

## **Meeting Minutes of the Board of Zoning Appeals Tuesday, June 13, 2017**

The Board of Zoning Appeals met in City Hall Council Chambers on Tuesday, June 13, 2017 at 5:15 P.M. with the following members in attendance: Don Bramblett, Anne Poliakoff, Jim Badger, and Reed Teague. Joshua Lonon and Ryan Gaylord had prior conflicts with the case and had been recused from the meeting. Marshall Irby was absent. Representing the Planning Department were Natalia Rosario, Planner III, and Julie Roland, Administrative Assistant, and Missy Strelec, Planning Intern. City Attorney Cathy McCabe, and Buddy Bush, City Building Official were also present.

### **Roll Call**

Mr. Bramblett Acting Chair, stated that public notice of this meeting was given twenty-four (24) hours in advance, 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 – Four members were present, constituting a quorum.

### **Approval of Agenda for the June 13, 2017 Meeting**

Mrs. Poliakoff moved approval of the Agenda for the June 13, 2017 meeting, and she was seconded by Mr. Teague. The motion was unanimously approved by a vote of 4 to 0.

### **Disposition of the minutes from the February 14, 2017 meeting of the Spartanburg Board of Zoning Appeals**

Mr. Badger moved approval of the February 14, 2017 Meeting minutes, with second by Mrs. Poliakoff. The motion was approved by a vote of 4 to 0.

### **Old Business**

There was no old business.

### **New Business:**

**VAR 17 2-02 - Request for Variance from John & Katherine Fucile, Property Owners. The Applicants are asking for a four (4') foot encroachment into the required five (5') foot property setback line, to allow the construction of a detached garage on the property at 793 Glendalyn Avenue. The property is further identified as Parcel 322.00 on Spartanburg County Tax Map Sheet 7-12-08.**

Ms. Rosario, Planner III. came forward and was sworn; and she submitted the meeting packets the Board Members had previously received including the report and slides, as well as an email from a neighboring property owner at 799 Glendalyn Avenue that was in support of the request as Exhibit A. She introduced the case to the Board Members.

Mr. John Fucile, Property Owner came forward and was sworn. He explained to the Board Members he was trying to get a variance from five feet to one foot and that the City had asked him for a survey of the property; and he had a document marked with pins that he had done with a land surveyor when he first purchased the property. He informed the Board Members he did not have a problem with making the garage fire coded. He was trying to utilize a shared driveway between the two properties that was already there so he did not have to take out another five feet of the back grassy area. There used to be an old building that was built on the property that was shared by the two properties, and he said he had that document with him. The back foundation wall was still there, and he said he was 18" inside that coming back. He also explained the foundation from the other building was still in the ground; and he said when he purchased his home the neighbors had built a building on the property line on a concrete pad, and that when they had put their eaves on the building it encroached onto his property.

Board Questions:

- Mrs. Poliakoff asked had he had any opposition from the neighbors.

- Mr. Fucile said the homeowner next door at 799 had told him they were fine with the request.
- Mr. Bramblett asked if the neighbor was present.
- Mr. Fucile said she could not be present, but she had sent an email comment regarding her support.
- Mr. Bramblett asked about the old structure that had previously been on the property that had been shared.
- Mr. Fucile said the building was no longer there.
- Mr. Bramblett asked if he had his property surveyed prior to purchasing the property.
- Mr. Fucile explained.
- Mr. Bramblett said he was an electrical contractor and he had been out to the house; and he thought he at least ought to be able to put a ladder on the side of his building, or something.
- Mr. Fucile explained it was a steel building and he could get to everything, and he could get on the roof from the other side, and the roof had a very small slope.
- Mr. Teague referenced a slide and asked Mr. Fucile if that was the building.
- Mr. Fucile said it was; and he explained he was a little more than twelve inches off of the line, but the neighbor's eave encroached on to his property. He said from the front of the building he was about eighteen inches off the property line, and on the back side he was about thirteen inches from the line.
- Mr. Bramblett asked Mr. Fucile how far he would be from the property line if he included the roof eave.
- Mr. Fucile said about five inches between the two buildings.
- Mr. Teague asked how tall was the building.
- Mr. Fucile said it was twelve feet; and he said the pitch would be 14' high down to 12'.
- Mr. Teague asked would it be a metal building all the way around.
- Mr. Fucile said it was and that it would be 29 gauge steel.
- Mr. Badger asked when it rained, did the water fall off of his roof garage onto the neighbor's building.
- Mr. Fucile explained that it did not, that there was a foot between the two of them.
- Mr. Bramblett said he needed to add in five inches for the gutter also.
- Mr. Teague said the neighbors did not care.
- Mrs. Poliakoff asked would there be any adverse effects on anyone else to have the two buildings that close, and had they had any complaints.
- Ms. Rosario explained not that staff had heard from; and that the neighbor who would be the closest had given their support; and she explained it would not be close to any other buildings or property lines.

The City of Spartanburg Building Official, Buddy Bush then came forward and was sworn; and said Mr. Fucile and himself had talked about the building would need to have a one hour fire wall on that one side (on the exterior wall closest to the property line) per the Residential Building Code regarding anything within five feet from the property line. He said he would have to deconstruct the wall on that one side which would be inclusive of an eave if there was some sort of overhang. He explained that everything would have to be one hour fire rated on that side. He said even an overhang within two feet would have to be one hour fire rated. Mr. Bush explained Mr. Fucile would have to present him with something in order to show how he was going to fire rate the wall.

- Mr. Bramblett asked Mr. Bush if the petitioner was issued a permit to begin any construction on the building.

Mr. Bush explained he had not; and said the petitioner had been in to the office about six weeks prior to doing anything and had talked to him; and at that time he had informed Mr. Fucile that the building would not be within the setback line and he had directed him to Ms. Rosario in the Planning Department; and he said she had directed him that if he wanted to be closer than five feet to the property line that he would need to go before the Board of Zoning Appeals to seek a variance. Mr. Bush explained he found out that construction had begun about two weeks ago, and he had gone out at that time and stopped the work; and then the petitioner had put in an application to go before the Board. He explained anything over 200 square feet had to meet the setback for zoning and building requirements and also get a building permit before construction.

Ms. Rosario came forward again and showed more slides in order to better illustrate the request; and she went over 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* – The property at 793 Glendalyn Avenue does not have any extraordinary or exceptional conditions that fundamentally differs from most properties along Glendalyn Avenue and in the Converse Heights Neighborhood. It does share a gravel driveway with the property at 799 Glendalyn Avenue, and backs up to an alleyway that is not paved in this portion. The alleyway has several accessory and fence structures encroaching upon it.
- 2) *These conditions do not generally apply to other property in the vicinity* – Being that the other properties in this portion of Glendalyn Avenue are of comparable dimension with alleyways in the rear, these conditions do generally apply to other properties in the vicinity. Other properties on this block have accessory storage and residential structures that abut the alleyway.
- 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* – Application of the Ordinance to this piece of property would not effectively prohibit or unreasonably restrict the utilization of the property, although there would be some space between the building and the property line that would not be able to be utilized for much purpose besides perhaps exterior storage.
- 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* – Converse Heights is a district that has traditionally built homes and accessory structures very close to property lines, and in many cases within 0'-3' of the property line even for the main structures. The current zoning standards were implemented long after the original neighborhood was platted and many of the main structures constructed. To that end, placing an accessory structure closer than 5' to the property line is in keeping with the traditional building pattern of the Converse Heights neighborhood. The Zoning Ordinance calls for a distance of at least 5' from property lines to ensure fire safety. If the structure is built within 1' of the property line, it will need to be fire rated per the Building Code. Staff does not feel that placing this structure at 1' from the side property line will be of substantial detriment to the character of the district or the public good – although Staff would note that the walls that are currently in place are closer to a 0' setback and should be moved back to ensure that the structure is within the property line.
- 5) *Orientation and spacing of improvements or structures* – The Orientation and Spacing of the structure for use as a garage does make sense in reference to the layout of the property and its share driveway. Staff is of the opinion that a storage building would work just as well 1' or 5' from the property lines – but it makes more sense to align the garage with the existing driveway if that is its purpose.

#### **STAFF'S RECOMMENDATION**

After review of the guidelines established in Zoning Ordinance Section 603.3, Staff finds that the proposed variance will not adversely affect the adjacent and surrounding property owners. Consequently, staff recommends Approval of VAR#17-02-0.2 with the condition that the property pins be located to ensure that the building is setback at least 1' from the property line, and that the structure be fire rated per the Building Code.

Board Questions:

- Mr. Bramblett informed Ms. Rosario he had previously built a garage on his property in Converse Heights on an alley, and that her predecessor had told him there were two feet off an alley (and if he had a property owner behind him it would have been five feet).
- Ms. Rosario said she had not been able to find anything to that effect in the Zoning Ordinance but it may have been an old policy; but she did say Converse Heights was an old neighborhood where they did things a little differently which is why things were so close and it had worked for them; and the zoning ordinance was put in to place way after Converse Heights was developed. She said the zoning ordinance called for an accessory structure to be five feet from the rear and side property line.
- Mr. Badger asked Ms. Rosario regarding fire ratings, wasn't it necessary that someone had to be able to get down between the two buildings in order to be able to carry a fire hose and equipment.
- Mr. Buddy Bush, the City of Spartanburg Building Official said he did not know of any requirement for that; it was just in relation to the property line; and he explained regarding the fire rating again. He did say regarding the accessory building on the other property they would not be able to get between that one and the proposed building anymore.
- Mr. Fucile said the back of the building would be almost five feet off the alley.

Mr. Bramblett opened the public hearing and asked anyone in the audience that wished to speak in favor of the request to come forward. No one came forward. Mr. Bramblett asked anyone who wished to speak against the request to come forward.

- Mr. Dean Plyer came forward and said he lived at 796 Plume Street, and was speaking on behalf of Biff Bomar who owned the property; and that Mr. Bramblett had sent him a rather confrontational question regarding next door and had not identified himself as to who he was, and he had answered his question honestly; and he said even if he had identified himself he still would have answered the question the same way. Mr. Plyer said they have no access from Plume Street to their backyard other than through the alleyway. The alleyway was obstructed by 793, 799, & 805 Glendalyn Avenue. He referenced the plat that was done by Archie Deaton and Associates back in March 6, 1992 which he did not think was correct at all. He said he had a plat that was done in January of 2017 that he gave to the City Manager and City Attorney; which showed that 793, 799, & 805 were all encroaching onto the alleyway.

Mr. Bramblett explained to Mr. Plyer the petitioner would not be doing anything in the alley.

Mr. Bramblett explained that he needed to take his survey to the County Assessor's Office and request an evaluation as to why his new survey was different from the older one.

Mrs. Poliakoff informed the petitioner that this Board could not address what he was referring to about the survey being incorrect.

Mr. Bramblett asked if there was anyone else who wished to speak against the request. No one else came forward. Mr. Bramblett closed the public hearing.

Board Deliberation:

Mr. Bramblett said he had been over to the house and went down the alley; and he felt like two feet off the alley would have been plenty because that was what he was previously told. He said although it was true there was a hodge-podge in the neighborhood; and in his alley was a house that was built that faced into the alley and they depended on the alley to get home; and he did not think they allowed that anymore. He explained when he received his permit regarding his garage about three or four years ago; he was told that it did not matter what the neighbors had done, and he had to comply with the zoning ordinance. He said he liked having the open space between them. Mr. Bramblett said in Mr. Fucile's application he had stated he would lose 800 feet; but he did not think that was correct.

Mr. Fucile said that was between himself and his neighbor's property.

Mr. Bramblett said he could not worry about what the neighbor would lose; and on the petitioner's property he felt the petitioner would lose about 80 square feet, which in his opinion was an area that could be beautified with some small shrubs, etc.

Mrs. Poliakoff made a motion to approve the request per Staff's recommendation. Mr. Teague said if the neighbors were fine with it; he would second the request.

Discussion of Motion:

- Mr. Bush, the City of Spartanburg Building Official asked again how far the rear wall would be from the property line.
- Mr. Fucile said five feet.
- Mr. Bramblett said he respected Ms. Rosario's research, but he saw no problem with the building being put over a little further than proposed. He also felt in the future if they got a new neighbor, the value would be a potential devaluation of the properties. Mr. Bramblett felt there was a reason that the Zoning Ordinance required certain buffers in order to not be right up on the neighbor's property; and he urged his fellow Board Members to vote against the motion.
- Mrs. Poliakoff asked Mr. Bush if he was comfortable with Staff's recommendation.
- Mr. Bush said he would prefer it be set back a little further, but if the petitioner could meet the current Building Code Requirement and build it to a one-hour rated UL design to be provided to him, that he would be o.k. with it.
- Mr. Bush asked the petitioner if he had a gate if he needed to access the alleyway.
- Mr. Fucile said he would access it through the back of the fence; that he did not have a gate there.
- Mrs. Poliakoff asked if the neighbor that had emailed in support of the request had a gate.
- Mr. Fucile explained they did not.
- Mrs. Poliakoff asked was it accessible regarding fire trucks.
- Mr. Fucile explained that it was.
- Mr. Bramblett asked Mr. Bush how many feet would the petitioner have to be away from the property line to not have to have it fire rated.
- Mr. Bush explained it would be five feet.
- Mr. Bramblett said he would accept two or three feet as a compromise, if that would keep the petitioner from not having to do a fire rating.

Mr. Bramblett asked if there was any more discussion or comments. There was no more discussion.

Mr. Bramblett then asked for a vote for the motion on the floor.

The vote was 2 to 2.

City Attorney Cathy McCabe said the vote was a tie.

Mr. Badger asked could they not come to some sort of compromise.

Mr. Bramblett said he was willing to compromise on two or three feet.

Ms. Rosario explained that Mr. Fucile would need to amend his request or the Board come to a certain vote one way or the other.

More Discussion and Questions:

Mr. Teague asked why they could not come to an agreeable vote since Staff was recommending approval and the neighbor that would be most affected by the request was fine with the request; and then taking into consideration the Building Official's comments; he did not understand why they could not come to a certain vote.

Mr. Bramblett said the Board was the higher authority, and the neighborhood depended on the City of Spartanburg's resources to settle these types of issues, and the City had higher standards than the people in the County; and if they were going to make all these zoning rules, they may as well adhere to them.

Mr. Teague said he understood that; but when they had the City telling them to approve it; the person who would be most affected by it saying it was o.k.; and they had no one who was in opposition to the request except for themselves, he did not see a reason not to grant it.

Mrs. Poliakoff agreed with Mr. Teague.

City Attorney Cathy McCabe said the work was stopped when the Building Official found out about the work; and the fire rating would be required and the petitioner would have to satisfy the Building Official before the rest of the work could be done.

Mrs. Poliakoff felt the Building Department would follow through with their end.

Mr. Bramblett said it sounded like they needed to have another motion and vote.

Mr. Teague made a motion to approve the City's recommendation; and he was seconded by Mrs. Poliakoff.

Board Discussion:

- Mr. Badger asked if the two buildings would only have a couple of feet between them.
- Mr. Bramblett did not think there would be very much room at all.
- Mr. Badger said he would change his vote and support the request as recommended by Staff.

Mr. Bramblett called for a new vote of the motion.

The motion was unanimously approved by a vote of 4 to 0.

Staff Announcements

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Mrs. Roland welcomed the Planning Department's new Intern, Missy Strelec.

Mrs. Roland updated the Board Members that on June 30, 2017 there would be one Board Member Vacancy and there was one Board Member that was up for reappointment to the Board to be approved by the Mayor and Council.

Mrs. Roland said they already received a New Business case for the July 11, 2017 meeting.

Mr. Bramblett asked were the Board Members current regarding their 2017 Continuing Education Training.

Mrs. Roland said she needed to check on that issue.

There being no further business the meeting adjourned at 6:10 P.M.

  
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Don Bramblett, Acting Chair

-Edited by Julie Roland, Administrative Assistant