

## BOARD OF ZONING APPEALS

November 5, 1998

### A. ROLL CALL

PRESENT:

Mr. Feigley  
Mr. Nice  
Mr. Giedd  
Ms. Wallace

ABSENT:

Mr. Fischer

OTHERS PRESENT:

Scott Denny, Code Compliance Officer  
Jim Breitbeil, Development Management Technician

### B. MINUTES

The minutes of the September 3, 1998 meeting were approved as submitted.

### C. OLD BUSINESS

None

### D. NEW BUSINESS

ZA-9-98 Mr. Eric J. Kortenhoeven

Scott Denny presented the staff report stating that Mr. Eric J. Kortenhoeven submitted a request for a building permit to construct a deck on the rear of his home located at 217 Sand Drive West. The application was denied because it failed to meet the required 35-foot rear setback. Subsequently, Mr. Kortenhoeven applied for an eleven-foot variance to Section 24-217(b) of the zoning ordinance thereby establishing the rear setback at twenty feet. Upon examination of the proposed deck drawings, it was determined that a fifteen-foot variance would be required to establish a twenty-foot rear setback. The property is located in the A-1, General Agricultural Zoning District.

The parcel in question is a .53 acre lot located in the Great Woods Subdivision. The subdivision was approved on April 20, 1984. At that time the setbacks for the A-1 zoning district were 35 feet from the front property line, 15 feet from the side property lines, and 35 feet from the rear property line. However, the house located at 217 Sand Drive West was not constructed until February of 1997. At that time, the lot had nonconforming status but any new construction had to meet the current setback requirements. This resulted in the house being located at least 50 feet from the front property line. The side and rear setbacks remained the same.

While the public notification sign was being placed on the property, the framework for part of the deck was observed. As a matter of policy, staff posted a stop work order on the deck. Mr. Kortenhoeven called the Code Compliance office and stated that he had begun work on the deck in good faith when he had submitted the building permit thinking there would be no problems. He added that he immediately stopped the construction when he learned that a variance would be required to place the deck at the proposed location.

Staff realizes that the property to the rear of 217 Sand Drive West is owned by Stonehouse Inc. and that the deck would not be of a substantial detriment to the adjacent properties, nor would it change the character of the district. However, a hardship bordering on confiscation of the property does not

exist. Nor does this property have any hardship that is not shared with other properties in the same vicinity. Therefore, staff cannot support this application.

Mr. Feigley stated that he thought the applicant is required to stop construction when issued a stop work order by a building inspector and the staff report mentioned that the applicant stopped work when he found out that a variance would be required.

Scott Denny stated staff was not aware that any part of the deck was constructed. As a matter of policy, a stop work order is issued any time construction is noted without a building permit. Mr. Kortenhoeven, while the building permit was under review, began to work on the deck thinking that there would be no problem with the building permit.

Mr. Nice asked if the variance initially was for the house or for the deck.

Scott Denny stated the variance was for the deck.

Mr. Feigley asked if Mr. Kortenhoeven was notified that a variance was required when the building permit was under review.

Scott Denny stated that when he reviewed the building permit and the plans for the deck, it was then noted that a variance would be required.

Mr. Giedd asked if the rear setback is 35 feet.

Mr. Feigley stated that the rear setback never changed. The problem occurred because the front setback changed from 35 feet to 50 feet before the house was built.

Mr. Feigley asked if Scott Denny made it clear to Mr. Kortenhoeven that he could not construct the deck until a variance was granted.

Scott Denny stated yes and that Mr. Kortenhoeven previously began work on the deck while the building permit was under review thinking that there would be no problem with receiving permit approval.

Ms. Wallace asked how Mr. Kortenhoeven knew there was a problem with the building permit.

Scott Denny stated that Mr. Kortenhoeven had been by the office and was notified that Zoning had not approved the permit.

Mr. Nice asked if one of the decks is already on the house.

Mr. Denny stated that there are no decks on the house and that deck "A" is currently being applied for and that Mr. Kortenhoeven has future plans to put on additional decks that are shown on the application for the variance.

Mr. Feigley asked when an applicant is given an official building permit.

Scott Denny stated that a building permit is not issued until all departments review and approve the building permit.

Mr. Feigley asked if the copy he has in his BZA packet is the official building permit.

Scott Denny stated that he has a copy of the building permit application. The application was denied and confirmed that there has been no building permit issued for the deck. Mr. Kortenhoeven did not think there was going to be any problem with the building permit. When a problem was noted, he informed Mr. Kortenhoeven of the problem and Mr. Kortenhoeven ceased construction on the deck.

Ms. Wallace asked if it was unusual for someone to build a deck without obtaining a building permit.

Scott Denny stated that, while staff does not condone this, it does happen.

Mr. Nice asked if this deck would be noticeably closer to the rear property lines than adjacent property's decks.

Mr. Feigley stated that he went out to see the site and that this is an unusual location for a lot. He added that a wooded area is almost directly behind the deck.

Scott Denny showed the BZA members a plat of surrounding lots and stated that the deck would not be out of character with the neighborhood.

Mr. Nice asked how far along the construction of the deck has proceeded.

Scott Denny stated he had some photos, but they were destroyed.

Mr. Feigley stated that there are some joints and some supports for the joints, but not much construction overall.

Mr. Feigley opened the public hearing.

Mr. Kortenhoeven stated he is the property owner at 217 Sand Drive West. He applied for the building permit on Tuesday the 15th of September and was told by Code Compliance that there should not be a problem, but the application would still need to go through all the necessary departments. The application received approval from all departments except the Zoning Department. He had not foreseen any problems in the approval of the application and took it upon himself to secure the headers and to lay the preliminary foundation. Only a semi-structure was complete while awaiting official building permit approval. After three days passed he went to the office of Code Compliance and received notification that the application was denied. He did not do any more construction on the deck and applied for the variance.

He contacted the builder, Mr. James McReynolds. When the house was purchased, there were plans for a deck that would extend beyond the back corner of the house. The deck on the application is of similar size and structure to the one shown on the original house plan. The house was moved back to accommodate a fifty-foot setback unbeknownst to him. He wanted to build a deck from the original planning stages of the home. He reviewed other decks in the area built by Mr. McReynolds and did not feel that they were of the quality or caliber that he could construct himself. Currently, Mr. McReynolds has filed a complaint with Code Compliance for his neighbor who Mr. McReynolds built a deck for which has been out of code since 1992. Donna Martha Falls, who lives behind him, has no problems with the construction of the deck. He feels his deck will not be an outrageous structure and fits the home very properly. He apologized for beginning to build without a building permit and that there is typically not a problem with building a small deck on a home. He would like to continue to construct the deck to add value to his residence and to enhance the property.

Mr. Nice asked if the dimensions of the drawings were submitted to Code Compliance.

Mr. Kortenhoeven stated dimensions for deck "A" were shown. Decks "B" and "C" were not.

Mr. Nice confirmed that the dimensions of the deck "A" were submitted with the drawing. He added, in regards to starting the deck, that it is reasonable for a homeowner to start the framework without doing anything structural to get their points and recognized that Mr. Kortenhoeven actually applied for a permit. He stated he thinks this is a case of a homeowner acting in good faith under the circumstances that the home was set back fifty feet and not thirty-five feet which was originally planned and this creates an undue hardship in relationship to adjoining properties. Mr. Nice stated he

applauds Mr. Kortenhoeven's decision to apply for a permit for the deck when many homeowners do not apply for a permit. He stated that if the deck is not out of character or a detriment to the area, he would be in favor of granting the variance.

Mr. Giedd asked if Mr. Kortenhoeven considered building a smaller deck that would not encroach the setbacks.

Mr. Kortenhoeven stated that he did and would not be able to put a staircase to the backyard if the setbacks were not encroached. He could place the staircase on the side yard, but not the back yard.

Mr. Giedd stated his concern over property values if decks are permitted to encroach rear yard setbacks across the county placing adjacent homes and decks close to each other. He added that setbacks are established to protect property values. The choice here is to build a deck in a manner that does not encroach setbacks or build a patio – looking at other options than those that require a variance.

Mr. Kortenhoeven stated that the property to the rear, and next to the Walls' residence can not be developed.

Scott Denny stated that he cannot confirm that there are no plans for future development behind Mr. Kortenhoeven's residence and said that it would be improbable for future development to take place due to an existing ravine.

Mr. Giedd acknowledged that the topography does make a difference in this case.

Mr. Feigley confirmed Scott Denny's remark by stating that due to the topography of the land, it is improbable that anything would be built behind Mr. Kortenhoeven's residence.

Mr. Feigley closed the public hearing.

Mr. Nice made a motion to grant a fifteen-foot variance establishing the rear setback at twenty feet for the construction of a deck.

Mr. Feigley seconded the motion.

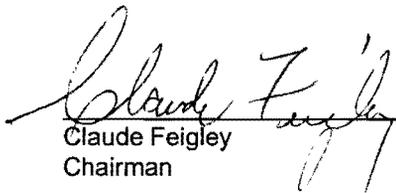
The motion was granted unanimously (4-0).

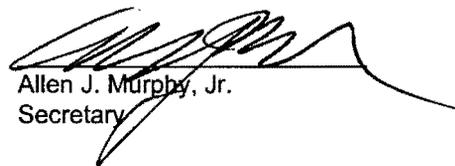
**E. MATTERS OF SPECIAL PRIVLEDGE.**

None

**F. ADJOURNMENT**

The meeting was adjourned at approximately 8:20 p.m.

  
Claude Feigley  
Chairman

  
Allen J. Murphy, Jr.  
Secretary