

Franklin County Board of Zoning Appeals
Agenda
November 5, 2020

I. Call to Order

II. Roll Call

III. Consent Agenda

A) Approval of Minutes from October 6, 2020 meeting

IV. Old Business:

1) **APPLICATION for VARIANCE** – Application of Doug Bowman, Applicant, and Thomas J. Gesuale, Owner, requesting a ten (10) foot variance to Section 25-226(a), Front Setback, of the Franklin County Code. The property is currently zoned R-1, Residential Suburban Subdivision District, and located on Lot 14 of Point Drive in the Gills Creek District of Franklin County, and further identified as Tax Map/Parcel # 0040301400. Section 25-226(a) states that the minimum distance from the nearest point of the house be equal to fifty-five (55) feet or thirty (30) feet from the edge of the right of way, whichever is greater. A variance of ten (10) feet is being requested to allow for the construction of a new home with a front setback of twenty (20) feet instead of thirty (30) feet (Case # VAR- 09-20-16693).

a. Staff Presentation (Lisa Cooper)

V. Citizen Comment

VI. Adjourn

Department of Planning & Community Development



A public meeting of the Franklin County Board of Zoning Appeals was held October 6, 2020 at 6:00 p.m. in the Franklin County Board of Supervisors meeting room located in the Franklin County Government Center.

THOSE PRESENT:

William Lee, Chairman
Eric Ferguson, Vice-Chairman
William Cooper
Kevin Hunt
Wayne Worley
Billy Kingery
Pamela Washington

OTHERS PRESENT:

Steven Sandy, Director/Zoning Administrator
Lisa Cooper, Principal Planner
Hannah Powell, Clerk

The meeting was called to order by Chairman Lee at 6:00 p.m. The first order of business was the roll call. The next item on the agenda was the approval of the minutes from the August 4, 2020 meeting. The August 4, 2020 minutes were approved by unanimous consent.

Chairman Lee announced the first item on the agenda and asked for the staff report.

APPLICATION for VARIANCE – Application of Doug Bowman, Applicant, and Thomas J. Gesuale, Owner, requesting a ten (10) foot variance to Section 25-226(a), Front Setback, of the Franklin County Code. The property is currently zoned R-1, Residential Suburban Subdivision District, and located on Lot 14 of Point Drive in the Gills Creek District of Franklin County, and further identified as Tax Map/Parcel # 0040301400. Section 25-226(a) states that the minimum distance from the nearest point of the house be equal to fifty-five (55) feet or thirty (30) feet from the edge of the right of way, whichever is greater. A variance of ten (10) feet is being requested to allow for the construction of a new home with a front setback of twenty (20) feet instead of thirty (30) feet (Case # VAR- 09-20-16693).

Mrs. Cooper began by explaining that this variance request is to allow for the construction of a three (3) bedroom 3 ½ bath single-family dwelling with the main floor area 2672 square feet, finished basement 1205 square feet, unfinished basement 1467 square feet and an attached garage 696 square feet. Mr. Bowman is requesting the front yard setback to be reduced to twenty (20) feet at the location of the garage.

Mrs. Cooper went on to say that the property is a .728-acre parcel located on a 50' private right of way. The parcel is irregular in shape; not a perfect rectangle. At the top of the lot moving down towards the lake the property slopes downward considerably and drops off close to the lake. The remainder of the lot continues to slope downward with a drop off at the lake.

Mrs. Cooper said that the staff's opinion is that the strict application of the ordinance would not unreasonably restrict the placement of the single-family dwelling. The single-family dwelling's main floor is 2672 square feet and the restrictive covenants for the subdivision require a one-story home to be a minimum of 1800 square feet.

Mrs. Cooper stated that the attached garage is proposed to be 696 square feet and the standard garage size is 576 square feet. There are two (2) lots on Point Drive that have been constructed meeting the setbacks and had less acreage than this parcel. The two (2) lots across the street that are vacant have less acreage (Lot 9 has 0.646 acres and Lot 10 has 0.569 acres) and the Board would be setting a precedent to grant variances for smaller lots in the subdivision.

Mrs. Cooper concluded that staff recommends that the Board of Zoning Appeals DENY the request for a variance.

Mrs. Cooper offered to answer any questions.

Mr. Hunt asked if this property was in a private subdivision.

Mrs. Cooper answered that it was.

Mr. Kingery commented that the lot was so extremely steep it seemed to pose a hardship to the builder.

Mrs. Cooper mentioned that the builder was present as he was also the applicant.

Chairman Lee asked to hear from the applicant.

Mr. Bowman reiterated that the lot was very steep and that the owners wanted to build a sizable house.

Mrs. Washington asked if the size of the garage could be reduced.

Mr. Bowman agreed that reducing the size of the garage was a possibility.

Mr. Hunt commented that surely the square footage of the home could be reduced also.

Chairman Lee opened the public hearing and asked if there as anyone present that would like to speak.

Linda Glod asked what setbacks were and how they related to HOA rules.

Mrs. Cooper clarified setbacks for Mrs. Glod.

With no other public speakers, Chairman Lee closed the public hearing and the members had discussion among themselves.

Mr. Ferguson made a motion to table action, stating that he would like the applicant and owner to try to modify the building plans therefore making a variance request unnecessary or smaller.

Mr. Cooper seconded the motion.

The motion to table action was approved. Voting on the motion was as follows:

AYES: Hunt, Washington, Kingery, Cooper, Worley, Ferguson, Lee
NAYES: None
ABSENT: None
ABSTAIN: None

APPLICATION to APPEAL – Application of Matthew T. Callahan and Barbara M. Callahan, Applicants and Owners, to appeal the Zoning Administrator’s decision dated July 17, 2020 and August 20, 2020. The purpose of this application is to appeal the Zoning Administrator’s determination that the short term tourist rental of a dwelling is not a permitted use in the R-1 District of Franklin County. The property is currently zoned Residential Suburban Subdivision (R-1) and is located at 279 Anthony Ford Road in the Union Hall District of Franklin County and further identified in Franklin County Real Estate Records as Tax Map/Parcel # 0500100400.

Mr. Sandy began by explaining that on July 17, 2020 and August 20, 2020 the Franklin County Zoning Administrator, Steven M. Sandy, issued determinations that the use of short term tourist rental of a dwelling is not a permitted use in the Residential R-1 zoning district. The Zoning Administrator notified the property owners on two (2) occasions by letter of their violation of the Franklin County Zoning Ordinance.

Mr. Sandy went on to say that in the Callahan’s letter of appeal they state that they understood Franklin County approved their short term rental when the County Commissioner of Revenue accepted payment for occupancy taxes. They were not advised at any point that payment of their transient occupancy taxes to the Commissioner of the Revenue satisfied their zoning violations.

Mr. Sandy stated that the Zoning Ordinance permits this use by-right in the Residential Planned Development District (RPD) and Planned Commercial District (PCD). The ordinance further allows this use in the Agriculture A-1 zoning district upon issuance of a special use permit by the Board of Supervisors. All other zoning districts do not allow short term rentals.

Mr. Sandy continued by saying that all decisions of the Zoning Administrator are appealable to the Board of Zoning Appeals within 30 days. Section 25-773 of the Zoning Ordinance permits the Board of Zoning Appeals to uphold, overturn, or modify the Administrator’s decision.

Mr. Sandy concluded that Staff recommends that the Board of Zoning Appeals make the following finding and uphold the decision of the Zoning Administrator:

- 1) The appellants, Mr. & Mrs. Callahan have not demonstrated by a preponderance of evidence that the Zoning Administrator erred in his decision of July 17, 2020 and August 20, 2020 by finding that short term tourist rental of a dwelling is not a permitted use in the Residential R-1 zoning district.

Mr. Sandy offered to answer any questions.

Chairman Lee asked if there were any questions for Mr. Sandy; there were not. Chairman Lee asked to hear from the appellant.

Holland Perdue, attorney representing Mr. and Mrs. Callahan, began by saying that he agreed with Mr. Sandy's interpretation of the Zoning Ordinance and that short term rentals is not a permitted use in R-1 districts. He went on to say that the owners were confused by the letters they received from the Commissioner of Revenue and the Planning Office. He concluded that the County needed to revise the letters that were going out to property owners to keep this sort of confusion from happening. Because of this, his clients are asking for the determination of the Zoning Administrator to be overturned.

Chairman Lee asked if anyone had questions for Mr. Holland; no one did.

Chairman Lee then opened the public hearing and asked if there was anyone present that would like to speak.

Mr. Ron Kohler of 223 Anthony Ford Road said that he bought his property in the R-1 district because he did not want to deal with short term rentals. He said that the Callahans have been renting their property since 2017 and there have been many problems varying from noise to dogs wandering loose. He concluded that he is adamantly opposed to this use and hopes the BZA will uphold the decision of the Zoning Administrator.

Mr. Kevin Kroll said he purchased his home in 2016 in that area because no rentals were allowed. He went on to say that he has spoken to Mrs. Callahan on several occasions regarding issues with the rental and was told to just deal with it. Mr. Kroll also mentioned dogs from renters being on his property. He concluded that he is also adamantly opposed to short term rentals and supports the decision of the Zoning Administrator.

With no one else to speak, Chairman Lee closed the public hearing and the discussion among the members ensued.

Chairman Lee made a motion to affirm the decision of the Zoning Administrator, stating that he found that the appellants, Mr. & Mrs. Callahan have not demonstrated by a preponderance of evidence that the Zoning Administrator erred in his decision of July 17, 2020 and August 20, 2020 by finding that short term tourist rental of a dwelling is not a permitted use in the Residential R-1 zoning district.

Mr. Kingery seconded the motion.

The motion to uphold the Zoning Administrator's decision was approved.

Voting on the motion was as follows:

AYES: Hunt, Washington, Kingery, Cooper, Worley, Ferguson, Lee

NAYES: None

ABSENT: None

ABSTAIN: None

Chairman Lee introduced the next item on the agenda as old business to discuss survey requirements prior to building. The members reviewed the information provided regarding the processes of other jurisdictions in Virginia.

Mr. Ferguson made a motion to request that the Board of Supervisors consider enacting a zoning ordinance amendment to require a survey.

Mr. Lee seconded the motion.

The motion was approved. Voting on the motion was as follows:

AYES: Hunt, Washington, Kingery, Cooper, Worley, Ferguson, Lee

NAYES: None

ABSTAIN: None

ABSENT: None

With no other business the meeting was adjourned at 7:35p.m.

_____, Clerk
Hannah L. Powell

October 30, 2020
Date

Department of Planning & Community Development



MEMORANDUM

To: Board of Zoning Appeals

From: Lisa Cooper, Principal Planner

Cc: Steven Sandy, Assistant County Administrator

Date: October 30, 2020

Subject: BZA Variance Doug Bowman, applicant/Thomas Gesuale, owner
Tax Map Number: 0040301400/Lot 14 of Point Drive

On October 6, the Board of Zoning Appeals held a public hearing on an application for a variance for Doug Bowman, Applicant, and Thomas J. Gesuale, Owner, requesting a ten (10) foot variance to Section 25-226(a), Front Setback, of the Franklin County Code. The property is currently zoned R-1, Residential Suburban Subdivision District, and located on Lot 14 of Point Drive in the Gills Creek District of Franklin County, and further identified as Tax Map/Parcel # 0040301400. Section 25-226(a) states that the minimum distance from the nearest point of the house be equal to fifty-five (55) feet or thirty (30) feet from the edge of the right of way, whichever is greater. A variance of ten (10) feet was being requested to allow for the construction of a new home with a front setback of twenty (20) feet instead of thirty (30) feet.

Staff presented the request and the applicant also made a presentation. There were no other speakers at the public hearing for this request. After discussion, the Board of Zoning Appeals voted 7-0 to table the variance request to allow Mr. Bowman and Mr. Gesuale to see if the variance could be reduced or reconfigured so that no variance was needed for the construction of the single-family dwelling.

October 22nd, Mr. Bowman submitted a revised plat requesting a variance of five (5) foot instead of ten (10) feet. In addition, Mr. Bowman informed staff that four (4) feet has been reduced off the front of the garage, three (3) feet has been reduced off the length and one (1) foot off the width of the house. This revised request to construct a single-family dwelling would have a front yard setback of twenty-five (25) feet instead of thirty (30) feet. Please see new plat attached to this memorandum.

Suggested Motions:

The following suggested motions are sample motions that may be used.

(Deny) Based on the fact the applicant has not demonstrated the required variance criteria identified in Section 15.2-2309 of the Code of Virginia has not been met, and the ordinance would not reasonably restrict the utilization of the property. Even though the applicant has

reduced the size of the garage and home to reduce the variance requested from ten (10) feet to five (5) feet. The Board of Zoning Appeals would be setting a precedent for other lots in the subdivision, therefore, I move to deny a variance to Section 25-226(a) of the Franklin County Code, requesting a five (5) foot reduction in the required front setback for the construction of a single-family dwelling as shown on the concept (survey) plat for Lot 14 comprised of .728 acres and located on Point Drive in the Gills Creek district of Franklin County.

OR

(Approve) Based upon the fact the applicant has reduced the size of the garage and single-family dwelling, which reduced the requested for a variance from ten (10) feet to five (5) feet. I find that the applicant has demonstrated granting the variance meets all criteria identified in Section 15.2-2309 of the Code of Virginia. Therefore, I move to approve the variance requested to Section 25-226(a) for a five (5) foot reduction in the required front yard setback for the construction of a single-family dwelling as shown on the concept (survey) plat for Lot 14 comprised of .728 acres and located on Point Drive in the Gills Creek district of Franklin County.

OR

(Table) Based on the fact that more information is needed I move that this item be tabled until the Board of Zoning Appeal's has the information it needs to make a final determination on this variance request.

If you have any questions, please do not hesitate to call 540-483-6642 or email me at lisa.cooper@franklincountyva.gov.

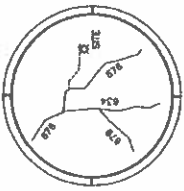
CURRENT OWNER - THOMAS J. GESUALS
DB 896, PG 1995

REFERENCE - TAX No. 4.3-14

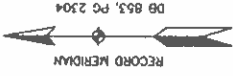
LOT 14, RIDGEWOOD SHORES
DB 853, PG 8304

NOTES:

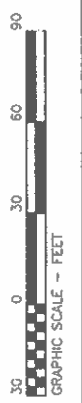
ALL IRON RODS SET ARE 6/8" REBAR.
THIS SURVEY WAS PERFORMED WITHOUT THE
BENEFIT OF A TITLE REPORT AND THEREFORE
MAY NOT NECESSARILY INDICATE ALL ENCUMBRANCES
UPON THE PROPERTY.
THIS IS TO CERTIFY THAT A PORTION OF THIS
PROPERTY SHOWN HEREON IS LOCATED IN THE
JOB, TRACT, SUBDIVISION, PLAT, MAP, RECORD
ZONE 1 & 2, AS PER S1087201002, DATED 1-8-10
THIS IS TO CERTIFY THAT ON MAY 29
2010 AN ACCURATE SURVEY WAS MADE OF THE
PROPERTIES SHOWN HEREON AND THAT THERE
ARE NO ENCUMBRANCES OR ENCROACHMENTS VISIBLE
ON THE GROUND OTHER THAN THOSE SHOWN
HEREON.
THIS IS A RE-SURVEY OF AN EXISTING LOT AND IS
NOT A RE-PLAT FROM THE FRANKLIN COUNTY
SUBDIVISION COMMISSION.



LOCATION MAP



CORNERSTONE LAND SURVEYING, INC.
260 SOUTH POLY STREET
ROCKY MOUNT, VIRGINIA 24151
640-468-3580



REVISED 8-11-20 TO SHOW
PROPOSED HOUSE LOCATION
AND PROPOSED M.B.L. VARIANCE
REVISED: 10-21-20
5' VARIANCE

VARIANCE REQUEST
PLAT OF SURVEY
PREPARED FOR
THOMAS J. GESUALE

LOCATED IN
GILLS CREEK MAGISTERIAL DISTRICT
FRANKLIN COUNTY, VIRGINIA
MAY 29, 2018
SCALE 1" = 30'

FIELD BK 567, JOB No. 18138, DRAWING No. C-3759

