Minutes

CHARLOTTESVILLE BOARD OF ZONING APPEALS
Thursday, November 21, 2019
Neighborhood Development Services Conference Room, City Hall

Members Present: Lisa Green, Jeannie Kellar, Justin Ritter, Bill Chapman

Staff Present: Patrick Cory, Reed Brodhead

I. CALL TO ORDER

The Meeting was called to order at 4:00 PM in the Neighborhood Development Services Conference Room.

II. PUBLIC HEARINGS

a. BZA 19-11-001 – Mr. Jeff Erkelens, the Property owner of 0 4th Street SW, has applied for a variance of section 34-353 of the Zoning Ordinance. The applicant would like to reduce the required corner side-yard setback, from a required 20 feet to 10 feet. The parcel is only 45 feet wide and has a storm water easement running through the middle of it. Both of these factors greatly reduce the area in which a structure could be constructed on the Property.

Staff Report, Reed Brodhead -

LOCATION:	**0 4th Street (corner of 4th St SW and Oak St)**
TAX MAP & PARCEL:	**Tax Map 29, Parcel 136.001 ("Subject Property")**
APPLICANT: PROPERTY	**Jeff Erkelens, Property Owner**
ZONING AND USE:	**R-2, two-family (vacant lot)**
VARIANCE REQUESTED:	**Owner requests relief from Section 34-353 of the City of Charlottesville Zoning Ordinance: The required corner side setback in the R-2 zoning district is twenty (20) feet. There is a storm water easement cutting through the center of the Property. As a result, the applicant is seeking to reduce the required corner side setback by ten (10) feet to better accommodate a new two-family home.**

The Subject Property is located on the corner of 4th Street SW and Oak Street. This Parcel was created through the subdivision process on 12/20/18 as it used to be adjoined to the adjacent property located at 413 Ridge Street. The Applicant intends on constructing a new two-family home on the Property. The setbacks for this use are twenty feet on the corner side of the Property and ten feet on the interior side. Additionally it must be at least 25 feet from the rear property line. A City storm water easement cuts through the center of the Property, further limiting the buildable area for a home site. As a result, the Applicant is seeking to reduce the corner-side yard setback from a required 20 feet to 10 feet. **Attachment 1** illustrates what the buildable area would look like **without** the granting of a variance and **Attachment 2**

illustrates what the buildable area would look like **with a** variance.

When the subdivision application was submitted to create this parcel, the Applicant was required to submit a survey of the Property. Therefore, it was known that there was a City sanitary easement running through the middle of the proposed parcel prior to the submittal of the application. This leads staff to conclude that the applicant knew there would be a hardship. He had the right to subdivide the parcel because it meets the minimum size and frontage requirements, but it was known that there would not be a suitable area to construct a new two-family home.

The applicant could pursue other options:

- A single family home would only be required to be 5 feet from the side property line, increasing the potential structure width from 15.69 feet to 20.69 feet.
- An exterior accessory apartment could be added in the rear yard of a single family home.
- The applicant could move the sewer line.
- The applicant could move the rear property to increase the size of the property and decrease the size of 413 Ridge Street. The applicant owns both properties.

There is one note that is important with the five part hardship test and that is number iii.

The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;

Staff note: The 20 foot corner-side setback can be erroneous when constructing a home on a narrower corner lot. However, section 34-354(2) of the zoning ordinance provides relief for lots of record prior to January 21, 1958, allowing a Property owner to reduce the setback down to as little as 10 feet to accommodate up to a 32-foot wide home. This code section does not apply to this parcel because it was just created in 2018.

Ms. Green – This is consistent with the next door lot?

Mr. Brodhead – It is consistent, but that is an existing home. That house is closer than 20 feet.

Ms. Green – Is this in the SIA?

Mr. Brodhead – It is in the SIA.

Mr. Ritter – I don't know if I am conflicted out of this. I believe that the applicant's company is a client of our law firm. I don't feel uncomfortable to continue representation.

Ms. Green – Do you personally represent him?

Mr. Ritter – I have done no work for him.

Ms. Kellar – What is the city policy on these kind of issues?

Mr. Brodhead – I have been privy to Planning Commission meetings, where the commissioners have not recused themselves.

Ms. Green – I am not certain that the city has a great policy.

Ms. Kellar – You are the attorney and you have to make your decision about positional responsibility.

Mr. Chapman – If someone pushed your firm, it wouldn't pass the conflict check. The firm can't represent both sides.

Mr. Ritter – Maybe my point will be ultimately irrelevant. Is it a majority?

Mr. Brodhead – You need at least three.

Mr. Chapman – If you recuse yourself, we would have to have a unanimous vote. It's not a majority of the remaining members.

Ms. Kellar – The applicant has the opportunity to decide if they want a panel of three or defer to another date.

It was agreed by the other members of the board that Mr. Ritter would not need to recuse himself from this application.

Mr. Chapman – If the rear property line is moved, that would make the lot bigger. Would it effect the side setback?

Mr. Brodhead – It would not affect the side setback.

Ms. Kellar – Do they own the adjacent lot?

Mr. Brodhead – They do own the adjacent lot.

Mr. Ritter – Are the pipes in the ground?

Mr. Brodhead – There are pipes in the ground.

Ms. Kellar – If the pipes are on your property, then it is your expense?

Mr. Brodhead – That is correct. The actual pipes belong to the city. The cost for moving the pipes belongs to the property owner. If there was a repair, it would be the city's expense because of the easement.

Jeff Erkelens, Applicant – Based on the geometry of it, moving the sewer line does need to go across the lot in that direction.

Mr. Chapman – What was the thought process when you created the lot? What was your intention?

Mr. Erkelens – My intention was to leave the main house lot as large as possible, while still leaving the minimum 7200 for R-2 lot. I have been working on the house for two years. Based on the other houses on Ridge Street, they have much larger backyards. If I pushed it any farther, I wouldn't be doing the right thing to the house.

Mr. Chapman – You did know that the constraint was there when you created the lot? Was your intention to go to the BZA to get a waiver?

Mr. Erkelens – It was not a waiver, but a variance.

Mr. Brodhead – Did you know about the 20 foot corner side setback? You obviously knew about it when you started going through the process. Was it your intention to get the variance?

Mr. Erkelens – No. I knew about quasi referenced earlier. I forgot that only applied to lots of record before 1959. I was mistaken.

Ms. Green – What was your plan for the lot?

Mr. Erkelens – To build a duplex.

Mr. Chapman – One of the things that strikes me is that you were here twelve months ago on that property in Fry Springs. I remember one of the points was the hardship brought on by actions of the owner. In that case, you created the slot, which didn't conform. In this case, it sounds like it is more deliberate. Your stakes didn't get shifted. You created the slot, and now you don't like what is allowed by right on the lot. We are reading through the newly specific directions. We are not supposed to grant a variance if its condition was created by the owner.

Ms. Green – By ordinance, we have four conditions. A. Strict application of the ordinance will produce undue hardship. The hardship is not generally shared by other properties in the same zoning district and vicinity. The authorization of the variance will not be a substantial detriment to the adjacent property. The character of the district will not be changed by granting of the variance and the condition or situation of property concerned is not of so general or re-occurring nature to make a reasonable practical formulation of general regulation to be adopted as an amendment to the ordinance.

Mr. Chapman - In order to grant a variance, the BZA must determine that all factors. The first one is the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance. It sounds like you didn't know that this flexibility was phased out, which doesn't apply to your lots, since 1958. You are now stuck building a skinny house or getting a variance to build it wider. It's better policy making. It's better economics for the developer to build two families in one structure rather than this accessory dwelling.

Public Hearing

Karen Howard – Traffic is very bad and parking is terrible in the area – Concern is that the parking and traffic created by the building of the new duplex if the applicant gets the variance from – There is little to no parking

Mr. Ritter – He does have the right to build a duplex. For every dwelling unit that he builds, he has to provide at least one off street parking spot. If he builds a two family unit, he would have to provide two parking spaces. It is a city wide issue with parking.

Mr. Chapman - This board does not deal with traffic. Our concern is whether he can build this two family home wider or if he is constrained to build a skinny.

Board Discussion and Motion

Ms. Green – It's in the SIA. One of the things happening, especially in this area, is a concentration of more density and setbacks. Those are the two largest things that the Commission is now looking at in changing, especially in this area. I understand traffic. We hear it all of the time. This one is a tough one for me because I also am certified board zoning member, and I understand the hardship regulations. If we ask him to move a sewer line, we're going in the face of everything we're talking about in the city right now making things more unaffordable. I am conflicted.

Mr. Chapman – I was thinking about this. There is this movement to allow more accessory dwelling units in cities, including Charlottesville. People want that. There is going to be a wave of people coming in here asking for setback waivers. Everyone is going to want to build accessory dwelling units, but they are not going to have the setbacks. I am predicting a lot of people coming in here asking for waivers. We have to decide whether to grant this.

Ms. Kellar – When I first joined this board, it was very strict in terms of defining the hardship and applying the test to the criteria that are laid out. Several years ago, this would have been an open and shut denial. We are now thinking about more policy issues. I don't know that we are really defined to deal with that. The ordinance isn't keeping up with the needs and desires of our time. If you look at this, is it a unique hardship? It is probably not a unique hardship because there are other lots in the city that are large and can be subdivided by their owner or by someone wishing acquire it. The opportunity was created by the applicant by subdividing the lot. The hardship was created at the same time.

Mr. Brodhead – The only unique situation is that all existing lots on corners can reduce that twenty foot setback. He can't because it is a new lot. When this house was on the market, there were at least ten phone calls from people asking if they can split that lot off. That was the first thing everyone wanted to know. I gave them the criteria. You can if you have 7200 square feet and 50 feet of frontage.

Ms. Green – Is this part of the form based code area?

Mr. Brodhead – It could be but I think that they are focusing on phase one right now. I know that he was also looking at potentially doing an infill SUP. It is such an erroneous process that it was going to be a lot of cost and time. He chose not to do that. In this area, all of the other lots on corners could reduce their setback, with the exception of this one.

Ms. Green – It is a problem with the re-codification of the zoning ordinance, which is holding up a lot of different things.

Mr. Chapman – I wonder what the thought process was in changing standards for post 1958 lots. I am trying to think of what the downside will be for the neighborhood here in granting this. I can't think of any downsides for the neighborhood for granting this variance. With the parking, there are going to be two parking spaces off the street, regardless of the width.

Mr. Erkelens – My property is also zoned historic as well. It has to go through the BAR. There is another opportunity for there to be public comment.

Ms. Kellar – While I am sympathetic to this, you are in an R-2 neighborhood and a duplex is allowed. There are so many conditions. Earlier, I think that we would have denied it, but if we can look at the uniqueness of this particular corner lot and its neighborhood that would be the only thing that I would see that would allow it.

Ms. Green – If we are looking at section 34-16 and answer A, strict application of the ordinance would produce an undue hardship. I think that is we are hung up. Does it produce an undue hardship, since the last was just created? Is the hardship not shared generally by the other properties on the same zoning district of the vicinity? Correct. Those other lots were pre-existing and they are closer to the road and substantial detriment to the adjacent properties. Nor would they be changing the character. It's not creating a situation. It's almost not granting the variance creates a situation, where that's going to force us to make a quicker ordinance change.

Ms. Kellar – How many other people are in the same situation just waiting for the ordinance to change?

Mr. Chapman – In 2a on page 1, an undue hardship strictly applied to ordinance, what is the hardship? A skinnier house. Is that a hardship?

Ms. Green – And less density. He is not being able to take full advantage of the R-2.

Mr. Chapman – I do think he created it himself. He didn't do it intentionally. He was not willful in thinking that he could get around it by coming to us. If that doesn't matter, I don't think that we can grant the variance because he created it when the lot was recorded last year. We can't do variances if that is the case.

Ms. Kellar – I don't want to get into the psychology of intent.

Mr. Chapman – Based on the top of page 3, I am going to lean towards not approving the variance. The hardship was created by the applicant. A lot was created. It seems pretty clear.

Ms. Kellar – That's the one I am having a hard time. I would like to grant it. I just feel like if someone wanted to challenge this, the ordinance is very clear. Why is this corner lot unique?

Mr. Brodhead – After I put this staff report together, one thing that I was thinking was that there are corner lots in the general area. This one, which was just newly created, is the only one that would not be able to take advantage of reducing that setback. These are prior to 1958.

Mr. Chapman – That's a separate section of standards, whether it's unique or not. The applicant created the hardship. That's not in this list. That's about whether we should grant a variance.

Ms. Green – Had he not subdivided the lot we would allow him to build a house on that lot closer to the street than ten feet?

Mr. Brodhead – No. He already had a house on it. You can have a house, a duplex, or an accessory apartment.

Ms. Green – If I build an accessory structure, I would be able to build it at ten feet. I could build an accessory structure at ten feet, and then subdivide the lot.

Mr. Brodhead – We actually would make you conform to what the house is at. It's not twenty. You could subdivide after the fact.

Ms. Green – That seems like a ridiculous way to do this. I am going to support the variance. I think that this is a flaw in the ordinance.

Mr. Chapman – Maybe that is a good strategy to re-combine the lots and build an accessory structure.

Motion: Ms. Green - I move to grant a variance as requested in Application 19-11-001, based on a finding that the applicant has established that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and meet the hardship factor (i)-(v) detailed in this staff report.

Variance passes by a 3-0 vote with one abstention.

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a. **BZA 19-11-002 –** Mr. Tom, Hubbard, the Property owner of 110 Avon Street, has applied for a variance of section 1038(i) of the Zoning Ordinance. The existing sign located on the Property is non-conforming because it is higher than 20 feet above grade and the bottom sill of the second story window. The applicant is seeking to remove the sign and replace it with a new one in the same location. The applicant contents that because the building is located next to the Belmont Bridge, a sign at conforming height would be invisible.

Staff Report, Reed Brodhead:

LOCATION:	**110 Avon Street**
TAX MAP & PARCEL:	**Tax Map 58, Parcel 289 ("Subject Property")**
APPLICANT:	**Tom Hubbard, Property Owner**
PROPERTY ZONING AND USE:	**Downtown Extended (DE), the Property is also located within the Entrance Corridor**

VARIANCE REQUESTED: **Owner requests relief from Section 34-1038(i) of the City of Charlottesville Zoning Ordinance: Wall signs can be located on a façade, up to 20 feet above grade, but cannot be higher than the bottom sill of the second story window. The applicant is seeking a variance to replace the existing non-conforming wall sign with a new sign of similar size and style for a new tenant. The applicant contents that because the building is located next to the Belmont Bridge, a sign at conforming height would be invisible.**

The Subject Property is a 3-story building located adjacent to the Belmont Bridge (9th Street SE) on the East boundary of the Property. Avon Street splits at the base of the bridge, runs parallel to 9th St SE (the bridge), and eventually crosses under the bridge to provide the 110 and 100 Avon Street with road frontage. (Attachment 1) The existing sign on the building is located on the façade above the 3rd story windows, therefore making it a non-conforming sign. A new tenant is requesting a similarly sized sign in the same location. Section 34-1036 of the zoning ordinance explains the alternation and replacement limits for nonconforming signs. No structural alteration, enlargement or extension shall be made to a legal non-conforming sign, unless the new tenant sign is reduced by 30% of the total existing sign surface. A sign permit was issued for the exiting sign on 1/6/06 (Attachment 2) for a wall sign that is 37.5 square feet. The zoning ordinance regulations pertaining to wall signs are the same as the current regulations. (Attachment 3) Therefore, the zoning official who signed off on the permit, created the nonconformity by not regulating the maximum height for the wall sign. The applicant has the ability to reduce the nonconforming wall sign by 30% without a variance per section 34-1036. Therefore, they are entitled to have up a sign up to 26.25 square feet. Considering that the initial sign permit was not regulated correctly by zoning staff and the building doesn't front on 9th Street SE (Belmont Bridge), Staff does not believe that a hardship exists to necessitate a variance.

Board Discussion and Questions of the applicant

Mr. Brodhead – I did get one letter from one resident. A woman said that she had no problem with the sign and in total support of it.

Tom Hubbard, **Applicant** – They are the major and long term tenant. As the building owner, we have an interest in this.

Mr. Brodhead – I just made Mr. Hubbard aware of the non-conforming yesterday because I just found the sign permit. We are so far along in the process that it certainly makes sense to come to the board. If the primary tenant leaves next year, then he is going to have to reduce it again.

Mr. Chapman – You are a long term tenant but you haven't had exterior signage of this kind?

Tammy Wiseman, Primary Tenant – No. We have been there since February, 2014. At that time, we were one floor. As of January of this year, we have taken over all three floors, with the exception of one other tenant, who we share the second floor with. At the point we took over the first floor, we now considered ourselves to be the full tenant of the building.

Mr. Chapman – When you were expanding, were you operating under the assumption that you would be able to take over that sign space someday?

Ms. Wiseman – We started to work with them on an application for doing that and it came back.

Mr. Chapman – You had thought that it would be fairly routine and it came back rejected?

Ms. Wiseman – That's when we pursued the appeal. It's unusual. Our logo and our name has a similar look and feel in a way to the Inova sign.

Ms. Green – As we look through these, the application and the ordinance, does this generate. If this were to happen, because we accidentally approved a permit wrongly, how would this particular sign if granted apply to any other signs that might come along?

Mr. Brodhead – A mistake is a mistake. In my interpretation, it's a mistake. The person, who approved it, had some other thought processes. It's not documented that well and mistakes happen. Applicants lean on the city and they go through the process. You can't really look at it as a mistake.

Ms. Green – Would this create a situation where someone else could come in and a sign next to it at the same height?

Mr. Brodhead – I would say 'no.'

Ms. Kellar – Were you intending for your replacement sign to be similar in materials, color?

Ms. Wiseman – Yes. It is going to be similarly sized. The only difference is that our logo colors are black and orange. For us, our intent is not to have it illuminated. That's not a critical factor. For us, the critical issue is making our business aware for people, who are coming to our business, doing business with us, or providing services to us. It is very difficult to find our location, even if using GPS. Any type of signage on lower levels is blocked by the bridge or blocked approaching from the south because of our setback off of Graves. The only direct approach is Old Avon.

Public Hearing – None

Board Deliberations and Motion

Mr. Chapman – The applicant had a permitted sign, and the applicant operated for years as his tenant grew. Everyone was operating with the expectation that it was a permitted sign. When they became the anchor tenant, they would put their name up there. They have been operating all of this time with that expectation. It makes sense that the applicant would take over the permitted sign spot.

Ms. Kellar – That's not the issue. I would be inclined to support this, even though I know that our goal is to bring everything into conformity. It wouldn't change the visual effect, which I think is the intent of the ordinance. If it's similar to the sign that is there now, and the fact that it's going to go through another level of review from the Entrance Corridor Review Administrator, I don't have a problem with it.

Mr. Ritter – Me neither.

Mr. Chapman – With non-conforming uses, there is a goal to get rid of those. Wouldn't that generify the city after a while? Non-conforming uses are all over the place.

Ms. Green – I will not be supporting it. I understand that we had a mistake by a staff member. That doesn't give us the opportunity to circumvent the ordinance now. I would be in favor of making it less non-conforming, but not in the same location.

Mr. Ritter – It's a question of the use changing caused by the owner, not by the tenants. The use is the same. It's just a new tenant switching out a sign.

Ms. Green – We have this all of the time. This is not unusual. I can give you multiple places, where non-conforming uses change. It changes when there is a new use.

Motion: Ms. Kellar - I move to grant a variance as requested in Application 19-11-002, based on a finding that the applicant has established that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and meet the hardship factor (i)-(v) detailed in this staff report. And I further move to grant this motion subject to the following conditions:

- **That the replacement sign will not vary substantially in style, size, materials, or illumination.**
- **Only a sign from one business can occupy that location in the future**

Motion seconded by Mr. Chapman. Motion passes (3-1)

Meeting was adjourned at 5:10 PM.