

FLUVANNA COUNTY BOARD OF ZONING APPEALS

The Morris Room

MINUTES OF OCTOBER, 11TH 2016

7:30 P.M.

Members Present: Harold Morris (**Chairman**)
Peter Von Keyserling (**Vice-Chairman**)
Easton Loving
Carol Walker

Staff Present: Jason Stewart, Planning and Zoning Administrator/**Secretary**
Brad Robinson, Senior Planner
James Newman, Planner
Frederick Payne, County Attorney
Stephanie Keuther, Senior Program Support Assistant

Members Absent: Ed Zimmer, Planning Commission

CALL TO ORDER:

Chairman Harold Morris called the Board of Zoning Appeals meeting of October 11, 2016, to order at 7:30 p.m.

APPROVAL OF MINUTES:

Mr. Loving made a motion to approve the minutes of the May 10, 2016, with corrections, noting that Morris and Von Keyserling did not vote for themselves. The motion was seconded by Mr. Von Keyserling. The motion to approve was carried with a vote of 3-0-1. AYES: Mr. Loving, Mrs. Walker and Von Keyserling. NAYS: None. ABSTAIN: Mr. Morris ABSENT: Mr. Zimmer.

PUBLIC HEARING:

BZA 16:02 Papa Jims, Senior Planner Brad Robinson conducted a brief presentation for a request for a variance to Fluvanna County Code Sec.22-9-5(A) of the Zoning Ordinance to allow for the reduction of the minimum setback required from the public right-of-way from 50 feet to 13 feet, with respect to 0.944 acres of Tax Map 11, Section A, Parcel 42A.

The applicant is requesting a setback verification of 13.7 feet from the public right-of-way on route 15 if approved the variance would permit an open carport that is currently operated as seating. This was originally approved in 2011 to be in the rear. The carport is currently placed in the front of the ice cream stand 13.7 of the right of way. Another structure also known as Troy Market is located on this same property but they do not have any bearing's on the current site plan. Senior Planner Brad Robinson showed an aerial of the property and the structure on the current site plan. The carport shows as located in front of the ice cream store. The site plan also shows the rear view of the property that is available to work with.

The Board may grant a variance if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and:

The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;

The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;

The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and

The relief or remedy sought by the variance application is not available through a special exception process or the process for modification of a zoning ordinance at the time of the filing of the variance application.

The Board must make each of the above findings in order to grant a variance as required by the Code of Virginia. Approval of a variance that does not meet each finding would be unlawful. The Board may impose, as part of an approval, 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 ensure that the conditions imposed are being and will continue to be complied with.

Mr. Von Keyserling: I noticed the parking needed to be set back 25 feet of the public right of way. This needs to be addressed with VDOT.

Mr. Stewart: This will be during the site plan process.

Mrs. Walker: I understand there is a drain field in the rear of the property, would this cause issues for the carport.

Mr. Robinson: We were not made aware of the drain field until now and request that the applicant speak on behalf of this.

Public Hearing Comments

Chairman Morris opened the floor for the public hearing section of public comments and gave the applicant a chance to speak.

Applicant: Mr. James Toms stated there was an elaborate forty-five thousand dollar drain field put into the rear of this property due to the failure of the old septic system. I was told there are not to be vehicles, lawnmowers or walking to be done over this new drain field.

The Carport is also located where it is because business has tripled in size. There are five employees with only 12 at most parking spots. The carport is located in the front due to public and employee parking.

There is no other place to put the car port. The real problem I have and would like explained to me is why the county allowed my neighbor to build a fence 100 foot long blocking my view on a B-1 zoned property with no permit. Also the carport has been here for 5 years, with no complaints. And you guys will not reduce the Speed limit and there was an accident there last year. Someone even hit my wife's parked car. So, if you take away the carport you take away the ambiance! If it has to go then I go to!

Elizabeth Dowed: Troy Market, These are honest people just trying to make a living. They put in drain field behind my business. We really don't want to lose this valued business. Is there any way to possibly move the carport closer to the ice cream stand itself?

Applicant: No, I don't think Liz is aware of this. I want to expand my business to better serve my customers. To do so we would be adding 4 ft. on the left and right side of the current structure. I have already bought a \$20,000 ice cream maker and a \$9,000 flavor machine to inject the ice cream with. We may not have the parking for it but at least there won't be a line and people don't have to wait. Therefore I cannot move the car port.

Mr. Walker: What is the trailer?
Applicant: A grandfathered 2 bedroom trailer, built by two brothers. Can someone please explain to me, please tell me why there allowed to put a big fence up that blocks the south view next to me!
Mr. Stewart: I sent out a letter regarding the fence already stating the zoning law pertaining to the fence in question.
Applicant: But it's a b-1 property.

Mr. Loving: Who owns the property?

Applicant: Mr. Channing. I have also asked Mr. Channing can I put gravel in on the lot next store. This would be great parking for Papa Jims. Mr. Channing says no way!

Mr. Loving: The 2011 site plan that was approved on the intended location of the carport, the drain field was not on there.

Applicant: This was added after 2 years because the old one failed.

Mr. Loving: Does the drain field prohibit a car port above it?

Applicant: No, but it would in in crouch into our business and privacy. Look the carport has been there for 27 years. I moved the carport up because it was within a foot of the building.

Mr. Loving: My question is why not move the carport on the other side? There's going to be a parking issue regardless.

Applicant: That's where we get our deliveries. Plus I have cameras I have to be able see. I have to watch for people pot smoking and love making. We also have to make sure people don't dump all their trash in my dumpsters. You all worked with me in the beginning to get this going but my business is expanding. So I guess if the carport is an issue than I need to find a new location. This is a real hardship.

Mr. Loving: Were very concerned about the road security and public safety.

Applicant: Well reduce the speed limit.

Mr. Loving: That's not up to us. This would be up to Vdot.

Mrs. Walker: I'm concerned with the trucks and tractor trailers that are going by. Someone could really get hurt.

Applicant: Well what about Liz? Not to call you out Liz, but she has tables sitting outside as well.

Elizabeth: Troy Market, could we put up pillars or stone?

Applicant: No, this wouldn't stop a big truck. Plus it wouldn't look good either.

Mrs. Walker: Where was the carport originally?

Applicant: It was behind the trailer for 25 years it goes with whoever rents the trailer.

Mr. Stewart: Mr. Chairman we have photography that shows the structure or lack thereof, of the property.

Mr. Loving: The 2011 shows it there as well.

Mr. Stewart: It doesn't appear to be there in 2009

Mr. Morris: Is there enough room to put the carport on the south end?

Applicant: No, the car port is 18x20 and I'm already close to the line.

Mr. Morris: You could put it behind the building though correct?

Applicant: Yes, I could.

Mr. Morris: Ok, so you could.

Applicant: We have a fire for people to sit around. It's not just a plain building sitting there.

Mr. Morris: Any other public comments. Mr. Payne do you have any question or comments?

Mr. Payne: I understand the property zoned next to this on the South is zoned B-1 So there is no side yard required between B-1 properties other than what's required by building code. So I think the answer to your question is that it appears there's more than 18 feet from the building and the side line. The fact that improvements have been made and I'm not questioning the business. The mobile home is a non performing residential use, so it's not a permitted use.

Mr. Von Keyserling: I don't understand your language. They can't have it there period or they can but can't change the trailer.

Mr. Payne: The trailer is a non-issue to me; the issue is what the condition of the property is as of the date of the ordinance. I think you should not consider if a particular improvement can be located on this property but if reasonable use can be made with the property.

One requests the carport in the earlier years the carport warns there. The other aspect of that is the carport being moved is a violation of the 2011 site plan. It shouldn't be there. A standard variance is where it was when the ordinance was adopted. There was an approved site plan that zoning felt was appropriate.

Mr. Von Keyserling: Does parking encroach on the VDOT right-of-way?

Mr. Payne: Yes I do believe so. However it's a VDOT issue not a county issue.

Applicant: You're taking away from an already small parking lot. That's the problem now.

Mr. Payne: I'm not a designer, but if the business is growing and or you choose to make it larger I would think you're going to continue to run in to this problem anyway.

Mr. Von Keyserling: What if we made the carport setback the same as Troy Markets?

Mr. Loving: The Board has a responsibility and there is a public safety issue. I don't believe we can accept a hardship that is self-inflicted.

Mr. Von Keyserling: It just doesn't meet the criteria of the conditions.

Mr. Morris: Could Fluvanna County be liable for anything?

Mr. Payne: No, the owner would be liable. VDOT can do several things they can remove or give a permit. I do know VDOT is hard on a primary highway. If the appeal was granted then could Fluvanna be liable. The owner could be if the improvements caused a traffic hazard it's an unlawful traffic hazard. Fluvanna county Zoning ordinance states "Buildings shall be located not less than 50feet from any public row. This shall be known as the setback line. All parking lots shall be located not less than twenty five feet (25)' from any public row" I think this is an accurate statement of the zoning law.

Mr. Von Keyserling: Ok, so VDOT would likely take their space back. Since Troy Market is already there could we make it line up with that? It would certainly set a precedent

Mr. Payne: we need to understand what a non performing use is. A nonuse was there before the ordinance if it wasn't there then you would have to tear it down. Have to tear it doesn't allow you to increase.

Mr. Von Keyserling: I do have to go back into the conditions. I hope you stay regardless But I can't get passed the first condition for hardship due to the carport the carport is creating the hardship; I have and do support your busy with my family. As far as the speed limit it is a public issue with the board of super visor to be noted in the minutes with the department of transportation.

Mr. Von Keyserling: we can't approve a variance it doesn't meet the conditions met

Mrs. Walker: I wish there's some way to move the carport and utilize the space for parking.

Mr. Von Keyserling: I will help you come and move the carport, unfortunately I don't think this is approvable.

Applicant: the only thing I will move is the building and my sign. How long do I have to move so I don't get put into jail? Can you advise me what to do?

Mr. Stewart: We haven't sent anything to Papa Jim's in regards to a time frame for violation. They have thirty days to fix the violations.

Applicant: As far as the carport I'm not moving it it's not my property. I'm out of here, thank you Liz.

MOTION:

Mr. Loving made a motion to deny BZA 16:02 Papa Jims Mr. Morris seconded. The motion carried with a vote of 0-4-0. AYES: None NAYS: Mr. Loving, Mr. Morris, Mr. Von Keyserling, and Mrs. Walker ABSTAIN: None ABSENT: Mr. Zimmer

Unfinished Business: None

New Business: None

ADJOURNMENT:

There being no further business, Chairman Morris adjourned the Board of Zoning Appeals meeting of October 11, 2016 at 8:15 p.m.

Minutes recorded by Stephanie Keuther.

Chairman Harold Morris
Fluvanna County Zoning Board of Appeals

Audio recordings of the minutes are available upon request

Approved