

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 April 20, 2021.

PRESENT: Kevin Scott, Vice-Chairman, Shawnee 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; and Reginald Shirley III, Opequon 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. Shenk and seconded by Mr. Cline, the minutes for the March 16, 2021 meeting were unanimously approved as presented.

Vice-Chairman Scott inquired if there are any applications for May, Mr. Cheran stated no, the cutoff date is Friday, April 23, 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 stated that Mr. Gary Oates is representing the Applicant Mr. Randy Kelly.

Mr. Oates stated the Applicant wasn't here last month due to family emergency. The Applicant was unable to attend again due to that family emergency.

Mr. Oates stated he surveyed the property and could answer questions if the Board had any. Mr. Oates did mention that the reason for front setback is the drainfield. The drainfield is twice the size of the dwelling.

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

PUBLIC HEARING CLOSED

Discussion/Comments

Mr. Madagan confirmed that the health department has approved well and septic system site. Mr. Oates replied yes.

One a motion made by Mr. Rinker that Variance #01-21 for Randy Kelly be approved and was seconded by Mr. Shenk. The vote was unanimous.

PUBLIC HEARING

Vice-Chairman Scott read **Variance #03-21 for Variance #03-21 for Gene Fishel and Angela Fishel**, submitted for a request for an 8-foot rear yard variance to a required 15-foot rear yard setback which will result in a 7-foot rear yard setback for a covered deck. The property is located at 144 Emperor Drive, Lake Frederick and is identified with Property Identification Number 87B-52-120 in the Opequon Magisterial District.

Mr. Cheran came forward to present staff report. Staff showed maps, proposed drawings of covered deck and plat. Mr. and Mrs. Fishel are seeking an 8-foot rear yard setback variance to a required 15-foot rear yard setback resulting in a 7-foot rear setback. Mr. Cheran mentioned the Applicant cannot meet current rear setback because the size of property and location of existing dwelling.

Staff noted this property was created in 2018 as a single-family small lot. Adjacent property to the rear property line is open space. In 2018 the building setback were 25-foot front, 5-foot sides and 15-foot rear from property line. Mr. Cheran noted that uncovered decks is 5-foot from the property line. Now the Applicant has an uncovered deck which is 7.1-foot from rear property line. Staff stated that when covering or enclosing a porch this becomes part of the principal structure. Then the Applicant would need to meet 15-foot rear setback. The dwelling is beside a road buffer.

In conclusion Mr. Cheran read the Code of Virginia 15.2-2309 (2) and the Code of Frederick 165-1001.2 states 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.

This proposed variance appears to be consistent with the character of the District; and meets the intent of The Code of Virginia 15.2309 (2) and the Code of Frederick County. This request from current rear setbacks of the R5 (Residential Recreational Community) Zoning District may be justified.

Vice-Chairman Scott ask the Applicant to come forward.

My name is Angela Fishel and my husband, and I reside at that address. I have a few comments by enclosing the deck, this would add value to my property. Mr. Fishel has health issue and is not able to be in the sun for long periods of time. Mrs. Fishel stated that Staff is working with her to resolve this issue.

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

CLOSED PUBLIC HEARING

Discussion/Comments

Mr. Madagan commented he visited the site and the back of the property backs up to a road. No one would see this covered deck. He also mentioned another house has a covered deck so this would be consistent with the neighborhood.

One a motion made by Mr. Madigan that Variance #03-21 for Gene and Angela Fishel be approved and was seconded by Mr. Rinker. The vote was unanimous.

PUBLIC HEARING

Vice-Chairman read **Variance Request #04-21 of Old Virginia Land**, submitted by Rocky Yost, for a 29-foot left side yard variance to a required 50-foot left side yard setback which will result in a 21-foot left side yard setback, and a 29-foot right side yard variance to a required 50-foot right side yard setback which will result in a 21-foot right side yard setback, for a single-family dwelling. This property is located in Shawneeland (Lot 57) on Chrysanthemum Trail and is identified with Property Identification Number 69A-1-30-57 in the Back Creek Magisterial District.

Mr. Cheran came forward to present an overview of the staff report. Staff presented zoning and a location maps and a proposed plat. Staff reiterated the request of the setbacks. Mr. Cheran stated that this property cannot meet today (Rural Areas) RA District setbacks due to the parcel size.

Mr. Cheran gave history that in 1967 Frederick County adopted zoning. The historical maps in 1967 show this property as A-2 (Agricultural General). When the zoning ordinance was adopted the setbacks were 35-feet front and 15-feet for sides. Staff continued by saying in 1989 ordinance was amended changing the A-2 Zoning District to RA (Rural Areas) District. Again, the ordinance was amended by the Board of Supervisors on February 28, 2007, changing to the current setback which is

60-feet for the front, 100-feet for the rear, and 50-feet for the left and right-side yard. Staff mentioned that this is a recorded plat with no setback so they would follow the current setback for the RA District. The Applicant is unable to meet the current setback so he is requesting a variance.

Staff concluded by reading The Code of Virginia 15.2-2309 (2) and Code of Frederick 165-1001.2, states 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 stated for the record we have three letters in opposition. The letters are placed at your set.

Mr. Rinker ask Staff if the property behind this lot is vacant? Mr. Cheran replied yes. Mr. Rinker inquired could someone build on it. Mr. Cheran said yes, but I not sure how the landowner would access the property.

Vice-Chairman Scott noted there are a few letters in opposition of this variance. If anyone should want to review or need a copy just see Mr. Cheran.

Vice-Chairman Scott ask the Applicant to come forward.

The Applicant Mr. Rocky Yost came forward. Mr. Yost commented that he has had the property for a long time because of the size and also the changing of the ordinance setbacks I am unable to build. I am requesting a variance so I could build.

Mr. Rinker questioned the adjoining properties on each side are they developed. Mr. Yost replied no.

Mr. Yost mentioned that the property behind his, the landowners has purchased several tracts then consolidated to one which makes a large lot. There is a house on this parcel.

Vice-Chairman clarified that the Applicant has well and septic permits. Mr. Yost said yes.

Mr. Sherk inquired if this was going to be a spec home. Mr. Yost answered yes.

Mr. Rinker mentioned that this is a private road and would be in best interest to help maintain the road.

Vice-Chairman ask is there anyone here wishing to speak for or against this variance.

Ms. Teri Bartnicki came forward to speak in opposition to this request. She has a petition signed by the residence opposing this variance. Ms. Bartnicki has spoken to health department, soil scientist, civil design engineer and my Board member Mr. Graber to gather my information.

Ms. Bartnicki gave background information on the community of Enon Springs. Are community being on North Mountain which is wooded and has rocky terrain. We have eight full time residence and an elderly couple has temporarily moved back to their other home. One person abandoned his property years ago. Originally this property was for recreation weekend campers on quarter acre lots.

Ms. Bartnicki concerns are for drainfield saturation, well pollutants, quality of life, road maintenance and decrease value of my property. When Ms. Bartnicki purchased her property, the realtor told her she would need to purchase two lots in order to put a well and septic. Ms. Bartnicki thinks that the property owner needs to purchase more than one lot so the occupant will have the proper setback for the dwelling and the well and septic.

Mr. Tim Sparrow of 701 Capon Springs Trail, came forward to oppose the variance. Mr. Sparrow concerns are well & septic, investment purposes and road maintenance. There are approximately 200 lots that are not built on and if each property owner comes to get a variance this will be an overlapping of well and septic system.

Mr. Sherk ask Mr. Sparrow what the square footage of your dwelling is. Mr. Sparrow said 1,400 sq. ft.

Mr. Sherk commented that the Applicant is building a 1,740 sq. ft. home and how could that decrease the value of your home.

Mr. Cline inquired if Mr. Sparrow purchase one lot or two. Mr. Sparrow replied, I own one lot with 6.6 acres.

Closed Public Hearing

Discussion/Information

Mr. Rinker inquired when the Health Department issues a permit, do they look just at that one parcel or do they consider the overall community lots. Mr. Cheran said they just look at that individual lot.

Mr. Cheran summarized that the Applicant has a few options in regard to the property setbacks. The Applicant today can pull a building permit but he would follow current setback for the RA Zoning District or he could purchase surrounding property to make parcel larger and use the current setbacks. The last options the Applicant can request a Variance before the Board because his land is recorded in the courthouse without building setbacks.

Mr. Shenk clarified that the Applicant only has one lot. Yes, that is correct Mr. Cheran replied.

A comment was made by Mr. Rinker that Frederick County didn't impose on the property owners to buy two lots. Mr. Cheran stated no. Mr. Rinker said that was the realtor selling the property but with the purchase of two lots, the property owner wouldn't need to go through variance processes.

A board member inquired, if the variance was turned down, the Applicant has the right to appeal to the circuit court. Mr. Cheran said yes.

Mr. Madagan commented that his house sets close on both side in a subdivision for 49 years and he doesn't have well & septic issues. The Applicant's acreage is almost a half of acre. If he gets the right permits, he should be able to build. Mr. Madagan does believe that if a road maintenance is agreed upon that would solve a lot of problems.

On a motion made by Mr. Rinker that Variance #04-21 be denied and could appeal to the circuit court. No second motion made. Call for the vote 1 deny 2 absent 4 approved. The motion fails.

On a new motion made by Mr. Shenk as submitted Variance #04-21 approved and seconded by Mr. Madagan. Call for the vote Yes (To Recommend Approval) 4 and 1 no 2 absent.

As there were no other items to be discussed, a motion made by Mr. Rinker to adjourn meeting and seconded by Mr. Cline 4:45.



Kevin Scott, Vice-Chairman



Pamala Deeter, Secretary