

Town of Colonial Beach Board of Zoning Appeals Minutes

Date: November 19th, 2013 – Town Center, 22 Washington Avenue

Time: 5:31 p.m.

Present: Dr. Frank Mansfield, Chairman
Frank Lincoln
Susan Windland
Charles Green
Bernard “Rocky” Denson

Absent: None

Staff: Gary Mitchell, Director of Planning and Community Development
Brendan McHugh, Planning Manager

Also Present: Ann Neil, attorney

Item 1: Call to Order

Chairman Mansfield called the meeting to order at 5:31 p.m.

Item 2: Approval of Agenda

Chairman Mansfield asked for a motion to make a recommendation to approve the agenda.

Member Lincoln made the motion. Member Windland seconded the motion.

It was unanimously resolved:

That the agenda for the November 19, 2013 BZA meeting be approved.

Item 3: Approval of minutes from the January 15, 2013 BZA meeting

Chairman Mansfield asked how the process of editing errors was handled concerning the minutes because he encountered some errors.

Mr. Mitchell then explained that the BZA notifies The Planning Department of the errors, and then the Planning Department will correct them.

Chairman Mansfield then explained that page 1 stated that, “a motion was made to nominate the previous chairwoman”, however she was not there. Then he explained that the other error was a grammatical.

Chairman Mansfield asked for a motion to approve the minutes of the January 15, 2013 meeting. Member Lincoln made the motion, which was seconded by Member Windland.

Chairman Mansfield called for a vote; it was unanimously resolved:

That the minutes of the January 15, 2013 meeting be approved, as written.

Item 4: Public Comment of matters not scheduled for public hearing

There was no comment.

Item 5: Public Hearing – To Consider a Variance Request by Mr. Tiches (case #ZV-01-2013)

Chairman Mansfield asked for a staff report concerning the case.

Mr. McHugh summarized the following staff report:

**ZONING ADMINISTRATOR'S SUMMARY
VARIANCE REPORT
2013**

**REFERENCE: ZV-01-2013: Demetrius Tiches
 TAX PARCEL # 3A3-1-3C-1 AKA 2 10TH STREET**

BACKGROUND INFORMATION

The property, located at 2 10th Street, it is within the R-2 (Residential General) zoning district. This site is located approximately about mid-block and the shoreline of the Potomac River (+/-150 feet). There is an existing "historic" house located on the parcel. The applicant wishes to restore the historic house and make improvements to the house and property.

**Proposed Variance(s): 23-feet from the minimum rear principal structure setback
 12-feet from the minimum front principal structure setback**

AUTHORITY:

Article XVII, Section 17-2 of the Town's Zoning Ordinance gives the Board of Zoning Appeals the power to authorize "upon appeal in specific cases such variances from the terms of the ordinance as will not be contrary to the public interest, when owing to special conditions, a literal enforcement of the provisions of the ordinance will result in an unnecessary hardship; provided that the spirit of the ordinance is observed and substantial justice done, as follows."

No variance can be authorized by the Board unless it finds: (a) that the strict application of the provisions of the Zoning Ordinance would produce an undue hardship; (b) that such hardship is not shared generally by other properties in the same vicinity; and (c) that the authorization of this variance will not be a substantial detriment to adjacent property and that the character of the district will not be changed by granting a variance.

Although there is no hard and fast definition of "undue hardship," generally based on legal precedent, the following should be used as a guide for defining "undue hardship":

1. That the ordinance effectively prohibits or unreasonably restricts the use of the property, or that the granting of the variance will alleviate a clearly demonstrable hardship approaching confiscation (as distinguished from a special privilege or convenience sought by the

applicant) because of a condition which is unique to the particular parcel of land (size, shape, topography, use of adjoining property).

2. That the strict application of the ordinance would produce undue hardship.
3. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
4. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
5. That the condition or situation of the property concerned or the intended use of the property is not of so general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

In authorizing a variance, the Board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to insure that the conditions imposed are and will continue to be in compliance.

ANALYSIS:

In applying the undue hardship test, it is important to note that a portion of principal structure already rests only 3-feet from the road right-of-way. The distance from the structure to the edge of pavement is 24 feet. The applicant wishes to extend the existing porch across the entire frontage of the house. Article 15-14 of the Zoning Ordinance allows a nonconforming structure to be rebuilt on the unaltered foundation, but not expanded without a zoning variance issued by the Board. This extension does not come any closer to the street but extends the non-conformity aspect of the house across the front of the entire house. Staff believes that this is a reasonable request since the house is a historic structure relative to its age.

With respect to the second test of hardship, the existing house location and orientation is unique to this property. The historic nature of the existing house makes it quite unique as opposed to other homes in the community. The rear setback request is tied to the fact that the existing house does not have modern amenities and sufficient space to accommodate the applicant and his proposed uses which are central to the beneficial use of the property. The applicant is proposing to use the addition as an area. Therefore, this request does not warrant an amendment to the zoning requirements in the R-2 zoning district. Additionally, staff feels that the proposed addition(s) to the existing structure will improve the aesthetic quality of the front and rear of this property.

Additionally, this case is unique due to the lot being small and the extremely small building envelope that exists on the property. The shape of the parcel also contributes to this situation since the long side of the rectangle faces the street as opposed to the short side of the rectangle which normally faces the street. As a result this lot is not normal and therefore it is unique to this parcel.

In light of principle 6 listed above, Staff feels that all beneficial use of the property has been eliminated due to these setback requirements. The required front and rear setbacks, because of the location of the principle structure, prohibits, the construction of any attached deck, outdoor living area, including modern amenities. Staff contends that in granting this variance, the Board would not be in violation of the Supreme Court's 2004 ruling.

Finally, if the Board believes that rear setback variance is too large you may alter the request to a smaller distance. The Board may also require as a condition that the applicant install a 4-hour fire rated wall on the exterior wall of the addition facing the rear of the property.

STAFF RECOMMENDATION:

Based on these facts and the plan submitted by the applicant, Staff recommends the granting of this variance. The applicant has adequately shown, by way of the guidelines above, that the setback requirements of the zoning district have produced an undue hardship.

Should the Board decide to grant the variance, Staff further recommends the following conditions to be placed on the variance:

1. The proposed additions shall not be any larger than those indicated on the plat plan.
2. A 4-hour rated fire wall be constructed on the rear wall of the proposed addition.
3. A storm water BMP agreement and Plan consistent with the Town's requirements shall be recorded in the County Clerk's Office at the applicant's expense prior to issuance of permits for construction of the addition to the house. A copy of the recorded document shall be submitted to the Town and shall provide to Staff a copy of the recorded instrument prior to obtaining a building permit to commence the construction of the renovations for the new structure.
4. The applicant takes the necessary steps to have this variance and its conditions recorded in the County Clerk's Office as part of the deed of the property, and shall provide to Staff a copy of the recorded instrument prior to obtaining a building permit to commence the construction of the renovations for the new structure.

Chairman Mansfield invited the applicant to address the Board.

The applicant, Mr. Demetrius Tiches of 2-10th Street, addressed the Board. Mr. Tiches explained that he is interested in restoring the house rather than tearing it down. He then explained that he wants to add the addition on the back. He also explained how his father is going to be moving in with him. He explained how he wants to keep it simple and plain but also keep the Colonial Beach character. He talked about how he already had a best management practice plan for the property approved by the town and the county.

Chairman Mansfield opened the public hearing.

The applicant's mother, Betty Tiches of 1808 Beach Avenue, addressed the board. She explained that her property abuts Mr. Tiches and gave her full support for her son's variance.

Chairman Mansfield then asked if there was further public comment. There were no further comments. Chairman Mansfield then closed the public hearing.

Chairman Mansfield expressed that he felt comfortable with most of the variance except for the rear setback. He felt that the setback should be more than two feet. He recommended a ten foot rear setback. He explained that with the ten foot setback, Mr. Tiches wouldn't have to install four hour fire rated wall.

Member Windland then explained that she agreed with Chairman Mansfield.

Member Green then congratulated Mr. Tiches on his project. He explained how he supports urban renewal in Colonial Beach. He then explained that he supported the staff recommendation for the full variance because his neighbors have no opposition.

The board then discussed the variance to decide on a recommendation.

Mr. Tiches explained that the original structure was about five inches off the property line and that he didn't need to go back as far as the original and settled with two feet. He then explained that he would rather build the fire wall then lose the eight feet that Chairman Mansfield was recommending. Chairman Mansfield then asked Mr. Mitchell why Mr. Tiches had to get a variance if the building already went to the two foot line. Mr. Mitchell then explained that it was before he was working in Colonial Beach. Mr. Mitchell then explained that the non-conforming status expired after two years.

Member Windland then suggested four feet from the property line since Mr. Tiches expressed that he didn't mind constructing the fire wall for more space. Member Lincoln then made a motion to accept the staff recommendation. Member Green then seconded the motion.

Mr. Mitchell called for a vote;

	Aye	Nay
Dr. Frank Mansfield, Chairman	X	
Frank Lincoln	X	
Susan Windland	X	
Charles Green	X	
Bernard "Rocky" Denson	X	

It was unanimously resolved:

To grant the variance request by Mr. Tiches

Chairman Mansfield then reminded Mr. Tiches that citizens have thirty days to appeal the decision and that work cannot begin until after the thirty days.

Item 6: Public Hearing – Administrative Appeal by Ms. Sharon Fortier (AA-01-2013)

Chairman Mansfield asked for a staff report concerning the case.

Mr. Mitchell summarized the following staff report:

**ZONING ADMINISTRATOR'S SUMMARY
VARIANCE REPORT
2013**

**REFERENCE: AA-01-2013: Sharon Fortier
TAX PARCEL # 3A2-**

BACKGROUND INFORMATION

The property, located at 125 Wilder Avenue, and is located within the Resort Commercial Zoning District (RS) (see exhibit 1). The applicant had a business license (tax) for a boarding house which expired in 2009. In 2010 it is contended that she rented the house as a single-family dwelling. Recently she acquired a new business license for the operation of a boarding house. The Town became aware of several property maintenance and building code violations on the property in August

of 2013. An inspection of the property was conducted on 8-29-2013, and these alleged violations were verified. The Code Enforcement Official notified the property owner of the violations via a meeting with the property owner on September 9, 2013. On September 11, 2013, the Code Enforcement officer issued a notice of violation and posted the property as unsafe and unfit (see exhibit 2). The on again off again use the structure as a boarding house and single-family dwelling became apparent as part of the code violations. The zoning administrator issued a zoning determination to the property owner on August 29, 2013 (see exhibit 3). The determination stated that the property is a boarding house and cannot be used as a residential structure. The property owner filed an appeal of the zoning administrator's determination.

AUTHORITY:

15.2-2309 of the Code of Virginia, 1950 as amended, specifically states that the Board of Zoning Appeals is empowered "to hear and decide appeals from the decision of the zoning administrator..."

Further 15.2-2312 of the Code of Virginia, 1950 as amended, states that a "concurring vote of the majority of the membership of the board shall be necessary to reverse any order, requirement, decision, or determination of an administrative officer {zoning administrator} to decide in favor of the applicant..."

Section 17-4 of the Town's Zoning Ordinance gives the Board of Zoning Appeals the power to hear and decide appeals from the decision of the zoning administrator.

ANALYSIS:

For many years this property has been in and out of compliance with the Town's ordinances and the Virginia Uniform Statewide Building Code (USBC). The earliest complaints and issues date back to 1990 and range from tall grass and weeds and conditions unfit for human occupancy. The applicant's claim is to use the property as a single-family dwelling. In the original 1974 Zoning Ordinance there is no reference to single-family residential uses. There was a reference to multi-family residential units and hotel/motels (see exhibit 4). However, in 1995, a Building Permit and Business License (tax) was issued for the necessary repairs and use of the structure as a Rooming House (see exhibit 5).

Additionally, the description and intent of the Resort Commercial District designates this area a resort area and beach front, as stated below:

That portion of Colonial Beach referred to as the downtown beach front provides a resort area for tourists. Land use in this district shall orient itself to the development of an attractive, viable resort area. This district should be permitted where public utilities and transportation systems are adequate. Land uses which go against this concept or adversely affect the operation thereof shall be excluded from the district. The FAR is 0.75 (Article 3-5, Section N).

Additionally, the current Resort Commercial Zoning District does not list single-family dwellings as a permitted or conditional use – therefore this use is not permitted (see exhibit 6). Additionally, in Article 2-4 H; *Uses Not provided for*, the current ordinance states,

In the event that an application is received for a use in any district which is not provided for in that district, then that particular use is not permitted. The applicant shall be informed of their right to petition or request the Governing Body to initiate a text amendment pursuant to section 19-36 of the Ordinance.

The zoning determination that I provided to the applicant states that the property is grandfathered as a Rooming House. This determination was based upon the evidence presented in this staff report. The re-use of the property as a single-family residence is simply not permitted under the current zoning regulations of the Town and based upon certificates of occupancy and business licenses that have been issued stating that it is a Rooming House.

STAFF RECOMMENDATION:

Staff recommends that the Board of Zoning Appeals should uphold the zoning administrator's determination based upon the facts presented in this staff report.

Mr. Mitchell then explained that the property is right in the middle of the Business District Revitalization Plan Project Area. Chairman Mansfield then explained that it takes very special circumstances to divert from that plan.

Chairman Mansfield invited the applicant to address the Board.

The applicant, Ms. Sharon Fortier of 1807 Windyknigh Road, Montross, VA, addressed the Board.

She explained that her father and siblings have owned that home for forty years. In 2010, her father passed away and the woman who helped care for him asked if she could remain in the building and rent. Ms. Fortier allowed her to stay without a business license. She found out that the woman had her son and daughter living with her. When Ms. Fortier questioned her, the woman said she couldn't charge her because she didn't have a license for her children. Ms. Fortier got a license and then presented her with an eviction notice. Ms. Fortier then explained that as a result of giving her an eviction notice, the woman called Ms. Teresa Davis, the code official for the town, to complain about the maintenance of the rooming house. She then explained that there are a few different properties located in the Resort Commercial District that are single family dwellings. She then explained that it is hard to get a commercial loan and that if it was across the street it would be Commercial Residential. She then explained that if it was residential it would be easier for her to sell.

Mr. Mitchell then explained that the properties that she was talking about were pre-existing, non-conforming. He then explained that if she wanted to change the zoning of the property, she would have to apply to the Planning Commission and the Town Council because it is a legislative act.

Chairman Mansfield then opened the BZA's attorney request.

Ms. Ann Neil, BZA Attorney, then asked the board if they had any questions and explained to them the framework of the law. She explained that the staff explained the case efficiently. She then explained that the Zoning Administrator is presumed to be correct and that it is up to the applicant to prove that the Zoning Administrator is incorrect in his determination. It would take three BZA members to prove Mr. Mitchell wrong. She explained that the house would have to be in use as a single family dwelling prior to 1974, when the zoning ordinance was adopted, in order to be considered a pre-existing, non-conforming dwelling. If it was used for anything else for at least two years, then it would lose that non-conforming use.

Chairman Mansfield then opened the public hearing.

Mr. Bob Swink addressed the board. Mr. Swink explained that there were people interested in buying the property as a single family dwelling. He then explained that if the house can't get sold it will sit there stagnant. He talked about how the permitted uses for the Resort Commercial Zoning were not practical with that particular property. He asked if there was any way the Board and the property owner could come to a compromise such as Commercial Residential.

Chairman Mansfield then closed the public hearing.

Chairman Mansfield explained that the only aspect that the Board can address is the variance. He then reiterated what Ms. Neil said about proving Mr. Mitchell wrong. He explained that he did not hear anything contrary to Mr. Mitchell's report.

The Board agreed with Chairman Mansfield.

Member Windland made a motion to uphold the Zoning Administrator's decision and to deny the appeal. Member Green seconded.

Mr. Mitchell called for a vote;

	Aye	Nay
Dr. Frank Mansfield, Chairman	X	
Frank Lincoln	X	
Susan Windland	X	
Charles Green	X	
Bernard "Rocky" Denson	X	

It was unanimously resolved:

To uphold the Town's decision and to deny the appeal

Item 7: Adjournment

There being no further business, Chairman Mansfield asked for a motion to adjourn. The motion was made by Member Windland and seconded by Member Lincoln. The meeting was ADJOURNED at 6:15 p.m.

Chairperson, Colonial Beach Board of Zoning Appeals