

# Department of Planning & Community Development



A public meeting of the Franklin County Board of Zoning Appeals was held March 2, 2021 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  
Kevin Hunt  
Wayne Worley  
Billy Kingery  
Pamela Washington

## **THOSE ABSENT:**

William Cooper

## **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 November 5, 2020 meeting. The November 5, 2020 minutes were approved by unanimous consent.

Chairman Lee announced the next order of business as the annual election of officers. Chairman Lee asked if anyone had a nomination.

Mr. Kingery made a motion to re-elect Mr. Lee for Chairman and Eric Ferguson for Vice-Chairman.

Mrs. Washington seconded the motion.

The nominations were approved. Voting on the nominations was as follows:

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

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

**APPLICATION for VARIANCE-** Application of John T. Boitnott, attorney for Paul D. Burke and Lori A. O'Connell, Applicants and Owners, requesting variances to Section 25-298(c), Rear Yard Setback, of the Franklin County Code, on an approximate 0.58 acre property currently zoned RPD, Residential Planned Unit Development District, and located at 499 Back Nine Drive in the Gills Creek District of Franklin County and further identified by Franklin County Real Estate Records as Tax Map/Parcel # 0300603500. The RPD zoning district requires a minimum rear yard setback of thirty (30) feet from the

rear property line. A rear yard setback variance of 23.2 feet is being requested to bring the existing structure (home) built in 2019 into conformance with the existing setback of 6.10 feet and a rear yard variance of 28.6 feet at the northwest corner to allow a setback of 1.6 feet and 17.1 at the northeast corner of a proposed 12' x 25' deck addition to the rear of the home to allow a setback of 12.11 feet.

Mrs. Cooper began by explaining that in 2019 the house location was originally approved by the Planning Department staff with a rear yard setback of 33 feet. Based on the survey that was provided Mr. Burke the home was constructed only 23.2 feet from the rear property line. The RPD district requires a rear yard setback of 30 feet. The single-family dwelling was approved by the Waterfront Architectural Review Board and the homeowner's association rear yard setback is 10 feet, which does not supersede the requirements of the Franklin County Zoning Ordinance.

Mrs. Cooper went on to say in December of 2020, the Planning Department received a land use application for a proposed 12'x 25' deck to the rear of the property since the existing home is encroaching into the setback already the deck addition was denied by planning staff.

Mrs. Cooper stated that Mr. Burke and Ms. O'Connell decided to apply for a variance in order to have the existing home brought into conformance with the rear yard setback and to apply for the variances needed to construct the proposed deck addition to the rear of the property.

Mrs. Cooper clarified by saying that the survey (concept plan) prepared by Larry T. Ogle, Jr. dated January 18, 2019 shows the request of a variance to the rear yard setback of 6.8 feet to allow the existing setback for the single-family dwelling to be 23.2 feet. The proposed deck addition requesting a variance on the northeast corner of the proposed deck to be 1.5 feet to allow a setback of 28.5 feet and a variance on the northwest corner of the proposed deck to be 12.9 feet to allow a setback of 17.1 feet.

Mrs. Cooper said that Section II, Lot 35 of "The Waterfront" subdivision in Gills Creek District. The property is a .58 acre parcel. The parcel is irregular in shape narrowing towards the west portion of the property. The acreage is similar to other lots in the subdivision.

Mrs. Cooper stated that as for the single dwelling the hardship imposed by the ordinance was not created by the applicants. The existing single-family dwelling was constructed before their purchase of the home. The granting of the variance would not be a substantial detriment to adjacent properties or properties nearby.

Mrs. Cooper concluded that granting the variance for the existing single-family dwelling would enable the dwelling to come into conformance with the Franklin County Zoning Ordinance, therefore staff recommends that the Board of Zoning Appeals APPROVE the variance request to legalize the existing dwelling by approving setback of 23.2 feet.

Mrs. Cooper said that as for the deck, the strict application of the terms of the ordinance would not unreasonably restrict the utilization of the property. The granting of the variance would not alleviate a hardship due to the physical condition and could set a precedent.

Mrs. Cooper concluded that granting the variances for the 12' x 25' proposed deck the Board of Zoning Appeals would be setting a precedent to other homeowners of "The Waterfront" the ability to have a variance granted for an addition to the existing single-family dwellings in the community that are unable to meet the required setback for the RPD district, therefore staff recommends that Board of Zoning Appeals DENY the request for the 1.5 feet at the northwest corner and 12.9 feet at the NE corner of the proposed deck, rear yard setback variance to allow rear deck.

Mrs. Cooper offered to answer any questions.

Mr. Ferguson clarified that two sides of the property adjoin a golf course and Mrs. Cooper answered affirmatively.

With no more questions, Chairman Lee asked to hear from attorney John Boitnott, who was representing the property owners.

Mr. Boitnott began by expressing what he thought zoning was used for and why it was implemented in the County. He went on to say that variances were created for unique parcels of land that could not meet the zoning requirements. He added that this particular property met the qualifications of being a unique property because it adjoined a golf course on two sides.

Mr. Boitnott continued by saying that the house was built non-conforming prior to the previous owners buying it. He said they had planned on building this deck since they initially bought the house. He commented that the architectural review board of the subdivision had reviewed and approved the setbacks requested by the applicants. Mr. Boitnott concluded that the granting of a variance for this house and deck would not be a detriment to anyone.

Mr. Boitnott offered to answer questions.

Mrs. Washington asked if there is currently a deck there that is smaller in size,

Mr. Boitnott answered that what is there currently is too small and covered and would not be of much use.

With no other questions, Chairman Lee opened the public hearing and asked if there was anyone else that would like to speak; there was not. Chairman Lee closed the public hearing and the members had discussion among themselves.

Chairman Lee made a motion to approve the variance for the single family dwelling, stating that based upon the fact the applicant has demonstrated the ordinance would unreasonable restrict the utilization of

the property and that the granting of the variance would alleviate the hardship of the physical condition of the property as shown on the concept plan (survey) and 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 25-298(c) of the Franklin County Code for a variance of 6.8 feet with existing setback of 23.2 feet in the required rear yard setback for existing single-family dwelling as shown on the concept plan (survey) for Lot 35 comprised of .58 acres and located at 499 Back Nine Drive in the Gills Creek district of Franklin County.

Mr. Kingery seconded the motion.

The motion to approve the variance request for the single-family dwelling was approved. Voting on the motion was as follows:

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

Mr. Ferguson made a motion to approve the variance for the deck, stating that he found that based upon the fact the applicant has demonstrated the ordinance would unreasonable restrict the utilization of the property, that the granting of the variance would alleviate the hardship of the physical condition of the property the location shown on the concept (survey) plat and that the applicant has demonstrated granting the variance meets all criteria identified in Section 15.2-2309 of the Code of Virginia, I move to approve the variance requested to Section 25-298(c) of the Franklin County Code for variances of 1.5 feet at the northwest corner to allow a setback of 28.5feet and a variance of 12.9 feet at the northwest corner to allow a rear yard setback of 17.1 feet for the construction of a proposed 12' x 25' deck to the existing single-family dwelling as shown on the concept plan (survey) for Lot 35 comprised of .58 acres and located at 499 Back Nine Drive in the Gills Creek district of Franklin County.

Mr. Kingery seconded the motion. The motion to approve failed. Voting on the motion was as follows:

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

There were no other motions made.

Chairman Lee stated the last item on the agenda was citizen comment and asked if there was anyone present that would like to speak on any topic; there was not.

With no other business, the meeting was adjourned at 6:58.

Hannah L. Powell , Clerk  
Franklin County Board of Zoning Appeals

March 3, 2021  
Date



