

BOARD OF ZONING APPEALS MINUTES

The Winchester Board of Zoning Appeals held its regular meeting on Wednesday, January 8, 2014, at 4:00 p.m. in Council Chambers, Rouss City Hall, 15 N. Cameron Street, Winchester, Virginia.

POINTS OF ORDER:

PRESENT: Chairman Phillips, Mr. Pifer, Mr. Lewis, Ms. Marchant, Mr. Crawford
ABSENT: Mr. Ridgell
STAFF: Aaron Grisdale, Nasser Rahimzadeh, Catherine Clayton
VISITORS: Chris Mason, Matt Mintschenko

CONSENT AGENDA:

Approval of Minutes of November 13, 2013.

Chairman Phillips called for corrections to the minutes. Hearing none, he called for a motion. Mr. Crawford moved to approve the minutes as submitted. Ms. Marchant seconded the motion. Voice vote was taken and the motion passed 5-0.

READING OF CORRESPONDENCE:

None.

PUBLIC HEARINGS:

BZA-13-651 Request of Chris Mason for a variance pertaining to rear yard setback regulations pursuant to Section 4-6-2 of the Winchester Zoning Ordinance, for the property located at 2072 Taylor Grace Court (Map Number 250-02- -45-45- > <01), zoned Medium Density Residential (MR) District. The applicant is seeking this variance as an approval for a rear deck constructed without a building permit that encroaches into the required rear setback.

Mr. Grisdale presented the staff report to the Board and stated that applicant is seeking relief of the required rear yard setback for a deck encroachment. He advised the Board that earlier this year, the Building Official observed a new deck constructed to the rear of the subject property without the requisite building permit. He added that when the applicant submitted the building permit information it was discovered that there were compliance issues and that the deck encroaches approximately eight (8) feet into the required rear setback of twenty-five (25) feet. The applicant is requesting a variance of eight (8) feet resulting in a rear setback of seventeen (17) feet. Mr. Grisdale added that this request reflects a site condition that was actually created by the homebuilder when the property was first improved with a single family dwelling. He further stated that this type of scenario has been presented to the Board on at least two prior occasions (Fort Braddock Court and Taylor Grace Court) and in both cases, the Board approved the variances and allowed the property owners to construct an elevated rear deck that encroached

into the required setbacks. He closed by adding that staff has received no letters of support or opposition to this case and that he is available for questions.

Chairman Phillips called for questions and discussion from the Board.

Mr. Pifer asked how much the other decks go in to the rear yard setback to which Mr. Grisdale advised that he was not sure about the Fort Braddock Court property but the one on Taylor Grace Court was about three (3) feet.

Chairman Phillips Opened the Public Hearing

Matt Mintschenko, 675 Beehive Way, was sworn in by Mr. Crawford and addressed the Board and advised that he supports the variance stating that there are several decks as such on Beehive Way and Taylor Grace Court. He added that it is an aesthetically pleasing looking deck and he thinks it adds value to the house and the development. He concluded by saying that he is in support of this application.

Chairman Phillips called for questions from the Board.

Mr. Lewis asked if there is a home owners' association in this development to which Mr. Mintschenko stated no.

Chairman Phillips then asked if there was anyone else wishing to speak either for or against the application.

Chris Mason, applicant, was sworn in by Mr. Crawford, and addressed the Board to explain the situation and advised that the builder never told them what they can and cannot do as it relates to building a deck but that if they wanted to use the rear doors, they would have to build a deck. He added that the only way that they could have a deck that they could actually use is to go in to the setbacks.

Chairman Phillips called for questions and discussion from the Board.

Mr. Pifer asked Mr. Mason if he built the deck or if he had someone else build it to which Mr. Mason responded that he built the deck. Mr. Pifer then asked why Mr. Mason did not pull a permit to which Mr. Mason stated that it was his mistake and that he should have gotten a permit. Mr. Pifer then asked if the Building Inspector has been out to make an inspection to which Mr. Mason stated yes. Mr. Pifer asked what, if anything, the inspector may have found. Mr. Grisdale responded that he is unsure to what level the inspection took place but that this is how all of this came about was that Mr. Knight was driving the neighborhood and the building official observed the deck. Mr. Grisdale also said that he believes that Mr. Knight went out and took a look at the deck to make sure that there are no immediate life safety issues but since the building permit is on hold until this variance issue is resolved there have been no final inspections done but there has been at least a preliminary look at the structure.

Chairman Phillips asked if it will be inspected. Mr. Gridale advised that should the variance be approved, the building permit will be issued and then Mr. Knight will conduct a final inspection.

Mr. Pifer said that his only concern is that if it is not built correctly then it may have to be torn down per the building inspector. He asked if the Board is able to table this request and have it inspected before granting the variance because he said that if the Board okays this and then it turns out that it is built poorly can they have the applicant come back. Mr. Gridale advised that it is at the purview of the Board but that is a separate issue as to whether the Board believes that there is a hardship that warrants this encroachment or there is not a hardship that warrants this encroachment. He added that if it turns out that it is not built to code, the building official may require that it be taken down and properly modified.

Mr. Lewis said that basically if the Board votes on it, even if they approve it, it would still have to go to building inspections and they could that it has to be altered or taken down so there still could be something done if there is something that is not correct about it. Mr. Gridale said that is correct and there are essentially two (2) sets of codes, the Building Code and right now we are dealing with the local Zoning Ordinance provisions pertaining to setbacks.

Ms. Marchant said that if the Board approves it and it is taken down and put back, would they have to go through this again if we approve it. Mr. Gridale responded that hypothetically that is correct. Within one (1) of the possible motions should the Board look favorably upon this request, one (1) of the conditions was that the variance applies to the structure as designed. So hypothetically if the Board would approve this variance for this encroachment and for some reason it is structurally not okay and it is taken down and rebuilt, it can be rebuilt to this specification in terms of depth. Mr. Lewis then said that if the Board approves it, it will be approved for eight (8) feet and if it goes farther than that, he would have to go through another application process and approval to which Mr. Gridale said yes.

Mr. Pifer asked Mr. Mason what the difference is in feet between the “bump out” of the deck on the right side to the one on the left side to which Mr. Mason responded that it is four (4) feet.

Chairman Phillips called for questions and discussion.

Chairman Phillips Closed the Public Hearing.

Chairman Phillips called for discussion from the Board.

Mr. Crawford said that it does not seem that the neighbors are opposed and it does come off of the back of the house and the way it hangs there it is difficult to tell where the property line or setbacks would be and there are certainly a lot of people out there that have decks. Although the homeowner should check first and it really is not the responsibility of the builder to point out that the homeowner can only build four (4) feet off the back but once there are doors such as there are, it is a reasonable assumption that a deck could be built there and most people would put a deck that is more than four (4) feet. He added that it does not look out of character with the house or the neighborhood.

Hearing no additional discussion, Chairman Phillips called for a motion.

Mr. Crawford moved to grant a variance to BZA-13-651 pertaining to rear yard setback regulations pursuant to Section 4-6-2 of the Winchester Zoning Ordinance, for the property located at 2072 Taylor Grace Court (*Map Number 250-02- 45-45*), zoned Medium Density (MR) Residential District, with the following conditions:

- A. The variance applies only to the structure as presented in the application materials.
- B. The deck may encroach no more than eight (8) feet into the required rear setback.

Mr. Pifer seconded the motion.

Roll call vote was taken and the motion passed 5-0.

NEW BUSINESS:

Mr. Grisdale stated that the Board has a copy of the 2014 Board of Zoning Appeals meeting schedule. He asked that the Board officially adopt the calendar for this calendar year so that it can be posted to the City's website and have it available for potential applicants.

Mr. Crawford moved to accept and adopt the 2014 Board of Zoning Appeals meeting schedule as presented by staff.

Mr. Pifer seconded the motion.

Voice vote was taken and the motion passed 5-0.

OLD BUSINESS:

None.

ADJOURN:

With no further business before the Board, the meeting adjourned at 4:16 p.m.