

**FLUVANNA COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING MINUTES
Fluvanna County Library
214 Commons Boulevard
Palmyra, VA 22963
May 18, 2021
7:00 pm (Virtual Meeting)**

MEMBERS PRESENT: Harold Morris
Peter Von Keyserling
Easton Loving
Ed Zimmer
Carol Walker

STAFF PRESENT: Eric Dahl, County Administrator
Frederick Payne, County Attorney
Douglas Miles, Community Development Director
Jason Overstreet, Senior Planner
Valencia Porter, Administrative Program Specialist

MEMBERS ABSENT: None

1. **CALL TO ORDER, THE PLEDGE OF ALLEGIANCE AND A MOMENT OF SILENCE:**
At 7:00 pm, Douglas Miles called the May 18, 2021 regular Meeting to order, followed by the Pledge of Allegiance and a moment of silence
2. **2021 Organizational Meeting:**

MOTION:	I move to elect Morris as Chairman of the Fluvanna County Board of Zoning Appeals for the calendar year of 2021				
MEMBER:	Morris	Keyserling	Loving	Zimmer	Walker
ACTION:		Second	Motion		
VOTE:	Yes	Yes	Yes	Yes	Yes
RESULT:	5-0 Approved				

Douglas Miles turned the meeting over to Chairman Harold Morris.

MOTION:	I move to elect Peter Keyserling as Vice Chairman of the Fluvanna County Board of Zoning Appeals for the calendar year of 2021				
MEMBER:	Morris (Chair)	Keyserling	Loving	Zimmer	Walker
ACTION:			Motion		Seconded
VOTE:	Yes	Yes	Yes	Yes	Yes
RESULT:	5-0 Approved				

MOTION:	Board of Zoning Appeals Meeting Calendar 2021				
MEMBER:	Morris (Chair)	Keyserling (Vice Chair)	Loving	Zimmer	Walker
ACTION:		Motion	Seconded		
VOTE:	Yes	Yes	Yes	Yes	
RESULT:	5-0 Approved				

3. **MINUTES:**

MOTION:	Board of Zoning Appeals Minutes of March 17, 2020				
MEMBER:	Morris (Chair)	Keyserling (Vice Chair)	Loving	Zimmer	Walker
ACTION:		Motion		Seconded	
VOTE:	Yes	Yes	Yes	Yes	Abstained
RESULT:	4-0-1 Approved				

4. PUBLIC HEARINGS:

BZA 21:01 – Edward Theodore & Mary A. Whalen – Jason Overstreet, Senior Planner

A Variance request to Section 22-7-11 (B) setback lines to allow for the reduction of the rear yard setback from thirty (30) feet to twenty-five (25) feet to construct a rear addition on Tax Map 9 Section 13 Parcel 1. The subject property is zoned R-3, Residential Planned Community District within Village Oaks residential subdivision and is known as 8 Virginia Avenue. The property is located in the Palmyra Election District and is in the Rivanna Community Planning Area.

Chairman Morris asked the applicant if they would like to come forward and speak.
Edward Whalen, applicant: Stated that when purchasing the home they asked than will it be acceptable to add a sunroom to the back of their home, at time of purchasing someone quoted them and said yes that shouldn't be a problem. After purchasing, they was told that they would have to ask the Home Owners Association, which was told to come to the county and ask for a Variance.

Chairman Morris open the Public Hearing at 7:13, Chairman Morris than closed public hearing at 7:14. Chairman Morris has now opened it up for discussion.

Mr. Zimmer: Asked about the 30 foot setback, is it part of the community or the convenience?

Mr. Miles: replied, yes sir, when they rezone Village Oaks to R-3 they created a master plan. With a master plan they set and stone to establish their setbacks. So the 30 foot setbacks is part of the Master Plan.

Mr. Payne: Yes, it is both private restriction and public

Mr. Zimmer: Asked what are some of the other setbacks?

Mr. Miles: Stated that they are very similar in other districts. For example in R-4 there are 25 foot setbacks.

Keyserling: Stated that he doesn't see no objections

Zimmer: Stated that he doesn't see no objections either

Loving: Stated that there are a couple of circumstances that make this really unique because of the open space. I guess there are some questions in my mind to whether or not we meet all the test in the Variance, but I'm inclined to support.

MOTION:	I move to Approve BZA 21:01, a request for a Variance to Fluvanna County Section 22-7-11 (B) of the Zoning Ordinance to allow for the reduction of the minimum rear yard setback from thirty (30) feet to twenty-five (25) feet, for the purpose of adding an addition to the existing single-family, detached dwelling that is located on Tax Map 9, Section 13, Parcel 1 and is known as 8 Virginia Avenue.				
MEMBER:	Morris (Chair)	Loving (Vice Chair)	Walker	Zimmer	Keyserling
ACTION:		Motion	Second		
VOTE:	Yes	Yes	Yes	Yes	Yes
RESULT:	5-0 Approved				

5. UNFINISHED BUSINESS:

None

6. NEW BUSINESS: Communications:

2020 General Assembly changes to the Board of Zoning Appeals – Fred Payne, County Attorney

Sec. 22-17-8A. – Flood protection.

This section is adopted pursuant to the authority granted to localities by section 15.2-2280 *and section 15.2-984* of the Code of Virginia.

Sec. 22-18-1. – Board of zoning appeals.

(A) A board consisting of five (5) members shall be appointed by the Circuit Court of Fluvanna County. Members of the board shall be residents of Fluvanna County. Members of the board may receive such compensation as may be authorized by the governing body. Members shall be removable for cause by the appointing court after hearing held after at least fifteen (15) days' notice. Appointments for vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term.

(B) The term of office shall be for five (5) years, except that of the first five (5) members appointed, one (1) shall serve for five (5) years, one (1) for four (4) years, one (1) for three (3) years, one (1) for two (2) years and one (1) for one (1) year. Members may be reappointed to succeed themselves. A member whose term expires shall continue to serve until his successor is appointed and qualifies. Members of the board shall hold no other public office in the County, except that one of the five appointed members may be an active member of the planning commission, *any member may be appointed to serve as an officer of election as defined in section 24.2-101 of the Code of Virginia, and any member may serve as an elected official of the Town of Scottsville.*

Sec. 22-18-2. – Powers of the Board of Zoning Appeals.

(1) Notwithstanding any other provision of law, general or special, a variance shall be granted 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, *or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability;*

(2) Any variance granted to provide a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance, subject to the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable. If a request for a reasonable modification is made to a locality and is appropriate under the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable, such request shall be granted by the locality unless a variance from the Board of Zoning Appeals under this section is required in order for such request to be granted.

Sec. 22-18-4. – Applications for variances, appeals to the Board of Zoning Appeals.

(1) Any written notice of a zoning violation or a written order of the Zoning Administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within thirty (30) days in accordance with this section, and that the decision shall be final and unappealable if not appealed within thirty (30) days. The zoning violation or written order shall include the applicable appeal fee and a reference to where additional information may be obtained regarding the filing of an appeal. The appeal period shall not commence until the statement is given *and the Zoning Administrator's written order is sent by registered or certified mail to, or posted at, the last known address or usual place of abode of the property owner or its registered agent, if any. There shall be a rebuttable presumption that the property owner's last known address is*

~~that shown on the current real estate tax assessment records, or the address of a registered agent that is shown in the records of the Clerk of the State Corporation Commission. A written notice of a zoning violation or a written order of the Zoning Administrator that includes such statement sent by registered or certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or records shall be deemed sufficient notice to the property owner and shall satisfy the notice requirements of this section.~~

Sec. 22-18-7. – Certiorari to review decisions of Board of Zoning Appeals.

(A) Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer or any officer, department, board or bureau of the County, may ~~file with the clerk of the circuit court for the County a petition that shall be styled "In Re: date Decision of the Board of Zoning Appeals of Fluvanna County"~~ present to the circuit court of the County a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the board.

(B) Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the Board of Zoning Appeals and shall prescribe therein the time within which a return thereto must be made and served upon ~~the secretary of the Board of Zoning appeals or, if no secretary exists, the chair of the Board of Zoning Appeals, which shall not be less than 10 days and may be extended by the court. Once the writ of certiorari is served, the Board of Zoning Appeals shall have 21 days or as ordered by the court to respond.~~ the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

(C) ~~Any review of a decision of the board shall not be considered an action against the board and the board shall not be a party to the proceedings; however, the board shall participate in the proceedings to the extent required by this section. The governing body, the landowner, and the applicant before the Board of Zoning Appeals shall be necessary parties to the proceedings in the circuit court. The court may permit intervention by any other person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals.~~

(D)(C) The Board of Zoning Appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof as may be called for by such writ. The return shall concisely set forth such facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(E)(D) The Court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

(F)(E) Costs shall not be allowed against the ~~locality or the governing body~~board, unless it shall appear to the court that it acted in bad faith or with malice ~~in making the decision appealed from~~. In the event the decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or person who requested the issuance of the writ of certiorari to pay the costs incurred in making a return of the record pursuant to the writ of certiorari. *If the petition is withdrawn subsequent to the filing of the return, the locality or the governing body may request that the court hear the matter on the question of whether the appeal was frivolous.*

7. ADJOURNMENT:

Chair adjourned the Board of Zoning Appeals meeting of May 18, 2021 at 7:37pm.

Minutes recorded by Valencia Porter, Administrative Program Specialist.

Harold Morris, Chairman
Fluvanna County Board of Zoning Appeals

APPROVED