

# **Meeting Minutes of the Board of Zoning Appeals**

## **Tuesday, February 12, 2013**

The Board of Zoning Appeals met in City Hall Council Chambers on Tuesday, February 12, 2013 at 5:15 P.M. with the following members in attendance: Shelley Robbins, Aaron Ryba, Marshall Irby, Josh Page, Norberto Gliozzi, Dave Drum, and Joshua Lonon. Representing the Planning Department were Joshua Henderson and Julie Roland. Assistant City Manager Chris Story also attended the meeting.

### **Roll Call**

Mrs. Robbins, the 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 – All seven members were present, constituting a quorum.

### **Approval of Agenda for the February 12, 2013 Meeting**

Mr. Ryba made a motion to approve the Agenda for the February 12, 2013 meeting, and was seconded by Mr. Page. The motion was unanimously passed by a vote of 7 to 0.

### **Disposition of the minutes from the November 21, 2012 Special Call meeting of the Spartanburg Board of Zoning Appeals**

Mr. Irby moved approval of the November 21, 2012 Special Call Meeting minutes, with second by Mr. Ryba. The motion was unanimously approved by a vote of 7 to 0.

### **Old Business**

There was no old business for discussion.

### **New Business**

***VAR 13 2-01 - Request for Variance from Marilyn P. Sunderlin, Owner. The request is to encroach a maximum of ten (10) feet into the required fifteen (15) foot side yard setback, to construct a 360 square foot attached carport to the house over the existing driveway. The property is located at 106 Hillbrook Drive, and is further identified as Parcel 020.00 on Spartanburg County Tax Map Sheet 7-13-03.***

Mr. Henderson came forward and was sworn, and he submitted the staff report, including the slides and the presentation the Board Members had previously received in their meeting packets into evidence, as Exhibit A. He said the property was zoned R-15, and the owner was seeking a setback encroachment up to ten (10) feet into the required fifteen (15') foot side yard setback to allow for construction of a carport.

Mrs. Marilyn Sunderlin came forward and was sworn. She informed the Board Members they wished to build the carport over the existing driveway, and wished to cover as much of the driveway as possible within the setback line.

#### **Board Questions:**

- Mrs. Robbins asked about a response from her neighbor. Mrs. Sunderlin said she had a signed letter of approval from the neighbor that would be most affected by the request; and said it should have been in their meeting packets previously received.

Mr. Henderson came forward again and said the house at 106 Hillbrook Drive was constructed c. 1959 when the neighborhood was constructed, and was approximately 2,928 square feet in size. He said when writing this report, he was unsure whether or not there was ever a carport or garage on the property, but he had received a call this past week from a previous property owner who indicated there had been a garage some time ago on the property. The applicants are requesting to construct an approximate 360 square foot open carport attached to the house, over the driveway. He informed the Board Members the house directly to the east has an existing carport that encroaches approximately 4' into the required 15' setback, as well as the house to the west encroaches approximately 6' into the required 15' setback. He further informed the Board Members he had spoken to the property owner who would be most affected by

the request, who had also submitted a written letter that she had no objections to the applicant's request. Mr. Henderson explained the majority of the homes in the Hillbrook Forest neighborhood did not meet the required setbacks, as of now. A lot of them were constructed with carports, or had them added at another date, and already encroached significantly into the side yard setbacks anywhere between a couple of feet to an entire setback to the property lines. He said it was a precedent to have these carports in the neighborhood. Mr. Henderson concluded his presentation by showing slides of the proposed property, proposed carport, and homes in surrounding area with carports, plat of the property, and drawing of what was proposed, in order to better illustrate the request.

[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;
- 2) These conditions do not generally apply to other property in the vicinity;
- 3) Because of these conditions, the application of the ordinance to these particular pieces of property would effectively prohibit or unreasonably restrict the utilization of the property;
- 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;
- 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.

#### ANALYSIS OF REQUIRED FINDINGS

The exceptional and extraordinary conditions that apply to this property are related to the layout of the house with regards to the parcel. The majority of the homes in the Hillbrook Forest neighborhood were constructed with carports (or had carports added at a later time) that encroach into the required 15' side yard setback for the zoning classification of R-15. Even though the request is a significant encroachment on the side property line, it will not detract from the surrounding properties since they are all non-conforming with regards to setback encroachments. The proposed carport will also not cause an adverse impact on the street or the neighborhood as a whole.

It is of staff's opinion that by allowing for this variance, the layout of the building should not be detrimental to any of the neighbors or the neighborhood itself. Therefore, staff recommends approval of the variance.

#### Board Questions:

- Mr. Lonon asked Mr. Henderson was the proposed property an annexed parcel, or had it always been part of the City limits. Mr. Henderson said he did not know that answer; and he asked Assistant City Manager Story if he knew the answer. Assistant City Manager Story did not know the answer either.
- Mr. Lonon said he was curious as to whether or not all the property owners had been grandfathered in to the City. Mr. Henderson said he was not sure, but said a lot of the homes were constructed prior to the setback guidelines being added to the zoning ordinance. Mr. Henderson said staff would look into the matter regarding when or if the proposed property had been annexed.
- Mr. Lonon asked Mr. Henderson if he said all of the homes on the street were in violation of the zoning ordinance. Mr. Henderson said not all of them.
- Mr. Lonon asked Mr. Henderson if he thought that 50% of the homes on the street were in violation. Mr. Henderson said he would say so; and he explained that the majority of the homes in the surrounding area were either slightly encroaching or significantly encroaching.
- Mr. Drum felt the proposed property was right on the City's boundary line. Mr. Henderson referenced one of the slides and explained the proposed property was located in the City, and the ones to the rear were in the County.

- Mrs. Robbins asked Mr. Henderson to clarify where the carport would be. Mr. Henderson referenced a slide of the house and driveway and explained where the carport would be located.
- Mr. Page asked was one aspect regarding setbacks whether or not an emergency vehicle would be able to turn around. Mr. Henderson said he was not aware of any emergency requirements or access to the rear of the property lines, but explained there was enough room through a fence at the rear.
- Mr. Ryba said for larger structures there needed to be full access around to be able to drive one way.
- Mr. Lonon explained under the law the Board was only suppose to grant variances in special cases; and in order to do that the request needed to meet all five of the criteria when considering a variance request. He said his biggest issue was how would not being able to build a carport over the existing setback line unreasonably restrict or technically prohibit the utilization of the property. Mr. Henderson said it was possible to construct a carport to the rear of the house, but in Staff's opinion having the carport more in line with the rest of the homes and carports in the area, as well as being more accessible to the petitioners made sense.
- Mr. Paul Sunderlin, the applicant's husband responded to Mr. Lonon's above question by saying he felt it was a reasonable request that an existing driveway be covered to allow the homeowner to ingress and egress of their property in inclement weather, particularly since the driveway was constructed prior to the existence of the particular requirement.
- Mr. Henderson pointed to a slide, and asked was that a doorway. Mrs. Sunderlin said yes, that was the only way they could enter and exit the house.
- Mr. Gliozzi asked about the location of the door. Mrs. Sunderlin said it was on the side of the house.
- Mr. Ryba asked about the proposed materials. Mr. Sunderlin explained.
- Mr. Henderson presented the list of materials, and said the list was too big to scan in with the meeting packet the Board Members had previously received; and he submitted it into evidence as Exhibit B.
- Mr. Irby had a question regarding the angle of the proposed roof pitch regarding the covered carport regarding whether or not the run-off would be running down the hill on the adjacent property owners. Mrs. Sunderlin said they would be putting in gutters.
- Mr. Henderson explained the Stormwater Manager and Building Official would make sure there would be no increase of water runoff on adjacent property owners.
- Mr. Lonon asked Mr. Henderson how they would make a finding that there were exceptional and extraordinary conditions on this property. Mr. Henderson said short of tearing the fence down and adding additional asphalt all the way around the back of the property, extending the driveway, and adding an extra impervious area, and putting the carport at the rear, there was no other place to have a carport on the property, plus they may not have as good of access into the carport; and he felt this was the most appropriate area to have a carport without adding a lot of extra costs to the property owners.

Mrs. Robbins opened the public hearing and asked anyone who wished to speak in favor of the request to come forward. No one came forward. Mrs. Robbins asked anyone who wished to speak in opposition of the request, or who had questions to come forward.

- Mr. Lonon asked Mrs. Robbins if the required letters were sent out to property owners. Mrs. Robbins said yes.
- Mr. Henderson said fifteen days prior to the meeting staff sent out certified letters to all abutting property owners, as well as letters to all property owners within a 400' radius of the property. A sign was also posted on the property, and the meeting was advertised in the newspaper.

Mrs. Robbins closed the public hearing portion.

Board Discussion:

- Mr. Lonon did not feel the request met the required criteria for approval and he also felt the law supported that fact.

Mr. Irby made a motion to approve the request as presented by staff, and he was seconded by Mr. Gliozzi.

Discussion of Motion:

- Mr. Gliozzi felt it made more sense to put the carport in the proposed area more in line with the rest of the property owners in the area, than incurring most costs to put the carport in the back of the house.

The motion was approved by a vote of 6 to 1, with Mr. Lonon in opposition.

Other Business

There was no other business.

Staff Announcements

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- Mr. Henderson welcomed New Board Member Dave Drum to the meeting.
- Mr. Henderson informed the Board Members Staff had placed their new Zoning Ordinances at their places, and they were to recycle their old ones. He also informed the Board Members that the revised Ordinance incorporated the Urban Code into the Zoning Ordinance.
- Mrs. Roland informed the Board Members that new Board Member Dave Drum had completed his six hours of required New Board Member Orientation Training, and Mr. Lonon would be taking his second session soon, which would complete his New Board Member Training. Mr. Gliozzi had been out of the country, but was soon scheduled to take his 2012 training, and would also be scheduling 2013 Continued Education Training at a later date this year.
- Mrs. Roland said Mr. Irby had already received his required 2013 Continued Education Training, and informed the other Board Members of upcoming continued education training.
- Mr. Henderson informed the Board Members that AIA and AICP credits also counted toward the Continued Education Credits.
- Mrs. Robbins suggested that a good topic for training would be refreshing themselves on the issues that Joshua Lonon had talked about earlier.

There being no other business, the meeting adjourned at 5:45 P.M.

  
Shelley Robbins, Chair

Edited by Julie Roland, Administrative Assistant