

Town of Lexington
**Board of Zoning Appeals
Minutes**

August 2, 2018

The Board of Zoning Appeals held a Work Shop prior to their regular scheduled meeting on August 2, 2018 at 4:30 p.m. in the third floor conference room. Those present for the Work Shop were Chair Mary Watts, Vice-Chair Troy Fite and Board Members Reve' Richardson and Justin Brown. Staff members present were: Director of Planning, Building and Technology John Hanson, Municipal Prosecutor Cliff Koon, Assistant Zoning Administrator Jessica Lybrand, and Municipal Clerk Becky Hildebrand.

The Board received a new MASC 2018 Comprehensive Planning Guide for Local Governments and reviewed the rules and procedures for the Board of Zoning Appeals.

The Board of Zoning Appeals held their regular meeting at 5:30 p.m. in the Council Chambers located at Town Hall, 111 Maiden Lane, Lexington, South Carolina. The meeting was attended by: Chair Mary Watts, Vice-Chair Troy Fite and Board Members Justin Brown, Lisa Gibson and Reve' Richardson.

Council and Staff members present were: Town Council Member Todd Lyle, Director of Planning, Building and Technology John Hanson, Assistant Zoning Administrator Jessica Lybrand, Digital Media Coordinator Darrell Pritchard, and Municipal Clerk Becky Hildebrand.

Three (3) citizens were present and no one from the news media was present.

Chair Watts called the meeting to order at 5:30 p.m. and read an opening statement to explain the procedures of a Board of Zoning Appeals meeting.

All four points must be met and should be read as part of the official record. The Board of Zoning Appeals is a legal board operating under the Comprehensive Planning Act of the State of South Carolina; they make decisions within the parameters of State law and may hear and decide appeals for a variance from the requirements of the ordinance when strict application of the provision of the ordinance would result in unnecessary hardship and a variance may be granted in an individual case of unnecessary hardship if the Board makes and explains in writing all their findings: (1) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography. (2) These conditions do not generally apply to other property in the vicinity. (3) Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property. (4) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the

**Board of Zoning Appeals Minutes
August 2, 2018**

variance. State law further prohibits the board from granting a variance simply because the property could be used more profitably if the variance were granted. The board is not concerned with the use of the property because that is determined by others. If the applicant believes the board made an incorrect decision, they may appeal the decision through Circuit Court within certain time limits provided by State law. Those testifying at the meeting are asked to sign-in.

ACTION ITEMS

1. **Variance 2018-5 (V): Variance from the Side Yard Setback Requirement on Nine Lots in the Millstream Crossing Subdivision:** Mr. Steve Oexmann requested a variance from the side yard setback requirement on nine (9) lots located in the Millstream Crossing subdivision. Mr. Oexmann is a builder interested in constructing homes on the remaining lots in this neighborhood. The developer/owner of the lots originally permitted Millstream Crossing as a townhome development. After several townhomes were built, the remaining lots were converted to construct detached housing on them with three (3) foot side yard setbacks. After this was done, several homes were built with three (3) foot setbacks. The neighborhood was finalized and the plat was recorded for the development in January 2017. At that time, the remaining undeveloped lots were shown on the plat with three (3) foot side yard setbacks. Mr. Oexmann would like to reduce these setbacks to two (2) feet on nine (9) of the remaining lots.

Chair Watts asked if the original three (3) foot setback was permitted. Mr. Hanson clarified that yes the three foot setback was permitted and zero setback is permitted in PR2 Zoning, however, the issue is that the neighborhood was approved as townhomes with shared walls. He added that when they came back and requested detached housing the Town authorized it due to adding more green space, more marketable housing per the developer and it did not increase density. He explained that they allowed the switch to what is referred to as “zero lot line” in a subdivision where you can have zero setbacks on one side and six feet on the other side or three feet and three feet setbacks uniformly throughout the subdivision. Mr. Hanson stated that they converted the remaining lots to 3 and 3 of which a few houses were built with that configuration and closed out the subdivision and recorded the plats with that configuration. He added that since the plats were recorded on a public document with a 3 and 3 setback, they are required to request a variance. Chair Watts asked if they were trying to build more townhomes. Mr. Hanson responded that the number of lots is the same, but the product is different and the request is to change the setback from a 3 and 3 to a 2 and 2 on nine lots.

Chair Watts called for comments from the applicant and/or those *in favor* of the variance.

Mr. Eli Rozier, EMR and Associates, developer and owner of remaining nineteen lots at Millcreek Townhomes and Cottages, gave a brief history of the project and stated that the original homes were built in 2005 and 2006 just before the recession hit. He added that it was not feasible at that time to move forward so they did a new market analysis and changed the configuration of the neighborhood from an

**Board of Zoning Appeals Minutes
August 2, 2018**

attached product to a detached product which was more marketable of which they did a few. Mr. Rozier stated that due to a financial situation it was not feasible to keep moving forward and he relocated back to Florida. He came back to finish this neighborhood which has been sitting for 12 to 14 years and it was very difficult for him. He added that Mr. Oexmann came to him to be the developer because they had a similar product which would integrate very easy with the existing product and make it work. Mr. Rozier stated that they have a nine lots that need a few modifications. He added that the existing product is 10 to 12 years old and dated whereas the new product is energy efficient, more modern, yet will not disrupt the structure or flow of the neighborhood. He stated that they were asking for the one (1) foot variance on each side in order to finish the 20 lots which would also benefit the residents that have been there paying their taxes and HOA dues.

Chair Watts asked Mr. Rozier to approach and show the Board exactly where the 19 remaining lots are located. Mr. Rozier pointed to a plat showing eight lots along the creek and one lot against the retaining wall. Mr. Hanson clarified that the applicant is asking for a variance on nine (9) lots and they are identified on the application by tax map numbers. He added that their copies did not show the yellow highlight very well. Vice-Chair Fite confirmed that the nine lots were initially platted for townhomes and changed to detached homes. Chair Watts stated that because the property was already platted and recorded they need a variance and if they had done it before it was platted and recorded they would have to go back to the Planning Commission. Board Member Gibson clarified that the house type now is a detached single family home cottage. Vice-Chair Fite asked if the nine lots were the same or similar in size to the lots that are already built with single detached cottages. Mr. Rozier responded yes, for the most part, they are very much the same size with only a little bit of variance because of the way they sit on a particular lot. Vice-Chair Fite stated that he disagreed in that the reason Mr. Rozier needed a variance is because he is building a house two feet wider than the ones he previously built. Mr. Rozier responded yes that was a true statement of what he has built in the past. Vice-Chair Fite stated that the land had not changed in years and ultimately Mr. Rozier wants to build a two foot wider house on a lot that the house did fit on when he was previously developing the neighborhood. Mr. Rozier responded yes, that he did have a product that would fit on it. He added that he was not trying to mislead the Board. Vice-Chair Fite stated that he was not trying to be short, he just wanted to make sure that everyone understood that the land did not change, but the product did change.

Chair Watts called on Mr. Steve Oexmann for questions. She asked if he could make the larger detached product work on the property.

Mr. Steve Oexmann, Wade Journey Homes, 3300 Battleground Avenue, Suite 230, Greensboro, NC, stated that they had tried to make the larger product fit as the first option, but they had not come up with a way to shrink it by two feet and still have it make financial sense. He added that there are topography issues in the back of the property and the lots drop off as shown in the diagram so in order to make it a reasonable home they needed to go deeper. Mr. Oexmann stated that they had the same issue on the other side of the property with the retaining wall. Chair Watts

**Board of Zoning Appeals Minutes
August 2, 2018**

confirmed that 8 of the 9 lots are affected by the creek side of the property and the ninth lot has a retaining wall. Mr. Oexmann stated that the other 10 lots are wider and did not require a variance. He added that because of the width on the 10 lots they still had room for six feet of separation and it will all fit together if they can do four feet on the other lots.

Chair Watts called for comments from those *opposed to* the variance. There were none.

Chair Watts called for the Board's discussion. She stated that the only point she could see was the topography of the lots because of the creek and it has to meet all four points to justify a variance. Vice-Chair Fite stated that the first four on that side are attached town homes then the developer changed to a single structure. He added that he understood the topography issue. Chair Watts asked if there were any further comments from the Board. There being no further discussion, Chair Watts wished to make a motion.

A motion was made by Chair Watts and seconded by Board Member Gibson to deny Variance request #2018-5(V) due to failure to meet all four points as required. Chair Watts called for a roll call vote. Roll call vote results: Gibson – Yes to the motion to deny. Richardson - Yes to the motion to deny. Watts – Yes to the motion to deny. Fite – Yes to the motion to deny. The motion to deny Variance #2018-5(V) was unanimously carried.

Mr. Rozier wished to ask a question from an economic standpoint. Chair Watts allowed the question. Mr. Rozier stated that he understood why the Board did what they did and about the hardship on the lots, but from an economic standpoint they all need to try to work together and do what is best for the county. Mr. Hanson reminded Mr. Rozier of Chair Watts opening statement which indicates that the Board cannot give a variance for economic purposes.

2. Variance 2018-6(V): Variance from the Sign Ordinance at 5454 Sunset Boulevard – TJ Maxx located at 5454 Sunset Boulevard.

Mr. Hanson stated that the applicant, Ms. Jill Hopkins with Anchor Signs, was not present. He added that she had been notified and he had just called her about the meeting. He stated that in the absence of the applicant, it would be up to the Board if they wanted to hear the item, or defer it to the next meeting.

A motion was made by Vice-Chair Fite and seconded by Board Member Richardson to defer Variance request #2018-6(V) for TJ Maxx to the next Board of Zoning Appeals meeting. Vice-Chair Fite stated that since they only knew of one Board Member that would be absent next time, he recommended that the Board table the item in order to give the applicant an opportunity to speak. The motion was unanimously carried.

**Board of Zoning Appeals Minutes
August 2, 2018**

APPROVAL OF MINUTES

A motion was made by Board Member Gibson and seconded by Vice-Chair Fite to approve the Board of Zoning Minutes from the June 7, 2018 meeting as submitted. The motion was unanimously carried.

OTHER BUSINESS

Mr. Hanson stated that there would be a Board of Zoning meeting September 6, 2018.

ADJOURNMENT: Chair Watts called for a motion to adjourn if there were no further comments or questions. A motion was made by Vice-Chair Fite and seconded by Board Member Gibson to adjourn at 5:55 p.m. The motion was unanimously carried.

Respectfully submitted by:

Becky Hildebrand, CMC
Municipal Clerk

APPROVED:

Mary Watts
Chair

FOIA COMPLIANCE – Public notification of this meeting was published, posted and mailed in compliance with the Freedom of Information Act and the Town of Lexington requirements.