

DELAWARE BOARD OF ADJUSTMENTS
January 16, 2018

The scheduled meeting for the Delaware Board of Adjustments was held on January 16, 2018 at Town Hall. Those in attendance were Mayor Houlihan, Attorney James Waehler, Community Development Coordinator Hardin, and Clerk of Council Fisher. Absent: Code Enforcement Officer Bounds and Public Works Director Reid. Guests: Keith Rose, Robert Rose and Donald Ellis.

Called To Order

Mayor Houlihan informed everyone that this is a continuance of the December 12, 2017 Board of Adjustments Public Hearing. Everyone is still sworn in from the last meeting and are still under Oath. He said that the Board felt uncomfortable about some of the legal wording in the Public Hearing notification last month, so the wording was revised and re-advertised and the property re-posted and now the Public Hearing.

Mayor Houlihan read the wording of the Public Hearing notification.

Town Attorney Waehler asked if there was anyone to speak in favor of this variance request. Mr. Keith Rose stated that he co-owns the property with his father which is located at 103 E. Jewell Street, Delmar, DE and he is the one asking for a variance. Town Attorney Waehler informed Mr. Keith Rose that in order to be granted a variance he would have to show a hardship.

Mr. Keith Rose said that due to the Planning and Zoning Regulations, his property side setbacks cannot be less than 10 ft. He stated that whenever he sells his house and a survey is done, the house will be out of compliance. He believes that the house was built in the early 1900's but they could not find any records on the exact year.

When asked when the zoning code was adopted that required a 10 ft. side setback, Community Development Coordinator Hardin said that 2010 was his first exposure to any of zoning codes since that was when he first started working for the Town. He does not know the exact date that the 10 ft. side setback was made part of the zoning code.

Attorney Waehler said that Sussex County adopted their Code in 1970. There was some discussion on if this property could be grandfathered in. But if Mr. Rose sells the house, it will still be out of compliance. It does not better his property by selling that piece of his property to his neighbor, so he is creating his own hardship.

Mayor Houlihan said that in the petition for the variance it was noted that it would provide off-street parking for Mr. Ellis. The Town does encourage off-street parking. Town Attorney Waehler wanted to know more about the parking situation on Jewell Street. Mr. Keith Rose said that parking is only allowed on one side of the street and it is not on their side of the street.

Mayor Houlihan did say that the street is narrow and if cars are allowed to park on both sides of the street it would create a one-way street. So parking is only allowed on one side. Parking is difficult when they have company over. Sometimes they have to park a block or two from the house.

CDC Hardin said one of the items discussed, when it was originally brought to his attention was the parking. Number 4 of the cases in which a variance can be granted to relieve a hardship states” That the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the purpose of this chapter or the public interest.” There seems to be no objections since there is no one present to object and no one signed a petition. There is nothing on the record but it was suggested for the Rose’s to contact their neighbors to see if they would be in favor of the granting of this variance.

Mr. Donald Ellis, the owner of 105 E. Jewell Street, Delmar, DE said that the problem he has is with parking on the street. If there are cars coming from the other direction, you have to wait for that car to pass before you can continue down the street. He stated that once he had one of his vehicles parked on the street and it was damaged by a hit and run driver. The street has a lot of vehicle traffic since it runs directly to the high school.

Town Attorney Waehler asked how many cars can be parked on his property if this variance is granted. Mr. Ellis responded that at least 4 or 5 vehicles can be parked on his property if the variance was granted. His driveway is a gravel stone driveway and right now 2 or 3 vehicles can park on his property. There are times when he or his family members would have to park blocks from their house. Town Attorney asked about vandalism. Mr. Ellis said that there has been some vandalism but he is not sure of it is occurring with cars parked in driveways or parked on the streets.

Town Attorney said that Mr. Ellis is speaking in favor of the granting of the variance and he is the one who originally petitioned for the variance. Mr. Rose is the one who is willing to sell the piece of land to Mr. Ellis and Mr. Ellis will be benefiting from the variance.

Mr. Ellis said that there is a little dimple in the property line and he just wants to straighten it out. Mr. Rose’s driveway is on the other side of the house. It doesn’t affect his driveway at all. When asked how many vehicles Mr. Ellis had, he responded that he had 5 vehicles and 2 trailers. He can only park some of them in a single line in his driveway.

Mr. Robert Rose stood and said that he is in agreement with the variance request. There is really no hardship but his concern is that all underground lines for utilities are on that side of the house. He was thinking that if the gas company had to come with a back hoe, would there be enough room. Town Attorney Waehler said that if the utility has an easement to run the lines, then they have an easement to service them. Mr. Ellis said that on both houses the utility lines for the gas runs on the east side of the house so this addition to his driveway would not affect access to Mr. Rose’s gas lines.

Town Attorney Waehler noted for the record that there was no one at the meeting this evening in opposition to this application.

CDC Hardin said that speaking on behalf of the Town, he sees no reason why this variance should not be granted. He has received no calls from surrounding neighbors in opposition. The Roses' are actually creating the hardship but it is helping to alleviate a parking problem.

Mayor Houlihan said that parking was the basis for this petition in the first place. There will have to be a deed reference to recognize the variance that is on this property. Mr. Ellis said that he is planning on going to a lawyer and have both deeds changed to reflect the variance.

Town Attorney Waehler also suggested that the Town keep these minutes and the Finding of Facts in the tax records for 103 E. Jewell Street, so something can be at a local level for reference in the event of sale of this property.

Town Attorney Waehler made a motion to grant the petition of a variance to reduce the easterly side setback of the Rose's property located at 103 E. Jewell Street, Delmar, DE, from 10 ft. as required by Town Standards to no less than 6.5 ft. on the basis of the testimony that it will benefit the property by reducing congestion with on-street parking which only allows parking on one side of the street. This variance will serve to benefit both properties and the neighborhood in general. If the hardship is not granted, it would be an issue with the property and parking.

Mayor Houlihan stated that based on testimony on parking issues given this evening, he would be in favor of this petition. Mayor Houlihan seconded the motion which passed with 2 ayes and 1 absent. Town Attorney Waehler informed the petitioners that anyone can appeal the decision within 30 days.

Approval of Minutes

Town Attorney Waehler made a motion to approve the December 12, 2017 minutes as prepared. The motion was seconded by Mayor Houlihan and passed with 2 ayes and 1 absent.

Adjournment

Town Attorney Waehler made a motion for adjournment which was seconded by Mayor Houlihan and passed with 2 ayes and 1 absent.

Submitted by:

Cindy Fisher
Clerk of Council