

BOARD OF ADJUSTMENT
VARIANCE HEARING ♦ JULY 24, 2007

MINUTES

A variance hearing of the Kure Beach Board of Adjustment was held July 24, 2007 beginning at 7:30pm at Kure Beach Town Hall, located at 117 Settlers Lane, Kure Beach, NC. A quorum was present.

MEMBERS IN ATTENDANCE:

Betty Swann, Chair
Harry Humphries
Anne Brodsky
Norm Collins
Charles Allo, Alternate

MEMBERS ABSENT

John Gordon

STAFF IN ATTENDANCE:

Building Inspector John Batson
Town Attorney A. A. Canoutas
Commissioner Dean Lambeth, Liaison
Secretary Aimee Zimmerman

Court reporter services provided by Overby Court Reporting.

CALL TO ORDER

Chair Swann called the meeting to order at 7:36 pm.

APPROVAL OF MINUTES

ACTION: Member Brodsky MADE THE MOTION to approve the minutes from the January 23, 2007, meeting. Members Gordon and Humphries seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.

OPENING OF HEARING/POLL OF MEMBERS

Chair Swann opened the hearing at 7:36 pm. Chair Swann explained to all present that the Board of Adjustment is a quasi-judicial administrative body, that members may only consider substantial, competent and material evidence for factual determination, that hearsay and opinion testimony may not be considered in findings of fact, that applicant must prove that ordinance standards have been met and called for a poll of members regarding conflict of interest.

Norman Collins – no conflict
Harry Humphries – no conflict
Betty Swann – no conflict
Charles Allo – no conflict
Anne Brodsky – no conflict

ADMINISTRATION OF OATH

Chair Swann administered the oath to the following signed in to testify:

Diana Cebrick, applicant
John Batson, Building Inspector

TESTIMONY, FINDINGS OF FACT AND BOARD DECISION

A transcript of the testimony, cross examination, findings of fact and Board decision is herein incorporated as part of these minutes as attachment A.

Diana Cebrick, applicant, testified that

- The purpose of her application for a variance is to extend the previously existing deck the remainder of the house.
- The extension will be approximately four feet further than the deck that previously existed.
- That deck and stairs had to be removed as it was falling apart.
- This way the staircase and entryway to the deck is more accessible.
- While the address is North Third, by ordinance, the house would be M Avenue. The front of the house entrance way is North Third.
- Previous deck was 8 feet wide and she desires to lengthen the deck not widen it. Deck was 33 feet and she wants to extend it to 37 feet. She desires to make a flight of steps with a landing and then another flight of steps. Previous steps were straight down and they were 3½ feet.
- This new plan will be more aesthetically pleasing and will make it easier to get disabled relatives into the home.
- Did not have a permit for demolition of the staircase as they fell apart.

Building Inspector Batson testified that

- The Cebricks came into the office to apply for a permit to tear apart the inside of the house to see what repairs would be necessary to bring the house back up to code. That permit was issued.

- Plans were submitted a few months later and another permit was issued.
- Deck and steps were in very bad shape. They were also the only way to enter the second floor of the house.
- No survey was supplied at the time the permit was issued and it was noted on the permit that the before any new construction was added on, they would have to come back to his office for approval.
- While out doing an inspection, he noticed they were preparing to build the new deck.
- He knew this home was non-conforming.
- The initial application indicated that it was only for remodeling the house.
- If the deck and stairs were being rebuilt exactly as they were before, that would not have been a problem. The existing footprint would not have changed.

Comments from the Board included:

- Charles Allo commented that the non-conformity is being increased both horizontally and vertically. It is non-conforming the back by about .3' and non-conforming in front by about 3'.
- Building Inspector Batson confirmed that only one means of egress necessary. The windows were enlarged as a means of egress.

Diana Cebrick was questioned as to whether her realtor advised that the property was non-conforming. Ms. Cebrick indicated:

- That neither her realtor nor her attorney at closing told her about any non-conforming issues.
- She did indicate that she knew the house couldn't be made bigger.
- She didn't believe that applied to the deck.
- If she has to put the deck back up that is fine she is just looking to make it easier to navigate, especially for her grandmother.
- She's only asking for approximately 300 more square feet.

Testimony was then closed by Chair Swann.

General discussion is held between the members of the Board. Member Brodsky states that she believes a variance goes with the land and not the structure. Members concur. Information had been provided to the Board concerning the ADA guidelines however that is moot as this request doesn't fall under Sec. 19-357(11).

Discussion regarding Findings of Fact

As to Question No. 1: Did applicant follow ordinance requirements of Chapter 19 (Zoning)?

- Chair Swann states that applicant knew to get the permit but once it was received the applicant did not pay attention to what that permit stated. All members concur.

As to Question No. 2: Does the evidence indicate that the hardship of which the applicant complains results from unique circumstances related to the applicant's land and is not it the result of the applicant's own actions?

- Member Humphries states that the hardship relates to the structure on the land but not the land itself. Members concur.
- Member Humphries further states that it is not a result of the applicant's own actions but still she didn't do anything that would cause the house to not be in compliance. The house is non-conforming and her application to extend the deck doesn't go with the land, it goes with the house and it is not applicant's fault.
- Member Allo states that applicant complains that the hardship pertains to her handicapped family members but that is not a qualification, it does not apply, it is personal.
- Member Allo states that since the variance runs with the land that whether the structure is taken down in the future, the variance will continue to exist and that is not the intent of the law as it pertains to non-conforming structures.

As to Question No. 3: Does granting a variance preserve the spirit and keep harmony with the general purpose and intent of the ordinance?

- Member Allo states that, for example, if this is granted, any piece of property that uses this rationale, can mean a structure can be built in the setback area. That could lead to homes with no space in between.
- All members concur.

As to Question No. 4: In granting a variance, is the public safety and welfare assured?

- Chair Swann states it is her belief that this question does not matter.
- Member Allo states that if the variance is granted, it could cause a problem for future welfare and public safety.

As to Question No. 5: In granting a variance, will substantial justice be done?

- Member Allo states that although the Board understands why this request is being made, unfortunately, they do not have an option but to follow the law.

Chair Swann then calls for a vote on the five questions.

FINDINGS OF FACT

As to Question No. 1: Did applicant follow ordinance requirements of Chapter 19 (Zoning)?

A unanimous vote of "nay" is received.

As to Question No. 2: Does the evidence indicate that the hardship of which the applicant complains results from unique circumstances related to the applicant's land and is not it the result of the applicant's own actions?

As to the first part a unanimous vote of "nay" is received
As to the second part, a unanimous vote of "nay" is received.

As to Question No. 3: Does granting a variance preserve the spirit and keep harmony with the general purpose and intent of the ordinance?

A unanimous vote of "nay" is received.

As to Question No. 4: In granting a variance, is the public safety and welfare assured?

A unanimous vote of "nay" is received.

As to Question No. 5: In granting a variance, will substantial justice be done?

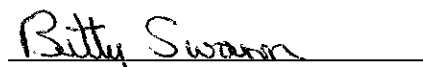
A unanimous vote of "nay" is received.

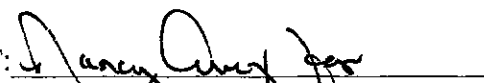
DECISION/VOTE OF THE BOARD:

IT IS THE DECISION OF THE BOARD, UNANIMOUSLY, TO DENY A VARIANCE FROM THE LITERAL PROVISIONS OF THE TOWN OF KURE BEACH ZONING ORDINANCE, CHAPTER 19, SECTION 19-357(2), FOR THE PROPERTY LOCATED AT 301 NORTH THIRD AVENUE, KURE BEACH.

ADJOURNMENT:

ACTION: Member Humphries MADE THE MOTION to adjourn the hearing at 8:30 pm. Member Collins seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.


Betty Swann, Chair

ATTEST: 
Aimee Zimmerman, Secretary