



BOARD OF ADJUSTMENT
VARIANCE HEARING ♦ SEPTEMBER 22, 2009

MINUTES

A variance hearing of the Kure Beach Board of Adjustment was held September 22, 2009 beginning at 7:30 pm at Kure Beach Town Hall, located at 117 Settlers Lane, Kure Beach, NC. A quorum was present.

MEMBERS IN ATTENDANCE:

Harry Humphries, Chair
Charlie Allo
John Gordon
Peter Boulter

MEMBERS ABSENT

Anne Brodsky

STAFF IN ATTENDANCE:

Building Inspector John Batson
Town Attorney Holt Moore
Secretary Aimee Zimmerman

Court reporter services provided by Jennifer Patterson of Cape Fear Court Reporting

CALL TO ORDER

Chairman Humphries called the meeting to order at 7:30 p.m.

APPROVAL OF MINUTES

Chairman Humphries indicated that on page 3 it should state that Gordon thought Subsection (d) should really be subsection (c) and also amended in the ACTION.

Member Gordon stated that Norm Collins needs to be removed from the minutes and replaced with John Gordon

ACTION: Member Boulter MADE THE MOTION to approve the minutes from the January 27, 2009, meeting as amended. Member Gordon seconded the motion. THE VOTE OF APPROVAL WAS UNANIMOUS.

OPENING OF HEARING/POLL OF MEMBERS

Chair Humphries opened the hearing at 7:33 pm. Chair Humphries 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.

Charlie Allo – no conflict
Peter Boulter – no conflict
John Gordon – no conflict
Harry Humphries – no conflict

ADMINISTRATION OF OATH

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

John Lare, 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.

John Lare testified that:

- 10 ft. side yard setback, unit entered from L avenue. As it exists, no way to safely exit building in case of fire. Proposes to add porch and stairs.
- He is original developer of unit. Purchased in November 2008.
- Member Allo asked the Building Inspector if this structure was considered townhouse or condo. BI Batson stated it was a condo and that covenants are in place. Additionally, the HOA was notified of this hearing.
- Member Gordon asked whether Mr. Lare owned the adjoining unit. Mr. Lare answered in the affirmative yet stated he planned to live in the A-1 unit.
- Due to certain medical issues, Mr. Lare will need to have this access in place.
- An elevator for this unit is not possible and would not be used in case of a fire.
- This porch would face L Avenue while all others face the ocean.
- Mr. Lare, utilizing the original drawing, clarified the placement of the porch and staircase to the Board.
- This would be the only condo with external access to the second floor.

Building Inspector Batson testified that

- Mr. Lare was told on several occasions that the deck would not be allowed and he was advised of the BOA procedures.
- The permit was denied based on §§19-320 and 19-329, Town of Kure Beach Code of Ordinances.
- The deck encroaches 24” into setback.

- Member Gordon asked if the ordinances permitted encroachment for certain apertures a total of 18” into the setback. BI Batson confirmed yes.
- However, this would not be described as a fire escape.
- Member Gordon clarified that the house sits 4’ 6” from the setback line for a total of 14’ 6” from the property line.
- Member Boulter questioned if the unit is in compliance with the Code of Ordinances. BI Batson stated yes.
- Member Gordon asked if there were any federal or state requirements that would require them to allow this. BI Batson stated no.
- Member Allo asked how many other units do not have an external exit in the Town. BI Batson stated a lot but did not have a specific number.
- Attorney Moore was asked about any regulations that would make them allow this. Attorney Moore stated there were not.

Testimony was closed by Chair Humphries at 7:56 p.m.

Comments from the Board included:

- Chair Humphries stated that hardships go with the land and not the people or the building. Chair Humphries further stated that this issue should have been addressed at the time of building.
- Member Boulter agreed with Chair Humphries.
- Member Gordon stated that there was a case some time ago with similar circumstances and the Board could not allow it then either.
- Member Allo concurs that variance goes with the land. Allowing this variance would create havoc to the Ordinances.

FINDINGS OF FACT

1. Did the applicant follow ordinance requirements of chapter 19?

A unanimous vote of “yea” was received

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 it a result of the applicant’s own actions?

A unanimous vote of “nay” was received

3. Does granting a variance preserve the spirit and keep harmony with the general purpose and the intent of the ordinances?

A unanimous vote of “nay” was received

4. In granting a variance is public safety and welfare assured?

A unanimous vote of "nay" was received

Member Allo stated that allowing the variance would hinder the public welfare.

5. Is in granting the variance, will substantial justice be done?

A unanimous vote of "nay" was received

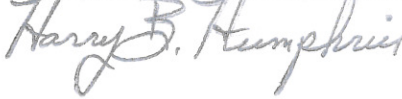
DECISION/VOTE OF THE BOARD:

IT IS THE DECISION OF THE BOARD, UNANIMOUSLY, TO DENY THE VARIANCE FOR THE PROPOSED DECK AND STAIRS ON THE RESIDENCE LOCATED AT 202 NORTH FORT FISHER BOULEVARD, UNIT A-1.

Mr. Lare was advised of his right to appeal the decision of the Board and that an appeal could be taken to the Superior Court of New Hanover County within thirty (30) days of receipt of the board's order.


ADJOURNMENT:

ACTION: MEMBER ALLO MADE THE MOTION TO ADJOURN THE HEARING AT 8:07 PM. MEMBER BOULTER SECONDED THE MOTION. THE VOTE OF APPROVAL WAS UNANIMOUS.



Harry Humphries, Chair

ATTEST:



Aimee Zimmerman, Secretary