

**BOARD OF ZONING APPEALS**  
**MINUTES**  
**JUNE 15, 2009**  
**6:00 P.M.**

The Board of Zoning Appeals (BZA) of the Town of Rocky Mount, Virginia met at the Rocky Mount Municipal Building on Monday, June 15, 2009 at 6:00 p.m. with Chairman Charles L. Hutto, Jr. presiding.

The following were present for the meeting:

Chairman Charles L. Hutto, Jr. and Vice Chair Susan Hapgood; Board of Zoning Appeals Members John Speidel, Lucas Tuning, and Alternate Member Maceo Toney; Staff members present included Assistant Town Manager Matthew C. Hankins and Deputy Clerk Stacey B. Sink.

Let the record show that BZA Member Sanford (Lyn) Robertson's appointment expired in May 2009 and he asked that his appointment not be renewed. As such, BZA Alternate Member Toney will fill the vacancy until a permanent appointment is made.

**APPROVAL OF AGENDA**

- Motion was made by BZA Member Speidel to approve the agenda as presented 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.

**APPROVAL OF MINUTES**

Prior to the meeting, BZA Members received the following draft minutes for review and consideration of approval:

- March 5, 2009 Regular BZA Meeting Minutes
- Motion was made by BZA Member Tuning to approve the minutes as presented 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.

## **PUBLIC HEARING**

Let the record show that Chairman Hutto recessed the meeting to hold the following public hearing:

### (A) Jones Family Subdivision

After being duly advertised, and pursuant to Article 3 of the Town of Rocky Mount Zoning & Development Ordinance, and the Code of Virginia, Allen Jones and others requested a variance from Article 3-4, 3-6, and 3-7 to permit a minor subdivision of their property at 160 Orchard Avenue, Franklin County Tax Map and Parcel Number 2070069400.

Chairman Hutto called upon the Assistant Town Manager to speak regarding the request.

The Assistant Town Manager advised that this is a fairly straight-forward request, though it is a bit unusual. The parcel in question is located at 150 and 160 Orchard Avenue. What is proposed is a subdivision, but there are some unusual circumstances that need to be addressed. The Jones family has inherited a family parcel following the passing of their father in 2008. In preparing to subdivide the property, the family engaged Cornerstone Land Surveying to prepare the necessary survey and title review. In reviewing the deeds, Mr. Jeans (with Cornerstone Land Surveying) determined that both houses are on the same property and have never been properly subdivided as reflected by the deeds on record with Circuit Court. In order to prepare the property for an orderly subdivision and settlement of the estate, the estate wishes to subdivide the property in a manner consistent with the way it is shown on County tax, real estate, and GIS records. In other words, all the tax and GIS records show the properties the way the family would like to have it, but the deeds do not. The subdivision as contemplated varies from the expectations and requirements of the Town's R1 zoning district in that it has a total of 100 feet of road frontage. Subdividing the property into two lots will leave both lots with less than 100 feet of road frontage. Since Orchard Street is a traditional neighborhood and is zoned R1, it would make little sense to subdivide the parcels and require a different zoning. However, without some variance from Section 3-4, which requires area in a lot of at least 15,000 square feet in an R1 district, Section 3-6, which requires 100 feet of road frontage, and Section 3-7, which sets out the yard regulations, the Town's Subdivision Agent cannot lawfully subdivide the property. The Assistant Town Manager, Mr. Jeans, and the Town Attorney have had several discussions about the issue and were able to determine that it would need to be referred to the BZA for

consideration of variances. He *does not* believe that this would be inconsistent with the surrounding neighborhood. He *does* believe that it demonstrates a hardship because of the unusual circumstance of having a property that is deeded on way and reflected another way on County records. It does meet the three tests that are in Article 16 of the Zoning Ordinance and he recommends approval of the variances. He further indicated that the family and Mr. Jeans are available to answer any questions the Board may have.

Chairman Hutto opened the floor to anyone wishing to speak in regards to the request. Let the record show that no one came forward.

Discussion ensued:

- The brick house will be on its own lot, separated from the rest of the property, and will not run all the way back.
- This will not change anything at all, but will instead make this property comply with what is on record.
- This lot is a flagstem lot, but it would already be that way if accurately reflected, so this should not be an issue. As shown, the small easement that runs to Patterson is just an access easement. It is not actually part of the property but staff had to notify the surrounding property owners. The actual flagstem is created by the large backyard that will go with 150 Orchard. The small easement was created to get cattle to water.
- A member of the family pointed out that she believes the addresses should actually be 160 and 170 Orchard rather than 150, and 160 is the parcel with the lot behind it.
- Flagstem lots are not supposed to be “created” but this is merely approving what is already existing, not “creating” a flagstem lot.

There being no further discussion, Chairman Hutto reconvened the meeting and entertained a motion.

- Motion was made by BZA Alternate Member Toney to approve the variance requests as presented, without conditions, as the strict application of the ordinance would produce undue hardship, that such hardship is not shared generally by other properties in the same zoning district in the same the vicinity, that the authorization of such variance will not be substantially detrimental to adjacent properties and the character of the district will not be changed by the granting of the variance, 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.

## **OLD/NEW BUSINESS**

### (A) Old Business

Let the record show there is no old business to discuss at this time.

### (B) New Business

- **2009 General Assembly Action Relevant to BZA Actions**

The Assistant Town Manager addressed the Board, advising that there were two BZA related legislative items that came out of the General Assembly that needs to be addressed:

First, House Bill 1637 clarifies the language that a **majority** of the members of the BZA is the *majority of the members present, not a majority of all members of the Board*. This is probably more relevant to seven member boards as opposed to five member boards. In other words, if the BZA has a quorum, which in the Town's case would be three members, and the BZA acts, then a majority would be a two to one vote, which would be sufficient for passage. BZA Member Speidel clarified that in the past, if only three members were present, then three votes were required for passage of a variance.

Second, House Bill 2326, which relates to the powers of the BZA, removes what has been a significant part of the Board's consideration, being the language that says that the applicant must demonstrate a hardship **approaching confiscation**. It removes the *approaching confiscation* part of the standard. The Town Attorney gave a brief explanation of what this change means, advising that in the past, and in larger localities, a variance was often only considered if the lack of it would cause a property to be confiscated or condemned. This type of application, however, was hard for small localities as it would be difficult for small localities like the Town of Rocky Mount to write an ordinance specific enough to address every parcel of real estate, and this change indicates that the Virginia General Assembly is leaning more towards the way the Town's Board has always operated, which is to focus on the uniqueness of the particular property.

### **BOARD AND STAFF CONCERNS**

- The Assistant Town Manager advised that the regularly scheduled meeting for July will fall on July 2, and he is expecting an application to arrive next week which will require a July meeting. Due to the July 4 holiday he asked if the Board would prefer to meet on the regularly scheduled July 2 date or move the meeting to the following week on July 9. It was the consensus of the Board to move the meeting to July 9.

The Assistant Town Manager advised that the application he expects to receive will be a school related matter, as the school wishes to build a canopy that will encroach on the street.

- The Assistant Town Manager advised that Mr. Robertson no longer wishes to seek appointment to be BZA. Chairman Hutto indicated that he would like to send something from the Board that acknowledges Mr. Robertson and thanks him for his service.

### **ADJOURNMENT**

There being no further business to discuss, Chairman Hutto entertained a motion to adjourn at 6:25 p.m.

- Motion for adjournment was made by BZA Member Speidel, seconded by BZA Alternate Member Toney, and carried unanimously.

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Charles L. Hutto, Jr., Chairman

ATTEST:

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Stacey B. Sink, Deputy Clerk

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