



Commissioners of Leonardtown

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J. HARRY NORRIS
Mayor

LASCHELLE E. MILLER
Town Administrator

Commissioners of Leonardtown
LEONARDTOWN BOARD OF ZONING APPEALS

41660 Courthouse Drive
January 22, 2008 at 5:00 P.M.

Attendees: Lanny Lancaster, Vice Chair
Dr. William Icenhower, Member
Kris Kraus, Member

Absent: Dr. Herbert Winnik, Chairman

Also in attendance were: Laschelle Miller, Town Administrator; DeAnn Adler, Plans Reviewer; Teri Dimsey, Recorder; Dan Guenther, Marketplace Fine Wines. An official list of attendees is on file at the Town Hall.

Chairman Winnik called the meeting to order at 5:00 p.m. and then took up the first item of business.

Approval of Minutes – October 23, 2007

Member Icenhower moved to approve the October 23, 2007 minutes as presented; seconded by Member Kraus.

Member Lancaster would like to see, in future meetings, more descriptive motions written into the minutes that more accurately reflect the legality of the findings.

Member Lancaster asked to amend the minutes to rewrite the motion to include more detailed information as to the particular finding and reason for the motion.

Member Lancaster provided Ms. Dimsey with a written copy of the amended motion.

Member Icenhower and Member Kraus had no objections to amend the minutes.

Member Kraus moved to approve the October 23 2007 minutes as amended by Member Lancaster; Member Icenhower seconded, no further discussion, the motion passed unanimously.

NEW BUSINESS

Case #86-07: Branden & Stacey Farthing – Request for 5' Rear Setback Variance to Construct a 10' x 23' Deck

Applicant: Branden & Stacey Farthing, Owners

Location: 41889 Miles Court, Academy Hills, Lot #55

Mrs. Stacey Farthing came forward to provide the board members a brief explanation for their variance request. Mrs. Farthing stated that they had previously tried to build a deck and then were told by the engineers that the footers would not be appropriate for the particular deck they were building. The deck was being built on the side of the house but the ground contained fill dirt which would not be suitable to sustain the footers and would require a considerable amount of money and unsafe construction methods to get the job done. This requires us to build the deck on the back of the house into the ravine and over the BRL line. We tried to build it within the constraints of the BRL but ran into this fill dirt issue. We are also in the process of trying to sell our house and it is the only house on our street without a deck.

Member Kraus asked to see the plan that showed the deck being built on the side of the house.

Member Icenhower expressed how fortunate they were to have a contractor who recognized this could be a serious problem.

Member Lancaster also noted that the house next door has a deck built from the back of the house into the ravine.

Ms. Adler stated that Member Fearn of the Planning and Zoning Commission had moved to forward a favorable recommendation to the Board of Appeals due to the exceptional hardships and limitation of the BRL due to the fill and the shape of the lot. Seconded by Member Burriss and the motion passed unanimously.

Member Lancaster asked if the staff had a recommendation.

Ms. Miller commented that staff presents the facts of the case to the members who then makes a ruling based on the applicant's presentation and provided information.

Member Lancaster inquired when the Town's attorney would be involved in a case?

Ms. Miller responded that staff would seek his advice if there were particular questions and if there were more complicated legal aspects to a certain case. We do not bring him in on every case.

Member Lancaster noted his concern that this variance request happens continuously in this neighborhood and there may come a time when the Board of Appeals deny a request and the applicant takes the case to court. We would then need to back it up with a history of consistency.

Member Icenhower commented that there have been previous exceptions to the BRL, that other people have built decks across the BRL line.

Ms. Miller replied that there have been a number of cases that have come before the Board and all of them have been in the Academy Hills development. There have not been any objections from any of the neighbors at this time.

Ms. Miller noted that there was one case that was unable to be granted due to the 100 foot buffer by State Highway and they would have needed an exception but they did not pursue.

Member Lancaster noted that the County has an attorney present during their meetings and the staff provides a recommendation.

Ms. Miller stated that the Town is in the process of working on some major ordinance and process revisions and I can certainly bring a recommendation forward if you feel an attorney should be present at each meeting.

Member Lancaster asked Mrs. Farthing if she had any paperwork from the engineer stating why the soil could not support the requested structure. This would be a factual item for the Board's finding.

Mrs. Farthing stated that she may have had at one time but not sure if she had it any longer.

Member Kraus moved that the Board of Appeals finds that the criteria as set forth in Section 155-105. Variances have been met and that the petitioner has shown:

- 1. That not allowing the variance will cause an unnecessary hardship due to the following unique circumstance(s):**
 - a) The soils at the side yard have proven not to support the requested structure**
- 2. That granting the requested variance will not be detrimental to the property owners in the vicinity.**
- 3. That the unique conditions/circumstances applying to the specific property do not apply generally to other properties in the subdivision.**

Therefore the Board of Appeals moves to grant the request made by Branden and Stacey Farthing for a 5 foot rear yard setback variance to construct a 10' x 25' deck.

In addition, this variance shall be subject to the following condition:

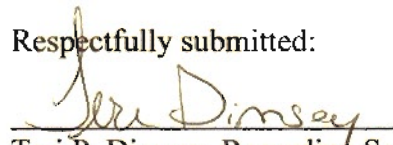
- 1. The deck is to be erected per the exhibits submitted with the application.**

Seconded by Member Icenhower, no further discussion, motion passed unanimously.

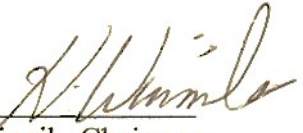
Adjournment:


Member Kraus moved to adjourn the meeting at 5:35 p.m., seconded by Member Icenhower, no further discussion, motion passed unanimously.

Respectfully submitted:


Teri P. Dimsey, Recording Secretary

Approved:

Absent 
Dr. Herbert Winnik, Chairman


Lanny Lancaster, Vice Chair


Dr. William Icenhower, Member

Kris Kraus, Member