



## **Board of Adjustment Regular Meeting**

**October 25, 2022**

### **Call to order**

Chairman Neil Gurney called the Board of Adjustment regular meeting to order at 1:00 p.m.

### **I. Roll Call**

#### **Board Members Present:**

Mr. Neil Gurney, Chairman  
Mr. Wyn Hardy, Vice Chairman  
Mr. Melvin Owensby  
Mr. Greg Gardner  
Mr. Al Joyner  
Mrs. Kimberly Sayles, Alternate  
Mr. Mark Windfeldt, Alternate

#### **Absent:**

Mr. Rick Spruill, Alternate

#### **Town Council Members and Town Representatives present:**

Commissioner David DiOrio, Council Liaison  
Michael Williams, Community Development Director  
Richard Carpenter, Development and Environmental Review Specialist

### **II. Approval of Agenda**

The agenda for the October 25, 2022 Board Meeting was reviewed. **Vice Chair Wyn Hardy moved to approve the agenda, as presented. Mr. Greg Gardner seconded. All present members voted in favor.**

### **III. Approval of Minutes**

The minutes from the September 27, 2022 Board meeting were reviewed. Mr. Hardy made a motion to approve the September 27, 2022 meeting minutes, as presented. Mr. Melvin Owensby seconded and all voted in favor.

**IV. Public Comments**

There were no comments from the public.

**V. Old Business**

There was no old business to discuss.

**VI. New Business**

**A. *Educational Review of Variance Standards and Determining Qualifying Hardship***

Director Michael Williams reviewed the roles of Town staff and the Board of Adjustment members. Development and Environmental Review Specialist Richard Carpenter provided the board with a presentation (Attachment A) which highlighted state criteria regarding the Board of Adjustment including what a variance is.

Specialist Carpenter reviewed hardships and criteria to meet a hardship. Mr. Joyner asked if tangible and intangible is correlated with subjective and objective and Specialist Carpenter answered that subjective evidence is required to grant a variance and that hardships are determined by property not property owners. Specialist Carpenter noted that courts have upheld that good faith mistakes can be granted hardships and variances, but noted hardships are not based on convenience. Mr. Melvin Owensby asked about self-created hardships and Specialist Carpenter confirmed that self-created hardships are not eligible for receiving variances.

Mr. Joyner asked if a property owner is held responsible if the property is bought with prior issues. Director Williams noted that there is an ordinance and state law that enforces that purchasing a property with prior issues should not be considered a self-created hardship.

Specialist Carpenter reviewed test for hardships. Mr. Mark Windfeldt expressed that the Board's responsibility is to consider grey areas and make decisions on extenuating circumstances. Specialist Carpenter explained that the Board has to operate under state criteria and explained that precedence can be challenged based on community fairness principle. Mr. Joyner asked what the recommendations would be if someone tried to obtain a variance based on precedence and Specialist Carpenter answered that the case could be challenged by a higher court.

Director Williams noted that zoning text amendment may be passed by Town Council if standards are unrealistic. It was also noted that Board decisions can be challenged by Council. Specialist Carpenter explained that the Board could confide in an Attorney prior to making any decisions.

Specialist Carpenter also noted that Town staff will be providing staff positions in memos, rather than solely brief facts in the future.

Chair Gurney asked if the Board can make recommendations to an applicant. Specialist Carpenter and Commissioner DiOrio advised that it is bad policy to make recommendations to applicant because their cases are based on their material presented. Specialist Carpenter noted that if applicants are willing, he can help them by having pre-BOA meetings with them. Specialist Carpenter also noted that the Board could ask questions that might be helpful to the applicants rather than making recommendations.

Specialist Carpenter explained that the Board cannot use opinions as a determining factor.

Self-created hardships were reviewed. Specialist Carpenter also reviewed ordinance purpose, public safety, and substantial justice. The Board reviewed and discussed what information should be considered during a case.

Chair Gurney asked about cases in which it would be an upheaval to the community to not grant a variance and Specialist Carpenter explained that the case would still need to meet state criteria in order for a variance to be granted. Specialist Carpenter explained that property values and other non-substantive fears should not be accepted.

Board members held discussion regarding the presentation, and upholding ordinances and state laws.


**VII. October Department Report**

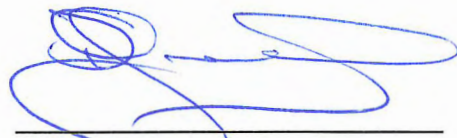
Director Williams provided the Board with a department report for the month of October.

**VIII. Adjournment**

Chair Gurney asked for a motion to adjourn the Board of Adjustment regular meeting at 3:05 p.m. Mr. Gardner made motion to adjourn and Mr. Joyner seconded. All members voted in favor.

ATTEST:

  
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Olivia Stewman, Town Clerk

  
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Neil Gurney, Board Chair