



CITY OF RICHMOND

DEPARTMENT OF
PLANNING AND DEVELOPMENT REVIEW
BOARD OF ZONING APPEALS

BOARD OF ZONING APPEALS

MEETING MINUTES

WEDNESDAY, MARCH 7, 2018

On Wednesday, March 7, 2018, the Board of Zoning Appeals held a public hearing in the Fifth Floor Conference Room, 900 East Broad Street, at 1:00 p.m.; display notice having been published in the Richmond Legacy Newspaper on February 21 and 28, 2018 and written notice having been sent to interested parties.

Members Present: Burt F. Pinnock, Chair
 Roger H. York, Jr., Vice-Chair
 Rodney M. Poole
 Kenneth R. Samuels
 Edward H. Winks, Jr.

Staff Present: Roy W. Benbow, Secretary
 David Duckhardt, Zoning Administrator (Acting)
 Brian P. Mercer, Planner II
 Neil R. Gibson, Assistant City Attorney

The Chairman called the meeting to order and read the Board of Zoning Appeals Introductory Statement, which explains the proceedings of the meeting. The applicant and those appearing in support of an application speak first, followed by those appearing in opposition.

CASE NO. 05-18

APPLICANT: Raul Cantu

PREMISES: 3449 WEST CARY STREET
 (Tax Parcel Number W000-1591/009)

SUBJECT: A building permit to install a walk-in cooler and freezer to the rear of an existing restaurant.

DISAPPROVED by the Zoning Administrator on September 8, 2017, based on Sections 30-300 & 30-433.5(3) of the zoning ordinance for the reason that: In a UB (Urban Business District), the rear yard (setback) requirement is not met. A rear yard of twenty feet (20') is required; 10'2" exists and is proposed.

APPLICATION was filed with the Board on September 8, 2017, based on Section 15.2-2309.2 of the Code of Virginia.

APPEARANCES:

For Applicant: Raul Cantu

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Raul Cantu, has requested a variance to install a walk-in cooler and freezer in the rear of an existing restaurant located at 3449 W. Cary Street. Mr. Cantu explained that he is the owner of Nacho Mama's and was in the process of selling the restaurant. Mr. Cantu further explained that he was requesting a variance for a rear yard setback. Mr. Cantu indicated that the rear yard setback requirement is 20 feet and he is requesting approval of a previously constructed cooler/freezer within 10.2 feet of the rear property line. Mr. Cantu stated that the cooler/freezer was constructed in 1996. Mr. Cantu explained that he contracted with a company for the freezer/cooler and was not aware that a permit was not acquired. Mr. Cantu stated that failure to receive the requested variance may impact sale of the business and its overall operation. It was noted that Mr. Cantu had acquired a parking lease for the requisite parking.

The Board finds that evidence shows that the applicant failed to show 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 (i) the property interest for which the variance is being requested was constructed in good faith and any hardship was created by the applicant for the variance; (ii) the granting of the variance will be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is 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; and (iv) the relief or remedy sought by the

variance application is available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a variance from the rear yard (setback) requirement be denied to Raul Cantu for a building permit to install a walk-in cooler and freezer to the rear of an existing restaurant.

ACTION OF THE BOARD: (5-0)

Vote to Deny

affirmative: Poole, Winks, Pinnock, York, Samuels

negative: none

CASE NO. 06-18

APPLICANT: Curtis and Robyn Bailey

PREMISES: 1924 HANOVER AVENUE
(Tax Parcel Number W000-0859/031)

SUBJECT: A building permit to legitimize a previously enclosed two-story covered open porch to a single-family detached dwelling.

DISAPPROVED by the Zoning Administrator on January 9, 2018, based on Sections 30-300, 30-412.5(1)b, 30-412.6, 30-620.1(c) & 30-1040.2(a) of the zoning ordinance for the reason that: In an R-6 (Single-Family Attached Residential District), the plans are not in compliance with the previous approval (Case No. 60-67) and the side yard (setback) and lot coverage requirements are not met. The previous approval granted a variance from the side yard (setback) requirement for the replacement of a side porch with a lower patio and upper deck (24'6" x 8'5"). A subsequent enclosure of the upper and lower porch which was not sanctioned by a building permit currently exists/ is proposed. A side yard of three feet (3') is required/ none exists/ is proposed. Maximum lot coverage shall not exceed fifty-five percent (55%) of the area of the lot. Lot coverage of 1,454.06 square feet (55%) is permitted; 1604.0 square feet (60%) exists/ is proposed.

APPLICATION was filed with the Board on January 9, 2018, based on Section 15.2-2309.2 of the Code of Virginia.

APPEARANCES:

For Applicant: Henry Tenser, Tricia Bryant

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicants, Curtis and Robyn Bailey, have requested a variance to legitimize a previously enclosed two-story covered open porch to a single-family detached dwelling for property located at 1924 Hanover Avenue. Ms. Tricia Bryant, representing the applicant, testified that a side yard setback and lot coverage variance was being requested. Ms. Bryant noted that a previous variance had been approved for a side yard setback for a side porch in 1967. Ms. Bryant further noted that enclosure of the upper and lower porch was undertaken by a prior owner without benefit of a building permit. Ms. Bryant stated that the enclosure is located on the side property line and that a lot coverage of 55% is permitted and that they are requesting a lot coverage of 60%. Ms. Bryant noted that her clients purchased the property in 2009. Ms. Bryant indicated that the impact would be significant on the livability of the dwelling in event the variance were denied. Ms. Bryant stated that the new construction will be significantly safer and comply with the building code. The existing siding will be replaced with brick. Ms. Bryant noted that the adjoining property owner was in support of the requested variance as was the Fan District Association.

The Board finds that 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 (i) 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; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) 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; (iv) 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 (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a

zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a variance from the side yard (setback) and lot coverage requirements be granted to Curtis and Robyn Bailey for a building permit to legitimize a previously enclosed two-story covered open porch to a single-family detached dwelling.

ACTION OF THE BOARD: (3-2)

Vote to Grant

affirmative: Winks, York, Samuels

negative: Poole, Pinnock

CASE NO. 07-18 (CONTINUED TO APRIL 4, 2018 MEETING WITHOUT FEE)

APPLICANT: Amin Satish and Mitesh S

PREMISES: 812 WEST MARSHALL STREET
(Tax Parcel Number N000-0351/023)

SUBJECT: A building permit to construct a new building (1,507 sq. ft.) for restaurant use.

DISAPPROVED by the Zoning Administrator on January 9, 2018, based on Sections 30-300 & 30-710.1.(a) of the zoning ordinance for the reason that: In an M-1 (Light Industrial District), the off-street parking requirement is not met. Fourteen (14) parking spaces are required; eleven (11) are proposed.

APPLICATION was filed with the Board on January 9, 2018, based on Section 1040.3(11) of the Zoning Ordinance of the City of Richmond.

CASE NO. 08-18

APPLICANT: Kurt Engleman

PREMISES: 2308 IDLEWOOD AVENUE
(Tax Parcel Number W000-1032/040)

SUBJECT: A building permit to construct a new single-family detached dwelling and masonry wall.

DISAPPROVED by the Zoning Administrator on January 11, 2018, based on Sections 30-300, 30-412.5(1)(a) & 30-630.9(b) of the zoning ordinance for the reason that: In an R-6 (Single-Family Attached Residential District), the front yard (setback) requirement is not met. A front yard of fifteen feet (15') is required; five feet (5') ± is proposed along the Grayland Avenue street frontage. The front yard (setback) and maximum allowable height limit for a wall within a required front yard is exceeded. In the R-6 zoning district fences and walls located within required front yards shall not exceed four feet (4') in height; six feet six inches (6'6") is proposed.

APPLICATION was filed with the Board on January 11, 2018, based on Section 15.2-2309.2 of the Code of Virginia.

APPEARANCES:

For Applicant: Kurt Engleman

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Kurt Engleman, has requested a variance and a special exception to construct a new single-family detached dwelling and masonry wall for property located at 2308 Idlewood Avenue. Mr. Engleman explained that part of his goal was to provide appropriate infill for the Byrd Park neighborhood. Mr. Engleman further explained that his neighbors and the Byrd Park Civic Association were in support of the proposed infill. Mr. Engleman stated he purchased the property from the City in 2017. Mr. Engleman emphasized the fact that the lot was irregular in shape and could not accommodate any reasonable construction without benefit of a variance. Mr. Engleman indicated that based on the lotting pattern that front yards were required on both Grayland Avenue and Idlewood Avenue which further restricted development of the property. Mr. Engleman noted that the irregularly shaped property constituted a significant hardship based on the lack of buildable area of the lot. Mr. Engleman stated the property had been vacant since 1970 and was a blighting influence on the neighborhood. Mr. Engleman further stated that the property was located adjacent to the Downtown Expressway which constituted both an issue for noise

and security. Mr. Engleman stated that the current zoning only permitted a 4 foot wall and he was requesting approval of a 6 1/2 foot wall. Mr. Engleman noted that there were several other such walls located within the surrounding neighborhood.

The Board finds that 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 (i) 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; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) 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; (iv) 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 (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

The Board is satisfied that the property was acquired in good faith and pursuant to Section 114-1040.3 (10) of the zoning ordinance, the applicant has shown that the property on which the wall is to be constructed is devoted to a conforming dwelling use, that the proposed height of the wall is reasonably necessary to provide security for the property and/or to provide a buffer from noise and activity on the adjacent street, that the design and construction materials of the wall will be compatible with the main building and other structures located on the lot and with the general character of development in the immediate surrounding area and that the wall will not unreasonably impair light and air to adjacent property, and will not impair necessary visibility for operators of motor vehicles at any intersection of the adjacent street with an alley, driveway or other street.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a variance and special exception from the front yard (setback) and wall height requirements be granted to Kurt Engleman for a building permit to construct a new single-family detached dwelling and masonry wall, subject to substantial compliance with the elevation drawings submitted to the Board.

ACTION OF THE BOARD: (5-0)

Vote to Grant Conditionally
 affirmative: Poole, Winks, Pinnock, York, Samuels
 negative: none

CASE NO. 09-18

APPLICANT: McLaughlin Homes, LLC
 PREMISES: 4200 KENSINGTON AVENUE
 (Tax Parcel Number W000-1913/008)
 SUBJECT: A building permit to construct a one-story detached garage (23' x 27') accessory to a single-family detached dwelling.

DISAPPROVED by the Zoning Administrator on January 22, 2018, based on Sections 30-300, 30-630.1(a) & 30-1040.2(a) of the zoning ordinance for the reason that: In R-5 (Single-Family Residential District), the plans are not in compliance with the previous approval (Case No. 31-17). The previous approval granted a variance from the lot area, lot width, side yard and street side yard (setback) requirements, subject to compliance with the plans submitted to the Board including provision of brick veneer for the main dwelling. The interior side yard of five feet (5') and the street side yard (setback) of ten feet (10') are required. The previous approval reflected an interior side yard of 4.58 feet for the proposed one-story detached garage (22' x 20'6"); the proposal is to construct a one-story detached garage with a street side yard of three feet (3') proposed along the Antrim Avenue street frontage.

APPLICATION was filed with the Board on January 18, 2018, based on Section 15.2-2309.2 of the Code of Virginia.

APPEARANCES:

For Applicant: Kyle McLaughlin
 Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, McLaughlin Homes LLC, has requested a variance to construct a one-story detached garage (23' x 27') accessory to a single-family

detached dwelling. Mr. McLaughlin testified that he had received previous Board of Zoning Appeals approval for a garage that met the street side yard requirement of 10 feet. Mr. McLaughlin stated that a street side yard setback of 3 feet was being requested to increase the east-west dimension of the garage from 22 feet to 27 feet. Mr. McLaughlin explained that the dimension of the formerly approved garage was insufficient to accommodate the homeowners two SUVs given the turning radius's. Mr. McLaughlin indicated that two of the four corners of the intersection of Antrim Avenue and Kensington Avenue have similarly situated garages. Mr. York noted that the setbacks of the dwelling and the proposed garage will be similar.

The Board finds that 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 (i) 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; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) 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; (iv) 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 (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a variance from the street side yard (setback) requirement be granted to McLaughlin Homes, LLC for a building permit to construct a one-story detached garage (23' x 27') accessory to a single-family detached dwelling, subject to the condition that the garage door opening may be reconfigured from a double door configuration to a single door configuration.

ACTION OF THE BOARD: (4-1)

Vote to Grant Conditionally

affirmative: Winks, Pinnock, York, Samuels

negative: Poole

CASE NO. 10-18

APPLICANT: Matthews Realty Group LLC

PREMISES: 5214 WAVERLY AVENUE
(Tax Parcel Number E010-0136/006)

SUBJECT: A building permit to split an unimproved vacant lot and to construct a new single-family detached dwelling on an independent lot.

DISAPPROVED by the Zoning Administrator on January 19, 2018, based on Sections 30-300, 30-410.4, 30-410.5(1) & 30-630.1(a)(1) of the zoning ordinance for the reason that: In an R-5 (Single-Family Residential District), the lot area, lot width, and front yard (setback) requirements are not met. Lot areas of six thousand square feet (6,000 SF) and lot widths of fifty feet (50') are required. For zoning purposes, one (1) lot having a lot area of 8,450 square feet and a lot width of sixty-five feet (65') currently exists; lot areas of 4,225.0 square feet (#5214) and 4,225.0 square feet (#5216) and lot widths of 32.5 feet (#5214) and 32.5 feet (#5216) are proposed. A front yard of 18.96', as established by 1402 Winchell Street is required; 7.5' is proposed for the new dwelling along the Winchell Street frontage (#5216).

APPLICATION was filed with the Board on January 19, 2018, based on Section 15.2-2309.2 of the Code of Virginia.

APPEARANCES:

For Applicant: Pascal Matthews, Charles Snead

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Matthews Realty Group LLC, has requested a variance to construct a new single-family detached dwelling for property located at 4200 & 4202 Kensington Avenue. Mr. Pascal Matthews, representing the applicant, testified that the existing home on the lot requires extensive repairs. Mr. Matthews stated that when the property was purchased the intent was to construct an additional single-family dwelling within the southern portion of the lot at the corner of Waverly Avenue and Winchell Street. Mr. Matthews noted that being a corner lot that a street side yard setback is required along Winchell

Street. Mr. Matthews reiterated the fact that the intent was to utilize the proceeds for the new dwelling to help offset the cost of renovating the existing dwelling. Mr. Matthews stated that their goal is to provide affordable housing for the Fulton Hills community. Mr. Matthew further stated that they had the support of surrounding neighbors as well as the Fulton Hills Civic Association.

Speaking in support, Mr. Charles Snead testified that the average lot width in the block is approximately 50 feet and the subject lot has 65 feet of lot width. After investigation it was determined that the average lot width in the block is 45 feet. Mr. Poole noted that the requested variance proposes 32.5 feet of lot width which is inconsistent with other lot widths in the block.

The Board finds that the applicant failed to show an extraordinary or exceptional situation whereby the strict application of the lot area, lot width, side yard and street side yard setback requirements unreasonably restricts the properties use or that there is a clearly demonstrable hardship bordering on confiscation of the property. The Board is satisfied that reasonable use can be made of the property under applicable zoning regulations. The granting of a variance in this case would constitute a special privilege or convenience to the owner and would not be in harmony with the intended spirit and purpose of the ordinance and the powers of the Board.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a variance from the lot area, lot width, and front yard (setback) requirements be Denied to Matthews Realty Group LLC for a building permit to split an unimproved vacant lot and to construct a new single-family detached dwelling on an independent lot.

ACTION OF THE BOARD: (5-0)

Vote to Deny

affirmative: Poole, Winks, Pinnock, York, Samuels

negative: none

CASE NO. 11-18

APPLICANT: Chan Investments, LLC

PREMISES: 2808 WEST BROAD STREET
(Tax Parcel Number N000-1586/019)

SUBJECT: A building permit to replace underground fuel tanks, fuel dispensers and vent piping at an existing motor fuel dispensing use.

DISAPPROVED by the Zoning Administrator on January 19, 2018, based on Sections 30-300, 30-457.2, 30-800.1 & 30-810.1 of the zoning ordinance for the reason that: In a TOD-1 (Transit-Oriented Nodal District), existing and proposed use (motor fuels dispensing) is not permitted in the Transit-Oriented Nodal (TOD-1) zoning district and the nonconforming use and feature regulations are not met. No building or structure devoted to a nonconforming use shall be reconstructed, improved or structurally altered unless such building or structure is thereafter devoted to a conforming use. No building or structure having a nonconforming feature shall be moved, reconstructed or substituted with another building or structure unless such nonconforming feature is thereby eliminated and the building or structure is made to conform to the requirements of the zoning ordinance. The proposed reconstruction, move and structural alteration to the underground fuel tanks, pump islands, fuel pumps and related appurtenances is not permitted.

APPLICATION was filed with the Board on January 19, 2018, based on Section 1040.3(13) of the Zoning Ordinance of the City of Richmond.

APPEARANCES:

For Applicant: Brett Davenport

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Chan Investments LLC, has requested a special exception to replace underground fuel tanks, fuel dispensers and vent piping at an existing motor fuel dispensing use for property located at 2808 W. Broad Street. Mr. Brett Davenport, representing the applicant, testified that the existing 7-Eleven located at the property was recently rezoned to Transit-Oriented Nodal zoning (TOD-1). Mr. Davenport explained that the intent is to replace the tanks, fuel pumps and vent piping to improve safety and reliability. The special exception is being requested for the reason structural alterations are not permitted to a nonconforming use. Mr. Poole commended Mr. Davenport for being extraordinarily responsible by undertaking the proposed improvements.

The Board is satisfied that the property was acquired in good faith and pursuant to Section 114-1040.3 (13) of the zoning ordinance, the applicant has shown that the proposed alterations are primarily for the purpose of enabling the nonconforming

use to be operated more efficiently or safely and in a manner that does not adversely impact adjoining and surrounding properties.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a special exception from the nonconforming use and feature regulations be granted to Chan Investments, LLC for a building permit to replace underground fuel tanks, fuel dispensers and vent piping at an existing motor fuel dispensing use.

ACTION OF THE BOARD: (5-0)


Vote to Grant

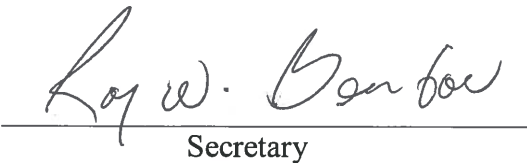
affirmative: Poole, Winks, Pinnock, York, Samuels

negative: none

Upon motion made by Mr. Poole and seconded by Mr. York, Members voted (5-0) to adopt the Board's February 7, 2018 meeting minutes.

The meeting was adjourned at 1:45 p.m.


Chairman


Secretary