

**MINUTES
BOARD OF ADJUSTMENT
THURSDAY, NOVEMBER 7, 2013
HOOD ROOM, MATTHEWS TOWN HALL**

PRESENT: Chairman Eric Welsh, Members Jim Jiles, Jim Mortimer and; Alternate Members Peter Tuz, Jeanne Moore and; Attorney Robert Blythe; Senior Planner Jay Camp and Zoning Technician/Deputy Town Clerk Mary Jo Gollnitz

ABSENT: Members Cecil Sumners and Walter Monestere; Alternate Jerry Meek

CALL TO ORDER/INVOCATION

Chairman Welsh called the meeting to order at 7:27 pm and gave the invocation.

Jeanne Moore made a motion to approve the minutes of the October 3, 2013 meeting. Jim Mortimer seconded and the motion was unanimously approved.

Ms. Moore and Mr. Tuz were appointed to act as voting members for the meeting.

VARIANCE REQUEST CONTINUATION: Parcel 19320416, Sam Newell Rd

SWEARING IN

Chairman Welsh stated that the variance request is a continuation of the October meeting for the parcel identified as 19320416 on Sam Newell Road. The following were reminded that they are still under oath from the last meeting: Jay Camp and Francisco Javier Arteaga Roggiero.

Staff Report

Senior Planner Jay Camp provided the Board with information about the updated plan that was submitted. He noted that there are floor plans and elevations examples of houses that would fit on the site. There are two different site plan versions, one being larger than the other. The larger building plan shows a possible driveway location, just before the curve on the road/property. Mr. Camp further discussed the site plan and how it addressed the changes the Board asked to be presented to them.

Mr. Camp stated that staff did contact Police Chief Hunter regarding accidents along this section of Sam Newell Road. There was only one accident listed of someone who ran off the road. This is not a high crash location. The Police Chief did suggest that the driveway be kept as far away from Williams Road as possible. There are turning movements coming from Williams Road.

Mr. Camp continued going over the new site plan and elevations that the applicant had provided. The new plan shows a variance of 24 feet. Per the drawings the corner of the house is a total of 31 feet from the back property line. The original variance request was for 25 feet from the back property line.

Mr. Camp stated that staff does recommend that if the variance is approved, a condition be placed with the approval which is the recently adopted zoning text that allows encroachment in rear yards does not apply to this site. Mr. Camp explained that earlier this year the ordinance was amended to allow for non-heated additions to homes, such as screened porches and decks, to encroach up to 25% in the rear yard. Staff recommends that if this Board does move for approval, that this does not apply to this site because these additions would even further the degree of rear yard encroachment.

Chairman Welsh asked if the drawing that was superimposed conforms to the original variance request or has it changed. Mr. Camp said that the request has not changed and that the Board had given direction to the applicant to show what will actually fit on the lot. The elevation may change from what is provided but the variance is the same. The front porch would probably not fit in the buildable area because it is so tight there.

Ms. Moore asked what is pictured off the side of the small elevation version. Mr. Camp stated that there is a side porch on that particular version. He continued showing alternate location and sizes of porches on the structure. He clarified saying that there is enough room for a proper stoop and stairs to come off the front of the house. Mr. Jiles said that there appears to be plenty of room for the side and front porches to be built.

Mr. Mortimer asked if someone from the Town would inspect the footings to insure that this is built to the drawings shown. Mr. Camp answered saying that when the applicant goes to file building permits, that the county would see that it does not meet setbacks and the applicant would have to produce the letter stating that a variance had been granted for the site. As far as footings, that is not something that is automatically. The Board could make it a condition that staff go out and check the footings.

Ms. Moore asked if there are any conditions that it be built in a certain amount of time, because once you issue the variance it runs with the land. Attorney Blythe asked Mr. Camp if the ordinance has a time frame for a variance. Mr. Camp read Section IX, Expiration of Decision from the Board's Rules of Procedure which states a six month limit. Mr. Blythe said that you could allow a longer time period but not shorten the time frame.

Mr. Welsh asked when the Certificate of Occupancy is issued, if someone will check to make sure it complies with the variance. Mr. Camp noted that the people who handle inspections do not necessarily pay attention to the location of the footings.

Mr. Tuz asked to see the development plan from the previous meeting. Mr. Camp showed the plans to the Board. No questions were asked regarding the previous plans. Discussion was held about addressing in the area of the subject property.

Mr. Roggiero addressed the Board. He stated that Madison Home builders have been helping him with the house. He said that the plans presented are the smallest version that they could build on the property. He continued noting that he is willing to look at any suggestions the Town provides. He is open to whatever entrance onto the property that the Board feels is safe. He did research the accident reports on that property. He found that there have not been many accidents along there in a long time. The speed limit is 35 mph and the fact that the road is curvy, cause's people to slow down.

He currently lives a few blocks down the road, he knows for a fact that there are not that many accidents in that area. He stated that any changes the Board wants him to make, he is willing to do. They have his full cooperation.

The entrance location into the property was suggested by the builder. The builder suggested the location next to the easement. He welcomes any other suggestions to the location.

Mr. Welsh asked for the applicant to show on the site plan where the easement is located and where the driveway would go on the property. Mr. Roggiero stated that the driveway would be next to the easement. He also said that it could be further off the easement if necessary.

Mr. Welsh asked if Mr. Roggiero has had any further discussions with the land owner behind him. Mr. Roggiero stated that he has not. He continued noting that he will respect the tree environment that is around him. Mr. Blythe reminded the Board that the neighbor had testified last month that she had no objections to the variance being granted as long as she does not incur any expenses for clearing shrubs and trees for driveway purposes.

Mr. Mortimer asked the applicant if it is his intent to start construction within 6 months if the variance is granted. Mr. Roggiero said yes, right away. His builder is anxious to get the deal. He has been walking the land with the builders. The porch could be on the other side of the house and not on the back side.

Mr. Mortimer asked if the applicant has the financial resources to build the house. Mr. Roggiero stated that he does have the resources to build with a loan.

Deliberations

Ms. Moore said that the variance request is for the rear yard only. Mr. Camp said yes that the request is for the rear yard setback. Mr. Jiles noted that the property behind this is undeveloped and is heavily wooded. There is not an issue for screening or landscaping in this variance. Mr. Mortimer stated that it wouldn't be difficult for the property owner behind to sell a portion of land to the applicant and then this Board would not have had to heard this variance.

Chairman Welsh noted that this is one of the oddest pieces of property he has ever seen. This is a situation where the ordinance was in place when the applicant bought the land. Nothing has changed since then. He noted his concerns about setting precedence. He continued saying that this property is so unusual that unless there is an additional purchase of land it is unbuildable.

Mr. Jiles concurred with Chairman Welsh and noted that even though it is a small home, it is not inconsistent with other structures in the neighborhood.

Mr. Welsh said he is pleased that the applicant complied with the Board's request for additional information.

Mr. Tuz said that he is concerned about future development along Sam Newell Rd. How that area is going to develop, he feels that the Board is setting precedence. There will probably be a lot more development along there. There are other properties in Matthews that could be purchased to build a home on. It is close to the neighboring properties and what would go in there in the future. Discussion continued about future development of the area and the effect on this property.

Mr. Jiles stated that the variance request is in conjunction with the current zoning ordinance and the property zoning of residential use. Ms. Moore has concerns too, but the variance is for the back yard only.

Mr. Welsh said that the issues raised by Mr. Tuz are the same ones he has wrestled with. This is a very extraordinary piece of property and extraordinary situation. If the Board is to grant this, he does not view this as broad precedential value because of the unusual circumstances. On safety issues it is unrelated to the variance

request. If he were to vote for the variance it would be under the condition that the driveway be placed by the easement in order to be away from the curve in the road.

Mr. Mortimer asked how the Board would be insured compliance with the variance. Mr. Camp suggested that a condition be placed that the property be resurveyed and corners placed on survey. This would make sure that the footprint corners are accurately sighted before any construction begins. That should be with construction anyway, but because there is no room for error, that could be a condition.

Mr. Camp also noted to the applicant that if the variance is approved, that the house must look substantially like the photos of the house he submitted for this evenings meeting. He cannot come back with a ranch plan. Chairman Welsh asked if the Board could add a condition that the property be resurveyed and report it back to the Board. Attorney Blythe stated that the applicant could provide the survey to staff to review.

Mr. Jiles said that the survey submitted with the variance request is current; there is a date of 2013 on the survey. Attorney Blythe said that a new survey should have the corners of the footer located on it and provided that to staff.

Mr. Tuz asked how far the adjacent house is it to the property line. Mr. Camp stated that is approximately 130' to the east. Mr. Jiles noted that the area is naturally screened with a creek and trees.

Chairman Welsh asked if everyone was in agreement that the Board approve the variance with set stipulations attached to it. All members voiced agreement.

Mr. Welsh continued stating the conditions to go with the approval; first being that the house would have to be substantially the same as the drawings that were presented for tonight's meeting. Attorney Blythe wanted the Board to clarify when saying "substantially the same", if they are referring to the footprint or the design. Mr. Camp said that in previous variances that have dealt with building height the conditions have dealt with the facade, however, that is not relevant in this matter. Mr. Welsh said that the condition on the footprint be the same as what was presented on the drawings.

Mr. Welsh also said that the approval would be conditional on the builder doing a survey of the corner footings before the actual construction begins on the foundation. The applicant must present this survey to staff. The third condition is that the entrance to the driveway be at the location of the easement as presented on the drawings provided.

Mr. Blythe added that the condition that the provision for the 25% encroachment of rear yards for non-heated structures could not be used on the house.

Mr. Welsh asked the applicant if he understood the fourth condition regarding the rear yard. Mr. Roggiero acknowledged that he did.

Chairman Welsh motioned that the variance be approved with the four conditions as stated. Mr. Jiles seconded the motion. Ms. Moore asked if the applicant needs to complete the work within the six month time frame as discussed earlier. Mr. Welsh stated yes. Chairman Welsh called for the vote which carried unanimously.

Chairman Welsh stated the findings for the approval. He said that there is ample evidence that the problem is with the land itself and clearly runs with the land. It is a difficult piece of property. There is enough evidence showing that it is unbuildable for residential uses without getting a variance from this Board. He noted that it is his view as

well as others on the Board that this is an exceptional circumstance with this piece of property. It should be kept in mind if others are looking at this for precedential value, that this is an extraordinary set of facts.

He continued saying that the variance request is in harmony with the Town of Matthews standards it is attempting to accomplish in their ordinance. The variance request with the conditions is consistent with the safety of the Town. The property owner did not create this hardship but did come to it and it is clearly a hardship. The hardship is specific to this piece of property.

Mr. Welsh provided more specifics on the public safety noting that providing a condition on where the location of the drive in granting the variance is consistent with public safety. It will protect the safety by bringing the ingress and egress further away from the curve in the road. It should not add to any safety concerns.

Mr. Welsh continued saying that this provides substantial justice to the applicant and any person who wished to build a residence on this property. Without this variance no residence could be built on the land. He also added that the applicant did try to purchase additional land from the property owner behind him on multiple occasions without success. The applicant comes to the Board with the variance request out of necessity.

Mr. Tuz added that the presence of the neighbor adding supporting of the variance.

Mr. Welsh thanked the applicant for his patience and providing the additional information for the Board.

ADJOURNMENT

Mr. Welsh made a motion to adjourn. Mr. Mortimer seconded the motion and the meeting adjourned at 8:22 pm.

Respectfully submitted,



Mary Jo Gollnitz
Zoning Technician/Deputy Town Clerk