

**MEETING MINUTES**  
**OF THE**  
**FREDERICK COUNTY BOARD OF ZONING APPEALS**

Held in the Board Room of the Frederick County Administration Building, 107 N. Kent Street, Winchester, Virginia, on March 16, 2021.

**PRESENT:** Kevin Scott, Vice-Chairman, Shawnee District; Reginald Shirley III, Opequon District; Dudley Rinker, Back Creek District; Dwight Shenk, Gainesboro District; John Cline, Stonewall District and Ronald Madagan, Member at Large.

**ABSENT:** Eric Lowman, Chairman, Red Bud District

**STAFF PRESENT:** Mark Cheran, Zoning Administrator; and Pamala Deeter, BZA Secretary

**CALL TO ORDER**

The meeting was called to order by Vice-Chairman Scott at 3:30 p.m. and he determined there is a quorum.

Vice-Chairman Scott led the Pledge of Allegiance.

On a motion made by Mr. Rinker and seconded by Mr. Cline, the minutes for the January 19, 2020 meeting were unanimously approved as presented.

Vice-Chairman Scott inquired if there are any applications for April Mr. Cheran stated yes, the cutoff date is Friday, March 19, 2021.

**PUBLIC HEARING**

Vice-Chairman Scott read the request for **Variance #01-21 for Randy S. Kelly**, submitted for a request for a 30-foot front yard variance to a required 60-foot front yard setback which will result in a 30-foot front yard setback and a 24-foot left and right side yard variance to a required 50-foot side yard setback which will result in 26-foot left and right side yard setback for a single family dwelling. The property is located at High View Manor Subdivision, on Meadow Way in Winchester and is identified with Property Identification Number 60A-2B-A-32 in the Back Creek Magisterial District.

Mr. Cheran came forward to present the variance. The property is in the Rural Area (RA) Zoning District and the land use is vacant. The adjoining properties are RA and also vacant in land use. Staff presented a location map and a proposed plat of the final house location. Staff mentioned the reason for the request is the property cannot meet the current setbacks due to the size of the property and location of the dwelling.

Mr. Cheran noted that in 1962 the High View Manor Subdivision was created, and no building restrictions were assigned at that time. The parcel is located within the subdivision so that Applicant would need to follow the current RA setbacks.

Staff stated the historical maps of this property as being A-1 (Agricultural Limited) in 1967. At the adoption of the Zoning Ordinance the setback were 35-feet for the front, 15-feet for the side yards and 50-feet for the rear yard. The Ordinance was amended again in 1989 to change the A-1 Zoning District to RA Zoning District. Mr. Cheran noted that in February 28, 2007 that the Board of Supervisor changed the setback for the RA Zoning District to 60-feet for the front, 50-feet to the rear and 50-feet left and right-side yard. Mr. Cheran said this is the current setbacks for Mr. Kelly parcel. Staff reiterated the setbacks that the Applicant is requesting.

Mr. Cheran concluded by reading The Code of Virginia 15.2-2309 (2) and the Code of Frederick 165-1001.2 that no variance shall be granted unless the application can meet the following requirements.

- 1) The property interest for which the variance is being requested was acquired in good faith.
- 2) The granting of the variance will not be a substantial detriment to adjoining property or nearby properties in the proximity of that geographical area.
- 3) The condition or situation of the property concerned is not of so general or recurring as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.
- 4) The granting of the variance does not result in a use that is otherwise permitted on such property or a change in the zoning classification of the property.
- 5) The relief or remedy sought by the variance is not available through a special exception or the process for modification of a zoning ordinance.

Mr. Cheran also mentioned that we received two emails from residences. One is opposing the application and the other one is asking the Board to place restriction on the approval.

Vice-Chairman ask the Applicant to come forward to speak. Applicant wasn't in attendance.

Mr. Shirley had questions on the proposed plat about the 26' and 30' BRL. Mr. Cheran tried to clarify the best he could without the Applicant.

Vice-Chairman ask is there anyone here wishing to speak for or against this variance. No one came forward.

## **PUBLIC HEARING CLOSED**

### **Discussion**

The Board discussed the importance that the Applicant should be present. The Board had questions for the Applicant.

One a motion made by Mr. Rinker that Variance #01-21 for Randy Kelly be tabled 30 days until the April meeting and was seconded by Mr. Shenk. The vote was unanimous.

## **PUBLIC HEARING**

Vice-Chairman Scott read **Variance #02-21 for Gerald and Linda Aronovitch** submitted for a request for a 50-foot rear yard variance to a required 100-foot rear yard setback which will result in a 50-foot rear yard setback and a 50-foot right side yard variance to a required 100-foot right side yard setback which will result in a 50-foot right side yard setback for a single family dwelling. The property is located Flint Ridge Subdivision and is accessed of Fodder Court and is identified with Property Identification Number 39-A-85C in the Back Creek Magisterial District.

Mr. Cheran came forward to present staff report. Staff mentioned, the property has 5.2 acres with a pond and is vacant. Mr. Cheran said the pond is in the center of the property. This property backs up the rural preservation reserve lot. The zoning of the parcel is RA (Rural Areas). The surrounding properties are RA and residential. The Applicant parcel was created before the Rural Preservation was created. The rural preservation surrounds the Applicants property with that in mind the Applicant would have greater setbacks. Mr. Cheran stated with the current 100' setbacks today, the house would be placed close to the pond. If the dwelling is placed close to the pond, there is a possibility of water collecting around the foundation.

Mr. Cheran mentioned the setback lines for the RA Zoning District are: 60-feet for the front, 100-feet for the side yards and 100-feet for the rear. The Applicant is requesting a 50-foot rear yard variance to a required 100-foot rear yard setback resulting in a 50-foot rear yard setback and a 50-foot right side yard variance to a required 100-foot right side yard setback resulting in a 50-foot right side yard setback, for a single-family dwelling. Mr. Cheran stated should this variance be granted, the building setbacks for this property would be 60-feet in the front, 50-feet in the rear, and 50-feet on the right side.

This application for a variance does not meet the requirements as set forth by The Code of Virginia 15.2-2209 (2), and the Frederick County Zoning Ordinance. The setback requirements of the RA Zoning District do not produce an unreasonable restriction on the property. The Applicant can place the proposed dwelling in a different location on this 5+/- acre parcel to abate the drainage issues.

Mr. Cheran concluded by reading The Code of Virginia 15.2-2309 (2) and the Code of Frederick 165-1001.2 that no variance shall be granted unless the application can meet the following requirement.

- 1) The property interest for which the variance is being requested was acquired in good faith.
- 2) The granting of the variance will not be a substantial detriment to adjoining property or

nearby properties in the proximity of that geographical area.

- 3) The condition or situation of the property concerned is not of so general or recurring as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance
- 4) The granting of the variance does not result in a use that is otherwise permitted on such property or a change in the zoning classification of the property.
- 5) The relief or remedy sought by the variance is not available through a special exception or the process for modification of a zoning ordinance.

Mr. Cheran concluded with this variance request may not be justified. The Applicant doesn't meet the criteria of The Code. The strict application of the Frederick County Zoning Ordinance does not produce an unreasonable restriction on the property as required by the Code of Virginia.

Vice-Chairman ask the Applicant to come forward to speak.

Mr. Aronovitch came forward. Mr. Aronovitch expressed that the topography plays a big role in where we place the dwelling. If we place the dwelling near the pond, with the current setback the water overflow would surround our foundation. The Applicant explained what his engineer recommended he would need if placing the house close to the pond.

Mr. Aronovitch wonder why his setbacks were different than his neighbors. The Applicant was glad that Mr. Cheran explained the rural preservation setback. The Applicant was unaware that his property was surrounded by a rural preservation.

Mr. Rinker clarified with the Applicant as to where he was going to build.

Vice-Chairman ask is there anyone here wishing to speak for or against the variance. No one came forward.

### **PUBLIC HEARING CLOSED**

#### **Discussion**

Mr. Shirley needed clarification about the rural preservation. Mr. Cheran stated the rural preservation has 60 percent reserve, one building right and cannot be further subdivided.

Mr. Cline ask could it be divided into a family subdivision. Mr. Cheran replied no.

Vice-Chairman Scott mentioned that an email from Sue Teal was sent in to oppose all variances.

A couple of committee members visited the site and agreed that this would not affect another property by allowing this variance.

A motion was made by Mr. Rinker that Variance #02-21 for Gene and Linda Aronovitch be approved and was seconded by Mr. Madigan. The vote was unanimous.

Mr. Cheran gave an update on the appeal cases.

On a motion made by Mr. Cline to adjourn meeting and seconded by Mr. Shirley 4:15.



Kevin Scott, Vice-Chairman



Pamala Deeter, Secretary