



City of Harrisonburg

409 S Main Street
Harrisonburg, VA 22801

Meeting Minutes Board of Zoning Appeals

Monday, November 2, 2020

4:00 PM

Virtual

1. Call To Order

The Harrisonburg Board of Zoning Appeals met in regular session in the City Council Chambers on Monday, November 2, 2020, in order to consider the following request which was duly posted. Members present were Matthew Phillippi, Thomas Jenkins, Patrick Ressler, and Gil Colman. Members absent were Glen Stoltzfus. Also present were Rachel Drescher, Zoning Administrator; Alison Banks, Senior Planner; and Wesley Russ, Assistant City Attorney.

Chair Phillippi called the meeting to order at 4:00 PM.

Chair Phillippi: This meeting will be held as an electronic meeting due to the emergency and disaster represented by the spread of COVID-19. This meeting will be conducted by the following electronic communication means: electronically through GoToMeeting and Granicus. The public had the opportunity to provide comments in advance via email and will have the opportunity to provide comments by phone at designated times during this meeting. Because calls are taken in the order that they are received, we ask that the public not call the comment line until the item you are interested in is being presented or discussed.

Present 4 - Matthew Phillippi, Thomas Jenkins, Patrick Ressler, and Gil Colman

Absent 1 - Glen Stoltzfus

2. Approval of Minutes

Are there any corrections, comments or a motion regarding the minutes from August 3, 2020?

Mr. Jenkins: I move to approve the August 3, 2020 meeting minutes.

Mr. Colman: I second.

WHEREAS: Chairman Phillippi called for a roll call vote: Mr. Jenkins: Aye; Mr. Colman: Aye; Mr. Ressler: Aye; Chairman Phillippi: Aye, and,

BE IT, THEREFORE, RESOLVED: The Board approved the minutes from August 3, 2020.

A motion was made by Jenkins, seconded by Colman, that this be approved. The motion carried with a recorded roll call vote taken as follows:

Yes: 4 - Phillippi, Jenkins, Ressler and Colman

No: 0

Absent: 1 - Stoltzfus

3. New Business

The first item of business is the variance request for 561 Ott Street. Ms. Drescher read the following request:

The subject property at 561 Ott Street is a vacant lot, which is currently nonconforming to required lot area and lot width per Zoning Ordinance Section 10-3-35, Area and Dimensional regulations for the R-1, Single Family Residential District. The current lot width of the parcel is 60 feet and the current lot area of the parcel is 9,608 square feet.

The applicant is requesting two variances in order to make a lot line adjustment between 571 Ott Street (identified as tax map parcel 26-R-17) and the subject property, which would reduce the lot width and lot area of the subject property. The first request is a variance of 25 feet to the required 80-foot required lot width. The second request is a variance of 1,200 square feet to the required 10,000 square foot lot area.

While both 561 and 571 Ott Street are nonconforming to lot area and lot width within the R-1 district regulations, only the lot being reduced in width and area is required to have approved variances prior to an approved lot line adjustment.

Currently, the property line between the two parcels is about two inches from the existing wall on 571 Ott Street. The applicant presently owns both parcels and wishes to sell 561 Ott Street, which is a vacant lot. The applicant would like to own enough land on the north side of the existing wall on 571 Ott Street, so he can continue to have access on this side of the property. The applicant is not interested in a private access easement because the new buyers of the property would be paying taxes for the property that he would be using. The applicant states that he does not plan to sell the vacant lot if he is unable to relocate the property line.

Note that if the variances are approved, the subject property's side yard setbacks would be reduced to five feet per Zoning Ordinance Section 10-3-110(f), which states *Except in the R-8 Small Lot Residential District, where a lot of record is less than sixty (60) feet in width as measured at the point of required front setback, each required side setback for internal lot lines may be reduced to not less than five (5) feet unless otherwise superseded by building regulations.*

Approving the requests means that the BZA finds there is a restriction on the reasonable utilization of the property which would be alleviated by a variance from the required lot width and lot area. Denying the requests means that the BZA finds there is no restriction on the reasonable utilization of the property. No lot line adjustment can occur.

Chair Phillippi asked if there any questions from the Board to staff regarding this request.

Mr. Colman: The plat or sketch that we have shows the lot line adjustment to be at 18 feet back from the right of way. On your sketch it shows it all the way to the right of way.

Ms. Drescher: The property owner wants it to be a straight line. He was showing how he would need five feet to get around his property on that side. He did confirm that it would be the straight lot line adjustment.

Chair Phillippi: I saw mention in the packet regarding the possibility of rezoning to R-8 zoning residential district. Is seeking rezoning not an option in this case?

Ms. Drescher: It is an option. It was discussed with the applicant. At this time, because we were so close to the BZA hearing, the applicant thought a variance would be more appropriate. He could apply to rezone the property to R-8. It would have to go to Planning Commission and City Council.

Mr. Ressler: Did we get any comments from the neighbors or the neighborhood?

Ms. Drescher: I have not received any calls or concerns from neighbors.

Mr. Jenkins: If the lot was to remain at 60 feet and there was a structure built there, what would be side setback required?

Ms. Drescher: If it remains at 60 feet, then it is a 10-foot setback. Anything under 60 feet would reduce the setbacks to 5 feet.

Mr. Ressler: The hardship that is being presented here is that they do not think that the property will be as sellable. That is what they alluded to in the letter. They do not think it will sell as fast. Is that correct?

Ms. Drescher: I will allow the property owner to address that question. The hardship is two-fold. One is not being able to get around his home on that edge without walking on what would be the new buyer's property.

Mr. Colman: The property is a corner lot, so there is access to the back yard through the other side.

Mr. Ressler: That was my impression, too. Was that porch, next to the pole, built with the original house or was it added on?

Ms. Drescher: I do not know the answer to that.

Mr. Jenkins: If that lot is reduced, it will change the side setback from ten feet to five feet. Does it change the front or rear setback?

Ms. Drescher: It does not.

Chair Phillippi asked if there were any more questions from the Board to the staff. Hearing none, he opened the public hearing portion of the meeting. Staff, please forward the applicant's call.

Lester Mintzer, 571 Ott Street, called to speak to his request.

Mr. Mintzer: I think the real question is, why would you deny this request? It hurts no one. It certainly does not change the characteristics of the neighborhood. It certainly will not set a precedent because I do not believe that there is any other lot on Ott Street this size. In this case, the buyer, John Sallah, and the seller have both agreed to this reduction. It is not just a win-win situation, it is win-win-win situation. It is a win for me that I will be able to have access to my back yard. It is a win for the property owner that he will not have to pay taxes on land that he will not be able to use, and it is a win for the City because they will be getting more money in revenue. I do believe that not granting my request would unreasonably restricting the utilization of the property. Granting

the request will not be contrary to the public interest. I am hoping that the Board will look favorably on this request.

I heard that someone asked whether the porch was part of the original property. To the best of my knowledge, when the house was built, it was part of that. I moved into the house when I was three and a half years old. I do not have a recollection of them building that after the house was built. I believe that was built at the time of the house.

It was asked if I could get access to the back yard from the other side of the house. I have animals. On the other side of the house is my driveway. It would almost be impossible for me to put a fence down the other side to get to my back yard and still have utilization of my driveway because my driveway is at the back of the house.

I appreciate the Board giving me a chance to make this request.

Mr. Colman: What are you trying to get access to?

Mr. Mintzer: I have animals. I have had animals since I have been in Harrisonburg. When I let them out my side porch, they will be able to get to the back yard. Otherwise, I would have to go down the stairs, get them out, then wait for them to come back in to go back upstairs. As I get older, stairs are going to be tough for me. I am 74. I am trying to remain in my house for the remainder of my days. This will be a clear title for my family, for the Sallah family, that it will be in writing where the property line is.

Mr. Colman: It sounds like the issue here is accessibility, but that is not what is requested.

Mr. Ressler: Have you spoken with the neighbor on the other side? Do they have any opinion? Have you spoken with them?

Mr. Mintzer: I know the neighbors. We were the first house between there and Paul Street. The Myers, who built that house in the mid-50s, have been the only people who have ever lived in that house. They knew one day that there was a good chance that the house could be sold. They have been happy that it has not been sold all this time, but they realize the reasons that I need to sell it and they accept them. I have not heard anything negative from any of the other neighbors that were contacted.

Mr. Ressler: You mentioned that you have a buyer lined up. Does that person intend to build and live there or do they intend to develop?

Mr. Mintzer: He told me that he intends to build and live there in a couple of years. They live not too far from me. I have known his wife from when we were both working with the Thomas Harrison PTA. They would be good neighbors for both of us. When their kids get out of high school, they will not need such a big house. They like the lot and they like the property. They have accepted the fact that the dimensions of what the house can be is smaller and they have no problem with that. It is a win-win-win. It does not hurt anyone. It does not affect negatively the characteristics of the neighborhood. If it ever came to where I want to sell the house, it would be tough to sell the house without a side egress. It would be difficult that I would not be able to utilize the property if the request is denied.

Mr. Jenkins: When you come out your side door, and you are on that side patio, it looks like there is a brick wall to your left. If that brick wall is not there would there be accessibility to the back yard from there?

Mr. Mintzer: Are you asking if I want to take the house apart, take all the brick work out that goes directly out back? Is that what you are asking? There would be no good way for me to get to the back yard from that side of the house unless I do something with the whole structure of the wall. I do not know what that would cost me. That seems like it would be an unreasonable request. If it is not granted and he still wanted to build the house there, it would not change anything. This way would make it more legal and permanent for both the buyer and the seller.

Mr. Jenkins: Have there been any conversations with the Myers at 551 Ott Street, that if this variance were approved, the side setback would decrease from ten feet to five feet?

Mr. Mintzer: I have not spoken with them about that. The original thought was a ten-foot setback on both sides and the 35 feet was more than enough in width for them to build the house that they desired. I will let Mr. Sallah address that. It may not be that the house would be within five feet, but if that is the law, then that is the law.

Chair Phillippi: I do not know if it would actually lower the setback. What we are talking about is not rezoning to the R-8 which would require the five-foot setback. Would it reduce the side yard setback on both sides? It would?

Ms. Drescher: Yes.

Mr. Colman: The interesting thing is that instead of being able to build a house that is 40-feet wide, it could be 45-feet wide, if we reduce the size of the lot.

Mr. Mintzer: My understanding is that if it was 60-feet wide and there is a ten-foot setback, then their house could only 40-feet wide. They were happy that it was 55-feet. Even if there were a five-foot setback on my side from the fence, which would be ten feet from the property line and ten feet from the other one, it would have plenty of width to build their house. Mr. Sallah can answer those questions about what their desires are.

Mr. Colman: I think the same thing that Mr. Jenkins was asking. If that walk that comes to the front, where he wants access around the back, I see no reason why he could not extend that walk to the back. I understand that there would be an expense. If that is the main reason, because of the expense, then that is the reason for it. Perhaps stairs are not viable because, as you said, aging in place stairs could be dangerous. A ramp could be built towards the back of the house.

Mr. Mintzer: I supposed that if you have enough money, anything could be done. I just think that it would be unreasonable to have to do that on property that I own or that my family has owned since 1948. I am asking for five feet. It does not seem unreasonable to me, under any circumstances.

Mr. Colman: Why did you not pursue a rezoning of the property? That avenue seems like you would have a better chance there than here. We will see how the Board moves on this.

Mr. Mintzer: When I first put the application in, I was not aware of the other possibility. After I put the application in, I asked Rachel, if it is denied, whether I still would have that option. Right now, next Thursday, I am undergoing \$50,000 worth of oral surgery and waiting another four months to figure out where I am going to get the money to pay for some of this is daunting for me. That is the reason I am selling. I have some health issues that I have to deal with.

Mr. Ressler: Our main responsibility is to consider the hardship that is being caused here.

Chair Phillippi: We can get into that when we move on to our discussion after we close the public hearing. We go through the checklist and talk about what the requirements are for a variance.

Mr. Ressler: To make sure that I understand, what we hear is that the two areas where you feel the biggest hardship is that you would not have access to the back and that the property you are selling would be harder to sell. Those are the two main things?

Mr. Mintzer: Correct. That is pretty much it. If I was looking to buy a property, I think that is one thing they would look at. This would give me access. Giving me this variance does not deprive the buyer and the City of anything. I hope that I have answered all your questions. I did it to the best of my ability and knowledge.

Chair Phillippi asked if there were any more questions for the applicant. Hearing none, he asked staff to forward the next caller.

John Sallah, 387 Monticello Avenue, called in support of the request.

Mr. Sallah: I am calling to voice my support for this variance request. Mr. Mintzer and I examined this problem from a number of different angles that would have not required intervention from the City or the BZA or anybody for that matter. They were all imperfect solutions. This is the only one that both of us thought made sense all the way around.

You talked about the width issue. Until I read the packet, today, I did not know that by reducing the lot size by five feet it was also going to reduce the side setbacks by five feet. It is odd that by reducing the size of the lot you can build a bigger house. That was not the intention. Mr. Mintzer mentioned earlier in the call that I am shopping for a 35-foot wide house. I do not necessarily see that changing. It is interesting that something a little bit wider can go there. I am not interested in being on top of anybody, just as they are not interested in being on top of me.

It was also asked, what was the intention of the lot? I am a developer and I do make my living in real estate, but I am in a house that is going to be larger than what I need very shortly. Hopefully, I can get my two daughters off to college at some point. I am probably still a couple of years away from that, but I am planning for the future. I am getting ready to downsize. That is the point here. I will put the house up. I do not know what year I am going to move in. I do intend for this to be where they drag me out of feet first.

I live right around the corner from this place. There are tons of houses in this neighborhood, just because it is so old, that are right up on the lot lines. There are all kinds of weird things that have happened. There are lots that are less than 60 feet all over the place. I am building another house on Franklin Street on a very narrow, pie shaped lot right now. I do think that anybody would have any

idea, if you are sauntering around the neighborhood, that there was ever any special consideration given to this lot in order for this house to be built on it. I think it is going to fit in well. It is going to look like everything else in the neighborhood in the way that it fits in.

The last thing that I will say, as a developer and speaking to the hardship issue, if you do not have access to the back of your house from one side of your property it is probably a material defect in that property and it would affect the marketability of the property. Is it going to make it unsellable? No. Everything is sellable. Not being able to use the side door that he has in the way that he has been using it for a long time, which is to let the dogs out. You heard his dogs barking. I understand where Mr. Mintzer is coming from with this. He is a good guy. I want to keep him as a neighbor. I do not want him to move out of the house. It is one of the reasons that I want to build there. I would not mind living next door to him. I am happy to answer any questions.

Chair Phillippi asked if there were any more callers wishing to speak to the request. Hearing none, he closed the public comment portion and opened the matter for discussion.

Mr. Colman: I move to approve the request as presented.

Mr. Jenkins: I second the motion.

Mr. Jenkins: The reality is that the lot is sellable as it is. I do not think that there is any lot in the City of Harrisonburg that is not sellable. I think that having the structure, whether it is your house or your neighbor's, access to that from a maintenance standpoint and being able to fully access all the way around the house, I would view that as a hardship and a unique situation. If it is just a matter of accessing the back yard, I think that there are alternative ways around that. I think that not having full access around your house would be a hardship.

Mr. Colman: Concrete walls or fence, and that concrete wall is a basically a fence, there are fences that are brick, are only accessible from one side and not from the other side. I am responding to the accessibility from the standpoint of aging in place. If we want to facilitate that type of living, then that could be a reason to provide the access through this door to the back of the house. Presumably, there is not easy access to the back of the house through another door, other than using the stairs, so you need an accessible path. Those are not the basis for the request, so I do not know that we can approve it for that reason. That wall is a fence along the property line, maybe two inches in.

Mr. Ressler: I tend to agree. It seems like the cases for approving are not actually listed in the application specifically, so I do not know where that leaves us. That is my take from the presentation and conversation.

Chair Phillippi: Based on guidance from the authority that we have in the BZA, based on Cochran and the ordinance that we have before us in the City of Harrisonburg, I would say that we could not actually grant this variance. The reason for this is because a remedy was mentioned in the application, which is the easement, and there is the rezoning to R-8. Those are other remedies that could be undertaken with our current Zoning Ordinance. The variance is supposed to be the last possible remedy. There is no other option for the applicant to remedy the situation. That is when the variance is supposed to come in. Because those other remedies are available to the applicant and it is just a matter of preference for the variance, that is not an unreasonable enough restriction on the use of the property for us to grant a variance or to have the authority to grant that variance as a

Board.

Mr. Colman: We are trying to find some angles here to validate the concern of the request. I do understand that as reasonable as the request may be, it might not apply given the fact that there are other avenues. I agree. At the same time, as Mr. Jenkins suggested, he does not have access to the side of the house. I do not know if that is sufficient reason.

Mr. Ressler: I am on the fence here. There are people with townhouses who do not have access to the back yard on either side. It seems to me that it is more of a preference than actual hardship. When it comes to know for sure, how can you really say for certain that it would make it less sellable? I did not think that was something that would cause hardship. I think the property could still be sold. It could be a valuable property and still have access to that backyard. I would lean towards not approving the request.

Chair Phillippi: I would agree that what has been said about the property would probably be less sellable without the remedy, however, one of the things that we are not supposed to take into consideration as a BZA in Virginia is the financial burden of the variance request. If it costs them more without the variance or if they lose out on money because of the variance, that is not something that we are supposed to take into consideration as a BZA. This is coming from the point that this is where our authority is under the Code of Virginia, under the ordinances that we have here in Harrisonburg. That is the approach I am taking with it. I think it also not an unreasonable request and I would think that this would be beneficial to both parties. Both parties agree with it. I think it would be great for them to be able to do that with their land. The problem is that, based upon the authority that we have in the Commonwealth of Virginia, it is not a request that I think that we would be able to grant.

Mr. Colman: I want to be sensitive to the request, yet there are other avenues. As part of the Planning Commission (PC), if this came to Planning Commission, I would view this as they are moving that line to provide a sellable lot. Infill development for that lot seems like it would be something we would consider and perhaps supported by the PC. The PC has more of an avenue to approve this than the BZA in this case. I realize that the BZA may determine there is no restriction to the property. The property can be built on. The hardship is for the adjacent property, not to the property that is making the request. We are discussing the remaining property and not the requesting property. The requesting property has no hardship.

Mr. Jenkins: It is interesting how the process is coming about. Maybe it is not the correct one. There were other steps before coming to the BZA.

Mr. Colman: I would like ask Mr. Russ whether the hardships presented here are relevant given that it is the adjacent property. Am I wrong to consider that? A hardship should be to the property requesting the variance, not to the adjacent property.

Mr. Russ: Yes, usually. I think that the way it is being presented is fine. I do not think it is an issue.

Mr. Colman: It is the same owner.

Mr. Ressler: I empathize with Mr. Mintzer's frustration because I would be frustrated, too, in that situation where you own both lots and you feel restricted. Based on our limitations, it puts us in a

tough position.

Mr. Colman: I think that I will support it. I think that accessibility could be something that we need to consider for the future. That is thinking more towards the PC than the BZA, and the new ordinance coming up, that we provide avenues for people to age in place. Right now, we are having a population that is aging and trying to find a place not just to downsize but to be able to stay in the same home. It is difficult when you have these challenges. In this case, the challenges are there. Could it be made in other ways? Perhaps, but to make the point, this is something that needs to be considered. Perhaps not by this Board, but by the PC and the new ordinance. My vote will in favor for those reasons, in spite of the restrictions on the Board itself.

Chair Phillippi: That is certainly something for you and I to think about when we go to the next Ordinance Advisory Committee meeting.

WHEREAS: Chairman Phillippi called for a roll call vote: Mr. Colman: Aye; Mr. Ressler: No; Mr. Jenkins: Aye; Chairman Phillippi: No.

BE IT, THEREFORE, RESOLVED: The Board voiced a decision of 2-2. The motion failed and the request is denied.

There is some new business. I would like to introduce our new Zoning Technician, Christopher Perez-Leon.

Variance Request for 561 Ott Street

A request by Lester Mintzer & Deanna Frankel for a variance of 25 feet from the required 80-foot lot width and a variance of 1,200 square feet from the required 10,000 square foot lot area per the Zoning Ordinance Section 10-3-35, Area and dimensional regulations of the R-1, Single-Family Residential District. If granted, the lot could be 55 feet wide and 8,800 square feet in area by performing a property line adjustment with the adjacent parcel to the south. The property is located at 561 Ott Street and identified as tax map parcel 26-R-16.

4. Old Business

None.

5. Adjournment

With no further business, the meeting adjourned at 4:07 PM.

Notice to Public:

In accordance with the Emergency Ordinance to effectuate temporary changes in certain deadlines and to modify public meeting and public hearing practices and procedures to address continuity of operations associated with pandemic disaster, adopted on April 6, 2020, the public will not be able to physically attend the Board of Zoning Appeals meeting.

However, a phone line will be live where community members will be allowed to call in and speak with the Board of Zoning Appeals during the Public Hearing portion of the meeting. The telephone number to call in is: (540) 437-2687

Community members also may provide comment prior to the meeting by emailing: Rachel.Drescher@harrisonburgva.gov

Community members will be able to watch the meeting live on:

- The City's website, <https://harrisonburg-va.legistar.com/Calendar.aspx>
- Public Education Government Channel 3