

Meeting Minutes of the Board of Zoning Appeals Tuesday, September 10, 2013

The Board of Zoning Appeals met in City Hall Council Chambers on Tuesday, September 10, 2013 at 5:15 P.M. with the following members in attendance: Shelley Robbins, Aaron Ryba, David Drum, and Jim Davis. Marshall Irby and Joshua Lonon were absent. Representing the Planning Department were Joshua Henderson, Planning Coordinator; Julie Roland, Administrative Assistant; and Natalia Rosario, Intern. Assistant City Manager Chris Story and 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 – Four Board members were present, constituting a quorum.

Approval of Agenda for the September 10, 2013 Meeting

Mr. Ryba made a motion to approve the Agenda for the September 10, 2013 meeting, and was seconded by Mr. Drum. The motion was unanimously approved by a vote of 4 to 0.

Disposition of the minutes from the June 11, 2013 meeting of the Spartanburg Board of Zoning Appeals

Mr. Ryba moved approval of the June 11, 2013 Meeting minutes, with second by Mr. Davis. The motion was unanimously approved by a vote of 4 to 0.

Election of Chair and Vice-Chair

Ms. Robbins made a motion to nominate Mr. Ryba to continue to serve as Vice-Chair, and she was seconded by Mr. Davis. There were no other nominations for Chair. The motion was unanimously approved by a vote of 4 to 0.

Mr. Ryba made a motion to nominate Ms. Robbins to continue to serve as Chair, and he was seconded by Mr. Davis. There were no other nominations for Vice-Chair. The motion was unanimously approved by a vote of 4 to 0.

Old Business

There was no old business for discussion.

New Business

VAR 13 2-03 - Request for Variance from Laura A. Mills, Owner. Variance to encroach a maximum of four (4) feet into the required thirty (30) foot side yard setback for a corner lot, in order to construct an addition onto a non-conforming structure. The property is located at 401 Connecticut Avenue in Converse Heights, and further identified as Parcel 044.00 on Spartanburg County Tax Map Sheet 7-13-09.

Ms. Robbins disclosed to the Board Members due to a conflict of interest, she would recue herself from the vote on this item of business; and she turned the meeting over to Vice-Chair Aaron Ryba.

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 located at 401 Connecticut Avenue, which was zoned R-8 General Residential with an overlay of Single Family Residential; and the Owner was seeking approval for a four foot building addition which would increase the 10' 11" existing encroachment into the 30' required street side yard setback for a corner lot, and the house would be setback 15' 1" from the street side property line.

Josh Summers and Laura Mills of 401 Connecticut Avenue came forward and were sworn. Mr. Summers explained to the Board Members that prior to purchasing the home this summer; their offer was

contingent upon the ability to build a master bedroom addition which included a bathroom and closet. He further explained to the Board Members that currently the house only had three bedrooms and two small bathrooms; and they were looking forward to raising a family in the home and would like to create a more modern and comfortable living space. Also they wished to increase the value of their home in the case they ever needed to sell the property. Mr. Summers said after speaking with several contractors and a draftsman regarding the proposed addition, they found the Springdale side of the home was the most efficacious use of the space, based on the size, orientation, and the layout of the house. The property had not been surveyed since prior to the construction of the home in the 1930's. After they obtained a new survey of the property, they provided it to their draftsman, who contacted the City of Spartanburg in order to see what the setbacks were along the Springdale lot line. The draftsman was informed at that time the setback was 15 feet. He then proceeded with the drawings and drew up the plans, and when they were about to close on the property, the builder pulled a permit with the City and found that there was actually a 30 foot setback. He explained it was an honest mistake which they did not know prior to closing on the property. Mr. Summers informed the Board Members without a variance they feel they would be unreasonably restricted to the use of their property; and explained they were unable to move the proposed additions further away from Springdale, because it would encroach upon the rear of the home, as well as a bay window at the rear of the home. Their whole goal was to preserve and restore the character of the home as it now stood. He explained Mr. Henderson had indicated there were a lot of non-conforming homes already in the neighborhood regarding the setbacks. He said prior to the adoption of Section 403.1C the side yards had been listed as a setback of 15 feet; and prior to that adoption the homes in the neighborhood were already constructed with 15 foot side yard setbacks; and they were asking the Board Members for the four additional feet as was present with a lot of the current homes in the neighborhood with similar lot restrictions. Mr. Summers said they feel because of the 200' depth of the lot and the driveway from the mother-in-law suite which was visible in the slide he referenced on their property, provided an exceptional situation in protecting the aesthetics of the neighborhood, especially the homes on Springdale and their neighbors and 706 and 713 Springdale. He said along with the existing vegetation, the distance from the sidewalk to the home, and also the elevation of the property would aid in shielding the addition from obstructing any of the aesthetics along Springdale. He said regarding their neighbors; they had taken all of the plans to their affected neighbors who signed statements from them that said they did not oppose the variance as they had requested it. He also said they had received a lot of support from the neighbors directly behind them, where the rear lot line would abut their side lot line, and who would probably be most affected by the variance. He concluded by explaining the proposed addition would be constructed to look like it was part of the original house.

Mr. Henderson came forward again and said the existing structure was approximately 2,269 square feet and the proposed addition would be an approximate 618.75 addition. He said there was also another addition on the other side of the structure with a proposed carport that would not encroach into the interior side yard setback, and would not require a variance of any kind. There was an existing accessory structure (mother-in-law suite) on the property and with that structure and the existing structure (with proposed addition) the total building square footage would be 3,829.75 square feet which was under the total allowable buildable area of 7,747.20 square feet. According to the Spartanburg County Assessor's information, the house was constructed in 1930. It was compatible with the age range of homes along Connecticut Avenue which were built between 1920's and 1950's (through the section of Connecticut Avenue where the property in question was located). The properties along Springdale Drive were constructed a little later between the age ranges of 1940's to 1960's. Homes along both streets were constructed prior to Section 403.1C being adopted in 1973. The majority of homes in the Converse Heights neighborhood were existing/legally non-conforming properties with regards to the City Zoning Ordinance. These include, but were not limited to, property width dimensions being less than required, setback requirements, etc. Mr. Henderson concluded his presentation by showing slides of the proposed property and surrounding area, 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* – The homes in

this area were situated prior to the adoption of zoning ordinance which established the policy objective of aligning corner lot street setbacks in both directions. The degree of the existing non-conformity effectively prevents achieving the desired alignment with the homes on Springdale Drive which was the intent of the requirement in question. The aim of the relevant policy was never achieved in this location and there does not appear to be a reasonable alternative that would both cure the non-conformity and allow full and appropriate utilization of the property. The resulting square footage and lot coverage achieved by the addition would be consistent with the character and pattern established along Connecticut Avenue as would the owners; desire to preserve the distinctive architectural features of the original structure.

- 2) *These conditions do not generally apply to other property in the vicinity-* There are other corner lots in the neighborhood with non-conforming side street setbacks. However, many of those homes were either originally constructed with greater lot coverage or expanded prior to the establishment of the current ordinance.
- 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 –* The owners' desire to expand the home while maintaining the architectural character of the original structure is reasonable and appropriate for the neighborhood. While there may be alternative design configurations that would allow them to accomplish those goals, notwithstanding the setback nonconformity, their plan appears functional, efficient, and consistent with other properties in the area.
- 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 –* Because this is a relatively small change to a longstanding setback nonconformity and the aim of the policy cannot be achieved and has never been achieved in this location, we do not believe that this variance could be of substantial detriment to adjacent properties or to the neighborhood.
- 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

While we recognize that the proposed addition does not conflict with the character and pattern of the neighborhood, we defer to the ordinance policy of avoiding the expansion of nonconformities and thus recommend denial. However, we believe that there are relevant considerations addressing each of the required findings that could adequately justify approval should the board reach that conclusion.]

Board Questions:

- Mr. Drum asked Mr. Henderson if there were any verbiage in the ordinance that stated non-conforming structures could not be expanded. Mr. Henderson deferred the question to City Attorney McCabe.
- City Attorney McCabe said not for an addition unless restoring more than 50% of the building.
- Mr. Henderson said there was a section that talked about internal lots (but it did not break it down to corner lot properties or street side yards, where it mentioned on lots of record you could decrease the side yard setback requirements, but this section does not mention anything about street side yard setback lines.
- Mr. Ryba asked the applicant regarding the floor plan they showed, about an area near the carport. Ms. Mills referenced a slide and explained what was in that area now.
- Mr. Ryba said to clarify; the rectangular portion on the plans that bumped out all the way to the left was all that was proposed for the addition. Ms. Mills said that was correct.
- Mr. Ryba referenced a slide and asked Ms. Mills about something he thought she mentioned earlier regarding if they did not receive the variance, would the addition shift over to where the bay area

was? Ms. Mills explained they really did not want to have to put the addition in that area, and felt it would ruin the bay window area, as well as take away from the character of the house.

- Mr. Ryba asked Ms. Mills if they just extended the wall on out for the proposed addition so it was aligned with the existing face of the wall which he thought was four feet, would that still be non-compliant with the regulations.
- Assistant City Manager Chris Story came forward and was sworn, and said he wanted to make a statement for the record: “The neighborhood design principle at work there was intended in the zoning ordinance regarding the side setback to preserve the notion that the southern side of the proposed structure would align with the fronts of the homes on Springdale; and that was never the way it was originally constructed. He explained the principle that the additional setback was trying to protect never existed, but yet that was the way the zoning ordinance had been written ideally, that was supposed to be reflected citywide.
- Mr. Ryba said he would like to clarify regarding the zoning ordinance, that Assistant City Manager Story was not just talking about this particular neighborhood. Assistant City Manager Story said that was correct.
- Mr. Henderson explained to the Board Members in the past when Staff dealt with setbacks and non-conformities in Converse Heights, Hampton Heights, etc., as long as it stayed in line with the existing building wall and did not encroach, and the overhang and everything was in line; even though it was a non-conformity and did not meet the setback requirements, Staff could approve it without having to come before the Board. He further explained if it passed the existing building wall, it was Staff’s current practice to bring it before the Board.
- Mr. Ryba asked Mr. Henderson if essentially the petitioner would have been able to do their proposed addition by right, if the four foot bump out was not proposed. Mr. Henderson said that was correct.
- Mr. Ryba clarified they still understood per the applicant’s response; that plan would not work for them regarding the bay window area. Mr. Henderson said that was correct.
- New Board Member Jim Davis asked the petitioner if they had any plans to disturb any of the vegetation, or if not were there any plans to increase the vegetation. Ms. Mills referenced a slide of the house where the proposed construction would take place and explained they wanted to keep all of the vegetation.
- Mr. Henderson reminded the Board Members that Staff had received five letters supporting the petitioner’s request which he had submitted into evidence at the beginning of the meeting.

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

- Mr. Steve Poole of 930 Thomas Road, Contractor for the Petitioner came forward and was sworn, and informed the Board Members the four feet was not going to change the aesthetics of the neighborhood, and it would not work if they placed it along the bay area. He felt the petitioner’s were increasing the value of their home, as well as the neighborhood.

Mr. Ryba asked anyone else who wished to speak in favor of the request to come forward. No one else came forward. Mr. Ryba closed the public hearing.

Board 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:***

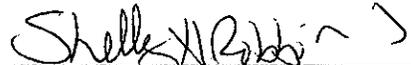
- Mr. Ryba said considering the age of the home and the requirement for the setback being thirty feet, he would consider that there are qualifications for extraordinary and exceptional conditions, in addition to the fact that a portion of the home already encroached upon the setback; and also considering there was no one to speak in opposition to the request.
 - Mr. Drum agreed with Mr. Ryba.
- 2) ***These conditions do not generally apply to the other properties in the vicinity:***
- Mr. Ryba said he knew there were other properties in the area that were already nonconforming for the same reason; and he asked City Attorney McCabe for some clarification as to whether or not they were obligated to find that this was a condition that would not exist elsewhere.
 - City Attorney McCabe explained in this case the corner lots were the only ones to be affected.
 - Mr. Ryba felt that was the case, especially if a number of the structures were already non-conforming and would not be an applicable condition; so he would agree with City Attorney McCabe.
 - Mr. Drum agreed and said the history of a lot of those expansions occurred before the establishment of the current ordinance.
- 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 felt there could be other layouts that would be entertained, but he assumed not ideal due to the reasons that had been stated regarding the loss of the bay window, as well as the functionality of the way the house flowed, which he felt was a judgment call depending on what you would consider to be unreasonable. He also felt considering the amount of character that had been presented for it to fit with the existing aesthetics of the house and the rest of the neighborhood, the applicant had done a reasonable job to make the proposal work; and he could understand to re-work it would be less than ideal, and would prohibit them from reasonable use of the house as planned, to a certain extent.
 - Mr. Drum agreed.
 - Mr. Davis felt also as a home owner, and with the size and age of the home, for them to want to create something suitable for expansion seemed very reasonable.
- 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 that seemed like an extension of their comments already, and if the character of the house was being maintained, that would also be true for the neighboring area; and also to be considered were the five letters in support of the request.
 - Mr. Drum said he agreed that the letters supported the request.
- 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 did not feel it necessary to attach any conditions or restrictions.
 - Mr. Drum agreed.
- After the five criteria were reviewed and all five findings could be found and stated, Mr. Drum made a motion to approve the petitioner's request, as he felt it did meet all the findings required under the Ordinance as requested, and the Board should adopt the findings in the approval as justification as

stated in the petitioner's application; and he was seconded by Mr. Davis. The motion was approved by a vote of 3-0-1, with Ms. Robbins abstained from the vote.

Staff Announcements

- Mr. Henderson said the only announcement was to welcome New Board Member Jim Davis to the meeting.
- He also informed the Board Members there was still one vacant position; and if anyone knew of anyone who would be willing to serve and 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.

There being no other business, the meeting adjourned at 5:55 P.M.



Aaron Ryba, Vice-Chair

Edited by Julie Roland, Administrative Assistant

Shelley Robbins - Chair