



Minutes
Board of Zoning Appeals
March 18, 2019
Council Chambers, City Hall
Fredericksburg, Virginia

MEMBERS PRESENT

Dr. Roy Gratz
Jay Jarrell III, Vice Chair
Matthew Muggeridge
Tom O'Toole
Helen P. Ross

MEMBERS

ABSENT
Frank Reyes, Chair

STAFF

James Newman, Zoning Administrator
Cathy Eckles, Secretary

Vice Chair Jarrell, Acting Chair, called the meeting to order at 4:30 p.m. for Chair Reyes, who was absent.

PUBLIC NOTICE REQUIREMENTS

Acting Chair Jarrell determined that a quorum was present, and asked if public notice requirements had been met. James Newman stated that public notice requirements had been met.

APPROVAL OF AGENDA

Dr. Gratz motioned to approve the agenda as presented. Mr. O'Toole seconded. The motion carried 5-0.

DISCLOSURE OF EX PARTE COMMUNICATIONS

Acting Chair Jarrell asked if any Board member had engaged in *ex parte* communications on any item before the Board. No one indicated that they had participated in any *ex parte* communication.

DISCLOSURE OF CONFLICTS OF INTEREST

Acting Chair Jarrell asked if any Board member had any conflicts of interest on any item before the Board. Mr. Muggeridge indicated he believes he has a conflict but it is not the one indicated in the statute. He noted that he is negotiating the lease of a property for which the petitioner's representative is the representative but it is a completely separate property. He further stated that according to the statute he believes he does not need to disqualify himself. There were no further disclosures.

PUBLIC HEARING – New Business

- A. **VAR 2019-01 Route 3 Village Center LLC**, requests a variance for 2211 Plank Road in the Commercial-Highway Zoning District. The exception is to Section 72-32.4.B. of the Unified Development Ordinance. The applicant requests a variance to reduce the side yard setback by 1.85 feet each for two proposed adjoining lots, and to reduce the minimum lot width for the new parcel from the required 150 feet to 70 feet.

Presentation by Staff

James Newman, Zoning Administrator, presented the staff report and power point presentation.

Public Comment

The applicant, James Scully was present and expressed appreciation for what the Board of Zoning Appeals does. He further stated he had nothing to add to Mr. Newman's presentation, it covered all aspects and he agrees with Staff's recommendations.

There were no further public comments. Acting Chair Jarrell closed the public hearing.

Board Comments & Questions

The Board of Zoning Appeals (BZA) discussed the application and asked questions to staff and the applicant.

Mr. Muggeridge questioned how carving off a section of the lot in question would impact the value of what remains. Mr. Scully noted that the remainder of what is being carved from the property (the shopping center side) will not decrease the value nor the usability. It will probably increase both by putting a neighboring parcel back to work and increasing the traffic in that area. Closed businesses detract from their neighbors so the sooner the business is open, the better.

Mr. Muggeridge further questioned if it creates any peculiarities, any need for variances, any unique shapes or sizes or set offs in the remaining property. Mr. Scully noted it doesn't and the reason for the zig/zag of the parcel is to balance the parking as well as the open space. The existing open space on the previous parcel and on the two new parcels is exactly the same. They are equal.

Mr. O'Toole asked for clarification on the open space and if it is sufficient to meet current code. Mr. Scully stated he's not sure what the ordinance requires. What they are maintaining on each side of the yellow line in the drawing is about 5.6 percent but is unsure if it meets current code.

Mr. O'Toole further questioned the split of the difference between the two buildings and if this puts Parcel B in violation if we approve this variance, and won't it need a variance as there is no 15 foot setback from the property line? Mr. Scully clarified that this request is asking for a variance on both sides of the yellow line. Mr. O'Toole questioned if approving this automatically approves the other variance. He further questioned making one parcel have a 15 foot setback and the other parcel have the variance so only one parcel would be in violation and have a variance. Mr. Scully clarified that the request is to approve a variance to reduce the side yard setback by 1.85 feet each for the proposed adjoining lots. Mr. Newman further clarified that splitting it down the middle puts the setback as 13.1 on both parcels. Based on the wording of the motion the City Attorney drew up, the approval is based on the condition of the subject property as subdivided and the subject property as a whole. The subdivision would therefore be for a variance for both the new parcel and for the remainder.

Dr. Gratz questioned the fact that the split looks as if it goes right through the middle of the drive through lane. Mr. Scully clarified that this will be taken care of in an easement and won't be a problem. Dr. Gratz further questioned this subdivision in that it creates a strange lot and once this building reaches the end of its life, it will be hard for a new business to build there. Mr. Scully noted they have a potential buyer who will be reusing the current building and substantially changing the façade but he has not thought any further to when the building comes down eventually.

Dr. Gratz also questioned whether there are other shopping areas in the City where something like this could come up, wonders if this will set a precedent. Mr. Scully noted that there are no other single parcels with multiple buildings on it. Mr. Newman explained that he and Mike Craig, Senior Planner, looked into this and found no other commercial properties like this situation. A few had side setbacks that were too close, but they were single buildings on one parcel.

Mr. Muggeridge asked Mr. Newman to repeat the variance request language. Mr. Newman stated it was the final paragraph of the Conclusions of Law section stating:

Therefore, the Fredericksburg Board of Zoning Appeals approves the application for a variance from the side yard setbacks and the minimum lot width requirements of the C-H Commercial Highway zoning district, on the condition that the subject property is subdivided in substantial accordance with the proposed subdivision plat.

Acting Chair Jarrell questioned if the City had looked back at the lot width requirements back in the previous ordinance when this project was approved. Mr. Newman does not believe there were lot width requirements at that time. Mr. Newman would have to further research it but also believes there were not any setback conditions either.

Mr. O'Toole noted that he is still concerned about a precedent being set but since the City Attorney is drafting this motion, he'll accept it. Mr. Muggeridge stated his initial thought was that they were trying to go through the back door, but since hearing that there were not requirements back at the time, he no longer feels they were trying to pull something. He now believes this is a separate situation which is what variances are for.

Mr. Muggeridge spoke further about his concern, although it is beyond the scope of the Board's jurisdiction, does this subdivision of the property cause the property to lose its value as a commercial lot. Acting Chair Jarrell noted that the person who would care the most about the value of the remaining property is the one here asking us to do this.

Mr. Muggeridge motioned to approve based on the draft language of the Record of Decision regarding Variance 2019-01, Route 3 Village Center. Mr. O'Toole seconded but had one further question regarding parking and whether it satisfies both parcels. Mr. Newman clarified that a change in use does not change the parking requirements whether greater or less than the previous requirements.

Mr. Jarrell called for a vote. The motion to approve was passed, **4-1, Dr. Gratz-Deny.**

STAFF / BOARD COMMENTS

None

ADJOURNMENT

Mr. O'Toole made a motion to adjourn. Dr. Gratz seconded. Passed unanimously. Meeting adjourned at 4:59 p.m.

Jay Jarrell III, Acting Chair

