

FINAL MINUTES  
CHARLOTTESVILLE BOARD OF ZONING APPEALS  
THURSDAY, May 17, 2018 AT 4PM  
Basement Conference Room, City Hall

Members Present

Gennie Keller, Mr. Bill Chapman, Bob Stevens, Justin Ritter & Addison Barnhart

Staff Present

Read Brodhead

Craig Fabio

Agenda

The meeting was called to order by Mr. Bill Chapman

The following cases are on the agenda:

BZA 18-05-001 – Mr. Jeff Erkelens (Latitude 38), on behalf of the property owners of 115 Porter Avenue, is seeking relief from several requirements of the Zoning Ordinance. Section 34-353 and Section 34-972(a) (3). The requested variance addresses a reduction of the required front yard setback.

Staff Report by Craig Fabio:

This is a single family home on a by-right lot in the city. On behalf of the owners the builder is seeking a reduction of the front yard set-back of several feet to accommodate the front portion of the home that was constructed into the corner of the setback. The first step is: Is this an actionable request, the driveway portion did is not applicable for a zoning variance, we are hearing the zoning setback at this point. This is very straight forward case and into the setback as the property line is at an angle and the house is a square in the front corner. The home is occupied; the buyer purchased it from the builder prior to completion and the city has not issued a CO as we determined with the as built survey that was submitted at the front corner encroached. We were going to hear this at the last meeting but there was an opportunity to work with engineering to potentially to have another option but we are back here to the 25 foot setback and an additional corner approximately 16 feet away from so applicant sort relief and we were going to hear this at the last meeting.

Chapman: What are the possible outcomes here?

Fabio: we have had cases where a duplex was built incorrectly and right of way purchases in the past and sometimes removal is the only way to be in compliance.

Brodhead: said he doesn't know if grant one variance is precedent but if he is makes a zoning determination and leaning one way of the other it's really up to the Board.

Fabio: Staff had a concern for setting a precedent forgiveness and an error with stakeout.

Brodhead: said in this case the right of way is really wide, 16 feet from the back of the sidewalk and it was a lay out error.

Fabio: the parking does not qualify for a variance and the applicant has been notified.

#### Open the Public Hearing:

Jeff Erkelens: 310 6<sup>th</sup> Street SW, He hopes that since there is that 16 feet of right of way, it is a special case, the engineers came up with a good faith effort plan that he thought it could work with so we got our surveyor for those front property lines. The 3 properties to the right: we got everyone on board to potentially adjust those front lines but could not do it in a satisfying way but it would be an acquired jog

Chapman asked is it that you don't want your right of way property line to be different from your neighbors.

Erkelens: said correct.

Brodhead: asked how far they were going to give you.

Erkelens: said it was just under two feet.

Can you tell us about the 16 foot right-a-way and how it came about?

Fabio: said Porter Avenue was previously under developed, when the developer came in to create that road the sidewalks and the street were laid out knowing the parking would not be allowed on the street. The City worked with the developer to lay out that portion. Mr. Erkelens is simply a purchaser of the lot and came when he came into this property: it was already set at this 16 feet and the developer had already created that sidewalk.

Any idea how the mistake was made?

Erkelens: said there was an iron on the front left side because all of this property was undeveloped and the irons were not on the right side yet. We had a stake from Lincoln and he believes the stake fell down and was put back in so he went off of that. He said it was his fault for not getting Lincoln in there to assure everything was all right. He said it was not intentional. He has a long history of trying to do the right thing.

#### Close the Public Hearing

What is the staff recommendation? The only option for the setback was 25 feet, in-considering which way to go on this, staff went with we may be setting a precedent.

Ms. Keller: said she can see some merit in a initiating a text amendment because we know we do not have much land in the city and it is not very often that we are developing streets and we are entering an era where we are probably encouraging a denser environment and to initiating it would than allow staff to thoroughly research comparable and would allow police and fire to weigh in but that is a more lengthy process which doesn't help this particular applicant.

Fabio: said he doesn't see in his opinion a text amendment need. They could have a CO today if they met the setback.

Ms. Keller: said if there was a way within our purview to recommend the applicant initiate a conversation to try to acquire enough property at market rate to bring this into compliance she would favor that because there is some carrot and stick there.

It was asked if Mr. Silman wrote a report and the answer was he did not.

Stevens: said to continue it for a few months to give them a chance to say landowner you really want to work this out with the city.

Stevens: encourages the City and the applicant to work this out and the continuance is the best thing right now for at least a couple of months.

Fabio: there was no opposition from the City engineers; they were unable to come to an agreeable layout. We are on hold until the pre-determined the outcome of this in that if you choose to move forward with the continuance. We will work with them on the other matters with the site to get them up to compliance before we come back here as well. Martin Silman is still acting in that role and likely be the one they are talking with.

Acting Chair Bill: asked for a motion to defer this case.

Stevens: said can we leave it open ended like this? In the past we have continued things for two or three months.

Fabio: said we may have a case next month so we could continue it or say 60 days. It doesn't sound like the variance is necessary the option here.

Stevens: said his recommendation is to keep it

Ms. Keller: said we want to give it more times because we certainly don't want to take an action that would jeopardize the existence of the already built house. There are no penalties, insurance, levied on anyone then she would be in favor of six months so you could work out a solution because we are all sympathetic to the applicant, owner, and the builder that this was an honest mistake, but we would prefer a solution that is worked out and negotiated with engineering and Council if necessary.

Stevens: issued a motion to continue for 6 months, seconded by Ms. Keller motion passes 4-0.

The Board of Zoning Appeals voted 4-0 to defer this application for 6 months.

**BZA 18-05-002** – Mr. Zeb Pence, who is under contract to purchase the Property located at 0 Preston Avenue (TMP: 030057000), has applied for a variance for relief from section 34-353 of the Zoning Ordinance. The applicant is seeking to reduce the required rear yard setback from 25 feet to 10 feet.

This is a vacant lot off Preston Avenue. The owner is seeking a variance for relief from section in the rear yard with a setback from 25 feet to 5 feet. The rear is an excess easement that comes down from Preston. He wants the setback to be 5 feet. He wants a 20 foot variance from the back which is the absolute minimum that we would allow for any building. That is what he is seeking today for the primary residence. It is a vacant property behind the Robertson and Woods subdivision. It's got about a 30% average grade on it according to GIS topo. It drops 18 feet over 60 feet. This is non-conforming. The applicant wants to mitigate any run off from the new home. Mr. Broadhead has provided a little map where it shows where the run off goes. The National Channel collects water from other properties and channels it through this private residence underneath Robertson and Woods and flows out on the other side. It is a well-established channel, looking like a little creek through their yard.

They want to put the house in the back of the lot and there are no trees on the lot. There is a natural row of trees behind him and Robertson Woods and he wants to leave them untouched.

#### Open the Public Hearing

Ms. Keller: regarding the staff report the Virginia code would allow the BZA would require a guarantee or a bond; how would the amount of that be determined? She said a bond to insure the conditions be met.

Brodhead: said it would depend what the condition is and for the price of the work.

Ms. Keller: it seems quite straight forward that this is a better alternative than the by-right and because it is an old lot and recorded and can be built on, she thought Mr. Pence's conditions were well received and she would be in favor of some kind of bond to go with these conditions.

Chapman: said he agreed with those conditions, but what would the bond be holding him to and he doesn't own the land yet. Does it go with the lot that he may never buy or does it go with his idea. It a little complicated on that front but he agrees it's a good candidate for a set-back variance.

Ms. Keller: said can you verify that it goes with the property.

Brodhead: said yes it does go with the property

Brodhead: said Ida J. Lewis is the owner, Mr. Pence contacted the builder about the lot and got tuck because he told him he had to put a road in and that really held up the time and then the applicant, Mr. Zen put the property under contract.

Brodhead: said he was working on a determination, gave him the determination and he waited until day thirty of his contract and pulled out. Read said he told the realtor to call Mr. Pence back because he seemed interested in the property and he is back here, so he think he really adamant about building on it. The property owner, Ida J. Lewis, received this through inheritance.

Chapman: Do you guys agree that that signature and that approval only covers a specific adjustments proposed in this application. We can't go increasing the front yard setback as we reduce the backyard setback without her knowing about it. Right now if you are her, all different kinds of houses could go on this property.

Stevens: said what if he falls through and somebody wants to buy the property put a house in the middle where they have it by-right.

Chapman: said that is why it is bad for the owner to do anything but specifically what he is asking for that she signed off on. If we want to change all of the setback to assure the house gets built in the right place and the right scale that Mr. Pence suggested her to sign something new or have him come back.

Mr. Pence: We will close on Thursday of next week, they don't have a closing date yet. He said everyone wants it this way and the neighborhood approves and we will go ahead with the closing.

Brodhead: said he can't get a variance saying he can build the house then his thirty day study period is over, he can't do his closing.

Mr. Pence: He doesn't want to build the home in the space that bothers the neighbors. He said I think the point you are trying to make is if he backed out it would be hard for Ida to have potential sales and the community is benefitted by this variance in general. He believes Ida would sign.

Chapman: said we cannot change setback without her knowing about it because our intent would be to ensure that this smaller sensitive replaced house, but if you don't close then she is out looking for new buyers.

Stevens: why don't we make our ruling contingent upon the successful closing and if it doesn't happen that would solve this.

Mr. Pence: said one thought he had was if you are reducing the rear setback by 20 and increasing the front by 20 doesn't reduce buildable square footage of the lot at all. He said there is currently a drainpipe in the middle of the property and he would have to stay 10 feet away from this pipe. If the setback was 45 in the front I would have to stay away from the drain pipe is not enough space and the only remaining buildable space is between the neighbor's uphill drain and the rear setback is the design and that is the only space affecting everything to building in that one space.

Mr. Stevens motions to approves BZA 18-05-002 on the following conditions:

1. The variance to reduce the rear yard setback to 5 feet will only be valid Mr. Zeb Pence purchases the Property. If the purchase fails to go through with the purchase of the Property, the variance approval will be null and void.
2. The West side of the Property will have a 5 foot setback.
3. The East side of the Property will be increased to a 15 foot setback.
4. No tree may be removed within the 15 foot setback between the future dwelling and the adjacent properties located in the Robinson Woods Subdivision. If a tree is dead, the Property owner must prove that the tree in a terminal condition prior to its removal. If trees are taken down without permission, the Property will be in violation of the Zoning Ordinance.
5. The future driveway surface on the Property must be pervious. No asphalt or concrete may be used.
6. A French drain must be installed on the bottom side of the driveway to help prevent run-off from impacting the homes in the Robinson Woods Subdivision.

BZA approves the variance request 5,0

Keller made motion to approve minutes;  
Ritter 2nded the motion

Minutes Approved 7/19/2018: 4:0