

NELSON COUNTY BOARD OF ZONING APPEALS
December 2, 2013
MEETING MINUTES

Present: Gifford Childs, Linda Russell, Kim Cash, and Goffrey Miles

Absent: John Bradshaw and Ronnie Moyer.

Staff: Tim Padalino, Director, Planning & Zoning Director, and Stormy Hopkins,
Secretary

Call to Order: Gifford Childs called the meeting to order at 7:32 P. M. in the General District Courtroom, County Courthouse, Lovingson. There were four members present to establish a quorum.

Approval of Minutes: Ms. Russell made the motion to approve the minutes as submitted for the Board of Zoning Appeals meeting of September 3, 2013. A second was made by Ms. Cash. The motion passed 4-0.

I. Variance Request #2013-002 / Appeal of Notice of Violation

Consideration of a request by Mrs. Brenda Curro for a Variance pursuant to Article 14, Sections 14-2-2 and 14-4-4 of the Nelson County Zoning Ordinance. The applicant seeks a Variance from the Setback Regulations required in Article 4, Sections 4-3-1a and 4-3-2 for an existing retaining wall / parking structure. This application is for property at 746 Mountain Road in Afton, further identified as Tax Map #3-A-100, which is owned by the applicant.

Mr. Padalino presented the Staff Report stating a Variance Request was received in conjunction with property identified as Tax Map #3-A-100, located at 746 Mountain Road in Afton. The applicants for this Variance Request, Terry and Brenda Curro, are also the owners of the property. Mr. Padalino used the County's GIS system and the dimension tool to calculate the approximate length of road frontage to be one hundred seventy-five feet (175'). A deed search was also conducted, which the Plat of Record, (deed book record 116, page 741), shows road frontage of approximately one hundred eighteen feet (118') in length. This is misrepresented on the County's GIS system.

On August 12, 2013, the Building Inspections Department received a building permit application for a parking structure / retaining wall. During the zoning review process, staff noticed that required setbacks may be an issue. On August 23, 2013, Mr. Grant Massie, Planning & Zoning staff member, met with the Curros to discuss the setback requirements in the County's Zoning Ordinance, as well as to discuss the structure and to determine what would need to be done next. After much deliberation and research the County issued a Notice of Violation on October 30, 2013. On November 7, 2013, the applicant appealed the notice and sought a Variance, specifically for the existing structure from the front yard setback requirements found in Section 4-3-1a as well as a Variance from the side yard setback requirements in Section 4-3-2.

The Zoning Ordinance requires a minimum of seventy-five feet (75') from the centerline of the road or fifty feet (50') from the edge of the public right-of-way (ROW), whichever is greater. The side yard setback is a minimum of ten feet (10') – although the total side yard setbacks must be a minimum of

twenty-five feet (25') when added together. Mr. Padalino noted that the adjoining property owners were notified and the State Code requirement for a public hearing notice was also properly satisfied.

Ms. Cash stated she understands what the requirements are for both front yard and side yard setbacks but does not know what the actual measurements are for this particular property. Mr. Padalino stated that the County does not have the measurements in an official survey, and that County staff have not taken its own measurements. He noted that part of the issue with the variance and measurements is that the property line is also in dispute.

Ms. Russell stated she does not know how a Variance could be granted, unless the Board knows how much of a Variance is being requested. She noted the Board is only allowed to grant the minimum Variance required.

Mr. Padalino stated the structure was built without a Building Permit. Ms. Russell asked if there were any measurements in regards to the depth, length and width of the pad. Mr. Padalino stated the only measurement given was in reference to the wall, which is five feet (5') at the lower end.

Mrs. Curro was then sworn in by Mr. Childs and signed the affidavit.

Mrs. Curro addressed the Board, stating the purpose of the structure was to prevent the basement from flooding and since the structure was built, there has not been any flooding. She stated the contractor, David Campbell, was supposed to get all the permits. She noted there is a ramp on the other side that comes down through the yard to the front of the house. She said that she is unable to see to back out of the driveway and that the existing driveway is very narrow and she isn't able to turn around in that area.

Ms. Russell asked about the garage in the back, and Mrs. Curro stated it was a two (2) bay garage.

Ms. Cash asked Mrs. Curro how long she had owned the property. Mrs. Curro stated she purchased the property in the 1960s and built the house in the 1980s. Ms. Russell stated the County records indicate that the property was purchased in 2006. Mrs. Curro said that was incorrect.

Ms. Russell and Ms. Cash asked if the driveway could be widened. Mrs. Curro said it could not because she does not have enough land to do so, and there is not enough room to turn around in front of the garage. Ms. Russell indicated if both bays are accessible, there should be enough room to turn around in the area.

Ms. Russell indicated that she has never known the Board to grant a blanket Variance without a plan that has dimensions showing the structure under contention; why it does not meet the County regulations; why it can't meet those regulations; and what the numbers are. She stated at this time, she cannot support the pad as far as its proximity to the state highway; however, she has no idea what the measurement numbers are from the side yard. The request is for two Variances and there is not enough information to grant the second Variance. Mr. Miles added figures need to be provided in order to grant a Variance.

Mrs. Curro pointed out that the location of the pad is where the old driveway to the property used to be.

Mr. Childs asked Mrs. Curro, since the water doesn't go into the house now, where does the water go. Mrs. Curro stated the water runs down the side in between the properties, down the back side of the hedge row.

Mrs. Cash asked Mrs. Curro about the boundary line dispute and what was being disputed. Mrs. Curro said her sister was the one disputing the line. The line in question is on the left side of the pad. Mrs. Curro said the pad is built within one (1) to two (2) feet of the property line.

Mr. Childs opened the public hearing at 8:03 p.m. and the following people spoke:

Bobby Morris:

Mr. Morris stated he is the son of the applicant and lives at the residence. He stated he had pictures of the ramp and the road if they needed to be seen. He said he had copies of medical records indicating he has Optical Neuritis because he has MS, which causes blurred vision, symptoms that come and go. With this, he's not able to back out of the driveway and he's not able to park in the garage because it is only a two bay garage. Mr. Morris stated at the closest point, the whole structure should be three feet (3') off the property line. He said the water runs between the structure and the fence.

Martha Eutsler:

Ms. Eutsler stated that she is a sister to Mrs. Curro. She stated that after the structure was built, the water now comes down to her side of the property. She stated her property is to the left of the structure.

The public hearing was closed at 8:06 p.m.

Ms. Russell indicated that since Mr. Curro owns the property, she would like for him to sign the application as well, if he's able.

Ms. Cash and Ms. Russell both stated there were several issues and concerns. Two of the main issues that are the most concerning are the unresolved boundary line issue and the question of not being able to use the existing driveway.

Mr. Padalino stated staff researched the County's Ordinance and worked with David Thompson, Building Inspections Official, to figure out the Building Code requirements. The conclusion to consider this a structure was the fact it has footers; it's a permanent structure to the ground. Mr. Padalino read the definition of structure from the County's ordinance.

Structure: Anything constructed or erected, the use of which required permanent location on the ground, or attachment to something having a permanent location on the ground. Fences are excluded from this definition.

Ms. Cash disagreed, stating she does not feel a building with footers constitutes it as a structure and should have to meet those codes. Mr. Padalino respectfully disagreed.

Mr. Padalino stated that on the Variance Request Form, a petition of appeal to the Board of Zoning Appeals must be accompanied by the following:

(3): A plat drawn to scale showing the lot or property described in the application, location of the existing and proposed buildings, alterations, or additions, all setback

lines, and the limits of any variance requested.

Ms. Eutsler told the Board that she had her property surveyed about 6 ½ years ago. Ms. Cash told her she should provide a copy of the survey to Mr. Padalino and he would give the Board a copy for review. Both parties need to provide some information to protect their rights and interests.

Ms. Cash noted that Mr. Padalino would work with the applicant in making sure they knew what the Board is requiring of them for the March hearing. She asked Mr. Padalino if he was clear as to what would be required by the applicant. Mr. Padalino stated the following:

- a) Identify the side yard boundary line (the northeast side of the property)
- b) Identify the front yard boundary line (adjacent to Mountain Road)
- c) Identify the Virginia Department of Transportation (VDOT) right-of-way(s)
- d) Identify the location and all the dimensions of the existing parking structure
- e) Identify the location and dimensions of the existing handicap ramp(s)
- f) Identify the location of the required minimum setback lines for the side yard and front yard
- g) Identify the dimensions of the driveway, including the existing turn-around area in front of the garage as well as the potential turn-around area (if it can be expanded)
- h) Existing plat or survey of parcel #3-A-103A
- i) Signature of Mr. Curro on the current application

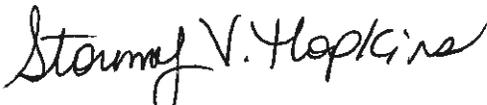
Ms. Russell made a motion, that in consideration of the request by Brenda Curro for a Variance at her property at 746 Mountain Road, Tax Map #3-A-100, the Board of Zoning Appeals has determined that insufficient evidence has been put forth by the applicant; and the Board will table this issue until the meeting on March 3, 2014, at which time the applicant will provide the Board with more specific details of what is on the property, dimensions of the proposed structure that requires the variance as well as other structures that are currently on the property. In addition, the Board would like to see the application signed by both owners of the property before appearing before the Board in March.

A second was offered by Mr. Miles; the vote was 4-0.

Adjournment:

8:36 PM

Respectfully submitted,



Stormy V. Hopkins
Secretary