

BOARD OF ZONING APPEALS

MINUTES

6:30 p.m.

February 20, 2019

Council Chambers

MEMBERS PRESENT: Harrison Case, Kevin Meehan, Chris Benison, Heidi Cook and Garrett Tomblin

MEMBERS ABSENT: None

STAFF: John Whitmore, AICP

- I. **CALL TO ORDER AND ROLL CALL:** Case called the meeting to order and read the standard explanation of the how the Board conducts business and rules for public comments.
- II. **MATTERS OF BUSINESS:**
 - A. Minutes for the January 16, 2019 hearing. No corrections noted, and minutes approved as presented.
- III. **UNFINISHED BUSINESS:** None.
- IV. **NEW BUSINESS:**
 - A. **V19-07 / Miller / 449 Overhill Street:** Request by Matthew E. Miller for variance relief from Section 1335.04 to encroach into the minimum rear setback standard; Tax Map 14, Parcel 220; R-1A, Single-Family Residential.

Whitmore presented the Staff Report.

Whitmore stated Staff received a letter of opposition from Mariana Matthews that has been made part of the record.

Whitmore stated the petitioner submitted a letter to further explain the project as he is unable to attend the hearing. Board members acknowledged said letter and Whitmore noted it would be made part of the record.

Case recognized the petitioner's son, Andrew Miller of 2077 Pinecrest Drive, who provided further explanation of the project and noted the expansion would allow for the bedroom and dining area to be expanded.

Case noted that no additional bedrooms or bathrooms will be added inside the structure. Miller confirmed and stated only the bedroom and dining area would be expanded.

Case noted the structure is a single-family home. Miller confirmed and noted there is a second dwelling located next to the house.

Whitmore provided further explanation and stated there is a legal pre-existing non-conforming accessory dwelling unit located on the parcel.

Case asked if Miller would like to respond to the letter of opposition. Miller stated he believes there was miscommunication and his father did not get a chance to speak with her about the project.

There being no further questions or comments by the Board, Case asked if anyone would like to speak in favor of or in opposition to the either of the variance petitions.

Case recognized Sheila Thomas of 456 Overhill Street who spoke in favor of the petition. Thomas stated the petitioner has informed her and all of the surrounding neighbors about the project and expressed Miller would be a great neighbor.

There being no further comments, Case declared the public hearing closed and asked for Staff recommendations, which were read by Whitmore.

Meehan noted there are many nonconforming houses in the neighborhood and the adjustment appears to be minor.

Tomblin noted the letter of opposition from Matthews does not outline a specific concern.

Case read aloud the letter of opposition from Matthews and expressed he did not read anything in the letter that addresses the merits of the variance.

Case referred to the letter submitted by the petitioner and noted where he addressed Matthews concerns.

Benison noted the improvements would be consistent with the characteristics of a single-family neighborhood and the R-1A zoning district.

Meehan made a motion to find in the affirmative for all of the Finding of Facts for V19-07 as presented; seconded by Cook. Motion carried unanimously.

NOTE: The following findings were included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The two-story room addition being requested will not affect the public health, safety, or welfare, or the rights of the adjacent property owners or residents adversely because construction will be done according to all applicable codes and the result will not extend into the variance area beyond what is currently already there in the front side.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The existing master bedroom is not large enough to put a kind size bed in it. By extending the master bedroom wall to the existing distance of the front part of the house, which is 3.16 feet from the side property line, the problem is solved. If the wall is only moved to 5 feet from the property line, then the resulting space on both floors is inadequate.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The existing master bedroom is not large enough for family use. If this house is to continue to be used only for students, then this variance is not necessary. But if a family is to live here then the size of the master bedroom is unreasonably small and the resulting space, if only built to a 5-foot setback is inadequate.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The variance to allow an extension of the existing foot print of the house to fill in the rear gap area will not extend any new construction beyond what is already there in front of the house, where there is already a shorter set back than the required five feet. So, justice will be done by solving an existing problem without creating any problem.

Cook moved to grant variance relief for Case No. V19-07; seconded by Meehan. Motion carried unanimously.

Case reminded Mr. Miller that the Board's decisions can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

B. V19-09 / Mini Mountaineer Early Learning Center, LLC / 3414 Collins Ferry Road: Request by Gloria Scotchel, on behalf of Mini Mountaineer Early Learning Center, LLC, for variance relief from Section 1365.09 regarding parking aisles; Tax Map 53, Parcels 219 and 220; B-1, Neighborhood Business District.

Whitmore presented the combined Staff Report for Case Nos. V19-09 and V19-10.

Whitmore stated Staff received a letter in opposition from Betsy Mullett and noted said letter includes three specific points that will need addressed by the Board.

Case recognized Mike Ludman of 3131 Cove Point Drive, on behalf of Mini Mountaineer, who provided further explanation of the project. Ludman stated the parking off of Martin Street is vital to the business and noted a variance is necessary for the landscaping as a 10-foot buffer would eliminate the parking. He referred to the letter of opposition and recognized it is a busy intersection but expressed there is enough staging area to pull onto Martin Street.

Case asked if there were any objections to combining the public hearing for V19-09 and V19-10. There being none, Case asked if anyone would like to speak in favor of or in opposition to the either of the variance petitions.

Case recognized Amy and Ben Mayle of 509 Martin Street who asked to read the letter of opposition from Betsy Mullett. Mr. Mayle was provided the letter.

Mayle stated they live across from the daycare and noted he has not had any parking issues with past businesses in that building. He expressed he is in favor of the proposed variances but requested yellow line parking for two spaces on the opposite side of Martin Street to ensure safety.

There being no further comments, Case declared the public hearing closed and asked for Staff recommendations, which were read by Whitmore.

Case referred to the map within the Staff Report and asked if parking would be allowed within the floodplain. Whitmore confirmed and stated the floodplain impacts landscaping as there will be higher saturation.

Case referred to the letter from Mullett and asked if the objections were in reference to the proposed modifications or from past experiences.

Whitmore noted there are issues at the site with large expansive asphalt but expressed there is a lot of opportunity for parking. He explained the past parking use was previously consider as pre-existing, legal, nonconforming conditions. However, the building sat empty for more than twelve months resulting in those nonconforming conditions to be abandoned.

Case referred to the letter from Mullett and read aloud the three concerns noted.

Case referred to the Staff Report and expressed those concerns were addressed within the report.

Case inquired if the applicant would need to obtain approval of the final plans from the City Engineer if the variances are approved. Whitmore confirmed.

Case asked if Staff consulted with the applicant when crafting the Staff recommendations. Whitmore stated the staff recommendations were created internally based on the submitted plans.

Benison asked if 16 spaces are adequate. Ludman confirmed.

Case asked the petitioner if there were any objections to the Staff recommended conditions in the Staff Report. Ludman agreed to all conditions with no objections.

Cook expressed the conditions listed in the Staff Report address the concerns submitted in Mullett's letter of opposition.

Cook asked if a yellow curb could be painted on the opposite side of Martin Street to provide more room and increase safety.

Whitmore stated he would forward the request for service to the City Engineer.

Case expressed the yellow curb option could not be listed as a condition as the applicant cannot be responsible for ensuring that is completed.

Benison made a motion to find in the affirmative for all of the Finding of Facts for V19-09 as presented; seconded by Tomblin. Motion carried unanimously.

NOTE: The following findings were included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

This variance request pertains to the City Code, Section 1365.09(A)(3), "Parking Aisles". Site conditions relating to the existing building, support areas, parking scheme and watercourse (Burroughs Run) which bisects a portion of Parcel 219 make it very difficult to comply with the requirements of this Section of the Code (See attached "Site Plan"). There is not ample space to achieve the required parking spaces (15-18) as stipulated by Code to accommodate the daycare facility (City Code, Section 1367.08 (C), "Landscaping". Previous business operations at this property established parking directly off Martin Street. Martin Street is not a main thoroughfare and serves primarily the residents that live

in this area. Residents have become accustomed to this parking arrangement and traffic condition. It is important to note that site distance is more than adequate for vehicular travel on Martin Street in the vicinity of the daycare facility. The request for variance is based on the above discussion of existing conditions and prior use of the building and parking scheme which in our opinion will no cause a hazard or risk the safety of the neighboring residents or the customers and employees of the daycare facility.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

As indicated in Item “No. 1” above, this variance emerges as a result of the parking requirements dictated by the City Code (see attached Site Plan). Note “existing conditions” depicted in Item No. 1 referring to the existing building, support areas and the parking scheme established by prior businesses at this location.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

This variance will permit the reasonable use of the existing facility to the fullest extent with minor improvements (incorporate additional parking and establish a playground area with fencing) and facilitate the intended use to serve as a daycare establishment and comply with City Code requirements. Proposed additional parking areas will be stabilized with asphalt paving, a tar and chip application or other recognized material to prevent mud or gravel from being transported onto the public streets.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The approval of the identified improvements will serve the intended use of the facility as a daycare and comply with the existing zoning ordinance and will avoid an unreasonable economic burden on the owner to justify the needs in order to operate a safe and healthy establishment.

Whitmore suggested to modify Staff condition number four to include drive isles in addition to parking spaces.

Benison noted the request for 18 parking spaces was listed in the original application. Case noted the applicant is fine with the adjustment to 16 spaces.

Benison asked if they should consider the landscaping prior to making a motion for the parking variance. Case expressed they should consider them individually even though there may be some combined aspects.

Whitmore noted that parking flows into the buffering issue and therefore the parking needs to be considered first.

Cook moved to grant variance relief for Case No. V19-09 with presented Staff recommended conditions including the amended condition to include drive isles; seconded by Meehan. Motion carried unanimously.

- C. **V19-10 / Mini Mountaineer Early Learning Center, LLC / 3414 Collins Ferry Road:** Request by Gloria Scotchel, on behalf of Mini Mountaineer Early Learning Center, LLC, for variance relief from Section 1367.08 regarding landscaping buffer; Tax Map 53, Parcels 219 and 220; B-1, Neighborhood Business District.

Case expressed this is a unique property as it sits on a corner lot, has pre-existing nonconforming issues, a floodplain in the rear of the property, and there has been an increased in traffic patterns.

Board members agreed with Case and expressed no issues with the proposed landscaping buffer variance.

Meehan made a motion to find in the affirmative for all of the Finding of Facts for V19-10 as presented; seconded by Tomblin. Motion carried unanimously.

NOTE: The following findings were included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

This variance request pertains to the City Code, Section 1367.08 (C), "Landscape Buffer". Site conditions relating to the existing building, support areas, parking scheme and watercourse (Burroughs run) which bisects a portion of Parcel 219 make it very difficult and impractical to comply with the requirements of this Section of the Code (See attached "Site Plan"). There is not ample space to achieve the required parking spaces (15-18) as stipulated by Code to accommodate the day care facility (City Code, Section 1365.09(A)(3), "Parking Aisles". Attempting to comply with this Section of the Code would negate the majority of the required parking. Several "buffer areas" are proposed in an attempt to comply with the Code (See attached Site Plan). The landscaping plan for the proposed identified areas will be in accordance with Article 1367 of the Planning and Zoning Code for Type II Site Plan Approval. Previous business operations at this property established parking directly off Martin Street. Martin Street is not a main thoroughfare and serves primarily the residents that live in this area. Residents have become accustomed to this parking arrangement and traffic condition. It is important to note that site distance is more than adequate for vehicular travel on Martin Street in the vicinity of the daycare facility. This request for variance is based on the above discussion of existing conditions and prior use of the building and parking scheme which in our opinion will not cause hazard or risk the safety of the neighboring residents or the customers and employees of the daycare facility.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

As indicated in Item "No. 1" above, this variance emerges as a result of the parking requirements dictated by the City Code (See attached site plan). Note "existing conditions" depicted in Item No. 1 referring to the existing building, support areas and the parking scheme established by prior businesses at this location.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

This variance will permit the reasonable use of the existing facility to the fullest extent with minor improvements (incorporate additional parking with landscaping buffer areas as indicated on the Landscape Plan and establish a playground area with fencing) and facilitate the intended use to serve as a daycare establishment and comply with the City Code requirements. Proposed additional parking areas will be stabilized with asphalt paving, a tar and chip application or other recognized material to prevent mud or gravel from being transported onto the public streets.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The approval of the identified improvements will serve the intended use of the facility as a daycare and comply with the existing zoning ordinance and will avoid an unreasonable economic burden on the owner to justify the needs in order to operate a safe and healthy establishment. It should be noted that there is a relative significant amount of area on the east side of Burroughs Run that is not being developed and is to remain as “green” area (See attached Landscape Plan).

Cook moved to grant variance relief for Case No. V19-10 with Staff recommended conditions; seconded by Tomblin. Motion carried unanimously.

Case reminded the petitioner that the Board’s decisions can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board’s decisions during this period would be at the sole financial risk of the petitioner.

V. ANNOUNCEMENTS:

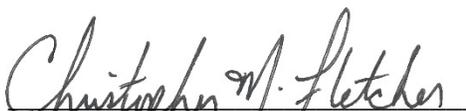
- A.** Whitmore stated there will be a training workshop for all Board members on Monday, March 11, 2019 at 6:00 p.m. in the Public Safety Building’s Conference Room.
- B.** Whitmore stated the Planning and Zoning Code updates have been codified for 2019 and is available on the City website. Hard copies can be provided at the training session if needed.

VI. ADJOURNMENT: 7:50 p.m.

MINUTES APPROVED:

March 20, 2019

BOARD SECRETARY:


Christopher M. Fletcher, AICP