

**BOARD OF ZONING APPEALS
MINUTES
DECEMBER 3, 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 Thursday, December 3, 2009, at 6:00 p.m., with Chairman Charles Hutto, Jr. presiding.

The following were present for the meeting:

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

Let the record show that BZA Members John Speidel and Maceo Toney were absent from the meeting.

APPROVAL OF AGENDA

- Motion was made by BZA Member Tuning 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 by those present.

APPROVAL OF MINUTES

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

- October 1, 2009
- Motion was made by BZA Member Tuning to approve the draft minutes 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 by those present.

PUBLIC HEARING

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

(A) Frank and Kathy Azarch Variance Request

After being duly advertised, and pursuant to the Town of Rocky Mount Zoning & Development Ordinance, and the Code of Virginia, Frank and Kathy Azarch requested a variance from Article 3-6-2 of the Zoning and Development Ordinance, which requires a minimum lot width at the building line of 100 feet, and a variance from Article 3-7-1, which requires the side yard of a main structure to be 15 percent or more of the lot width at the building line, for Franklin County Tax Map and Parcel Number 2100033700, located at 370 Orchard Avenue. The Azarchs wish to demolish the current residence, replacing it with new residential construction.

Chair Hutto called upon the Assistant Town Manager for a staff report.

The Assistant Town Manager advised that this is a fairly simple request to consider and in summary made the following points:

- This request was made by Mr. and Mrs. Azarch who are interested in taking advantage of some of the tax incentives that are available now. They wish to purchase 370 Orchard Avenue and are in negotiations with the current owner. They wish to build a new house, occupy it, and then sell the house they live in now, which is located next door at 390 Orchard Avenue.
- The existing home at 370 Orchard was built in 1945, with asphalt siding, and it is approximately 1350 square feet with one and one-half stories and a crawl space.
- The replacement home will be built according to a plan by David James Homes, and will be a vinyl sided two-and-a-half story home with 2,214 square feet of finished area.
- The Azarchs are still trying to acquire the lot on the corner at Russell Street to be able to build a little larger home than they have planned, but at the very least, they would like to know that they are able to build on this lot going forward.
- The lots on Orchard Avenue vary greatly in width. There are some longer lots, but many of them are in the 80-foot range and it is more of an R-2 Zoning type construction.

- To build in an R-1 Zoning District, there must be 100 feet of frontage and most lots on Orchard do not have this. So, this hardship would apply in any case for anyone on Orchard wanting to build if a house were to be destroyed.
- Given the age and condition of the current residence, replacement is not so much a hypothetical as likelihood. The existing house's assessed value is \$27,100, which almost matches the value of the land \$24,000, and this is usually a good sign that the house is in poor condition.
- In addition to the requirement for the frontage, the Azarchs would also like a variance for the side yard. The envelope for building a house on this particular property would be 53.5 feet wide, and the Azarchs have selected a home plan that is 52 feet in width, so it will fit in the envelope; however, the house includes a garage on the right hand side and the turning radius would be difficult in coming out of the garage. They are asking for a 3.5-foot variance to be able to have adequate space to turn out of the garage. He noted that the written staff report indicates that the 3.5-foot variance would still leave 70 feet between the new house and the Azarch's current home, and clarified that it would actually be closer to 65 feet.
- The Azarchs have already had an offer on their current home.
- Staff believes that variances in both cases would be consistent with good planning and zoning practices and staff recommends approval.

Chair Hutto opened the floor to discussion and questions by the Board.

Vice Chair Hapgood questioned if the new house will be located where the old house is now or if it will be set further back. The Assistant Town Manager clarified that the current house is listed as 28 feet wide in the current tax records and the new construction will be 52 feet so it will be approximately twice the current width.

Chair Hutto invited the Azarchs to the podium to speak.

Frank Azarch, of 390 Orchard Avenue, explained to the Board that what he wants to do is to make the house uniform with the neighborhood. He wants to blend in and not stand out. He also clarified that David James Homes will not be the builder, as he plans to use a local builder name Craig Alls. The home will be along the same line as where the current home is built. It will extend back 60 feet. It will have a full basement and altogether, with a finished basement, the home will be about 3,800 square feet of living space, with heating systems built for each level. Mr. Azarch clarified that in looking at the front elevation of the current home, the garage on the new home will be on the right-hand side.

BZA Member Tuning questioned if staff had received a letter in regards to this request. The Assistant Town Manager clarified that no written correspondence had been received in reference to the Azarch's request.

Mr. Azarch added that all of the feedback he has received from neighbors, as well as from former neighbors, regarding their plans for the property has been positive.

Chairman Hutto opened the floor to questions from the Town Attorney, who asked Mr. Azarch about the ownership of the property. Mr. Azarch confirmed that he does not currently have ownership of the property and that if he does not close on the property then his efforts to obtain the variance will be a waste. Based on this fact, the Town Attorney confirmed with Mr. Azarch that he would have no problem then in conditioning the approval of the variance upon Mr. Azarch's successful closing on the property. Mr. Azarch confirmed that he has no problems with this.

The Town Attorney questioned if Mr. Azarch would agree to build in substantial conformity to the plans that have already been presented to the Planning Department, with Mr. Azarch stating that the real home plans will have a wrap-around porch and will be a little different than the plans presented because they decided to go with a 50 feet wide by 60 feet deep plan. The Town Attorney then clarified that, still, the new home will be in substantial conformity to the plan that was presented to the BZA tonight, and Mr. Azarch agreed that it was.

The Town Attorney questioned if the new home would be built in line with the other homes in the neighborhood, with Mr. Azarch confirming that the new home would line up with the other homes, but it would be deeper than the current homes.

Vice Chair Hapgood questioned the Town Attorney, asking if the variance is granted would it go with the property, with the Town Attorney confirming that what the BZA will want to do is grant the variance subject to the following conditions; (1) that it is exclusive to Mr. Azarch; (2) that it is subject to Mr. Azarch taking title to the property; (3) that the construction will be in substantial conformity with what he has presented here tonight; and (4) that his construction will be in line with and uniform to the other properties in the neighborhood.

Chairman Hutto asked for clarification as to whether the variance would also be in conjunction with the corner lot [Franklin County Tax Map and Parcel Number 2100033600]. Mr. Azarch stated that it would not, as the corner lot belongs to Mrs. English. He has made an offer to purchase the property from Mrs. English but she has not accepted. The Assistant Town Manager added that if Mr. Azarch could acquire the

additional parcel then the variance would not be needed, as he could vacate the line between the two parcels.

There being no further discussion, Chairman Hutto called the meeting back into regular session and entertained a motion.

- Motion was made by Vice Chair Hapgood to grant the variance requested by Frank and Kathy Azarch for the property located at 370 Orchard Avenue from section 3-6-2 for lot width and 3-7-1 for side yards, conditional upon their acquisition of the property, because the variance will relieve a hardship that is not shared generally by other properties in the same zoning district, the variance will not be a substantial detriment to adjacent properties, and the strict application of the ordinance would produce undue hardship relating to this property. Discussion ensued. BZA Member Tuning questioned if the motion could also include that the house will go along with plans submitted, with the Town Attorney stating that it could be worded “to be in substantial conformity with the plans presented to the BZA and staff and that it be uniform with other neighborhood homes.” The Assistant Town Manager added that the Azarch’s will still have to get a zoning permit so staff will be able to review the plans at that time. Vice Chair Hapgood confirmed that she wished to add this condition to her motion. Motion on the floor was seconded by BZA Member Tuning. There being no further discussion, let the record show that the motion on the floor passed unanimously by those present.

OLD BUSINESS

(1) Status of bylaws update

The Assistant Town Manager noted that the draft version of the bylaws included in the meeting packets includes some changes that the Deputy Clerk identified in red that pertain to some changes in state law and code. The current bylaws state that changes to the bylaws cannot be made without a prior 30 day notice. This will be the first review and if the BZA wishes to make changes then it can do so at the next meeting. If there is an interest in doing it in January then a meeting can be held just for that purpose. The Assistant Town Manager also noted that there are some changes that need to be made in Town Code to reflect changes in State Law in Article 16, which outlines the rules for appeal, so it would probably be best to look at this in January or February of the new year.

- Motion was made by BZA Member Tuning that the bylaws be reviewed for the January 2010 meeting, 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 by those present.

NEW BUSINESS

Let the record show that there were no new business items to discuss at this time.

ADJOURNMENT

There being no further business to discuss, motion was made by Vice Chair Hapgood to adjourn the meeting at 6:25 p.m., with motion being seconded by BZA Member Tuning, and carried unanimously by those present.

Charles L. Hutto, Jr., Chairman

ATTEST:

Stacey B. Sink, Deputy Clerk

/sbs