



CITY OF RICHMOND

DEPARTMENT OF PLANNING AND
DEVELOPMENT REVIEW
BOARD OF ZONING APPEALS

BOARD OF ZONING APPEALS

MEETING MINUTES

WEDNESDAY, AUGUST 5, 2015

On Wednesday, August 5, 2015, 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 Voice Newspaper on July 22 and 29, 2015 and written notice having been sent to interested parties.

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

Member(s) Absent: none

Staff Present: Roy W. Benbow, Secretary
 William Davidson, Zoning Administrator
 Matt Welch, City Attorney

The Board of Zoning Appeals held a work session to review changes to Sections §§15.2-2201, 15.2-2308, 15.2-2309, 15.2-2314, and 15.2-2308.1 of the Code of Virginia as amended (taking effect on July 1, 2015). Mr. Poole stated that changes to the Code will involve the Board's Rules of Procedure which will require amendment. Mr. Poole asked that the Secretary prepare the necessary amended language for consideration by the Board. Mr. Poole noted that the State Code reflects that relief granted for a feature of the use is governed by the variance process. Mr. Poole also noted that changes in the code limit conversations between Board Members and non-legal staff. Mr. Poole stated that the remedy for unauthorized ex parte conversations is disclosure of the conversation and the substance of the conversation. In response to a question from Mr. Pinnock, Mr. Poole stated that his long-standing position has been that if contacted by an applicant that he would be willing to discuss the particulars of the case as long as applicant understands that it would preclude him from actually voting on the case. Mr. Poole made clear that the Code limits ex parte discussions relating to the facts or law of the case. Mr. Poole stated that discussions relating to facts or law should be conducted only with the City Attorney. Mr. Poole stated that Board Members could discuss hypothetical situations as long as the situations did not involve the facts or law of a case. Mr. York noted that ex parte conversations as provided for in the Code do not restrict conversations with an opponent of an application. Mr. York pointed out that the Code allows a Board to appoint a member of the Board to serve as Secretary. Mr. York noted that this would preclude a Board Member serving as Secretary to the Board from interacting with an

applicant which on its face would be absurd. Mr. Poole stated that the better course of action for all Board Members would be to apply the same standards to all individuals involved in the case. It was also noted that applicant must receive identical information to that provided to a Board Member within three days of having provided the information to a Board Member. The Secretary indicated that all notices include a statement that information involving a case is available for inspection in room 511 of City Hall. The Secretary further indicated that if contacted by an individual opposed to an application that all information available to the applicant is also made available to the individual in question. The Board discussed the fact that parking is not noted in the definition of a variance under the revised State Code as being eligible for relief. After discussion Board Members concluded that parking was an accessory use and as such could be addressed via a special exception. It was noted that as part of revisions to the State Code that in conjunction with an appeal, the Zoning Administrator presents his or her case first. Mr. Poole noted that not only has the law changed to provide the Zoning Administrator with a presumption of correctness that there is also a shifting of the burden of proof. Mr. Poole further noted that it places the overt duty on the party that is appealing a decision of the Zoning Administrator to meet the standards to rebut that presumption of correctness by a preponderance of the evidence. Mr. York requested that Mr. Poole discuss the difference between the preponderance of evidence and fairly debatable. Mr. Poole explained that if you consider the scales of justice preponderance refers to a situation where one scale is higher than the other. Mr. Poole noted that fairly debatable would refer to a situation where the scales are basically equal. Mr. Poole indicated that preponderance requires a higher burden. Mr. Poole noted that the appellant has a higher burden of proof when attempting to lift the scales to the point where the decision of the Zoning Administrator requires reversal. Mr. Poole indicated that in the case of a variance the applicant has the burden of proof but if met the burden then shifts an opponent. The opponent can then only prevail if the burden of proof is shifted back to the applicant. Mr. Poole noted that the amended State Code specifies that the granting of a variance will not be a substantial detriment to adjacent and nearby properties. Mr. Poole stated that this expands a previous standard to include more distant properties. Mr. Poole indicated that it becomes a judgment call regarding whether there is an adverse effect on a more distant property. Mr. Benbow noted that notices are mailed to all property owners within 150 feet of the applicant's property. Mr. Poole stated that the revised statute requires that the property was purchased in good faith and that the hardship was not created by the applicant. Mr. Poole referred to the fact that the amended statute specifies that the granting of a variance does not result in a use that is not otherwise permitted on such property. Mr. Benbow noted that the new language allows the Board to impose conditions of approval in the granting of a variance which has not previously been the case. In addition the Board has the authority similar to a special exception of requiring a bond to ensure compliance. Mr. Poole pointed out that once a variance is granted that the feature for which the variance was approved becomes conforming. Board Members requested that in accordance with the amended code that Mr. Benbow prepare revised language governing hearing time limits. Mr. Pinnock acknowledged that it would be the responsibility of the Chairperson to limit discussion which is repetitive or non-germane. Mr. Poole noted that there are two different standards for appeal to Circuit Court governing an application for a variance or special exception. In the case of a special exception the petitioner must show

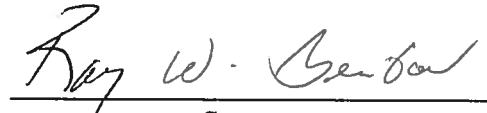
to the court that the Board applied erroneous principles of law or the decision of the Board was plainly wrong and is not fairly debatable while in the case of a variance the standard is a preponderance of the evidence. Mr. Poole noted that the standard for overturning a Board approved special exception is much greater than that of a variance. Mr. Benbow commented that based on state code amendments that a number of changes will be required to various Board documents.

Upon motion made by Mr. Poole and seconded by Mr. York, Members voted (5-0) to adopt the Board's June 3, 2015 meeting minutes.

The meeting was adjourned at 2:30 p.m.



Chairman



Secretary