

**BOARD OF ZONING APPEALS**  
**May 25, 2005**

THE REGULAR MEETING OF THE GREENE COUNTY BOARD OF ZONING APPEALS WAS HELD ON WEDNESDAY, MAY 25, 2005, AT 7:30 P.M.

Those present were:            Raymond Daughtry, Chairman  
   Joel Snow, Member  
   Richard Herring, Member  
   Bart Svoboda, Zoning Official  
   Marsha Alley, Secretary

The Chairman called the meeting to order stating that there would be two public hearings for variance requests. He explained that three members are present which will require a unanimous vote for any motions to pass.

**PUBLIC HEARING: Catherine & Scott Perry—Variance Request #05-013**

Mr. Daughtry asked Mr. Svoboda to read the request and give a report.

Mr. Svoboda read the request: Catherine & Scott Perry request a 20 ft. front yard variance from Article 15-6-1 of the Greene County Zoning Ordinance which requires a 35 ft. front yard setback for non-conforming parcels. This request is on property that is identified on the County Tax Maps as 27A-(9)-4 located on Sunrise View containing 0.84 acre and is zoned A-1, Agricultural, non-conforming. (VAR#05-013

Mr. Svoboda gave a staff report and a digital presentation. He stated that the request is for a reduction in the setback from the edge of the right-of-way from 35 feet to 15 feet for the construction of a garage. He added that public water and public sewer are not available to the site. He pointed out that the proposed location is approximately 40 feet from the center of the gravel road, noting that the location of the gravel road is not specified on the plat. He stated that the septic field location remains undefined. He added that the work done thus far has been done without a building permit. He stated that staff has visited the site and does appreciate the applicant's position. However, planning staff recommends denial of this application in that:

- a. the strict application of the ordinance would not produce an undue hardship given that reasonable use of the property already exists in the form of a single family dwelling, and
- b. such hardship is shared generally by other nonconforming properties in the zoning district given that setback issues are addressed in Article 15.

Mr. Daughtry swore in speakers.

Scott Perry, applicant, addressed the Board. He stated that he was unsure as to what "unreasonable use" meant and noted that it would hold a relative meaning. He explained that his hobby is building muscle cars and that the painting must be done indoors. He added that the proposed site is the only site on the property for the garage. He pointed

out the power lines, telephone lines, well, and other obstacles on the property. He restated that building muscle cars is his only real hobby and that not being able to do that is not reasonable use of his property. He submitted photos of the car and the property as well as the road. He stated that prior to the meeting he had spoken with Carol Weiss of the Homeowners' Association and that the HOA had sent a letter to the county giving their permission for the garage to be built. He added that most of the property owners do not even know where Sunrise View is. He noted that the immediate adjoining property owners signed a form with no opposition to the request. He stated that he then received another letter from Carol Weiss (HOA) stating that the HOA has changed their minds about approving the garage because the president is apparently paranoid about the increase of building in the area but that ultimately the HOA would agree with the county. He stated that if the variance is not granted so that he has somewhere to work on the car, he will have to sell the car. He reminded the Board that this is his hobby and not a business. He added that he lives on a dead end road and that the garage would help to increase property values as the car is currently covered by a tarp. He stated that he does not have reasonable use of his property if he cannot perform his one major hobby. He added that if there was any other place to build the garage, he would place it there so that this process could be avoided but that this is the only option. He asked that if the request is denied, what distance, if any, would be allowed for a variance so that maybe he could come up with another idea. He explained that the structure was being built without a permit because he was new to Virginia and made the mistake of listening to the HOA property manager who told him that he did not need a permit because the garage would not be fixed to the ground. He stated that when he received the stop work order, he came to the office and found out otherwise and realized the need for the variance.

Mr. Daughtry asked if anyone had visited the site.

Mr. Snow stated that he had visited the site. He asked Mr. Svoboda if Article 15 would supercede Article 4 in this instance.

Mr. Svoboda stated that it would, adding that the lot is a non-conforming lot and the front setback would be 35 feet to the front property line as opposed to 75 feet from the center line of the right-of-way as required in Article 4 for conforming lots.

Mr. Snow asked Mr. Perry if he had contacted Sprint to ask about relocating the telephone line.

Mr. Perry stated that the line could be relocated but that he would have to ask Sprint and the power company. He pointed out that the only option for relocating the line would be where the shed is currently located which holds his tools because he has no garage. He added that he is in a nasty catch-22.

Mr. Snow asked how far the shed is located from the well.

Mr. Perry stated that the well is about eight feet from the shed, adding that he had considered tearing down the shed to place the garage there but the well would be in the way. He stated that the garage would be for the muscle cars and not the cars that he drives.

Mr. Snow asked if the garage could be built where the vehicles are currently parked.

Mr. Perry stated that there is a telephone line under that driveway that goes to the neighbor's house.

Mr. Snow asked Mr. Perry if he knew for a fact that Sprint would not relocate that line.

Mr. Perry stated that a lot of work would have to be done for that to be relocated.

Mr. Herring asked if the garage could be built over the line.

Mr. Perry stated that Sprint would not allow a concrete slab over the line.

Mr. Snow asked if Sprint has a legal easement through the property.

Mr. Perry stated that he did not know.

Mr. Snow stated that if there is no legal easement, the line does not have to be there. He suggested that Mr. Perry contact Sprint's Engineering Department regarding relocating the line.

There was discussion about the relocation of the telephone line and the rearrangement of the proposed garage and the current parking area.

Mr. Perry asked what the setback requirements would be if the current parking area was used for the garage site.

Mr. Snow stated that it would be an accessory structure and the setbacks would be ten feet from the side and rear property lines.

There was discussion regarding the front and side yard setback requirements for accessory structures on non-conforming lots.

Mr. Daughtry stated that he believed the Board has given Mr. Perry some alternatives to consider.

Mr. Perry asked what would happen if the variance is not granted and Sprint will not relocate the telephone line.

Mr. Snow advised Mr. Perry that he will still be in violation of the setback requirements. He stated that he seemed to believe that there are other alternatives especially on the side of the property where the current parking area is located. He suggested that the property be surveyed to assure the ten foot setback from the property line and that the applicant contact Sprint.

Mr. Perry stated that if this request is not granted, the alternative would be to turn the garage sideways but added that he would still need a variance. He presented a sketch of the alternate plan to the Board. He asked what distance could be granted for a variance. He added that he could tear down what has been constructed and build the alternate plan.

Mr. Snow asked how far an accessory structure must be from a house.

Mr. Svoboda stated that there is no zoning restriction but that it may be addressed in the Building Code by fire rating.

There was discussion on the sketch of the alternate plan submitted by the applicant.

Mr. Herring asked where the drain field is located.

Mr. Perry stated that the drain field is located behind the house and down the hill.

Mr. Daughtry asked if there were any other comments or matters of discussion.

There were none and the public hearing was closed.

Mr. Snow made a motion to deny VAR#05-013 due to the following:

- a. the strict application of the ordinance would not produce an undue hardship given that reasonable use of the property already exists in the form of a single family dwelling, and
- b. such hardship is shared generally by other nonconforming properties in the zoning district given that setback issues are addressed in Article 15.

Mr. Herring asked if the applicant would have to reapply if he came back with a different plan.

Mr. Svoboda stated that he would have to reapply if the request was denied tonight but that it could be deferred and remain an active request.

Mr. Snow asked Mr. Perry if he could find other options if the request was deferred tonight.

There was discussion of other alternatives and the possibility of tabling the issue.

Mr. Snow stated that if the applicant submits an alternate plan that complies with the ordinance there would be no reason for him to come back to the BZA.

Mr. Daughtry agreed.

Mr. Snow withdrew his previous motion to deny the request.

Mr. Snow made a motion to defer the request for 30 days or until the next scheduled meeting.

There was discussion on meeting the advertising deadlines.

Mr. Herring seconded the motion.

Mr. Daughtry asked Mr. Svoboda to call for the vote.

Mr. Svoboda called for the vote.

**AYE**

Mr. Snow  
Mr. Herring  
Mr. Daughtry

**NAY**

The motion to defer carried by a 3-0 vote.

**PUBLIC HEARING: Charles & Judy Rogers—Variance Request #05-014**

Mr. Daughtry asked Mr. Svoboda to read the request and give a report.

Mr. Svoboda read the request: Charles & Judy Rogers request a 3.1 ft. side yard variance from Article 5 of the Greene County Zoning Ordinance which requires a 15 ft. side yard setback. This request is on property that is identified on the County Tax Maps as 60C-(14)-10B located at 101 Lake Haven Lane containing 3.15 acres and is zoned R-1, Residential. (VAR#05-014)

Mr. Svoboda gave a staff report and a digital presentation. He corrected the staff report explaining that the side yard requirement is 30 feet as it is corner lot and not a side yard

to an adjoining property line. He stated that the request is to reduce the setback from the edge of the right-of-way from 30 feet to 29.6 feet which will result in a 3.1 ft. variance.

He added that the site sketch shows the proposed division that will correct some of the issues on this parcel. He noted that the house has been constructed thus far under building permit #1962-2004 with approval from the county and no work has been done since the posting of the stop work order.

Mr. Daughtry swore in the speakers.

Larry Miller, attorney for the applicants, addressed the Board. He stated that staff had been thorough in the presentation and that this variance is basically their last alternative.

He added that the applicants are trying to complete the construction of this home and continue to incur more costs daily and want to resolve the issue. He pointed out that a surveyor laid out the home site prior to construction and the error was found later.

Mr. Daughtry stated that the purchase of the additional property and the division of the property would then make the current front yard a side yard.

Mr. Svoboda explained that the current front yard would be a side yard with a 30 ft. setback instead of a 15 ft. setback.

Mr. Miller added that there is a contract of sale contingent upon the approval of the variance request.

There was discussion on the acquisition of the additional property and how the division of the property would change the setback requirements for the parcel. The access easement was also discussed and it was determined that the rear lot would be accessed through the front lot.

Mr. Daughtry stated that it seems that a lot of work has been done to resolve the issue to this point. He asked for clarification if a surveyor had located the house originally.

Mr. Miller stated that a surveyor had supposedly located the house correctly.

Mr. Snow asked if the same surveyor was being used for the division survey.

Mr. Miller stated that the same surveyor would not be used.

Mr. Daughtry asked who would own the two new lots.

Mr. Miller stated that the Rogers' would own the lots.

Mr. Svoboda explained that the division would occur as a family division which requires

the property to be owned by a family member for a minimum of five years. He added that it is the Rogers' intent to keep the property in the family as they have six children.

Mr. Snow stated that he understands that the responsibility of the correct placement falls on the property owner, developer, or builder. He added that it seems that the county does not take measures to assure that the location is correct. He noted that building permit applicants may not always have the correct information.

Mr. Svoboda stated that he could pass those concerns along to the Board of Supervisors.

Mr. Daughtry stated that the BZA has written letters to the Inspections Department regarding that concern in the past.

There was discussion on the house location as provided by the surveyor which was incorrect.

Mr. Snow asked how the encroachment was discovered.

Mr. Svoboda stated that an adjoining property owner called the office with an inquiry. He added that staff then visited the site to verify the measurements as submitted and found the encroachment.

Mr. Snow asked if any objections to the request had been received.

Mr. Svoboda stated that there had been some inquiries but nothing had been submitted in writing.

There was discussion regarding access into the house/garage via the semi-circular driveway and possible conditions for approval due to road width and setbacks.

Mr. Snow stated that the Rogers seemed to have already conditioned themselves to this point, adding that it seems that they have gone out of their way to try to make this work.

Mr. Herring made a motion to approve VAR#05-014.

Mr. Snow seconded the motion.

Mr. Daughtry asked Mr. Svoboda to call for the vote.

Mr. Svoboda called for the vote.

**AYE**

**NAY**

Mr. Snow  
Mr. Herring  
Mr. Daughtry

The motion to approve carried by a 3-0 vote.

There was discussion regarding the failure of encroachments being discovered until construction reaches a point such as demonstrated tonight, noting Wayne Homes dilemma in the area.

Mr. Svoboda stated that the Rogers' made every effort to correct the problem instead of coming in for the variance request. He added that they wanted to have approval in order to be in compliance.

### **OLD/NEW BUSINESS**

Mr. Herring asked what would be on the agenda for the June meeting aside from the Perry deferral.

Mr. Svoboda that there will be a variance request from Tierney, LLC to allow one (1) 250 square foot sign on a business parcel instead of several smaller signs as allowed.

Mr. Herring stated that he may have to excuse himself as he sold them the land.

Mr. Snow asked if the Perry request could have been avoided if staffing were better within the departments.

Mr. Svoboda stated that it may have been possible had staffing been better.

There was discussion on Sprint and easement issues.

Mr. Snow referred to members excusing themselves from decisions and stated that he had excused himself from a hearing in the past which was denied. He added that he is not bothered by what is going on there with the motocross and such but noted that the particulars pointing out what could not be done are not all being met. He added that it is his understanding that there is a cost involved to go there, noting that it was his understanding that no fee could be charged.

Mr. Herring asked if other setback encroachments are not being caught.

Mr. Svoboda stated that there may be some that the department is not aware of.

There was discussion on how to handle the problem of setback violations with some

suggestions being to require surveys, soils and water information, etc.

## **MINUTES**

Mr. Herring made a motion to approve the minutes of April 27, 2005 as presented.

Mr. Snow seconded the motion.

The minutes of April 27, 2005 were unanimously approved.

## **OTHER MATTERS**

There were no other matters for discussion.

## **ADJOURNMENT**

There being no further business, the meeting was adjourned.

Respectfully submitted,

*Marsha Alley*

Marsha Alley, Secretary