

Meeting Minutes of the Board of Zoning Appeals Tuesday, June 11, 2013

The Board of Zoning Appeals met in City Hall Council Chambers on Tuesday, June 11, 2013 at 5:15 P.M. with the following members in attendance: Shelley Robbins, Aaron Ryba, Marshall Irby, Josh Page, Dave Drum, and Joshua Lonon. Norberto Gliozzi was absent. Representing the Planning Department were Joshua Henderson and Julie Roland. City Attorney Cathy McCabe also attended the meeting.

Roll Call

Ms. 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 – Six members were present, constituting a quorum.

Approval of Agenda for the June 11, 2013 Meeting

Mr. Ryba made a motion to approve the Agenda for the June 11, 2013 meeting, and was seconded by Mr. Irby. The motion was unanimously passed by a vote of 6 to 0.

Disposition of the minutes from the February 12, 2013 meeting of the Spartanburg Board of Zoning Appeals

Mr. Page moved approval of the February 12, 2013 Meeting minutes, with second by Mr. Ryba. The motion was unanimously approved by a vote of 6 to 0.

Old Business

There was no old business for discussion.

[Editor's Note: A motion was made by Mr. Drum at 5:17 P.M. to enter into Executive Session to receive legal advice regarding the Ordinance, and he was seconded by Mr. Irby. The motion was unanimously approved by a vote of 6 to 0. On a motion and a second the Board Members came out of Executive Session at 5:37 P.M., and no action was taken.]

New Business

VAR 13 2-02 - Request for Variance from William "Alex" Hudson II., Hudson Construction Services, LLC, Owner. Variance to encroach a maximum of ten (10) feet into the required twenty (20) foot front yard setback, in order to construct a single-family residential home. The property is located at 644 Reba Dale Court, and further identified as Parcel 005.21 on Spartanburg County Tax Map Sheet 7-14-02.

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 Owner was seeking approval for a setback encroachment into the required twenty (20') foot front yard setback to construct a structure encroaching ten (10') feet into the required setback.

Mr. William "Alex" Hudson II., Owner of Hudson Construction Services came forward and was sworn. He informed the Board Members he was owner and developer of the Planned Unit Development (PDD) at Arbors of Reba Dale; and there was a uniform setback of twenty (20') feet which worked well for him until he had to adjust the curb of the road. He referenced a slide of the location map and explained to the Board Members why he needed the setback.

Board Questions:

- Ms. Robbins said she drove out to the site; and asked Mr. Hudson why the proposed home could not be built in line with the houses that had previously been built that one had to pass before they reached the proposed lot. Mr. Hudson explained the depth of some of his newer houses were deeper than the ones he had previously built she had referenced, and he was not building that particular floor plan.

- Ms. Robbins asked Mr. Hudson if he shifted the house back to meet the front setback, would it meet the back setback. Mr. Hudson said yes; and he explained how the next house would follow the curb on around on that side of the street.
- Mr. Ryba asked Mr. Hudson if essentially he was saying he had an exposed side of the house above the proposed home. Mr. Hudson said that was correct.
- Mr. Drum asked if the house across the street had encroached into the setback. Mr. Hudson said yes.
- Mr. Drum asked if the house across the street had a smaller footprint. Mr. Hudson said yes.
- Mr. Ryba asked to clarify for the record, was the request not based upon a certain type of house that might be more desirable, but rather how the proposed house looked from the street, in order to blend in with the adjacent houses. Mr. Hudson referenced a slide of the plat in order to explain it was regarding the way the house followed the curvature of the road.
- Ms. Robbins asked Mr. Hudson how many feet he had at the narrowest part in the back yard. Mr. Hudson explained between 25 to 30 feet from the property line was the common area.
- Mr. Page asked Mr. Hudson if he was the original developer. Mr. Hudson said yes.
- Mr. Ryba asked Mr. Hudson whether or not there were any other conditions around the cul-de-sac that would also require a variance. Mr. Hudson explained there would be a few more lots in the future.

Mr. Henderson came forward again and said the proposed structure would be 2175 square feet in size, which included the garage and porch, and the lot size was 0.16 acre. The proposed home would be compatible with the style of the other homes that had already been built on the street. He informed the Board Members the Planned Development District (PDD) consisted of 25 lots along one street that terminated with a cul-de-sac. He referenced a slide of the Final Plat that was approved in September, 2007 by the City Planning Dept; and he explained the layout of the land should have been considered at the time. Some of the houses met the setbacks, and some did not. Mr. Henderson concluded his presentation by showing more slides 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. Since the front property line runs the curve of the radius of the road, the setback line follows the same curve. The conditions do apply to a few properties within the PDD; however, it is because of the radius of the turns in the road. Requiring every corner of the house to be within the setback lines of these various parcels would either require the house to not be uniform across the front with regards to the architectural design with the neighboring structures, or to have the house out of rhythm with the rest of the existing structures along the street. Although the application of the ordinance and the setback requirements will allow for the building of a house, it will, however, affect the most aesthetically pleasing utilization of the property in that it will break the rhythm of the structures in the neighborhood. By placing the structure outside of the required setback, will not be a detriment to

the surrounding properties nor the character of the PDD since the houses will continue to be aligned with one another and have a sense of conformity.

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 this variance.]

Board Questions:

- Mr. Ryba asked Mr. Henderson if the property lines had been reviewed to the potential regarding the way the final plat had been originally been approved, would it make a difference in what they were facing now. Mr. Henderson explained to the Board Members he had not been involved in the final plat approval process in 2007; but he said the design could have possibly been different.
- Mr. Lonon asked Mr. Henderson for the record, if he confirmed the proposed variance would be in compliance with all applicable building and fire codes. Mr. Henderson said the main concern with these structures was the side lot lines, and he explained they had worked with the Building Department, and he referenced a slide that showed it was only some of the houses on one side of the street that had a zero lot line on one side.
- Mr. Drum asked if a setback was honored, wouldn't it give the house a bigger front yard that would make it look different from the other homes. Mr. Hudson explained the look on those houses on that one side of the street, and if one house was pulled back, it gave the next house privacy, etc. He further explained how the street would look, if he had to live by the current setbacks.

Ms. Robbins opened the public hearing and asked anyone who wished to speak in favor of the request, or in opposition to come forward. No one came forward. Mrs. Robbins said let the record reflect, no one was present to come forward. Mrs. Robbins closed the public hearing.

Board Member Comments and Deliberation:

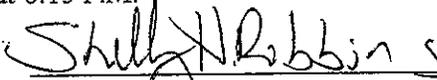
- Mr. Ryba suggested the Board Members move forward regarding review of the five criteria points found regarding Variance Requests.
 - 1) ***There are extraordinary and exceptional conditions pertaining to the particular piece of property:***
 - Mr. Ryba said to a certain extent he agreed, for one reason due to the age of the development, and also the understandings on Staff's part there might have been some way to mitigate this condition during the original Final Plat Review, needed to be recognized.
 - Mr. Lonon also felt curvature of the lot was unique.
 - 2) ***These conditions do not generally apply to the other property in the vicinity:***
 - Mr. Ryba did not feel that was the case because of the three other parcels, one of which had already been granted a variance; unless they could argue the point to a certain extent that those were conditions that arose under the first point as referenced above.
 - Mr. Lonon felt the key words were "do not generally apply", and explained he could agree with the finding.
 - 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:***
 - Mr. Ryba understood this from an aesthetic standpoint, but was not sure of the finding.
 - Mr. Lonon felt it was reasonable to restrict the use of the property when there was an aesthetic benefit, when there was no harm created except to the developer and property owner and he explained he found it could be considered a reasonable restriction to the developer to make him choose a different floor plan based on the circumstances.
 - Mr. Page and Mr. Irby agreed with Mr. Lonon.
 - 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:***

- Mr. Ryba felt they had pretty much already stated this finding above.
- 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:*
 - Mr. Ryba found that he did not find it necessary to attach any conditions or restrictions.
 - Mr. Lonon agreed, and did not feel there would be any property values that would be affected.
- After the five criteria were reviewed and all five findings could be found and stated, Mr. Lonon made a motion to approve the request, as he felt it did meet all the findings required under the Ordinance as requested, and the Board should adopted the findings in the approval as justification as stated in the petitioner's application; and he was seconded by Mr. Irby. The motion was unanimously approved by a vote of 6 to 0.

Staff Announcements

- Mr. Henderson said tonight's meeting would be Mr. Page and Mr. Gliozzi's last meeting, and he thanked them for all of their service to the Board.
- Mr. Henderson informed the Board Members there would now be two vacancies on the Board, and if anyone knew of someone who wished to be considered by the Mayor and City Council, to please let Staff know, in order to send them a Board Member Consideration form.
- Ms. Robbins asked if they had anyone to apply so far. Mrs. Roland said so far they had received one application and had forwarded it to the City Clerk.

There being no other business, the meeting adjourned at 6:15 P.M.


 Shelley Robbins, Chair

Edited by Julie Roland, Administrative Assistant