

NELSON COUNTY BOARD OF ZONING APPEALS
July 7, 2014
MEETING MINUTES

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

Absent: John Bradshaw

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

Call to Order: Mr. Childs called the meeting to order at 7:33 P. M. in the General District Courtroom, County Courthouse, Lovingson. There were five members present to establish a quorum.

Approval of Minutes:

Ms. Russell requested the following revisions:

Page 2 – Other Business / 4th paragraph / beginning with Ms. Russell suggests: 1. remove the “are” after driveways.

Page 2 – Other Business / 4th paragraph / beginning with Ms. Russell suggests: 4. remove the “s” at the end of permits.

Page 2 – Other Business / last paragraph / beginning with Ms. Cash suggests / 1st sentence: remove the “s” at the end of members.

Mr. Moyer made a motion that the Board approve the minutes as amended for June 2, 2014. A second was made by Mr. Childs. The motion passed 5-0.

Variance Request #2014-001 / Mr. Johnny Lawhorne: Mr. Padalino stated a complete application was received for Variance #2014-001 on June 11, 2014. Both the applicant and the property owner have signed the petition; a sketch drawing of the property was submitted; and the fee payment was received. Legal notice for advertising was published on June 19th and June 26th. The petitioner seeks a variance pursuant to the Board of Zoning Appeals authority granted in Article 14.2.4. The petitioner is seeking a variance in the front yard setback requirement, provisions found in Article 4 (Agricultural District); Section 3-1a.

The subject property is at 5532 Patrick Henry Highway, Roseland; further identified as Tax Map Parcel #64-A-189A; zoned A-1 (Agriculture); and is 0.77 acres in size. Mr. Padalino indicated that he went to the subject property and, with the petitioner, verified the measurements that were provided on the sketch submitted along with the application. The measurements were taken twice from the foot of the existing structure to the center line of Rt. 151, which was seventy-two (72) feet. The measurement did not include the existing concrete pad. The existing structure is three (3) feet inside of the required front yard setback, which makes this a non-conforming structure. Using the measurements, the petitioner is requesting an eleven (11) foot variance. If using the current three (3) feet non-conforming pad, the variance requested would be four (4) feet. Mr. Childs noted that the measurements do confirm what the applicant provided. Commissioner Russell stated that the new structure will be sixty-four (64) feet from the center of the road. Mr. Padalino indicated that is correct with regards to the design of the proposed porch, which would have a depth of eight (8) feet.

Mr. Padalino noted that he wanted to bring to the attention of the Board that the petition is being reviewed at the request of the property owner and their proactive application, and not due to a complaint or an issuance of a notice of violation letter.

Mr. Moyer noted that in the Staff Report it was stated that there are other existing homes in the neighborhood that are built closer than the current fifty (50) foot required right-of-way setback. Mr. Padalino stated that was correct and referenced the pictures that were taken by Mr. Massie.

Mr. Johnny Lawhorne-owner (Stacey Lawhorne-daughter) of 5532 Patrick Henry Highway, Roseland: Mr. Lawhorne was sworn in by Mr. Childs before the Board. Mr. Lawhorne stated that he requested the variance. He stated that the hardship was that the house was already located within the required front yard setback; and it's sitting too close to the ground. He wants to pour a concrete pad, put a roof over it and keep as much of the water away from the house as possible, to keep it from going under the house. He stated that the corner of the house has been replaced once due to water damage. Mr. Lawhorne stated that he would like to spend the rest of his time sitting in a rocking chair on the porch and watch the cars go by.

Ms. Russell stated that if she recalls there is room on the south side of the home to put a porch and not necessarily in front of the house. Mr. Lawhorne stated that was correct but that would not help resolve the water issues and noted that the air conditioning unit is on that side of the house. Ms. Russell stated that some of the water issues have been resolved by putting the gravel on the side of the house. Ms. Russell stated that she is sympathetic with the applicant but noted the Board is very restricted in granting variances.

Mr. Childs opened the public hearing at 7:50 p.m.

Tommy Bruguieri of 187 Jack's Hill Road, Roseland: Mr. Bruguieri was sworn in by Mr. Childs. Mr. Bruguieri stated that Mr. Lawhorne was like a lot of others who are within the seventy-five (75) foot setback; through no fault of their own. He stated that Zoning came in some time during or around 1973 and the houses were already built, and unfortunately, there is not grandfathering. The house is already three (3) feet in the setback and he doesn't see a problem with adding a porch. The road is not slated to have any expansion and it doesn't have heavy traffic like on the other side of Brent's Mountain. Eight (8) more feet for a porch is not going to bother anything or anyone. In regards to the south side, Mr. Lawhorne would have to move the heat pump and it would cost a lot more and they are trying to do this as cheap as possible. Mr. Bruguieri stated that he would appreciate the granting of the variance to build the eight (8) foot porch.

No further comments were made and the public hearing was closed at 7:53 p.m.

Mr. Miles stated that he felt that it would be a good idea for Mr. Lawhorne to have an eight (8) foot porch, rather than to have to move everything else around. Mr. Moyer agreed with Mr. Miles. Ms. Cash stated that she does not agree and that the Board's job is typically not to increase non-compliance, making note that the structure is already in non-compliance. She stated that the issue with the water drainage is not a zoning issue but an on-site issue; and that adding the porch would increase the house further into the required front yard setback area. Ms. Cash stated that she understands that a variance would not be creating something that does not already exist and it wouldn't be detrimental to the traffic.

Ms. Russell stated that although she is struggling with this and understands the reasons for wanting a porch with a cover, she keeps going back to the Virginia State Code, which is where the Board receives its mandate, which says that, "an application of the terms of the ordinance would effectively prohibit or unreasonably restrict the use of the property or cause a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant". Ms. Russell noted that she was sympathetic but not having a porch does not approach confiscation. She added that the State Supreme Court says that variances should be used very rarely.

Mr. Moyer made a motion to approve Variance #2014-001 to grant an eleven (11) foot variance to allow an eight (8) foot porch to be added to the front of the existing structure based on meeting the hardship requirements.

A second was offered by Mr. Miles; vote 3-2 in favor with Ms. Cash & Ms. Russell voting against the motion.

Other Business:

Chad Artz Case: Mr. Padalino stated that in regards to the Special Use Permit from 2009, Judge Eggleston is to hear the case on July 16th at 9:00 a.m. He stated that this is the final hearing for Mr. Artz to achieve full compliance with the orders of the BZA and the subsequent Court orders. Specifically, Mr. Artz needs to obtain a Certificate of Occupancy (C.O.) for his dwelling prior to the hearing. Mr. Padalino will contact Mr. Artz tomorrow as a reminder of the upcoming hearing and to get an update on his progress. Ms. Russell stated that she had asked Mr. Grant Massie if Mr. Artz had to be in compliance with his structure or the entire property; she noted that Mr. Massie stated that he believed that compliance needed to be on the entire property. Mr. Padalino stated that the issue before Judge Eggleston is whether or not he has the permitted primary use; which in this case is the single family dwelling. The issues that are active in this case are the existing sheds and as long as they are outside of the front yard setback; they are permissible, assuming he gets the C.O. for a dwelling. Ms. Russell stated that she just wanted to be sure that when staff goes to court they are prepared to deal with all issues of the property and not just the manufactured home.

Terry & Brenda Curro Case: Mr. Padalino stated that at this time, there is no update from Mr. Payne. He noted it has been submitted to Judge Gamble for his review. The next step is for Judge Gamble to determine if there will be a hearing or if he will throw it out. Mr. Padalino also explained that it was the County's obligation to compile the facts and to send them to the court, and that County staff assisted Mr. Payne with that effort. That information was provided to the court within the twenty-one (21) day requirement. Mr. Padalino stated that he would let the Board know if a hearing date is set or the disposition.

Ms. Russell stated that during the Curro case, the issue regarding driveways came up and how they fit in the Zoning Ordinance. She also noted that the BZA had asked for clarification if driveways are structures; the review process; if they required a Virginia Department of Transportation (VDOT) permit; and the required setbacks. Mr. Padalino stated that it's his understanding if driveways are at grade then they are not considered a structure. Ms. Russell asked that Mr. Padalino contact Mr. Payne if there is any legal court interpretations regarding driveways.

Meeting Procedures: Mr. Childs noted that he has prepared a draft of general procedures of how the meetings should be conducted. He stated that he would send a copy to all Board members to review and provide feedback.

Mr. Padalino noted that in regards to the Lawhorne case, there was the question of whether the application required an engineered survey or not. After inquiring and seeking counsel from Mr. Payne, he stated the BZA has the authority to set their own procedures. The way the application is written, it does not explicitly require it to be professionally prepared. Mr. Padalino suggested that a sketch site plan or survey is acceptable but also note that the Board reserves the right to request additional information; including, but not limited to, a professional scaled drawing, in order to make an accurate decision. Ms. Cash noted that it is imperative that Staff confirm measurements that are provided by an applicant. Mr. Bruguere added that this was no fault of the property owner; the County put the applicant in this particular situation.

Adjournment:

8:22 PM

Respectfully submitted,

Stormy V. Hopkins
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Secretary