacks? Mr. Chris Marland stated, yes sir. The only issue is with the setback on the rear and side. Mrs. Joyce Lance asked, if the variance is granted it would be to the owner is that correct? Mr. Chris Marland stated, it is granted to the property. Mr. Ed Wilson asked, it would stay with the property if the property is sold? Mr. Chris Marland stated, correct. Mrs. Joyce Lance asked, when it comes time to make a motion and if indeed it is suggested that we approve this, do we use the name Amanda Kirk or Betty Coldwell? Mr. Chris Marland stated, you would use just the address. Board member Eric Grant asked, Mr.

Marland the calls you have received from residents in the area could you elaborate on those for us? Mr. Chris Marland stated, a lot of them first asked if this was an apartment and was it to be rented out. Some of them just wanted to know whether it could or couldn't be rented out and some wanted to make sure it was known that they didn't want it to be rented out. There were six people that called that said they had no oppositions about this. I had four calls that said they were opposed to it and two of those believed that it was going to be rented out. Mr. Mike Gee asked, I guess that is all hearsay unless someone shows up and offers testimony to that fact, is that correct? Mr. Chris Marland stated, yes sir that is correct. Board Member Mr. Brumbaugh asked, rental is prevented by ordinance? Mr. Chris Marland stated, yes, no fee for rent or utilities may be used or accepted for the use of a guesthouses. Mr. Ed Wilson asked, so an adjoining property recourse would be to come back to the city to have that enforced? Mr. Chris Marland stated, correct.

DISCUSSION & FINDING OF FACTS: Chairman Ed Wilson stated, just so that we are aware there is a new variance standard that came in October 1, 2013 from our State Legislature. It is similar to what we were using. This is an existing garage built in 1937 and the property owner acquired the property in 2007. There doesn't appear to be any substantial changes to the outside of this structure except the changes that will be made will be of design similar to the existing home. The ordinance came into effect in 1972 so this predated that. We're looking for a four inch side variance and a four foot zero inch rear yard variance to both side and rear setbacks. Board Member Joyce Lance stated, I think they have met the conditions to grant a variance. Board Member Mr. Grant stated, with the information we have received this application meets all the requirements that we have from the City's point of view and it's a legal use of the property under our ordinance.

DECISION: Board Member Joyce Lance states, I would like to make a motion we grant a variance for property located at 417 Circle Drive for a four foot variance at the rear setback and a four inch variance on the side setback of a structure that currently is an existing garage that is going to be converted to living quarters. The variance should be granted because the hardship here is that this garage was built 70 years ago, the code was enacted 35 years later and to expect these people to be able to follow the code is unreasonable and unnecessary. The conditions that are peculiar to the property is that if you look at the layout of this you would see that all the lines are not straight geometrical, so therefore these setbacks are required. The hardship did not result from any actions taken by the applicant and the public safety is secured because there is no real difference as far as where the structure sits and substantial justice is achieved because there is no reason to deny this variance based on the case presented before us.

Board Member Mr. Grant seconded the motion. The board voted unanimously to approve the variance.

AYES: Lance, Gee, Wilson, Grant, Brumbaugh

NOES:

NEW BUSINESS:

None

MEETING ADJOURNED

Ed Wilson, Chairman

Chris Marland, Secretary