



**CITY OF LINCOLNTON
BOARD OF ADJUSTMENT**
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BOARD MEMBERS: Gene Poinsette, Chair, poinsetteg@charter.net ; Änd Lynn, Vice-Chair, andmyynn@gmail.com ;
Becky Burke, beckyburke940@gmail.com ; Jerry Hoffman, jlskhoffman@charter.net; Kathryn Yarbrow, kyarbro206@gmail.com

Tuesday, December 19, 2017 Meeting

Present: Gene Poinsette, Änd Lynn, Jerry Hoffman, Jamel Farley, Worth Roberts

Absent: Kathryn Yarbrow, Becky Burke

Call to Order

Chairman Gene Poinsette called the meeting to order and recognized that three members were present, two were absent and Worth Roberts and Jamel Farley were sitting in as first and second alternates.

Approval of Minutes

Chairman Gene Poinsette asked the Board if there were any additions or corrections to the minutes of the November 21, 2017 meeting.

Motion: Änd Lynn made a motion to approve the minutes. Jamel seconded. Motion carried unanimously.

BOA Appeal-1-2017

Jack Carswell has appealed a decision of the Lincolnton Planning Department in regards to enforcement of the Minimum Housing Ordinance for his property located at 107 North Grove Street (Parcel ID 21000).

Mark Carpenter, Laura Elam, Brett Hicks, Tim Carswell and John Lafferty were sworn in by Jean Derby.

Mark Carpenter addressed the Board, noting the following:

This is an appeal for the City's order to repair, alter or demolish the property located at 107 N. Grove Street.

ENFORCEMENT PROCEDURES AND APPEAL PROCESSES

The City's Minimum Housing Standards Ordinance provides for minimum standards for dwellings and outlines the below enforcement procedures and appeal processes:

1. If a complaint is filed charging that a dwelling is unfit for human habitation or if the Code Enforcement Officer determines a potential violation exists, then Code Enforcement Officer conducts preliminary investigation.
2. If preliminary investigation discloses a basis for the charges, Code Enforcement Officer serves complaint to owner stating the charges and containing notice of hearing.
3. After notice and hearing, Code Enforcement Officer states in writing his determination of whether dwelling is unfit for human habitation and serves notice to owner requiring repair, alteration or improvement to meet minimum housing standards or else removal or demolition within 90 days.
4. Any aggrieved person may file an appeal of any decision or order within 10 days from the decision or order. The appeal is to be considered by the Board of Adjustment and has the effect of suspending further action on the notice of violation until the hearing by the Board.
5. The Board may reverse or affirm, wholly or partly, or may modify the decision or order and may make a decision and order of its own and shall have all the powers of the Code Enforcement Officer. With the concurring vote of three members of the Board, any decision or order of the Code Enforcement Officer may be reversed or modified. The Board has the power to, in any case where there are practical difficulties or unnecessary hardships in carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done.
6. Any person aggrieved by an order issued by the Code Enforcement Officer or a decision rendered by the Board has the right, within 30 days after the issuance of the order or rendering of the decision, to petition the Superior Court for a temporary injunction restraining the Code Enforcement Officer pending a final disposition of the case.

SUMMARY OF CODE ENFORCEMENT HISTORY

- July 20, 2016: Code Enforcement Officer receives complaint about structure being in violation of City Ordinances.
- July 21, 2016: Code Enforcement Officer sends letter to Owner notifying him of complaint and that an inspection of the structure needs to be scheduled.
- August 2016: Inspection scheduled for August 10, 2016.

- August 8, 2016: Owner informs Code Enforcement Officer that he will not allow the inspection stating that the structure is being rented out and he does not have the keys or permission of the tenant to go inside.
- March 30, 2017: Code Enforcement Officer sends letter noting need for inspection and directions to contact him within 7 days to arrange inspection.
- April 2017: Owner contacted Code Enforcement Officer stating he was going to do some work on the structure.
- April 2017: It appears to Code Enforcement Officer that the only work done was removal of the front gutter.
- April 2017: Complaints about structure continue.
- May — August 2017: City Attorney researches available options related to lack of consent by Owner to inspection of premises that are being rented by third party.
- August 28, 2017: Code Enforcement Officer speaks to Owner's son about scheduling an inspection. Owner's son requests a meeting with the City Attorney, City Manager, and Planning Staff
- September 6, 2017: Requested meeting held.
- September 7, 2017: City Attorney sends Owner's son letter confirming agreement at meeting that Code Enforcement Officer and Building Inspector will be allowed access to property for purposes of determining if there are any ordinance violations. Letter notes that if any violations exist, those items will be brought into compliance with ordinance. Once property is in compliance with the ordinance, the property may be secured to prevent access by vagrants, children and animals. Once secured, no further action will be taken by the City unless circumstances with regards to the house's structural condition change following the inspection.
- September 14, 2017: Code Enforcement Officer and Building Inspector conduct inspection.
- September 18, 2017: The Building Inspector's report (Exhibit A) is delivered to Owner's son.
- September 21, 2017: Code Enforcement Officer sends letter to Owner noting that inspection on September 14, 2017 found evidence that violations of the Minimum Housing Standards Ordinance exist and list of violations noted by Building Inspector. Letter included notice of hearing on October 12, 2017 and that Owner has right to answer to the violation.

- October 11, 2017: Owner's attorney requests continuance of hearing due to conflicts.
- October 12, 2017: Code Enforcement Officer sends email to Owner's attorney with potential dates for hearing.
- October 30, 2017: Code Enforcement Officer sends email to Owner's attorney requesting response to email about potential dates for hearing. Hearing is scheduled for November 3, 2017
- November 3, 2017: Hearing held. Owner's attorney submits attached statement (Exhibit B).
- November 6, 2017: Code Enforcement Officer sends letter outlining determination that structure is in violation of ordinance and issues order to either repair, alter or improve structure to meet ordinance or remove or demolish structure no later than February 2, 2018. Letter notes that Owner may appeal the order by filing written notice of appeal within 10 days.
- November 13, 2017: Owner's attorney filed attached appeal. (Exhibit C).
- November 15, 2017: Code Enforcement Officer sends letter to Owner stating that appeal will be heard by Board of Adjustment on December 19, 2017.

Tim Carswell, son of Jack Carswell, and John Lafferty, attorney for Jack Carswell, addressed the board, noting the following:

1. That the property in question while once leased and used as a dwelling, is not held out for such use at this time. The former tenant/occupant of the dwelling who was responsible for maintenance, moved to a nursing home some time ago. At the time he moved to a nursing home, he left all of his personal property in the home, as he expected to return to occupy the property. As an accommodation to this long time tenant, Mr. Carswell, even though he no longer received any rental income, allowed the personal property to remain in the home, where it continues to be stored. The former tenant who will not return to occupy this or any other dwelling and has no other place to store his personal property and does not have the income to lease a storage unit.
2. Because the property is no longer intended to be used as a dwelling, the provisions of the Lincolnnton Minimum Housing Standards Ordinance (Section 150.070) are not applicable to this property.
3. Both the property at 107 N. Grove Street and the adjacent property owned by Jack Carswell were listed for sale as commercial property on December 13, 2017. They want to leave the house in its current condition until the property sells to let the new owner decide what to do with it.

Due to the recent listing of the site for sale, there was discussion of a potential deferral of the matter. And Lynn requested that the owner proceed with the standard notice to the former tenant that he have his belongings removed from the house within 30 days. Mr. Lynn also requested that the applicant have a listing of actions that he has taken for the board to be able to review at their next meeting on the matter.

After some brief discussion, Chairman Gene Poinsette suggested the Board would like to table the issue until the May Board of Adjustment meeting to see if the property sells before having to demolish the house. Tim Carswell and John Lafferty agreed to this suggestion.

Chairman Poinsette asked if there was a motion.

Motion: Worth Roberts made a motion to table the issue until the May Board of Adjustment Meeting. And Lynn seconded. Motion carried unanimously.

BOA-7-2017

A Variance application from Billy Bumgarner and Wendy McSwain for the subdivision of a single tract of land that does not meet the zoning requirement of 35 feet of road frontage along a dedicated street. The subject property is located on Rockhill Lane (Parcel 73224)

Mark Carpenter, Brett Hicks and Billy Bumgarner were sworn in by Jean Derby.

Brett Hicks addressed the Board, noting the following:

The property (161 Rockhill Lane - Parcel ID 73224) is located on the southwest side of Rockhill Lane near the intersection of Rockhill Lane and West NC Highway 27. A single-family home, a barn and (2) accessory buildings are currently located on the property.

The current use is a single family dwelling. The current zoning is residential and the total property size is 2.01 acres.

The variance request is to subdivide a single tract of land that does not meet the zoning requirement of 35 feet of road frontage along a dedicated street and to add a single family dwelling on the property.

UDO Requirements

153.050 LOT TO ABUT A DEDICATED STREET.

No lots may be created after the effective date of this chapter that do not have at least 35 feet of dedicated street right-of-way frontage except as follows.

(A) A lot not having 35 feet of dedicated street right-of-way frontage may be created if located entirely within a planned shopping center or office park.

(B) A one-family residence may be constructed on a lot which existed at the effective date of this chapter which does not abut a dedicated street right-of-way provided the lot is given access to a dedicated street by an easement at least 12 feet in width for the use of the dwelling established on the lot and further provided that the easement is maintained in a condition passable for automobiles and service and emergency vehicles. This easement may not be extended to provide access to any other lots or to any other residence not having frontage on a dedicated street.

Findings of Fact

1. Unnecessary hardship would result from the strict application of the ordinance. (It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.)
2. The hardship results from conditions that are peculiar to the property. Such as location, size, or topography. (Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.)
3. The hardship did not result from actions taken by the applicant or the property owner. (The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.)
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Staff Comments

- The property is located along a dirt & gravel road (Rockhill Lane) and does not have frontage along a dedicated street
- The owner of the property would like to subdivide the lot and provide the new lot created to a family member for the purpose of having a single-family dwelling.
- The property is large enough to accommodate an additional dwelling unit and both lots will meet the 100 foot lot width requirement. However, the property will not meet the requirement of 35 feet of frontage along a dedicated street.
- Being that the property does have access to a dedicated street via Rockhill Lane, dividing the property should not create an adverse situation as Rockhill Lane which has been in existence for several years is acknowledged by Dbk. 1016, Pg. 61.
- The spirit, purpose, and intent of the ordinance and public safety should be secured.
- The applicant will need to provide additional information, at the meeting, regarding how the four findings of fact are met in order for the Board of Adjustment to grant the variance.

After a brief discussion, Chairman Gene Poinsette asked if there was a motion.

Motion: Änd Lynn made a motion to approve the application. Worth Roberts seconded. Motion carried unanimously.

Chairman Gene Poinsette asked the Board if there was any other business to be addressed, to which there was none.

Adjournment

Motion: Worth Roberts made a motion to adjourn. Änd Lynn seconded. Motion carried unanimously.

Jean Derby

Boa12182017 minutes