

TOWN OF BOWLING GREEN
BOARD OF ZONING APPEALS MEETING

MINUTES

10-26-05

MEMBERS PRESENT: Chairman Dirk Farmer, Jean Davis, Eric Hinson.

MEMBERS ABSENT: Carroll R. Schools, Craig Lewis

OTHERS PRESENT: Town Clerk Virginia Brooks, Town Attorney Jean Kelly.

The Chairman called the meeting to order at 7:00 P.M.

ELECTION OF OFFICERS: Chairman Farmer noted that it had been some time since the Board had met and they were due to realign their officers.

Chairman - Chairman Farmer called for nominations for Chairman. **Jean Davis nominated Eric Hinson as Chairman of the Board of Zoning Appeals. The Chairman called for further nominations, there were none. Voting Aye: Farmer, Davis, Hinson.**

Vice Chairman - Farmer called for nominations for Vice Chairman. **Dirk Farmer nominated Carroll R. Schools as Vice Chairman. There were no more nominations. Voting Aye: Farmer, Davis, Hinson.**

PUBLIC HEARING - VARIANCE - BZA -2005-02: Chairman Hinson opened the Public Hearing by reading the following notice that was published in the Caroline Progress on October 12 & 19, 2005:

TOWN OF BOWLING GREEN

BOARD OF ZONING APPEALS

The Bowling Green Board of Zoning Appeals will hold a Public Hearing on Wednesday, October 26, 2005, at 7:00 P.M. in the Bowling Green Town Hall, 117 Butler Street to consider the following request:

BZA - 2005-02 Requests a variance to Article IV, Section 126-12 of the Zoning Ordinance to permit a reduction of the front "Setback Line" from 35 ft. to 31.5 ft. to permit a house that is under construction to be completed on site. The property is located at 299 Dickinson Drive on Tax Map Parcel 43A5-1-12 which is zoned R-1.

Any persons desiring to be heard in favor or in opposition to the above is hereby invited to be present at the Public Hearing. Copies of the above are on file in the Town Hall Business Office, 117 Butler Street, Bowling Green, Virginia.

Kimberly R. Parke
Deputy Zoning Administrator

Chairman Hinson asked if there was anyone who would like to speak for or against the request for a variance. Town Attorney Jean Kelly informed the people present that anyone wanting to speak would have to be sworn in since this is a judicial proceeding. She said they would need to affirm that the testimony or information they give is accurate. All of the people wishing to speak stood and gave an oath that they affirm that the information that they are about to give is the truth and nothing but the truth.

Chairman _____ Clerk _____

MacWayne Williams of 230 Maury Avenue explained that he would like to give some history that led up the request for a variance. He stated that he was the builder for the project and that in the process they hired a surveyor (Webb & Associates) to come in and place four pins to locate the house on the property. The construction was, subsequently, started. When the foundation was completed, the surveyor was called in for a wall check survey to make sure that the foundation was placed correctly on the property. Mr. Williams said that work continued on the house while waiting for the surveyor and the sub flooring on top of the foundation was completed. The wall check survey showed that the foundation encroached on the front setback and construction was immediately stopped. Mr. Williams said the house does not encroach on any adjoining property or utility easement but does encroach on the Virginia Department of Transportation right-of-way. He said he respectfully requests a variance for this property.

Rick Fuller, who resides at 279 Dickinson Drive, said he would like to speak against the approval of the variance for 299 Dickinson Drive. He said 299 Dickinson Drive was the original lot that he wanted to purchase but due to the setback requirement, he was told his house would not fit on the lot. Mr. Fuller stated that he chose the lot next to it but his house's footprint had to be reduced by two feet to meet the setback requirements. He said he was told there was not enough room to build a back porch on their property. Mr. Fuller stated that if variances were not given individually at any other time, he did not think it was fair to give it this time.

Gene Self, who lives at 243 Meadow Lane, said his house was one of the first ones built in the subdivision. He was allowed to build a porch, but not as big as he had wanted because of the setback requirements. He said he could not build a larger front porch because of the setback requirement. Mr. Self stated that he has known for a long time that it was going to be a problem putting a house on the circle. He said he was not in favor of the Board approving a variance for this house.

Daniel Webb of Webb & Associates, who resides at 131 Coghill Street, spoke next. Mr. Webb said he didn't think that E.M. Williams and Sons, who constructed this house and employed Webb & Associates stake the corners of this house, had any intention of not meeting the setback requirement. He said the house would fit if it was moved closer to the easement. Mr. Webb said that when they originally designed the subdivision the cul-de-sac was designed to have a fifty (50) foot radius. He said somewhere in the design process, at the request of the County, Town or someone, they increased that radius in the cul-de-sac to a fifty-five (55) foot radius. He said, unfortunately, some of the line work in the computer file was not updated and the 35 foot setback line stayed at a 30 foot because the adjusted the right of way line was not updated. Mr. Webb said this house would certainly fit on this lot and he doesn't believe it was ever the intention of the builders to construct a house on this lot that would not meet the setback requirements.

McWayne Williams of E.M. Williams and Sons, who is constructing the house, asked to speak. Mr. Williams said his company had constructed both houses for Mr. Self and Mr. Fuller and they were one story houses. He noted that the house build on the cul-de-sac was a two story and he chose this house because it has smaller footprint. He said it is unfortunate that he cannot put back porches and front porches on houses because the Town of Bowling Green has set the criteria for the setback line.

Mr. Self said it was odd that the last three lots being built in that Subdivision and the first house being built on these lots has the builder asking for a setback change.

Mr. Fuller said if this foundation has to be moved, it will cause an inconvenience on him because the house will be moved closer to him. However, he thought it was more important to uphold the principles than to necessarily look at an inconvenience to him. He didn't think this was a precedent that the Town of Bowling Green should set because

Chairman _____ Clerk _____

other businesses will say they made a mistake and want a variance.

Sandra Pelter, who lives at 115 Roper Drive, asked to speak. She said in doing research on the house being discussed, she found that the garage is on the side where there is a 20 foot width and this may cause a problem because of the way the driveway must connect to the garage. She said, therefore, it would be better to have the foundation moved.

McWayne Williams responded that several of the driveways are next to the property line and the distance from the end of the house to the property line must be at least 15 feet. He said the Town sets the requirements and he abides by the setbacks. Mr. Williams said the location of house's foundation does not affect any other property owner because it encroaches only on the front setback from the street. Mr. Williams said if the location of this foundation affected anybody's living standards, they would have torn it down, moved it, and not wait 60 days to see if they could receive approval for a variance.

Carroll Elliott, who lives at 180725 O'Brian Court outside of the Town, said that if he had a vote on this tonight, he would not vote for either side. He said that if this house was moved 10 to 12 feet to the left, it would not cause a problem for anyone and access to the garage would be without trouble.

The Chairman called three times for other comments, hearing none, he declared the public hearing closed at 7:24 P.M.

Jean Kelly announced that as Town Attorney, she is also required to be Counsel to the Board of Zoning Appeals. She said the Town Council is the only Council that has the authority under the Code of Virginia to adopt the Zoning Ordinance and Subdivision Ordinance and they are the only body that has the legal authority to determine what the setbacks are. Ms. Kelly said the authority of the Board of Zoning Appeals is by statute and arrogation sit as a quasi judicial board. She said they have very limited authority when they hear requests for variances. Ms. Kelly said that authority is in the Code of Virginia and when they hear a request for a variance, they must apply the standards under the Code of Virginia. She stated that the Code of Virginia requires that the Board look at three things. They are: (1) The Board should decide if a strict application of the zoning ordinance would create an undue hardship. She said the definition of an undue hardship is that the hardship must not be self inflicted. (2) The second criteria is to determine if the hardship is not shared generally by other properties in the same zoning district in the same vicinity. She said Bowling Green Meadows is a plated subdivision and everyone is on notice as to what the setbacks need to be in the subdivision. (3) Any authorized modification or variance from the zoning setback must not change the character of, or be a substantial detriment to, the adjacent properties. Ms. Kelly said a variance is typically given when it relates to a topographic issue, such as a big ravine. She indicated that a variance is easily granted for topographic issues because it is something not usually shared by everyone in the area, is a special hardship to the property owner, is not self-inflicted, and does not involve a confiscation of property if the setbacks are applied. Ms. Kelly said she was available to answer any questions anyone may have regarding the law.

Hinson encapsulated the zoning ordinance for R-1 by stating that there is a requirement for a 35 ft. setback in the front and back with a 15 ft setback required on each side. He said the property in question meets the minimum requirements of R-1 and the proposed structure, by testimony, will fit on the lot and meet the setback requirements. He said the change in cul-de-sac dimensions which were not updated in the computer system by Webb and Associates caused the specific issue under consideration this evening. He said the matter at hand is to decide whether the requested variance should, or should not, be granted.

Farmer stated that his first thought was this matter is a simple case it dealt with a few feet. He said he would hate to see the builder tear down the completed foundation.

Chairman _____ Clerk _____

Farmer said there are two things that he had to think about, one is the precedent that would be set by approving the variance and the other is the remarks made by Ms. Kelly regarding the law concerning a hardship case. He said this situation under review, by law, does not meet the requirements of a hardship case, but is more of a self-inflicted hardship case.

The Chairman asked if there were any other questions or comments from the Board.

There was a motion made by Hinson, seconded by Davis, that the request by Ronnie Williams for a variance (BZA-2005-02) to Article IV, Section 126-12 of the Zoning Ordinance to permit a reduction of the front "Setback" Line from 35 ft. to 31.5 ft. so that a house currently under construction can be completed on site be denied based on the facts discussed and the Town Code. Voting Aye: Hinson, Davis, Farmer.

ADJOURNMENT: On motion by Davis, seconded by Farmer, the Bowling Green Board of Zoning Appeals adjourned their meeting at 7:35 P.M. Voting Aye: Hinson, Davis, Farmer.