

**BOARD OF ZONING APPEALS  
MINUTES  
OCTOBER 1, 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, October 1, 2009, at 6:00 p.m., with Chairman Charles Hutto, Jr. presiding.

The following were present for the meeting:

Chairman Charles L. Hutto, Jr. and Board of Zoning Appeals Members John Speidel, Maceo Toney, and Lucas Tuning; Staff Members present included Assistant Town Manager Matthew C. Hankins, Town Attorney John Boitnott, Town Clerk Patricia H. Keatts, and Deputy Clerk, Stacey B. Sink.

Let the record show that BZA Vice Chair Susan Hapgood was absent for 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 BZA Member Speidel. There being no further discussion, let the record show that the motion on the floor passed unanimously by those present.

**ACKNOWLEDGEMENT OF APPOINTMENT OF NEW MEMBER**

Chairman Hutto recognized the recent appointment of Maceo Toney to the Board of Zoning Appeals, noting that Mr. Toney had been serving on the Board as an Alternate Member and now has been appointed as a full member.

**APPROVAL OF MINUTES**

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

- August 6, 2009

Let the record show that it was the consensus of the BZA Members present that the draft minutes were acceptable as presented.

## **PUBLIC HEARING**

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

### **(A) Warren and Brenda Boyd Variance Request**

After being duly advertised, and pursuant to the Town of Rocky Mount Zoning & Development Ordinance, and the Code of Virginia, Warren and Brenda Boyd requested a variance from Article 3-1-5 of the Zoning & Development Ordinance, which states that an “accessory building may be no closer than five feet to any property line of an adjoining property owner.” The applicants wish to build within the five feet buffer required by code. In addition, the applicants requested a variance from the Article 3-5 setback regulation, to build within the 60 feet setback requirement from the centerline, on property located at 20 Mountain View Drive, Franklin County Tax Map and Parcel Number 2020102700.

The Assistant Town Manager asked to share with the BZA his staff report regarding the matter, which included the following points:

- On August 17 and 18, 2009, Town staff received and investigated a complaint regarding 20 Mountain View Drive, a Zone R-1 parcel on a corner lot at the intersection of Bernard Road and Mountain View in Franklin Heights.
- Staff investigated and determined that the property owners were building a large utility shed which appeared to encroach on the setbacks to the centerline of Mountain View and on adjoining neighbors’ property lines.
- Staff also noted that the Boyds had neither requested nor received a zoning permit, or a building permit from the Franklin County Building Inspector’s Office, and it appeared that the building was in excess of 150 square feet, which requires a permit.
- On August 18, staff sent a letter to the Boyds advising them of the criteria they needed to meet, and then subsequently met with Boyds on site to go over the issues. At that meeting, Mr. Boyd agreed to stop construction activities pending application to the Town for permission to proceed.

- Mr. Boyd simultaneously submitted a zoning permit application and a variance request on September 2. Acting as the zoning administrator, the Assistant Town Manager denied the zoning permit on the basis that the building did not meet the following criteria: (1) It did not meet the five feet buffer that is required from the property line in R-1 zoning districts. (2) It did not meet the setback requirement from the centerline of the right-of-way of Mountain View. This lot is a corner lot and the building fronts on Mountain View, so this is the side that had to be looked at.
- As background, this is the second variance request in three years on the Boyd's property. The first was to construct an addition to the house.
- While Mr. and Mrs. Boyd have submitted the signatures of neighbors indicating that they don't have any problems with the project (see signatures attached), the BZA's decision cannot be based upon whether or not the neighbors like the project. It must be based on whether or not there is a hardship.
- Pointed out the shape of the Boyd's lot as being an odd, boomerang shaped corner lot that narrows back into the lot. There are some geometric characteristics that tend to lean toward the consideration of a hardship.
- Some considerations that staff suggests the BZA needs to undertake tonight are: (1) Do the owners exhibit sufficient hardship to merit a variance? (2) If the variance is granted, does it meet the following tests that are in Article 16 of the Town Code: (a) Does the strict application of the ordinance cause a hardship? (b) Is the hardship not generally shared by other properties in the same district? He noted that most of the properties nearby do have regular geometric characteristics. (c) Does the variance cause a substantial detriment to adjacent property?

Chairman Hutto opened the floor to any questions from the BZA Members for the Assistant Town Manager. There being none, he opened the floor to anyone present who wished to speak in regards to the request.

**James Sciaretta, managing member of Morningstar Partners**, came forward to speak, stating that he owns what is labeled as Tract F on the parcel map (Tax Map and Parcel Number 2010009300), a large 17 acre piece that is also known as the Franklin Woods Subdivision. He stated that he comes speaking on behalf of his partners, as over the past couple of years, he and his partners have been trying to move forward with the subdivision and have had four different meetings before Town Council and Planning Commission. At each of those meetings, Mr. and Mrs. Boyd led the charge against them. They organized the community and came with over 100 signatures opposing the subdivision application and Mr. Boyd's position was a very strict

interpretation of the law, that the letter must be followed, that everything must be followed, and that [Morningstar Partners] deserved no consideration because the ordinance was clear. It took Morningstar Partners two years and it ended up in court, but it has finally been resolved. He finds it ironic that Mr. Boyd has chosen with this case to ignore the law. Mr. Boyd claims that he is a Class A Contractor, and as such he should know the requirements for getting building and zoning permits, as those are the first two steps of any project. In fact, a couple years ago, Mr. Boyd did go through the appropriate process when he asked for a variance to add on to his house. His recollection is that Mr. Boyd's house was already a nonconforming house, and at that time, even though they had been butting heads a little bit, he wrote a letter to the Planning Commission stating that he had no objections to it. In this case, Mr. Boyd did not follow the proper procedure and this concerns him. He doesn't think the variance should be allowed. Mr. Boyd has shown disrespect for the law and this town. He doesn't think it is a popularity contest. If 100 people say it is okay for Mr. Boyd to do this, he doesn't think it is appropriate for the BZA to make a decision like this. If and when he builds the seventeen homes across the street from Mr. Boyd, the building laws will be strictly interpreted, and he expects that he will build everything within the building envelope. He asks that the BZA be careful and fair in their adjudication.

There being no questions from the BZA for Mr. Sciaretta, Chairman Hutto called upon anyone wishing to speak on behalf of the Boyd's to come forward.

**Warren Boyd of 20 Mountain View Avenue** came forward to speak, stating that he was in the hospital at the time his kids started this building out of an act of love. They shouldn't have. But, Mr. Sciaretta is only here tonight for vengeance. He knows this and his neighbors know it too because they called him and told him that Mr. Sciaretta was there the other night taking pictures. Mr. Boyd further stated that he should have followed the rules, but he was in the hospital under the doctor's care when his kids came from Charlotte thinking they were doing a good deed for their dad. They should have asked questions, but they didn't. The neighbors have no complaints about this, except for Morningstar and he knew this was going to happen. When they got the letter, they knew who it was. He closed by stating that he was asking for the BZA's approval, not Morningstar's.

Discussion between Chairman Hutto, Mr. Boyd, and the BZA Members ensued:

- Chairman Hutto asked Mr. Boyd what the consequences will be if approval is not granted tonight. Mr. Boyd responded that at the moment he could not answer the question, stating that he truthfully didn't know, and adding that he guessed they would have to start over. Right now, they don't have a

- basement but they would figure something out. If it is not granted, then they would do something. Chairman Hutto then reminded Mr. Boyd, that rightfully so, anything over ten square feet requires a building permit.
- Mr. Boyd stated that there was no money involved in this place because the materials were already there and that no matter what he does, he appreciates what his kids have done and if nothing else, he will put a memorial of the kids pictures there if he has to. Chairman Hutto noted that the deed was a good one, but the way in which it was done is questionable.
  - BZA Member Toney questioned if Mr. Boyd could cite a specific hardship as far as anything outside of not having a basement or space for storage, with Mr. Boyd stating that with this being a corner lot [the Town] has the biggest portion of his yard with a 60 feet right-of-way because it narrows so much in the back. Chairman Hutto called upon the Assistant Town Manager to address Mr. Boyd's comments, with the Assistant Town Manager clarifying that it is not actually a right-of-way but a setback requirement. The code reads "structures shall be located 35 feet or more from any street right-of-way which is 50 feet or greater in width, or 60 feet or more from any street right-of-way less than 50 feet in width." Since Mountain View is less than 50 feet wide, the 60 feet setback would apply, not allowing for anything to be built within the 60 feet setback.
  - The Town Attorney clarified with Mr. Boyd that his home is more than 60 feet off of Bernard.
  - BZA Member Toney stated that he has a problem with defining the back property as being owned by the municipality, stating that this is not what he is understanding. Mr. Boyd clarified that the property is useless because he can't do anything with it.
  - BZA Member Toney questioned if there is a size of this construction that Mr. Boyd could do to conform to the existing regulations, with Mr. Boyd advising he could have the building in his front yard which would look absolutely terrible. BZA Member Toney questioned if there was a way, in the area where the building was started, to make it smaller, so that it fits within the ordinance. The Assistant Town Manager addressed the question, advising that the way the Boyd's lot is located, pretty much nothing could be built within the standard building envelope, as much of the lot, probably 60 percent, is within the 60 feet setback from Mountain View. It is fine on the Bernard side, but because it is on the corner lot with Mountain View, most of the lot is taken up by the setback. The Town Attorney pointed out that neighboring lots, such as Lot E (Franklin County Tax Map and Parcel Number 2020102800), only has a 60 feet setback from Bernard, as do all the other lots on Bernard, and

because Mr. Boyd is on a corner lot he has to comply with the setback on Bernard and also on Mountain View.

- BZA Member Speidel asked Mr. Boyd if there is any question about the property line where the structure is being built. Mr. Boyd confirmed that the property lines are established. The structure is off the property line, but not quite enough and he is asking for a two feet variance.
- BZA Member Toney confirmed with Mr. Boyd that if he were to build this addition, this would pretty much finalize him doing anything else to the property in the future.
- Mr. Boyd commented that all the neighbors on his street and behind it have no problems with it, except for Morningstar, which is on the opposite side of the road, and he is sure [Mr. Sciaretta] will never have to look at it because he is a builder and he will build and leave, other than right now when he rides by because he is being vindictive.
- BZA Member Toney confirmed with Mr. Boyd that he must agree that just as he has the right to come, Mr. Sciaretta has a right as well. Mr. Boyd agreed and stated that he knows his motives, and they, as a neighborhood, went against him because they want to know what is coming to the neighborhood. They want it to look nice.

Mr. Sciaretta questioned if he could come to the podium to speak again, with Chairman Hutto allowing him the opportunity.

**Mr. Sciaretta** stated that he wanted to clarify a couple of things. He never wrote a letter and he has never taken pictures, stating that he only found out about this a couple of days ago when his attorney called him. He further stated that if Mr. Boyd's story is accurate and the BZA is satisfied that this was a mistake and his kids were doing something nice for him, then he withdraws his objection. His objection was more on the level that Mr. Boyd is a builder and he should know what he is doing. If this really happened without him knowing about it, then he has no problems with it. It looks like a nice building. It's big, but if the other neighbors don't have a problem with it, then he doesn't have a problem with it either.

The Assistant Town Manager clarified that staff mailed a letter to Mr. Sciaretta to the address that was on file with the Franklin County Land Records and it was returned. Mr. Sciaretta came in today and spoke to staff to become aware of what was going on with the hearing tonight. So, staff did make an attempt to notify him; however, the address was incorrect.

Discussion continued:

- BZA Member Toney pointed out that in his notes he does not see a reference that Mr. Boyd's children wanted to do this for him while he was in the hospital. The Assistant Town Manager advised that he was unaware of this as well.
- BZA Member Toney asked the Assistant Town Manager if this variance is granted, what position will it put the Town in as far as future variance requests? The Town Attorney addressed the question, stating that it has no bearing whatsoever on future variance requests, adding that the BZA's decisions are based upon the uniqueness of the particular situation. The reason the Town has variances from the Ordinance is that every parcel is not identical. The unique characteristic of this parcel is the shape of it. So, variances are intended to address specific pieces of real estate that because of the unique character of the real estate the property owner can demonstrate what is perceived to be a hardship that is not shared in common with other properties similarly situated and will not have some substantial detrimental impact on surrounding properties. Each is considered on its own footing. Chairman Hutto added that the BZA does not have to rely on a decision that is made today as setting a precedent.
- Chairman Hutto asked BZA Member Tuning for his thoughts on the matter with BZA Member Tuning stating that he is going back and forth in his mind regarding the uniqueness of this variance request.
- BZA Member Speidel pointed out that partial construction should not affect the BZA's decision. The decision is whether the variance is justified to begin with and the timing of the construction itself should not be in the decision. The decision should be whether the variance meets the requirements for a hardship and the effect on the surrounding community.
- BZA Member Tuning added that, based on the signatures, Mr. Boyd has the support of the surrounding community, and that because of the uniqueness of the property, anything Mr. Boyd does as far as adding onto an existing shed is going to be out of bounds.
- BZA Member Toney stated that he thinks it is interesting that one of the things Mr. Sciarretta said when he came back to the podium is that this is a good looking building, and he agrees that the BZA should not be concerned with the percentage of completion. He also noted that Mr. Boyd stopped the construction when he was notified.
- The Assistant Town Manager advised that in preparing possible motions that the BZA may consider he tries to be as thorough as possible; however, he was just notified by the Town Attorney that item 2 listed under the "conditional approval motions" is not something that is within the BZA's purview to offer, specifically that the applicants employ a professional surveyor to report to the

Community Development Department that the building currently being constructed does not rest on neighboring property.

- The Town Attorney advised that it could be conditioned on the basis that the building be a brick building that is substantially compatible as far as outward appearance and roof pitch to the house on the property, and on the condition that Mr. Boyd obtain a building permit.
- Mr. Boyd advised that these conditions were agreeable to him.

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

- Motion was made by BZA Member Speidel to grant the variance from Article 3-1-5 for building closer to the property line, and from Article 3-5 for setbacks from the centerline of the road for Tax Map and Parcel Number 2020102700 on the conditions that the applicants apply for and receive a building permit from the Franklin County Building Inspector's Office and that the structure be built with a brick façade and roofline matching the house, and that the variance be granted because the strict application of the variance would produce an undue hardship relating to the property, that the hardship is not shared generally by other properties in the same zoning district and the same vicinity, and that the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance. Let the record show that the motion on the floor was seconded by BZA Member Tuning and approved unanimously by members present.

## **OLD/NEW BUSINESS**

### (A) Old Business

#### (1) **Status of bylaws update**

The Assistant Town Manager stated that the BZA had requested for staff to draft some bylaw updates to bring them into compliance with state code. He has not had the opportunity to work on this but will work on it and bring it back at the November or December meeting. There were some changes in the way to consider a hardship and to count a majority. He further added that it has been so long since the bylaws were updated that an electronic copy cannot be found.

### (B) New Business

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

**BOARD/ STAFF CONCERNS**

BZA Member Tuning questioned if there were any items on the agenda for next month. The Assistant Town Manager confirmed that to date there have been no applications made, and adding that he is unsure of the filing deadline, but that staff likes to allow as much time as possible for applications to be made.

**ADJOURMENT**

There being no further business to discuss, Chairman Hutto entertained a motion to adjourn.

- Motion was made by BZA Member Speidel to adjourn at 6:44 p.m., seconded by BZA Member Tuning, and carried unanimously by those present.

\_\_\_\_\_  
Charles L. Hutto, Jr., Chairman

ATTEST:

\_\_\_\_\_  
Stacey B. Sink, Deputy Clerk

/sbs

(This page left intentionally blank.)