

**MINUTES
WINDSOR BOARD OF ADJUSTMENT
August 26, 2010**

Chairman Danny Horner called the meeting of the Windsor Board of Adjustment to order at 7:00 p.m. and called for roll. The following members were present: Mary Ann Baak, Jim Fanning and Chris Morgan. Chief Planner Scott Ballstadt and Associate Planner Diana Aungst were also present.

STATEMENT OF DOCUMENTS TO BE ENTERED INTO THE RECORD

Chairman Horner stated that he enters into the record the Town's Comprehensive Plan, the Town's Zoning Ordinance, the staff report regarding the action items of this hearing, and all of the testimony received at this hearing.

PUBLIC INVITED TO BE HEARD

There was no public comment.

APPROVAL OF THE MINUTES OF MAY 27, 2010

Chairman Horner asked for a motion to approve the May 27, 2010 minutes. Ms. Baak moved to approve the minutes as presented. Mr. Morgan seconded the motion. Motion carried unanimously.

VARIANCE OF MUNICIPAL CODE SECTION 16-12-40 PERTAINING TO BUILDING LOCATION IN THE SINGLE FAMILY (SF-1) ZONING DISTRICT – 117 OAK STREET – MARK KEMPSHALL, APPLICANT – D. AUNGST

Ms. Baak motioned to open the public hearing; Mr. Morgan seconded the motion. Motion carried unanimously.

Mr. Mark Kempshall presented a brief description of the proposed project noting a desire to keep and finish the deck on the front of his house to which he admittedly began and completed much of the construction without a building permit. Mr. Kempshall stated that the deck provides egress and stairs for the front of the house. Mr. Kempshall continued by discussing the previously existing stairs which were poorly constructed on the front of the house, built in 1924, which is why he decided to tear those off and construct something that was nicer in appearance and construction. Mr. Kempshall then showed pictures of the constructed deck from all angles.

There were no public comments related to this variance.

VARIANCE OF MUNICIPAL CODE SECTION 16-12-40 PERTAINING TO BUILDING LOCATION IN THE SINGLE FAMILY (SF-1) ZONING DISTRICT – 117 OAK STREET – MARK KEMPSHALL, APPLICANT – D. AUNGST (CONT'D)

Ms. Aungst entered into the record a letter from a neighbor in support of keeping the deck as is.

Ms. Aungst stated that the applicant is proposing to finish construction of an 8' x 8' deck three and one-quarter feet from the north property line that abuts Oak Street. Ms. Aungst also stated that Section 16-12-40 of the Windsor Municipal Code states that the minimum setback shall be twenty feet. Ms. Aungst noted that staff is recommending approval of Option #1 as outlined in the staff memo, with a deck size of 6' x 8' which will keep the setback consistent with the closest neighboring structure on the block which is 113 Oak Street; and will ensure that a smaller setback to Oak Street will not be established. Ms. Aungst also noted that the proposed deck is 8' x 8' and already partially built and that SAFEbuilt has indicated that the stair risers may be incorrect.

Ms. Aungst stated, Section 16-6-60(b) of the Municipal Code states that "Variances may be considered where, due to special conditions, a literal enforcement of the provisions of this Chapter would result in unnecessary hardship" and "Variances will not be granted contrary to the public interest and will only be considered when the spirit of this Chapter can be observed and public safety and welfare secured."

Ms. Aungst stated that staff considers the literal enforcement of the Code to result in an unnecessary hardship or a practical difficulty based upon the following findings of fact:

1. The deck built five and one-quarter (5.25) feet from the property line will maintain the setback already set by the neighbors and will ensure that a smaller setback to Oak Street will not be established; and
2. Granting of the variance does not appear to pose any public safety or welfare concerns.

Ms. Aungst continued, based upon the aforementioned findings of fact, staff recommends that the Board of Adjustment make a motion to approve the requested variance to Section 16-12-40 consistent with Option #1 as outlined in the staff memo to allow a deck built five and one-quarter (5.25) feet from the north property line subject the following conditions:

1. The applicant shall submit a building permit to the Town of Windsor and pay all applicable fees.
2. The applicant shall comply with all the requirements of SAFEbuilt, the Town's building inspectors.

Ms. Aungst stated that Option #2 as outlined in the staff memo is to approve the variance as presented by the applicant and allow the deck setback to remain at 3.25 feet from the north property line. Ms. Aungst stated that staff is offering Option #2 in the event that the Board decides that the applicant's request is appropriate.

VARIANCE OF MUNICIPAL CODE SECTION 16-12-40 PERTAINING TO BUILDING LOCATION IN THE SINGLE FAMILY (SF-1) ZONING DISTRICT – 117 OAK STREET – MARK KEMPSHALL, APPLICANT – D. AUNGST (CONT'D)

Mr. Fanning asked the applicant if they had spoken to neighbors directly next to them and directly across the street. Mr. Kempshall stated that unfortunately, his neighbors could not be present at this time but they have not indicated any concerns.

Mr. Morgan asked for clarification that the deck is built as described in Option #2 at this time. The applicant, Mr. Kempshall confirmed that the deck it is built as described in Option #2, although it is not completed because they are waiting to get a permit.

Mr. Fanning asked staff if they see any code violations with how the deck is currently built. Mr. Russ Weber, SAFEbuilt, stated that he was the one who issued the stop work order and observed that the rise/run was not $7\frac{3}{4}$ but thought it would be an easy fix.

Ms. Baak asked if because of the rise/run issue would there have to be another step that would come out further than what they are asking for in Option #1. Mr. Weber stated that he did not believe it would extend further, but that he would not know for sure what would need to change without doing a plan review.

The applicant and Mr. Weber discussed the rise/run issue further while looking at a photo of the deck and steps.

Mr. Fanning moved to close the public hearing; Ms. Baak seconded the motion. Motion carried unanimously.

Option #2 was discussed during board discussion and Ms. Aungst presented the board with the findings of fact for Option #2.

1. The deck built three and one-quarter (3.25) feet from the property line will exceed the setback that is already set by the neighbors by approximately two (2) feet; this difference does not appear to adversely affect the aesthetics or safety of the neighborhood;
2. The deck is approximately five and a half (5.5) feet in height and open as opposed to a fully enclosed structure and therefore does not block the neighbors views; and
3. Granting of the variance does not appear to pose any public safety or welfare concerns.

VARIANCE OF MUNICIPAL CODE SECTION 16-12-40 PERTAINING TO BUILDING LOCATION IN THE SINGLE FAMILY (SF-1) ZONING DISTRICT – 117 OAK STREET – MARK KEMPSHALL, APPLICANT – D. AUNGST (CONT'D)

Ms. Baak stated that the Board of Adjustment is charged with making decisions based on hardships that are caused by enforcing the code and indicated that she wished to ask further questions of the applicant.

Ms. Baak motioned to re-open the public hearing; Mr. Morgan seconded the motion. Motion carried unanimously.

Ms. Baak asked the applicant about the hardship why the deck has to be a 3.25 foot setback. Mr. Kempshall stated that his wife has very bad hips and the design of the deck was to give her gradual steps down off the deck. Mr. Kempshall stated that the deck would allow his wife an easier way to get in and out of the house.

Ms. Baak asked if the deck extends more than the stairs.

Mr. Kempshall stated that the deck does extend slightly more than the stairs.

Ms. Baak motioned to close the public hearing; Mr. Fanning seconded the motion. Motion carried unanimously.

Ms. Baak moved to approve the variance based on Option #2 including the stated conditions. Mr. Fanning seconded the motion. Motion carried unanimously.

VARIANCE OF MUNICIPAL CODE SECTION 16-12-40 PERTAINING TO BUILDING LOCATION IN THE SINGLE FAMILY (SF-1) ZONING DISTRICT – 317 7TH STREET – ALLAN DESPAIN, APPLICANT – D. AUNGST

Ms. Baak motioned to open the public hearing; Mr. Fanning seconded the motion. Motion carried unanimously.

Mr. Allan Despain stated his desire to build a garage at the southeast corner of his property. Mr. Despain stated that the larger garage and the placement of the garage will make it easier to turn from the alley. Mr. Despain continued by stating that the neighbor's sewer line is under the proposed location of the garage and that his own sewer line is further west.

VARIANCE OF MUNICIPAL CODE SECTION 16-12-40 PERTAINING TO BUILDING LOCATION IN THE SINGLE FAMILY (SF-1) ZONING DISTRICT – 317 7TH STREET – ALLAN DESPAIN, APPLICANT – D. AUNGST (CONT'D)

Mr. John Ginnity, 629 Walnut, (neighbor to the north), stated that the plot plan shows his sewer line going through the subject property and that he was given a paper requiring his signature to allow the variance but he has not signed it yet. Mr. Ginnity stated that everyone he has spoken with has recommended that he not sign the paper, including Town staff, because of the seriousness of building over the sewer lines. Mr. Ginnity stated that he has spoken with the neighbors but that they have not come to any conclusion on how to handle this.

Ms. Aungst stated that because the neighbors have not come to an agreement, staff is recommending that the board continue this variance request until the next meeting date to give the neighbors more time to come to a conclusion regarding the proposed garage and the sewer line.

Mr. Weber stated that depending on the type of pipe used for the sewer line it may not allow for a foundation to be built over it. Mr. Weber also stated that schedule 40 pipe is the only pipe that has the strength to be used under a foundation. Mr. Weber stated that his recommendation would be to find out what type of sewer pipe was used because it may not allow for the proposed foundation. The board, staff and the applicants discussed continuing the variance.

Based upon staff's recommendation, Ms. Baak moved to continue the variance request until the September 23rd regular meeting. Mr. Morgan seconded the motion. Motion carried unanimously.

COMMUNICATIONS FROM THE BOARD OF ADJUSTMENT

There were no communications.

COMMUNICATIONS FROM THE STAFF

There were no communications.

ADJOURNMENT

Mr. Fanning moved to adjourn the meeting. Ms. Baak seconded the motion. The motion carried unanimously.

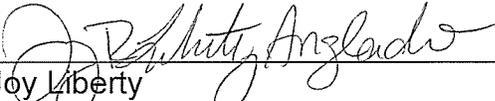
There being no further business, the meeting was adjourned at 7:42 p.m.

WINDSOR BOARD OF ADJUSTMENT
August 26, 2010

CERTIFICATION

Approved by the Windsor Board of Adjustment on the 23rd day of September
2010.

Submitted by:



Joy Liberty
Recording Secretary