

BOARD OF ADJUSTMENT MINUTES
Regular Meeting
Commons Meeting Room
November 13, 2012

Call to Order

Vice Chairman Todd Swaringen called the Board meeting to order at 7:30 p.m. on Tuesday, November 13, 2012, in the Commons Meeting Room.

Roll Call

Board Members Presiding

Todd Swaringen, Vice Chairman
Cathy Bennett
Richard Cosgrove
Dr. John Eckman
Benton Payne
Grover Stewart
Kevin Brickman

Absent

Houston B. Clark II

Alternates

Rebecca Carter

Staff Attending

Linda Evans, CZO, Planner II, Clerk to the Board
Tim Swaringen, CZO, Zoning Enforcement Officer

Vice Chairman Swaringen addressed the audience and stated that the Stanly County Board of Adjustment is a quasi-judicial Board; therefore, the North Carolina State Supreme Court, under NCGS 153A-345, requires that the Board base its decisions only on testimony given under oath. He informed the audience that any person, who, while under oath during this proceeding, willfully swears falsely, is guilty of a Class 1 misdemeanor.

Vice Chairman Swaringen cautioned the audience that no hearsay evidence would be accepted; that only testimony from those present would be considered by the Board. He also stated that the Board would accept any evidence such as maps, site plans, etc. and that it would be inserted into the file as permanent evidence.

Approval of July 10, 2012, Regular Meeting Minutes

Vice Chairman Swaringen asked if there were any corrections to the regular minutes of July 10, 2012. Hearing no objections or corrections, Vice Chairman Swaringen asked for a motion.

Motion: Richard Cosgrove made a Motion to approve the regular minutes of July 10, 2012, as written.

Second: Grover Stewart seconded the motion.

Action: The Board voted unanimously to approve the minutes of the July 10, 2012, regular meeting as written.

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Vice Chairman Swaringen asked the Clerk to present the first case, ZV 12-04.

Applicant, Ollie Almond, requests a Variance to permit a deck attached to the front of her home that extends to ten (10) feet from the right-of-way. Ms. Almond has constructed a 20 X 20 foot deck, with no permits, that extends one foot into the right-of-way. Ms. Almond states that she has a medical condition that will, at some point, require her to be confined to a wheelchair. She states that she constructed the deck over an existing much smaller concrete porch so that she could have a wheelchair ramp and enough room on the deck to maneuver a wheelchair for ingress and egress to her home. The property is approximately 0.526 acre and is zoned RA Residential Agricultural. Section 701 of the ordinance specifies that primary structures are required to be fifty (50) feet from the right-of-way.

Vice Chairman Swaringen asked that everyone who intends to speak on the first case, ZV 12-04, come forward and be sworn in. Ollie Almond, Linda Evans and Tim Swaringen were sworn in by Vice Chairman Swaringen.

Vice Chairman Swaringen asked the Board members if any one of them had a conflict with hearing this case, ZV 12-04.

Richard Cosgrove stated that he had taught Ms. Almond in school and offered to recuse himself if Ms. Almond or any of the Board members so wished. Ms. Almond and the Board members indicated that they were not opposed to Mr. Cosgrove hearing the case. Vice Chairman Swaringen asked Mr. Cosgrove if he thought he could vote impartially and without a predetermined decision and Ms. Cosgrove stated that he could. Mr. Cosgrove remained seated on the Board to hear the case.

Vice Chairman Swaringen asked the applicant to come forward and state his case to the Board.

Ms. Almond came forward and stated that the statements that Ms. Evans had made about the case were true. She stated that she has been in a wheelchair before and will probably have to use one again in the future due her medical history of Fibromyalgia and Myasthenia gravis. She stated that she had placed the deck in the only feasible location that would allow a wheelchair ramp.

Vice Chairman Swaringen asked for comments or questions from the Board.

Richard Cosgrove asked Ms. Almond if she had a wheelchair ramp now and Ms. Almond answered yes; it helps with the muscle weakness when she is having a bad day.

Richard Cosgrove stated that, while he would not make a motion, he would like to hear a Motion from the Board to approve Ms. Almond's variance. He stated he would not make a Motion himself because it could be interpreted by some people that he made the Motion because he had taught Ms. Almond. He also asked Ms. Almond to look around the room to

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verify that there is no one present to oppose her request. He stated that in his opinion, because there is no opposition to her request, the variance should be granted.

Vice Chairman Swaringen stated that it would be in order to review the findings of fact before a Motion is made and asked Ms. Bennett to read the findings of fact. The Board found as follows:

That applicant cannot secure a reasonable return from or make reasonable use of this property without the Variance.

Grover Stewart asked Ms. Almond if a licensed contractor had constructed the deck and Ms. Almond answered yes. Mr. Stewart pointed out that staff had stated in its report that she had said the contractor advised her that no permits were required for the deck. Ms. Almond replied that there was some confusion about who would obtain the permits and both she and the contractor had assumed the other had gotten the required permits to do the work.

Motion: Grover Stewart made a motion to find this fact true based on the evidence submitted and the fact that it is necessary that she have a handicapped ramp with a deck large enough to maneuver a wheelchair in order to have ingress and egress to her home.

Second: Dr. John Eckman seconded the motion.

Action: The Board voted unanimously to approve the motion.

That a hardship exists resulting from unique circumstances related to applicant's land.

Richard Cosgrove asked Tim Swaringen, Zoning Enforcement Officer, if only a small portion of the deck encroached into the right-of-way and Mr. Swaringen stated that the first step was in the right-of-way and the entire deck encroached into the County's setback requirement. A portion of the house is also in the front setback but has been there prior to the adoption of the zoning ordinance.

Vice Chairman Swaringen asked Tim Swaringen to clarify what portion of the deck is to be removed and Mr. Swaringen stated that all of the deck from the ramp toward the road will have to be removed in order to have a ten foot setback from the right-of way.

Motion: Richard Cosgrove made a motion to find this fact true based on the fact that applicant's land is small and very oddly shaped. Also, applicant's home was placed too close to the right-of-way with no room for an addition to the residence.

Second: Cathy Bennett seconded the motion.

Action: The Board voted unanimously to approve the motion.

That the existing hardship is not the result of applicant's own actions.

After discussion by the Board of Ms. Almond's failure to obtain permits, Mrs. Evans stated that had Ms. Almond applied for a permit for the deck she would have been refused because issuance of a permit would create an increase in an already nonconforming front setback. At

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that point, Ms. Almond would have had an opportunity to apply for a Variance if she so desired.

Motion: Grover Stewart made a motion to find this fact true based on the fact that the lot was created and the home was placed on the property prior to having to meet any zoning regulations and before Ms. Almond purchased the property.

Second: Kevin Brickman seconded the motion.

Action: The Board voted unanimously to approve the motion.

That, if granted, the Variance will be in harmony with the general purpose and intent of the ordinance and will preserve its spirit.

Motion: Cathy Bennett made a motion to find this fact true based on the fact that the addition to the residence will not cause a negative visual impact on neighboring property and will not substantially detract from the character of the neighborhood.

Second: Richard Cosgrove seconded the motion.

Action: The Board voted unanimously to approve the motion.

That, if granted, the Variance will secure the public safety and welfare and will do substantial justice in that the benefit to the applicant will substantially outweigh the harm to neighboring property.

A Board Member asked Tim Swaringen if the deck impedes traffic. Mr. Swaringen responded that he is not a highway engineer but, in his opinion, it does not.

Benton Payne stated that he has a background in traffic engineering and that he would strongly suggest that if the variance is granted the Board require Ms. Almond to go to the District Office of the NCDOT and have an engineer inspect the location of the deck to verify the safety of its location in relation to the right-of-way.

Motion: Benton Payne made a motion to find this fact true based on the fact that the benefit to the Applicant will substantially outweigh the harm to neighboring property owners.

Second: Grover Stewart seconded the motion.

Action: The Board voted unanimously to approve the motion.

Vice Chairman Swaringen stated that he would entertain a motion to grant, deny, or modify the petitioner's request for a Variance.

Motion: Benton Payne made a motion to grant the Variance with the following Conditions: That Ms. Almond shall contact the NCDOT and have an Engineer stake the right-of-way in front of her home and certify that the present location of the deck is compatible with NCDOT regulations. If the NCDOT finds that any portion of the deck is not acceptable, then Ms. Almond shall remove that portion of the deck within ninety (90) days of the date of this Order. Ms. Almond shall provide the Planning and Zoning Department with documentation from the NCDOT stating its findings. If the NCDOT approves the existing deck, then the entire deck will be allowed to stand as is.

Second: Richard Cosgrove seconded the motion.

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Action: The Board voted unanimously to approve the motion.

Vice Chairman Swaringen asked if anyone had further business to discuss.
No other business was discussed.

Vice Chairman Swaringen asked for a motion to adjourn. Benton Payne made a motion to adjourn, seconded by Dr. John Eckman. The meeting was adjourned at 8:20 p.m.

Date

Todd Swaringen, Vice Chairman

Date

Clerk to the Board