

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

October 1, 2020

The Board of Zoning Appeals held their regular scheduled meeting on October 1, 2020 at 5:30 p.m. in the Council Chambers located in Town Hall, 111 Maiden Lane, Lexington, S.C. Those present for the meeting were Chair Mary Watts, Vice-Chair Troy Fite, Board Members Reve' Richardson, Justin Brown, and Ronald Fisher.

Staff members present were: Director of Planning, Building and Technology John Hanson, Digital Media Coordinator Darrell Pritchard and Municipal Clerk Becky Hildebrand.

Four (4) 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 rules of procedure for a Board of Zoning Appeals meeting as follows:

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 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 2020-5(V): Variance from the Buffer and Setback Requirements at 456 South Church Street:** Director of Planning, Building and Technology Hanson

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presented the request and stated that Mr. David Cook requested another variance from the buffer and setback requirements at 456 South Church Street. The property currently has three apartment buildings with a total of twelve units. Mr. Cook requested and received two previous variances reducing the side yard buffer and setbacks to allow five (5) additional buildings to be constructed on the property. Although the site plan has remained virtually the same throughout this process, it was not known that a buffer and setback variance was needed for the rear property line so neither previous request addressed this requirement. Apartment facilities are required to have a 100 foot buffer and 150 foot setback from all property lines. For Mr. Cook to construct the fifth building as planned, (he is already under construction with the first four buildings) a variance reducing the rear yard buffer and setback to 105 feet is required. Mr. Hanson added that he had narrowed down the setback to 105 feet since drafting this item which originally stated 90 feet.

Mr. Hanson distributed a copy of the old site plans (2018 and 2019) and directed the Board to the new site plan included in their package. (Copies attached.) He explained that the previous plans did not address the need for a rear setback. Mr. Hanson stated that the only complaint they received last time was from an adjacent property owner at the rear of the property. He added that he had received an email from Clifton Rogers, an adjacent rear property owner, which stated that he did not have an objection to the variance request. (Copy attached.) Mr. Hanson confirmed that Mr. Rogers is not the only adjacent rear property owner.

Chair Watts called on the applicant for comments.

Mr. David Cook, DCook Property LLC d/b/a Woodland Villas, property owner, stated that Mr. Hanson had summed up the request very well. He added that the project has not changed at all and the information from his last variance meeting was the same. He apologized for having to make a third request, but there had been a lack of communication between some of his contractors who did not pick up on this rear setback and they should have known. Mr. Cook stated that in the original application they did request 60 feet, but now he has a CAD drawing and it can be reduced to 45 feet. He stated that other than that, everything else is still good.

Mr. Hanson explained to the Board that in their original write-up the applicant asked for a 60 foot variance from allowing it to be 90 feet from the property line, now making it 105 feet which is a 45 foot variance. Mr. Cook clarified that it was just for the back property line.

Chair Watts asked if the fifth building could be placed somewhere else on the property. Mr. Cook responded that he had talked with his General Contractor and if they can narrow the buildings because there is a minimum of 20 feet between buildings due to the type of construction. He added that a second issue is he is trying to make the buildings match the remaining complex. Mr. Cook stated that he was trying to build a high rise complex here because he likes his greenspace with more of a natural neighborhood atmosphere and the 25 foot seemed to fit well with everything, plus it met fire code requirements. He confirmed if they pushed it to 20

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feet it would require reconfiguring all the driveways, sidewalks, and grading so he thought 25 feet was more appropriate.

The Board Members discussed the placement of the fifth building using the site plan in their package which indicated a box in the location of the fifth building. Vice-Chair Fite confirmed that the 2019 site plan is the same and the building would be a town home plan just like the one to the left and the one across the parking lot.

Chair Watts asked if the Board was provided the rear setback information at the previous variance request. Mr. Hanson responded, no and that was why he gave the Board previous site plans from 2018 and 2019 because the back line was not shown on either. He added that he would take a little responsibility for not asking that question previously but they were dealing with the side yard variance request as submitted. He added that visually looking at it, without a surveyed measurement, he did not know if it was showing 105 feet from the property line or not.

Chair Watts asked the Board Members if they had any further questions for the applicant. Vice-Chair Fite did not but wanted to make sure the newer members did not have questions. There were no further questions.

Chair Watts asked if anyone was present who opposed the variance. There were none.

Ms. Cheryl Rogers, Addy Lane, adjacent property owner, asked how far the building would be from the creek and how far down South Church Street is the apartment. Mr. Hanson responded that the property line would be 105 feet from the creek. He added that this is an extension of the apartments that are already located at 456 South Church Street and they cannot clear anything within 50 feet of the creek. Board Member Fisher stated that Addy Lane is on the other side of the creek.

Vice-Chair Fite stated that looking at the tax map aerial photograph, he could see trees, but the other apartment buildings had been constructed since the photo was taken so he was not sure how many trees would be left.

Board Member Fisher stated that the applicant cannot clear anything within 50 feet of the creek. Mr. Cook stated that he had current photographs that he could show the Board and Ms. Rogers. He presented the photographs to the Board and Ms. Rogers. Vice-Chair Fite confirmed the location of where the photographs were taken in relation to the site plan.

Chair Watts called for a motion if there were no further questions. A motion was made by Board Member Fisher and seconded by Vice-Chair Fite to approve Variance Request 2020-5(V) as stated. Board Member Brown confirmed that this is for a 45 foot variance from the required setback of 150 feet. Board Member Fisher stated his findings as follows: *(1) There are extraordinary and exceptional conditions pertaining to the particular piece of property* in that zoning requirements do not allow for the conformity of the last town home building and otherwise conforms with the area. *(2)*

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These conditions do not generally apply to other property in the vicinity in that the existing buildings were approved with a 30 foot setback and were granted a side property variance of 35 feet. (3) Because of these conditions, the application of the ordinance to this particular piece of property would effectively prohibit or unreasonably restrict the layout of the fifth building which allows some conformity to the complex. (4) The authorization of a variance will not be of substantial detriment to adjacent property because the property backs up to a creek and has sufficient foliage to not negatively impact the adjacent properties.

Chair Watts called for a roll call vote. Roll call vote results: Board Member Brown, yes to the motion to approve the variance. Vice-Chair Fite, yes to the motion to approve the variance; Chair Watts, yes to the motion to approve the variance. Board Member Richardson, yes to the motion to approve the variance. Board Member Fisher, yes to the motion to approve the variance. The motion to approve Variance 2020-5(V) was unanimously carried.

Chair Watts advised the applicant that this would be his last variance on this property.

APPROVAL OF MINUTES

A motion was made by Board Member Richardson and seconded by Board Member Brown to approve the Board of Zoning minutes from the September 3, 2020 meeting as submitted. The motion was unanimously carried.

OTHER BUSINESS

Mr. Hanson advised the Board that they would have a meeting on November 5, 2020. Chair Watts advised that she would be unavailable to attend in November.

ADJOURNMENT: There being no further business Chair Watts called for a motion to adjourn. A motion was made by Vice-Chair Fite and seconded by Board Member Brown to adjourn the meeting at 5:50 p.m. The motion was unanimously carried.

Respectfully submitted by:

Becky P. 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.