

Meeting Minutes of the Board of Zoning Appeals Tuesday, July 8, 2014

The Board of Zoning Appeals met in City Hall Council Chambers on Tuesday, July 8, 2014 at 5:17 P.M. with the following members in attendance: Aaron Ryba, Dave Drum, Joshua Lonon, Jim Davis, and David Scott Lewis. Marshall Irby was absent. Representing the Planning Department were Joshua Henderson and Julie Roland. Building Official Buddy Bush also attended the meeting.

Roll Call

Mr. Ryba, the Vice-Chair, stated that public notice of this meeting was given twenty-four (24) hours in advance as required by the Freedom of Information Act. Any appeals from a decision or action of this body are limited to a request for pre-litigation/mediation or an appeal to the Circuit Court, to be filed within thirty (30) days after the decision of this Board in accordance with Section 603.6 of the City of Spartanburg Zoning Ordinance.

Roll call was taken – Five of the now six members Board were present, constituting a quorum.

Approval of Agenda for the July 8, 2014 Meeting

Mr. Lonon made a motion to approve the Agenda for the July 8, 2014 meeting, and was seconded by Mr. Davis. The motion was unanimously approved by a vote of 5 to 0.

Disposition of the minutes from the January 14, 2014 meeting of the Spartanburg Board of Zoning Appeals

Mr. Lewis moved approval of the January 14, 2014 Meeting minutes, with second by Mr. Drum. The motion was unanimously approved by a vote of 5 to 0.

Old Business – None.

Election of Chair and Vice-Chair for the 2014-2015 Calendar Year

Mr. Ryba asked if there were any nominations for Chair or Vice-Chair.

Mr. Lonon nominated Mr. Ryba to serve as Chair, and he was seconded by Mr. Davis. Mr. Ryba nominated Mr. Lonon to serve as Vice-Chair, and he was seconded by Mr. Davis. There were no other nominations. Mr. Ryba was elected as new Chair, and Mr. Lonon was elected new Vice-Chair, and the motion was unanimously approved by a vote of 5 to 0.

VAR 14 2-01 - Request for Variance from Pete Figueroa, on behalf of ABC Builders, Inc., Owner. Variance to allow an already constructed addition to the single-family residential home on the property, located at 340 Amherst Drive which is zoned R-12, General Residential District. The Applicant is asking for a maximum of a four (4') foot eight (8") encroachment on the left rear side of the structure. The Zoning Ordinance requires a ten (10') foot side yard setback for the primary structure. The property is further identified as Parcel 179.00 on Spartanburg County Tax Map Sheet 7-16-05.

Mr. Henderson came forward and was sworn; and he submitted the meeting packets the Board Members had previously received including the reports, slides and presentation into Evidence as Exhibit A. He explained the request tonight was from Pete Figueroa, on behalf of ABC Builders, Inc., which was the Owner of 340 Amherst Drive which is zoned R-12, General Residential District; and the applicant is seeking a maximum of a four foot, eight inch (4'8") encroachment on the left rear side of the structure.

Mr. Pete Figueroa came forward and was sworn. He informed the Board Members the house had been built for over fifty years; and he explained he had applied for a permit to begin fixing up the house, and was given a permit by the Building Inspections Department. He called for an inspection, after which time two inspectors came out and said everything was fine. He then began doing more work and poured the concrete for the addition. When he called for a final inspection it was made known to him that he did not meet the setback requirements. Mr. Figueroa felt an honest mistake had been made.

Mr. Henderson came forward again and said the applicant pulled a permit in 2009 to do some work on the structure which included a remodel, re-roof, and work on rafters, windows, doors, kitchen ceiling, and to do some cleaning and repainting. The City Building Department was then contacted to complete site inspections of the property for which the permit explained. A slide was shown of the permit that was

issued in 2009. At that time, a Building Inspector conducted an inspection of a footing without making sure the footing met the setback requirements of 10 feet. Mr. Henderson explained that normally when an applicant came in for a permit inspection, they were also brought down to his office to sign off on as well. It was not brought to him for a setback inspection (by a recently hired inspector) and he did not find out about the matter (regarding the fact that the footprint of the house had been expanded on the left rear side encroaching into the required side yard setback) until the applicant had called the Building Inspections Department again for a final inspection. An aerial slide of the property was shown, and Mr. Henderson explained according to the GIS aerial information from 2004 the structure contained a small addition to the south/left side of the structure which had been removed at some point. He further explained in the aerial photo, it appeared this small addition was approximately 15' measured to the property line (please note this measurement is not accurate since it was from an old aerial). He also explained from the aerial, there was never a carport or addition on this side of the structure until October 2012 when a carport was added and tied into the primary structure (as shown in a slide of the 2012 Google street-view slide). A slide was shown of the 2013 aerial view (the most current aerial) from the County; and he said you could see the property is situated in such a way that the property lines are not parallel to the structure, and the addition does not fully encroach into the required 10' setback. According to Staff's measurements from the existing fence to the overhang of the carport, the new addition begins to encroach into the required side yard setback just past the middle post at approximately 13'6" measured from the fence to the edge of the overhang and the closest point of the addition is approximately 5'4" from the fence to the overhang. More slides were shown of the proposed property from different angles, the surrounding properties, and a copy of a 2009 Residential Building Permit that was approved, in order to better illustrate the request. Mr. Henderson explained there was a fire at this property a few years ago, and the 2009 permit that was issued was to go back and correct those issues. He pointed out that in all of the aerial photos he had shown that the house had already been non-conforming. Mr. Henderson said the Board Members had received his Mandatory Findings in their meetings packets; but one thing he did want to point out under Mandatory Finding No. 1 regarding "There are extraordinary and exceptional conditions pertaining to this particular piece of property"; the only way to make this structure comply with the setback requirements would be to remove the portions of the house addition and carport to meet the 10' requirement. This would cause an unnecessary hardship on the owner and then would make the carport unusable. If the property lines were straight and parallel with the structure, then there would not be an issue with the structure encroaching into the setback requirements. It would be difficult to construct the carport and house addition meeting this requirement. Mr. Henderson concluded his presentation by saying after review of the guidelines set forth in the City of Spartanburg Zoning Ordinance, the proposed, and already installed, addition does not meet the requirement of 10' for a side yard setback. However, in this case, the construction has already been inspected by City Staff and completed. Therefore, removal of the addition to meet the setback requirements would be an unnecessary hardship for the Owner. Staff is of the opinion that the Board approve the applicant's request for the installed addition to the structure.

[Editor's Note: the report the Board Members previously received included the Mandatory Written Findings for the Board to consider when reviewing a variance request and Staff's Analysis of Required Findings as follows:

- 1) *There are extraordinary and exceptional conditions pertaining to the particular piece of property* – There are extraordinary and exceptional conditions associated with this property. The Owner applied for a permit to have some work done on the structure; however, it did not include the addition or the carport. When our City Building Inspector went to complete an inspection on the property, he inspected a footing for the carport without a setback inspection being conducted. At that point, the Owner/builder continued to construct the addition to the point it is today (which has been completed). The only way to make this structure comply with the setback requirements would be to remove the portions of the house addition and carport to meet the 10' requirement. This would cause an unnecessary hardship on the owner and then would make the carport unusable. If the property lines were straight and parallel with the structure, then there would not be an issue with the structure encroaching into the setback requirements. It would be difficult to construct the carport and house addition meeting this requirement.

- 2) *These conditions do not generally apply to other property in the vicinity* – There are a few other properties in the close vicinity that have the same concern with regards to the unparalleled property lines. Upon measuring adjacent properties, from aerial view, it appears that they all comply with the setback requirements for a side yard setback (please note that this measurement is not accurate since it was from an old aerial). As you can see from the most current aerial, the structure in question is no longer in scale with adjacent properties and therefore is closer to the side property lines since it is further back than those adjacent structures.
- 3) *Because of these conditions, the application of the ordinance to this particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property* – Without the carport and addition to the structure the property will still be able to be utilized as it has since it was constructed. However, since all construction is now complete, it would be unreasonable to require the Owner to remove the recent addition and come into compliance with the side yard setbacks.
- 4) *The authorization of a variance will not be of substantial detriment to adjacent property or to the general public good, and the character of the district will not be harmed by the granting of the variance* – The required 10’ setback for the side yard is for the protection of adjacent properties. With the addition, the property in question will be approximately 18’ at the closest point measured to the adjacent structure. It will meet all safety requirements for the Building Department with regards to fire separation.
- 5) *The Board does not find it necessary to attach conditions regarding the location, character, or other features of the proposed building, structure, or use to protect established property values in the surrounding area or to promote the public health, safety, or general welfare.*

STAFF’S RECOMMENDATION

After review of the guidelines set forth in the City of Spartanburg Zoning Ordinance, the proposed, and already installed, addition does not meet the requirement of 10’ for a side yard setback. However, in this case, the construction has already been inspected by City Staff and completed. Therefore, removal of the addition to meet the setback requirements would be an unnecessary hardship for the Owner. Staff is of the opinion that the Board should approve the applicant’s request for the installed addition to the structure.

Board Member Questions:

- Mr. Lewis said as far as the inspector went, that it seemed the electrical inspector made an error also regarding where the electrical panel was located. Mr. Henderson he really did not know other than to say that typically when the electrical went in, the footings and setback inspections had normally already been done and went off of the fact that it had already been approved by City Staff. Mr. Henderson said they were also unsure which slab was there at the time; and they were assuming it was some type of laundry room or something that was not attached to the structure; but it was not there in 2011.
- Mr. Ryba asked when a building permit was issued, how long was it good for.

Mr. Buddy Bush, City of Spartanburg Building Official came forward and was sworn. He explained a permit was good for six months if the applicant did not do any work whatsoever; and he further explained if the applicant worked on the project for any period of time; as long as they called for an inspection they could keep working.

Mr. Bush said there were a couple of mistakes that had been made regarding the permit. He said the permit was issued in 2009 for repairs due to fire damage to the structure as Mr. Henderson had mentioned earlier; and it was not for an addition. This job went on for some period of time; and when Mr. Bush became aware of it, what he thought needed to be done was to issue a new permit for an addition, in order to rectify the situation. He said that was kind of why there were here before the Board today, in order to rectify the situation; and there had been mistakes made by multiple people, not just the Building Department.

- Mr. Ryba asked what was the initiating factor that had brought this all up? Mr. Bush explained the applicant was trying to get a final inspection.
- Mr. Lonon asked Mr. Henderson if there was proper advertisement and notice for the meeting. Mr. Henderson said yes.
- Mr. Lonon asked was there any opposition. Mr. Henderson said he had not received anything for or against the request.
- Mr. Lonon said it appeared to him in the last year or so, most of the variances the Board had granted, had been results of construction that had already occurred. He said it appeared to him they were doing a lot of fixing things after the fact which he felt might send certain message to builders, etc. and wondered if was a concern for the City. Mr. Henderson said City Staff definitely did not want to set precedence and did not want to be in the practice of asking for forgiveness. He felt the Building and Planning Departments had the most in-line sequence of events to follow after something came in; and some changes had been made over the years; and there was always room for improvement.
- Mr. Lonon asked Mr. Figueroa what was the builder's responsibility to make sure they did what they needed to do regarding setbacks. Mr. Figueroa thought at the time Staff had looked at the setbacks, but in the future he would make sure he always had them check everything before something was built.
- Mr. Lonon asked Mr. Figueroa if he was the owner of the property. Mr. Figueroa said yes.
- Mr. Ryba said for clarification, he thought the proper process would have been to establish where the existing footing had been, and if that portion had needed to be rebuilt, he believe it would have been identified as non-conforming at the time, or they may have been able by-right to build in the same footprint, even though it was non-conforming. Mr. Ryba said he agreed with Mr. Bush in the fact that there were errors made on more than one party.
- Mr. Drum asked Mr. Henderson related to Mandatory Written Finding No.4, Staff had not received any response from any of the neighbors. Mr. Henderson explained that Staff sent certified letters to adjacent property owners and then regular mail letters to all property owners within a 400' radius of the property; and Staff had not had any comments.

Mr. Ryba opened the public hearing and asked anyone who wished to speak in favor of the request, or against the request to come forward. No one came forward. Mr. Ryba closed the public hearing.

Board Deliberation:

- Mr. Lewis felt the petitioner was telling the truth regarding his presentation and as depicted in the slides that were shown.
- Mr. Lonon felt there was a unique shape to the property which would make it worthy of a variance, which he also felt was demonstrated further by the fact that it was already non-conforming. He would not think any of the neighboring properties would be harmed at all, and that was probably why Staff had not received any letters of opposition. As far as the finding regarding prohibit or unreasonably restrict the utilization of the property, he felt that if all the other factors weighed strongly in favor or a variance, that it could be justified.
- Mr. Ryba agreed with Mr. Lonon regarding Mandatory Finding No. 1, as well as the errors that had occurred; and he also agreed that there would not be a significant negative impact on the surrounding properties, as there was no one present to speak against the request; and that the conditions do not generally apply to most other properties in the neighborhood; and he did feel that denying the request would subject the applicant to financial hardship.
- Mr. Davis agreed and was glad to hear Mr. Lonon confirm the hardship to the petitioner if the addition were to be demolished; and he felt moving forward that the builders, as well as Staff had responsibilities.

Mr. Lonon moved to approve the request as presented and adopt the findings as justified; and he was seconded by Mr. Davis. The motion was unanimously approved by a vote of 5 to 0.

Mr. Henderson informed the applicant he would receive an official Order and letter by mail.

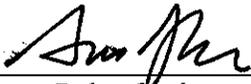
Staff Announcements

Mrs. Roland informed the Board Members that Mr. Irby's reappointment would be approved by the Mayor and City Council; and there were currently two Board Member vacancies. Ms. Robbins term had expired as of 6/30/14; and she informed the Board Members that Mr. Drum had informed her today that because of some health concerns and issues; he had resigned from the Board effective tonight. If anyone knew of anyone who would be interested in serving on the Board to please let Staff know and they would get them a Board Member Consideration form to be completed.

Mrs. Roland thanked Mr. Drum for all of his service to the Board; and said they would all miss him.

Mrs. Roland also expressed condolences to Mr. Lonon on the recent death of his brother.

There being no other business, the meeting adjourned at 6:00 P.M.



Aaron Ryba, Chair

Edited by Julie Roland, Administrative Assistant