

**BOARD OF ZONING APPEALS  
MINUTES  
NOVEMBER 2, 2006  
6:00 p.m.**

The Board of Zoning Appeals of the Town of Rocky Mount, Virginia met at the Municipal Building on Tuesday, November 2, 2006, at 6:00 p.m. with Chair Charles L. Hutto, Jr. presiding.

The following members were present:

Chair Charles L. Hutto, Jr., Vice Chair Susan P. Hapgood, and Board of Zoning Appeals (BZA) Members Sanford "Lyn" Robertson and John Speidel, along with Assistant Town Manager/Community Development Director Lara N. Burleson, Planning & Zoning Administrator Paul Stockwell, Town Attorney John Boitnott, and Town Clerk Patricia H. Keatts (in lieu of Board of Zoning Appeals Clerk Helene Ferguson)

Let the record show that BZA Member Lucas Tuning was not present.

**APPROVAL OF AGENDA**

Presented to the Board of Zoning Appeals prior to the meeting was the draft November 2, 2006 agenda for their review and consideration of approval, which reflected proposed changes to the original draft agenda sent out in the public hearing packets to the BZA members prior to the meeting.

- Motion was made by Vice Chair Hapgood to approve the draft agenda as presented with changes, with motion on the floor being seconded by BZA Member Speidel. There being no further discussion, let the record show that the motion on the floor passed unanimously.

**APPROVAL OF MINUTES**

Prior to the meeting, the BZA members received a draft set of October 5, 2006 minutes for their review and consideration of approval.

- Motion was made by BZA Member Robertson to approve the draft minutes as submitted, with motion on the floor being seconded by Vice Chair Hapgood. There being no further discussion, let the record show that the motion on the floor passed unanimously.

## **PUBLIC HEARING**

### A) Request of Greg Harmon

After being duly advertised, Greg Harmon requested to be granted two variances for Article 3, subparagraph 3-6-2 and subparagraph 3-7-2 of the Planning & Zoning Ordinance for the Town of Rocky Mount to allow an attached single car garage. The property is located at 212 East Court Street, Rocky Mount, Virginia.

The first variance request is for a variance for the 100 feet lot width requirement in the Residential-1 Single Family zone. In addition, the applicant is requesting a variance to waive the rear yard requirement of 35 feet, with the applicant intending to build an attached garage behind his residence.

Chair Hutto opened the floor to anyone wishing to come before the BZA to speak for or against the request.

- Mr. Greg Harmon of 212 East Court Street, Rocky Mount, Virginia, came before the BZA stating that under the present zoning for his property, he does not meet the required 100' front yard width requirements; therefore, requesting a variance in order to build a garage behind the house; and the second variance is being requested because he does not meet the requirement of 35'; plus, his neighbor shares a driveway on his property and he would like to exchange the land on the side of his house for the land in the rear in order to meet the required rear yard requirement.
- Mr. Edwin Chauncey of 25 Orchard Avenue, Rocky Mount, Virginia came before the BZA stating that him and his wife, Barbara, welcomes Mr. Harmon as their neighbor, and that they do not object to his requests and hopes that the BZA will look favorably upon Mr. Harmon's request.

Let the record show that there was much discussion between the BZA members, Town Attorney, Planning & Zoning Administrator, and Mr. Harmon regarding exactly what he needed for road frontage, the room he would have in the back of his property, what assurances the BZA would have that the property exchange would take place, and if the BZA could grant a variance on something that hasn't taken place yet on the property exchange.

The Town Attorney stated that if the BZA wanted to consider a variance on a particular piece of property, they could condition the variance upon the condition that is yet to be.

The Planning & Zoning Administrator read for the record the staff evaluation:

Strengths: The strengths for the request are two-fold. Due to the irregular shape of the lot, the rear yard does not provide space for having

an attached garage to the rear of the applicant's residence, although elsewhere in the lot, the rear yard would be sufficient. In addition, one of the purposes for the requirement is to insure that property owners have sufficient rear yard for future residents. This request clearly would not greatly reduce the existing rear yard for the property. Secondly, the slope of the lot is such that the flat buildable area of the property is located behind the residence; therefore, building a garage elsewhere would result in a greater disturbance of land in order to grade a flat buildable area for the garage.

**Weaknesses:** The adjacent property owners should have some protection against the encroaching of buildings. In addition, future property owners should be afforded the ability to have for a sufficient size rear yard as is customary for the existing neighborhood.

Based upon the above strengths and weaknesses, it is the staff's recommendation that the BZA approve with modification the variance request.

The modifications that should be considered by the BZA include granting a variance for only the portion of the property line directly behind the existing residence. In addition, the BZA should consider granting the variance, but requiring a setback of at least ten (10) feet from the property line. Finally, if the applicant chose the first option as a course of action, waiving the 100' lot width requirement should be contingent upon the transfer of property.

Chair Hutto entertained a motion.

- Motion was made by Vice Chair Hapgood to grant the variance on the minimum lot width of 100 feet contingent upon transferring of the property from the Temples at the rear of the line for exchange of the driveway footage, due to #1) that the strict application of the ordinance would produce undue hardship; #2) that such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and #3) that the authorization of such variance will not be a substantial detriment to adjacent property and that the granting of the variance will not change the character of the district. Let the record show that the motion on the floor was seconded by BZA Member Speidel. There being no further discussion, let the record show that the motion on the floor passed unanimously.

There was discussion between the Town Attorney and Mr. Harmon regarding if Mr. Harmon wanted the conditions put in that require the remaining lot width to be at least a certain amount of width. It was agreed by Mr. Harmon that he would like to keep the rock wall as the boundary. The Town Attorney suggested that the motion should have read that the new lot line will be the approximate location of the rock wall.

- ▶ Let the record show that Vice Chair Hapgood amended her motion on the floor to set the boundary on the west side, being the rock wall, with amended motion on the floor being seconded by BZA Member Speidel. There being no further discussion, let the record show that the motion on the floor passed unanimously.

Pertaining to the second variance request of Mr. Harmon, discussion ensued between Mr. Harmon, the Town Attorney, Planning & Zoning Administrator, and the BZA members regarding Mr. Harmon basically swapping land area for land area. The BZA informed Mr. Harmon that they wanted assurance that the property would be exchanged. Mr. Harmon informed the BZA that he could not guarantee the exchange, but that it would be in the best interest of the Temples to do so. BZA Member Robertson questioned the Town Attorney if the motion could be made to require the 10' setback of the property line and to include in the motion that a provision be made that the land transaction take place, and if not, the motion would be invalid. The Town Attorney stated that if the land transaction takes place, it would six feet, and if not, it would be ten feet. There was discussion that the land behind the house was unusable but for open space.

Chair Hutto entertained a motion.

- Motion was made by BZA Member Robertson that the BZA approve the variance request of Tax ID 207-651 to rear yard requirements and requiring a setback of least ten feet from the property line, and that this will be based on the provision that the property exchange does in fact takes place. Let the record show that discussion proceeded without a second to the motion being made for the record.

There was discussion and concern voiced by BZA members what would happen if the property exchange did not take place. Due to not knowing for sure what would take place between Mr. Harmon and the Temples regarding the property exchange, there was a suggestion by Chair Hutto to have the motion on the floor withdrawn and a new motion be made to clarify the intent.

Let the record show that the motion on the floor was withdrawn by BZA Member Robertson.

- Motion was made by BZA Member Robertson to approve the variance request of Tax ID 207-651 to rear yard requirements requiring a six foot setback from the property line on the contingent that the property transaction does take place due to #1) that the strict application of the ordinance would produce undue hardship; #2) that such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and #3) that the authorization of such variance will not be a substantial detriment to adjacent property and that the granting of the variance will not change the character of the district. Let the record show that the motion on the floor was seconded by BZA Member Speidel. Discussion ensued. The Town Attorney questioned the rear yard

footage setbacks. As this discussion was between the Town Attorney, Mr. Harmon, and the Planning Commission members, with confusion as to what it would actually be after looking at the plat, the Town Attorney stated he would clean up the language in the order. There being no further discussion, let the record show that the motion on the floor passed unanimously.

B) Rezoning Request of Franklin Vendors, Inc.

After being duly advertised, Franklin Vendors, Inc. requested a variance from the Zoning & Development Ordinance to waive the screening and transitional yard requirements for Manufacturing-1. The application is a result of the request for rezoning from Bonbrook, LLC to rezone adjoining Manufacturing-1 and Residential-1 property to Residential-3 for the purpose of a multi-family residential development. This rezoning would impose on Franklin Vendors, Inc.'s property screening and transitional year requirements that would not have previously existed for the property.

Chair Hutto opened the floor to anyone wishing to come forward to speak for or against the variance request.

- Arnold B. Dillon, owner of Franklin Vendors, Inc., came before the BZA with a brief history of how and why he bought the property known as Franklin Vendors, Inc. located on State Street. He informed Council that since then, the property and surrounding properties have been rezoned on several occasions, and now his property is in a Manufacturing-1 district. He would now like to build an addition onto his property, with one side of the property abutting a Manufacturing-1 property, and the other side abutting a Residential-1 property. He further stated that if he does not get the variance, it will create a hardship on his business.

The Town Attorney did confirm to the BZA that Mr. Dillon could not build onto his property now with it being a Manufacturing-1 zone because of the existing Residential-1 property beside him. Mr. Dillon did show on a plat to the BZA exactly where his place of business was located in relation to the property lines.

- David Peters of Bonbrook, LLC came before the BZA stating that he felt like he was at fault in causing the hardship for Mr. Dillon since he would be applying for the upcoming rezoning request for the property behind Franklin Vendors, Inc. to be changed from Residential-1 to Residential-3. He further stated that he has no objections to Mr. Dillon building close to the adjoining property line, and that there would be screening of trees between the two properties. He further stated that he did not want to do anything that would prohibit Mr. Dillon in doing what he needs to do to add onto his place of business.

At the request of the BZA, the Planning & Zoning Administrator read the staff's recommendation:

Strengths: Because of the size of the lot, any manufacturing use that may locate there would not be of such an intensive nature as to cause serious detriment to the adjoining houses. Also due to the size and shape of the lot, the required 50-foot setback for the Residential-3 adjoining parcel and 60-foot setback for the adjoining Residential-1 parcel would be an undue hardship on the property owner. In addition, the new rezoning of Manufacturing-1 to Residential-3 for a multi-family residential development (Bonbrook, LLC) would impose on the property owner regulations previously not required. The developer of the proposed multi-family development indicated that he would provide screening on the Residential-3 side of the property for the town homes.

Weaknesses: Residential uses should have proper protection against more intensive commercial and industrial uses whether through screening or transitional yards. The request for waiver of transitional yard requirements from the Residential-1 section of the property line should not be considered as being imposed as a result of the current rezoning (Bonbrook LLC) since the parcel is already zone as Residential-1.

Based on the above strengths and weaknesses, it is the staff's recommendation that the BZA approve with modifications the variance request.

The modifications to the request that could be considered include a requirement of a ten foot transitional yard along the Residential-1 section of the property line and a five foot transitional yard along the Residential-3 property to be rezoned. In addition, the BZA may choose to require screening in either the ten foot or five foot section of the transitional yard to act as a buffer between the different uses. The request also should be approved as provisional based on the approval of Bonbrook, LLC rezoning.

Mr. Dillon came back before the BZA stating that with the suggested modifications requiring the ten foot and five foot setbacks, he still could not add the addition onto his building, as it needed to be at least two feet away from the property line. There was discussion between the BZA and Mr. Dillon as to what distance he needed to build the addition onto his place of business.

Chair Hutto entertained a motion.

- Motion was made by BZA Member Speidel to approve the variance request of TAX ID 207-45 to waive yard requirements on the corner lot, to waive the setback requirements, and waive the screening transitional requirements due to #1) that the strict application of the ordinance would produce undue hardship; #2) that such hardship is not shared generally by other properties

in the same zoning district and the same vicinity; and #3) that the authorization of such variance will not be a substantial detriment to adjacent property and that the granting of the variance will not change the character of the district. Let the record show that the motion on the floor was seconded by BZA Member Robertson. There being no further discussion, let the record show that the motion on the floor passed unanimously.

## **ADJOURNMENT**

There being no further business to discuss, Chair Hutto entertained a motion to adjourn at 6:58 p.m.

- Motion was made by BZA Member Robertson to adjourn, with motion on the floor being seconded by BZA Member Speidel. There being no further discussion, let the record show that the motion on the floor passed unanimously.

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Charles L. Hutto, Jr., Chair

ATTEST:

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Patricia H. Keatts  
Town Clerk  
(In lieu of Helene Ferguson,  
Clerk, Board of Zoning Appeals)