



Board of Zoning Appeals

Public Hearing & Meeting

Cape Charles Civic Center

April 21, 2021
10:00 a.m.

At approximately 10:00 a.m. in the Cape Charles Civic Center, Chairman Bill Murphy called to order the Board of Zoning Appeals Public Hearing and Meeting. In attendance were Board members Pete Baumann, Jim Holloway, and Thomas Weaver. Dolores Blackburn was not in attendance. Also, present were Interim Town Planner/Zoning Administrator Katie Nunez, Planning Technician Tracy Outten, and an applicant representative. Applicant Spencer Custis participated via telephone. There were two members of the public in attendance.

Bill Murphy read the public hearing advertisement.

PUBLIC HEARING

A. *An application for a variance to allow a 3' from the rear yard setback of 25' requirements in Section 4.2 (G) (1) (c) for the construction of a single-family dwelling located at Lots 81 and 84 Strawberry Street (tax map #83A1-1-81A and tax map #83A1-1-84A).*

i. *Zoning Administrator Report*

Katie Nunez gave a narrative of the staff report.

Pete Baumann pointed out that page three of the staff report had three additional questions that created more of a burden for the applicant. Katie Nunez explained that the Code of Virginia requirements were used, and the ordinance was outdated. The board would need to schedule a meeting to go over the changes. Pete Baumann continued by mentioning that a double negative was used on page three letter "F" the word "not" was used in the question and "no" was given for the answer. The answer should be yes.

Bill Murphy thanked Katie Nunez for such a detailed staff report and suggested a quick online meeting to get updated on the variance criteria changes.

ii. *Applicant Statement*

Spencer Custis, applicant, said they tried to design a home that would complement the neighborhood and needed the variance for a code requirement.

iii. *Open Public Hearing*

Tracy Outten read a comment submitted by Michael Vetter. (Please see attached.)

Michael Vetter, 614 Strawberry Street

Mr. Vetter stated that he was opposed to the granting of this variance request, the shape of the proposed house to be built looked odd, and he did not want the value of his home decreasing.

There were no other comments to be heard nor any additional written comments submitted prior to the meeting.

B. *An application for a variance to allow a two-story addition of 1,320 sq. ft. and a 220 sq. ft. porch to an existing legal, non-conforming structure (duplex) requirements in the following Sections: 2.5.1 (A) (1); 3.2 (I) (3); 4.2 (F) at 428 Randolph Avenue (tax map #83A3-1-589).*

i. *Zoning Administrator Report*

Katie Nunez summarized the staff report and added that the total lot coverage exceeded what the zoning ordinance allows in Section 4.2 (E) (6).

ii. *Applicant Statement*

Edward Eichman, applicant representative, said the supplemental information provided in the application explained why the variance was needed. He clarified the calculated square footage total of 2,580, which would be less than 50% of the lot coverage.

iii. *Public Hearing Comments*

There were no comments to be heard nor any written comments submitted prior to the meeting.

iv. *Close Public Hearing*

Motion made by Thomas Weaver, seconded by Pete Baumann, to close the public hearing at 10:33 a.m. The motion was approved by unanimous consent.

Bill Murphy led the Board in the recitation of the Pledge of Allegiance.

CONSENT AGENDA

Motion made by Jim Holloway, seconded by Pete Baumann, to accept the consent agenda as presented. The motion was approved by unanimous vote.

NEW BUSINESS

- A. *An application for a variance to allow a 3' from the rear yard setback of 25' requirements in Section 4.2 (G) (1) (c) for the construction of a single-family dwelling located at Lots 81 and 84 Strawberry Street (tax map #83A1-1-81A and tax map #83A1-1-84A).*

Bill Murphy gave an overview of the application being presented and explained to the applicant that the board had strict criteria to follow for a variance to be granted.

Discussion and questions were as follows: (i) Bill Murphy asked if an easement was in place for the existing home encroaching on the lot to stay there. Spen Custis, applicant, answered yes, a permanent easement. Mr. Murphy asked if he knew about this issue when deciding to build a house. Mr. Custis said that he was fully of aware of the situation and consulted with an attorney to do a permanent easement; (ii) Tracy Outten read comments submitted by board member Dolores Blackburn. (Please see attached.); (iii) Much discussion ensued on the house that encroached on the property in question. Jim Holloway did not think the board could not make someone move their house. Bill Murphy stated that the only element the board could rule on was variance for the rear yard setback; (iv) Katie Nunez informed the board that if the variance was denied the applicant still had a right to use his property and he could get easements; and (v) Pete Baumann said a decision could not be based on the peculiar design or shape of the proposed house if the house were within the setbacks.

Bill Murphy asked if anyone had any additional comments to add before a motion was made.

Michael Vetter reiterated that he opposed the house being built unless Odessa Sullivan's house was moved. He added that if there was not going to be a driveway this would add more congestion to the street.

Motion made by Pete Baumann, seconded by Thomas Weaver, to grant the zoning variance request to allow 3' from the rear yard setback of 25' requirements in Section 4.2 (G) (1) (c) for the construction of a single-family dwelling located at lots 81 and 84 Strawberry Street (tax map #83A1-1-81A and tax map #83A1-1-84A) with the condition that a copy of the easement be provided to the town stating that it will expire upon any transfer of ownership from Odessa Sullivan and the house must be moved from tax map #83A1-1-84A. The motion was approved by unanimous vote.

- B. *An application for a variance to allow a two-story addition of 1,320 sq. ft. and a 220 sq. ft. porch to an existing legal, non-conforming structure (duplex) requirements in the following Sections: 2.5.1 (A) (1); 3.2 (G) (2) (b); 3.2 (I) (3); and 4.2 (F) at 426 and 428 Randolph Avenue (tax map #83A3-1-589).*

Bill Murphy gave an overview of the application being presented and explained to the applicant that the board had strict criteria to follow for a variance to be granted.

Tracy Outten read comments submitted by board member Dolores Blackburn. (Please see attached.)

Jim Holloway asked if this home had expired building permits. Edward Eichman, applicant representative, was unsure because he was not previously involved.

Discussion and questions on the two-story addition were as follows: (i) Bill Murphy said the zoning ordinance did not allow a non-conforming structure to be enlarged but his thoughts were the proposed two-story addition was not increasing the scope; (ii) Jim Holloway said it would be just under the allowable fifty-percent coverage; (iii) Katie Nunez informed the board that the board was only reviewing this application because it was a duplex and she thought the additions would enhance the property; and (iv) Pete Baumann read the zoning ordinance definition of use. He added that if this duplex was a vacation rental it would increase traffic. Katie Nunez did not find that increase to alter the use.

Motion made by Pete Baumann, seconded by Jim Holloway, to approve the zoning variance request to allow a two-story addition of 1,320 square feet and a 220 square feet porch to an existing legal, non-conforming structure (duplex) requirements from the Town of Cape Charles Zoning Ordinance Section 2.5.1 (A) (1) at 428 Randolph Avenue. The motion was approved by unanimous consent.

Motion made by Thomas Weaver, seconded by Jim Holloway, to approve the 5 feet zoning variance request to provide for a 0-foot side yard setback requirement in the Town of Cape Charles Zoning Ordinance Section 3.2 (G) (2) (b) at 428 Randolph Avenue. The motion was approved by unanimous consent.

Jim Holloway asked if the house was over the property line. Bill Murphy explained that the zero-yard setback would remove the center line from the home.

Motion made by Jim Holloway, seconded by Pete Baumann, to approve the zoning variance request to allow the roof pitch of the new addition to match the roof pitch of the existing non-conforming structure which does not meet an 8:12 roof pitch requirement in the Town of Cape Charles Zoning Ordinance Section 3.2 (I) (3) at 428 Randolph Avenue. The motion was approved by unanimous consent.

Motion made by Thomas Weaver, seconded by Jim Holloway, to approve the zoning variance request to allow the primary roof eave extensions for the new addition to extend 3 feet from the east and west boundary lines of said lot requirements in the Town of Cape Charles Zoning Ordinance Section 4.2 (F) at 428 Randolph Avenue. The motion was approved by unanimous consent.

OTHER BUSINESS

There was no other business to discuss.

Motion made by Pete Baumann, seconded by Jim Holloway, to adjourn the Board of Zoning Appeals Public Hearing and Meeting at 11:36 a.m. The motion was approved by unanimous vote.

Chairman Bill Murphy

Planning Technician

Comments Submitted in Writing
April 21, 2021, Board of Zoning Appeals Public Hearing

Dolores Blackburn, Member – Board of Zoning Appeals

Per your suggestion, I am forwarding this memo with my comments regarding the two applications for tomorrow's BZA meeting.

Spencer Custis

The applicant seeks a variance for relief from the 25-foot rear yard setback to construct a single-family home. His property has an unusual situation in that a structure/house on the adjacent property encroaches 10 feet into his side yard, a result of a prior subdivision. This encroachment reduces the usable footage on which to construct a house, therefore needing to extend the house into the rear setback by three feet. The applicant's house design allows for the neighbor's house encroachment. This application request is: reasonable; not a detriment to the neighboring properties; a rare case not requiring a general regulation; a permitted use; and relief is not available through another process. I would recommend approving the requested variance.

I would also commend the applicant on a well-thought-out solution to this situation. He stated that he will grant his neighbor an easement for the encroachment for the duration of her ownership of adjacent property rather than seek a lot line adjustment or subdivision.

Huff Sessions/Eichman

As part of the renovation project for the structure on the corner of Plum and Randolph, the applicant seeks variance relief from four ordinances. The structure is a legal non-conforming use; a duplex in a single home residential area. The first request is to extend the size of the structure by 1320 square feet, replacing a former addition on the rear of the structure. Although the addition will increase the size of the structure, it will not increase the non-conforming use; the structure will remain a duplex. I would recommend granting this request.

The remaining three requests relate to the architectural design of the restoration effort. The applicant's design for the addition incorporates the architecture of the original structure thereby needing relief for the roof pitch, roof eave extensions and side yard setback. Each request is; reasonable, not a detriment to neighbors; does not require a general regulation; other relief not available; and it will continue to be a legal non-conforming use. Additionally, but not part of our approval process, this restoration meets the Historical District overlay.

4-13-2021

Michael Vetter
179 Oval Spring Dr.
Valentines Va 23887

owner - 614 Strawberry St. Cape Charles Va 23310

Dear Katie Nunez and town of Cape Charles.

Received your letter on 4-12-2021 of an application from Spencer Custis for a variance of 3 feet from rear yard setback of 25 ft. at Tax map #83A1-1-81A + 84A in R-1 district.

I fully oppose any variance for this property. For the past 2 yrs the town and former planner Zack and John have told me that this home can not be changed from its original foot print. Plans were approved when Bill Manning Contractor was to rebuild this home. That was to be a single story with carport to East side. If I can't be at the meeting I want my letter read at meeting. The rules in Cape Charles for building a house change all the time and it took me a year to get approved. These plans should not be changed.

Thank You
Michael Vetter