

BOARD OF ZONING APPEALS
April 27, 2016

THE REGULAR MEETING OF THE GREENE COUNTY BOARD OF ZONING APPEALS WAS HELD ON WEDNESDAY, APRIL 27, 2016 AT 7:30 P.M.

Those present were: Richard Herring, Chairman
 Frank Morris, Vice-Chairman
 Bob Runkle, Member
 Lyle Durrer, Member
 Wesley Wills, Member

Those absent were: Brent Wilson, Alternate Member

Staff present were: Bill Martin, Ex-Officio Member
 Bart Svoboda, Zoning Administrator
 Stephanie Golon, County Planner
 Shawn Leake, Zoning Officer
 Marsha Alley, Secretary

CALL TO ORDER

The Chairman called the meeting to order.

DETERMINATION OF QUORUM

A roll call was taken to establish a quorum.

PUBLIC HEARINGS

Gateway Market Center 3, LLC requests:

- a 15 foot side setback line variance from Article 10-4-2 of the Greene County Zoning Ordinance which requires a 20 ft. side setback for accessory parking and
- to be exempted from screening yard regulations between commercial and agriculture zoning districts as required by Article 19-6-2 of the Greene County Zoning Ordinance.

These requests affect property that is identified on the County Tax Maps as 60-(A)-20D located at 344 StoneRidge Drive North containing approximately 1.274 acres and is zoned B-3, Business. (VAR#16-001)

The Chairman asked Mr. Svoboda for a report.

Mr. Svoboda read the request and reviewed the description of the property and the location. He explained that the parcel is located within the Gateway shopping center

and that the primary structure meets the setback requirement noting that the accessory use relating to parking requirements has triggered the variance request. He added that the applicant also requests to be exempted from screening requirements between zoning districts. He noted that the owner of the adjoining property had called and spoken with staff to say that they had no objection to the request. He added that the adjoining property owner spoke with Mrs. Golon and indicated that they would likely be rezoning their property in the future. He stated that the neighboring parcel is currently zoned A-1 with expectation of becoming a commercial designation. He explained that the variance request is less stringent than the current ordinance requirements for B-3 to A-1 zoning districts and more stringent than the requirements between B-3 parcels. He reviewed the Code of Virginia language related to the request for a variance and due process rights. He listed and explained the following proposed conditions to be added in the consideration of approval:

- a) A 15 foot side setback variance from Article 10-4-2 of the Greene County Zoning Ordinance which requires a 20 foot side setback for accessory parking.
- b) A variance from the screening yard required by Article 19-6-2.
- c) The grassed area, as indicated in Exhibit A, shall be landscaped to the requirements of the front buffer strip landscape under Article 19-6-7.
- d) Any changes to this proposal shall be modified by the BZA only.

The applicant was not present for comment.

There was discussion relating to parking area and a review of the provided map.

Mr. Morris asked if the possible loss of parking spaces was noted during the site plan review.

Mr. Svoboda stated that a different version of the plan was provided and approved during the site plan review based on the proposed user of the space at that time. He explained that the proposed user of the space has changed and there are different needs and parking requirements. He added that the dumpster location has also been affected by the proposed parking area change.

Mr. Morris stated that he noted that the plan date is 6/26/14 and had wondered why the plan was dated so far back.

Mr. Svoboda stated that the 6/26/14 dated plan was an early drawing and had been modified for this request.

Mr. Runkle asked how many spaces are involved.

Mr. Svoboda stated that five spaces would be unavailable if the variance is not granted which could cause the applicant to lose a tenant.

Mr. Herring asked about the location of the dumpster.

There was discussion relating to the dumpster location and screening, parking spaces, the date of the plan, and the version being used for this request.

Mr. Wills asked what the adjacent property owner had been agreeable to when they called, specifically regarding conditions, screening, etc.

Mr. Svoboda stated that he understood the adjoining property owner to be agreeable with the request as proposed.

There was discussion relating to the screening between A-1 and Business zoning designations.

Mr. Morris asked when the applicant considered the need for this request since the plan was updated a year ago. He noted that it would have been nice to have the applicant present to be able to answer questions like these.

Mr. Svoboda explained that the conditions for approval can tie the request to any exhibits provided by the applicant or staff. He added that any conditions and exhibits then become a part of the site plan checklist for approval.

Mr. Wills asked if the applicant would have to reappear before the BZA in order to develop within the landscaping area.

Mr. Svoboda explained that they would have to come back to the BZA in order to modify the variance but added that if the adjoining parcel were to be rezoned to Business, then the variance would cease and the regulations at that time would be in effect.

Mr. Herring asked if anyone had visited the site. No one offered comment.

The Chairman opened the public hearing.

There being no public comment, the public hearing was closed.

Mr. Durrer stated that the applicant knew the size of the lot when he purchased it and that the building meets the setbacks. He added that it appears to be a little mismanagement on the designer to maximize the number of parking spaces. He added that the neighboring zoning may or may not change.

Mr. Morris asked if there is a copy of the site plan available.

Mrs. Golon stated that it was available but had not been included in the packet. She added that she was not speaking on Mr. Pingry's behalf but noted that he had worked on the Gateway projects including Lowe's, Walmart, and the previous site. She noted that he was not involved on this project until later when this issue was discovered. She gave an overview of the features affected by the requirements.

Mr. Runkle asked if the number of parking spaces for restaurants is determined by the building size or the number of tables.

Mrs. Golon stated that the number of seats determines the number of parking spaces.

Mr. Runkle asked how many additional seats would be provided by the addition of five more parking spaces.

Mrs. Golon stated that five additional tables could be provided.

Mr. Wills noted that the building could have been made smaller to assure the number of needed parking spaces. He wondered if it is a request in good faith given that the original idea was for retail and has now become a restaurant.

Mr. Runkle stated that he could not see a bad result by granting the variance adding that he had looked at it from several perspectives.

Mr. Morris stated that he just wanted to be sure that it was simply an oversight and not an attempt to circumvent the ordinance or regulations.

Mrs. Golon stated that this was the first time during the review that she had seen this particular layout of the drawing as it relates to the restaurant.

Mr. Durrer asked how long into the process did they change the site plan.

Mrs. Golon estimated that she had been discussing this revision with the applicant for about four months which is likely when the new tenant became an option.

Mr. Morris asked when the applicant had applied for the Building Permit and Site Development Plan Review.

Mr. Svoboda estimated that the applicant may have applied for those items about six months prior to the plan being signed which was in 2015. He reviewed the plan itself may have been waiting for some time for the applicant to submit the final plans. He noted that not long after that, the applicant began asking questions related to restaurant regulations for that site.

Mr. Durrer stated that granting a variance is not something that should be granted with every request. He added that the BZA must consider when granting a variance is a good idea when it is not. He noted that there should not be a reputation for approving variance as a routine action.

Mrs. Golon stated that the intent of the buffer and the setbacks against the A-1 property is to protect the agricultural area. She stated that she was playing devil's advocate and wondered what benefit or protection is being offered by maintaining the requirements.

Mr. Durrer stated that the adjoining property is currently zoned A-1.

Mrs. Golon asked what protection is being provided to the A-1 parcel.

Mr. Svoboda stated that it is about a half-acre parcel.

Mr. Durrer stated that the adjoining property may not be zoned A-1 forever but that it is today.

Mr. Svoboda agreed.

Mr. Herring stated that it may help the neighbor by moving the dumpster location from the front of their property. He added that the BZA does not set a precedent by approving variances as each case stands on its own.

Mr. Svoboda stated that he did not research the last time a variance was approved but noted that there have not been many as reflected by the number of meetings held each year. He added that it is an indication of the health of the ordinance.

Mr. Durrer stated that a lot of variance approvals would indicate a problem.

Mr. Svoboda explained that if there were a lot of variances approved for the same or similar items, then an ordinance revision may be needed to address those issues specifically. He noted that there are not a lot of situations where business develops next to an agriculture area.

Mr. Morris stated that changing an egress through a parking lot with the new stormwater requirements is a big deal.

Mr. Svoboda agreed.

Mr. Morris stated that given that situation, he wondered how the developer got that far into the project without considering those items. He added that it would have been helpful for the applicant to be present tonight.

Mr. Svoboda stated that there would still be a lot of hoops even if the variance is approved. He pointed out that the stormwater calculations and that quantity and quality are still being followed.

Mrs. Golon explained that the stormwater was designed for full build out. She added that some underground Filterras are used to address quality and quantity changes.

Mr. Svoboda stated that the developer planned ahead for those types of things.

Mr. Morris noted a cemetery nearby and asked if it is a dedicated cemetery.

Mr. Svoboda stated that the cemetery is located on an adjacent parcel. He added that the assumption is that it is a family cemetery.

Mr. Runkle made a motion to approve VAR#16-001.

Mr. Wills seconded the motion adding the following conditions:

- a) A 15 foot side setback variance from Article 10-4-2 of the Greene County Zoning Ordinance which requires a 20 foot side setback for accessory parking.
- b) A variance from the screening yard required by Article 19-6-2.
- c) The grassed area, as indicated in Exhibit A, shall be landscaped to the requirements of the front buffer strip landscape under Article 19-6-7.
- d) Any changes to this proposal shall be modified by the BZA only.

There was some confusion regarding the motion.

Mr. Wills made a motion to approve VAR#16-001 with the following conditions:

- a) A 15 foot side setback variance from Article 10-4-2 of the Greene County Zoning Ordinance which requires a 20 foot side setback for accessory parking.
- b) A variance from the screening yard required by Article 19-6-2.
- c) The grassed area, as indicated in Exhibit A, shall be landscaped to the requirements of the front buffer strip landscape under Article 19-6-7.
- d) Any changes to this proposal shall be modified by the BZA only.

Mr. Runkle withdrew his original motion and seconded the motion made by Mr. Wills.

The vote was taken.

AYE

Mr. Runkle

Mr. Wills
Mr. Herring

NAY

Mr. Durrer

Mr. Morris

The motion to approve VAR#16-001 carried by a 3-2 vote.

OLD/NEW BUSINESS

Mr. Svoboda informed the Board of upcoming training opportunities and reminded everyone to check their county email for more information.

Mr. Svoboda announced that there will be two appeals to be heard at the May meeting. He stated that the ex parte communications language had been provided to each member by email and that it would apply for these applications. He offered a brief review of the ex parte communication language.

Mr. Durrer asked if staff would still present information for the requests.

Mr. Svoboda stated that staff would present information and that the applicant would present information. He added that per the Code of Virginia all of the discussion of the requests must take place at the meeting.

Mr. Morris stated that he would like to have it noted in the record that he voted against the previous variance request because the applicant was not present to provide information that may have been helpful. He added that he would have been more comfortable gaining information directly from the applicant instead of hearing second-hand information as to what he said previously.

Mr. Svoboda thanked Mr. Morris and added that staff spoke with the applicant about being present to state their case.

MINUTES

Mr. Morris made a motion to approve the minutes of January 27, 2016 as presented.

Mr. Durrer seconded the motion.

The vote was taken and the minutes of January 27, 2016 were approved by a 5-0 vote.

OTHER MATTERS

Mr. Morris asked if lawyers will be present for the appeals scheduled for the May meeting and asked if the BZA needed to be represented by a lawyer.

Mr. Svoboda stated that he had no idea who may accompany the applicant and added that he had not spoken with the county attorney about the cases.

Mr. Herring asked for contact information for whoever represents the BZA when legal counsel is needed. He added that he had previously been told that the county attorney cannot represent the BZA. He asked who would represent the BZA if the county attorney cannot.

There was a brief conversation regarding representation for the BZA and how that would work.

Mr. Svoboda stated that he did not have that answer but that he would try to find the answer for the BZA.

There was brief discussion relating to the new legislation and pending legislation applicable to the BZA and the importance for continuing education in that regard.

Mr. Morris asked if the meeting should begin at 6:30 pm since there are two appeals.

Mr. Svoboda stated that it would be left to the discretion of the BZA.

There was discussion regarding changing the meeting start time. It was determined to begin the meeting at the usual time of 7:30 pm.

Mr. Herring stated that he noted video recording taking place tonight and asked if that would be common from now on.

Mr. Svoboda stated that it is not a county staff initiative at this time. He added that there is no prohibition for that in county or state regulations.

Mr. Herring stated that he had understood that the Board of Supervisors was considering something like that.

Mr. Svoboda stated that it is being considered for Board of Supervisors meetings, likely Planning Commission meetings, and possibly various other meetings as well. He noted that some system upgrades may be necessary.

There was a brief discussion regarding the possibility of televising or live-streaming

county meetings. There was a suggestion of using school students for the project.

ADJOURNMENT

Mr. Durrer made a motion to adjourn the meeting.

Mr. Morris seconded the motion.

The vote was taken and the motion carried by unanimous vote.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Marsha Alley

Marsha Alley, Secretary

Richard Henig *5/25/2016*
BZA Chairman Date