



Minutes
Board of Zoning Appeals
July 15, 2019
Council Chambers, City Hall
Fredericksburg, Virginia

MEMBERS PRESENT

Frank Reyes, Chairman
Jay Jarrell III, Vice Chairman
Dr. Roy Gratz
Matthew Muggeridge
Helen P. Ross

MEMBERS ABSENT

STAFF

James Newman,
Zoning Administrator
Cathy Eckles, Secretary

Chairman Reyes called the meeting to order at 4:31 p.m.

PUBLIC NOTICE REQUIRMENTS

Chairman Reyes determined that a quorum was present, and asked if public notice requirements had been met. Mr. Newman stated that public notice requirements had been met.

DISCLOSURE OF EX PARTE COMMUNICATIONS

Chairman Reyes 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

Chairman Reyes asked if any Board member had any conflicts of interest on any item before the Board. There were no disclosures.

APPROVAL OF AGENDA

Mr. Muggeridge motioned to approve the agenda as presented. Mr. Jarrell seconded. The motion carried 5-0.

PUBLIC HEARING – New Business

VAR2019-03, Jennifer and Kirsten Talken-Spaulding, request a Variance from the front setbacks required by Code § 72-31-3-D-1, for 3207 Normandy Avenue (GPIN 7779-49-5649) in the R-4 Residential Zoning District.

Presentation by Staff

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

Public Comment

Applicant Jennifer Talken-Spaulling, 3207 Normandy Avenue, but currently residing at 2102 Caroline Street was present, as was her spouse, Kirsten Talken-Spaulling, and their realtor, Clay Murray, Pathway Realty. Jennifer stated her builder, Patrick Gay, Simply Home, was unable to attend. Jennifer stated they are requesting a variance to the calculated front setback and approval to use the standard front setback. She stated that is the information they received from Mr. Newman before they ever bought the house and have since based their design process on that information. Jennifer stated this was reinforced many times over until they received the calculated front setback information much later. Applicants are now eight months into the renovation process and without this variance, Applicants are essentially at day one again facing unknown costs and time delays.

Applicants have several points of disagreement with Mr. Newman's presentation. Applicants feel their design, which meets the standard setback requirement, supports and enhances the Normandy Village neighborhood. Applicants looked at three houses and called the City each time to get specific information and requirements about that particular house. The only house that Applicants felt met the potential intentions they had for their home based on information provided by Mr. Newman was 3207 Normandy Avenue. Jennifer then discussed the character of the property as Applicants believe that maintaining a ranch style home is consistent with the character of the Normandy Village neighborhood. Jennifer stated they have numerous sources of information regarding their proposal and were happy to answer questions.

Applicant Kirsten Talken-Spaulling, 3207 Normandy Avenue, but currently residing at 2102 Caroline Street, stated that had Applicants known the correct setbacks, they would have known they couldn't build what they wanted and wouldn't have bought the property. Applicants have now invested \$260,000 and months of time to discover that what they want might not be possible. Applicants are not blaming the Zoning Administrator but want the Board to realize the financial and time hardship they are in. Kirsten doesn't believe that changing the front setback will change the character of the house.

Clay Murray, Pathway Realty, realtor for Applicants, stated he reached out to the zoning administrator in October 2018, and based on the information given, Applicants purchased the property. To now find out that information was wrong is very concerning for him as a realtor giving information to his clients as it can damage his reputation. Applicants put a lot of money, time, and effort into this process based on wrong information given by the City. Mr. Murray believes the Board should approve the variance and right the wrong done to his clients.

Mr. Jarrell questioned how many communications confirmed the front setback before they received the calculated front setback. Jennifer stated the original question was asked in October, Applicants then checked the zoning for R-4 which the chart showed as 18' is the standard front setback which matched the verbal answer they received in October. There is a footnote they didn't see about calculated front setbacks but Applicants were not given any information that this would apply to them. On January 3, Applicants visited the City zoning office since they were bringing their builder on board and Applicants wanted to be sure they had all the information necessary. Applicants were considering a dining room at that point and were concerned about the right side setbacks because the existing carport is larger than a six foot setback. Originally Applicants had been told they could keep the existing footprint

but that information changed during the January visit and it became narrower than Applicants thought they had. Kirsten stated that Applicants were verbally told in October 2018, verbally told on January 3, 2019 (which was confirmed in an email on January 4, 2019), and at the end of the January 4 email Applicants requested confirmation on the setbacks (plural). Jennifer stated that adjustments were made to the side based on the January communications and based on Simply Home's communications with the City. Applicants also discovered in April the property line is slightly skewed so further changes were necessary. Jennifer stated the second hardship the property caused is the heavily terraced rear landscaping making it very difficult to go into the rear setbacks. Mr. Jarrell further questioned if Mr. Newman ever confirmed in writing the 18' front setback, but Jennifer stated it was just questioned but not confirmed.

Board Comments & Questions

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

Mr. Jarrell questioned Mr. Newman as to his understanding of the situation. Mr. Newman confirmed there was a verbal conversation with the realtor in October where he stated that the setback was 18' which was incorrect, it has to be calculated using the infill calculations. Mr. Newman next met with Applicants in January but he doesn't recall seeing any draft plans at that time. The side setbacks were discussed and it was confirmed that there was a 6' side setback requirement. Mr. Newman met with the architect in April with plans wherein it was discussed there were issues with the side setback. The architect resubmitted plans on May 3 which Mr. Newman responded to by email on May 17.

Mr. Jarrell questioned the 38 infill calculations done since 2016 and how many of those pushed the house farther back than the standard. Mr. Newman did not know. Mr. Jarrell questioned how many of them require a deeper setback than the standard. Mr. Newman responded almost all of them did.

Mr. Jarrell inquired about the process to receive a binding opinion from the Zoning Administrator. Mr. Newman responded that he had not sent any written opinion to Applicants, the front setback comments were given to the architect. Mr. Jarrell asked Mr. Newman to review the zoning determination process. Mr. Newman stated that the Code language is checked, which requires that a front setback be calculated. He then goes to the 2010 tax map book and takes the measurement of the closest point of the house to the edge of the right-of-way, measure all those and take the median of that number to establish the median setback. In this case, he determined the median was 31'.

Mr. Jarrell asked about the proper process to get a binding determination as to setbacks on a lot. Mr. Newman stated that a zoning determination form would need to be submitted. Mr. Newman will then do a letter with the City seal and that is a binding determination. Mr. Jarrell clarified that any other information received from the Zoning Administrator would not be binding. Mr. Newman stated there is a disclaimer in his correspondence with the Applicants at the end that states:

Information contained in this e-mail does not take the place of a written zoning determination and is not intended to be an official zoning decision. To obtain an official written zoning decision, contact the Zoning Administrator for more information.

Mr. Muggeridge asked if a hardship can occur based on a verbal communication and whether the City can be bound by any other communication besides a zoning verification letter. Mr. Newman stated he didn't think so but he would have to defer to the City Attorney.

Mr. Muggeridge asked Applicants what hardships they incurred due to the verbal communications. Applicants discussed the hardships as to how the house is orientated on the street, the other houses in the neighborhood, the limitations due to the setbacks, and all the changes needing to be made in order to put the garage in the back.

Mr. Muggeridge questioned the pictures showing the right and back of the house. Applicants discussed the limitations and information about trying to build to the back of the property with regard to drainage due to the storm drain located near the property.

Mr. Jarrell stated this is a difficult determination as on-the-spot answers are easy to get wrong and Mr. Newman is correct that this project is not in compliance with the character of the neighborhood.

Ms. Ross stated the regulations are here for a reason and asked if anyone has considered a variance with conditions which might help negate visual impacts.

Mr. Muggeridge stated it is not the Board's position to mitigate the effect of the Code. Future Applicants would use this decision as precedent. The Board does not need to agree with the Code but must uphold it.

Chairman Reyes stated he understands there are hardships but feels the City will learn to better their processes and make it more obvious on its engagements with citizens. This project has no technical hardships and there are solutions for the Applicants.

Dr. Gratz discussed the side setbacks already occurring on the street and feels that is a better variance. He feels setting a precedent on the front setback does not fall in the criteria for approving a variance. This would change the neighborhood.

Mr. Jarrell asked if there was a middle ground that the project could compromise at, possibly 25 feet. Discussion ensued regarding it setting a precedent and whether this compromise could be done. Applicants stated they would have to look at what a change to a 25 foot front setback variance would do for the project. Discussion ensued regarding the current and proposed conditional setbacks, the current character of the neighborhood, and why Applicants disagree that this project would change the character of the neighborhood.

Mr. Johnston suggested that since Applicants made a request for a specific variance, the Board could approve the variance with a condition of whatever feet the Board agrees to give and express the variance in terms of the front of the house next door, by physically matching it to 3205 Normandy Avenue. Discussion ensued regarding the exact front setbacks for 3201, 3203 and 3205 Normandy Avenue: 25, 25, and 26 feet, respectively. Mr. Johnston clarified that his suggestion to use houses on the street was because the 2010 tax map is not a survey, it is an estimate. By using a specific address, there is a point of reference on the ground.

Applicants noted a standard one car garage is 12 feet wide x 22 feet deep and that their current depth is 19 feet deep. Applicants are concerned if they go shallower they may have to move the whole project to the backyard, losing the buildable space on the right side of the house to a driveway. Applicant asked for clarification as to how close to the property line the driveway can be.

There were no further public comments. Chairman Reyes closed the public hearing.

Mr. Muggeridge moved that all the findings of fact in the Record of Decision are accepted and moved to grant a variance to allow Applicants to deploy a setback of 25 feet, or even with the setback at 3205 Normandy Avenue, whichever is closer to the right-of-way. Mr. Jarrell seconded.

Motion carried 5-0.

REVIEW OF MINUTES

Mr. Muggeridge made a motion to approve the meeting minutes from May 20, 2019 as presented. Ms. Ross seconded. Motion carried **5-0**.

STAFF / BOARD COMMENTS

None.

ADJOURNMENT

Mr. Jarrell made a motion to adjourn. Mr. Muggeridge seconded. Motion carried **5-0**. Meeting adjourned at 5:40 p.m.

 9/16/19

Frank Reyes, Chairman

