



CITY OF RICHMOND

DEPARTMENT OF
PLANNING AND DEVELOPMENT REVIEW
BOARD OF ZONING APPEALS

BOARD OF ZONING APPEALS

MEETING MINUTES

WEDNESDAY, MAY 1, 2019

On Wednesday, May 1, 2019, the Board of Zoning Appeals held a public hearing in the Fifth Floor Conference Room, 900 East Broad Street, at 1:00 p.m.; display notice having been published in the Richmond Legacy Newspaper on April 17 and 24, 2019 and written notice having been sent to interested parties.

Members Present: Burt F. Pinnock, Chair
 Rodney M. Poole
 Kenneth R. Samuels, Sr.
 Mary J. Hogue
 Edward H. Winks, Jr.

Staff Present: Roy W. Benbow, Secretary
 William C. Davidson, Zoning Administrator
 Brian P. Mercer, Planner II
 Neil R. Gibson, Assistant City Attorney

The Chairman called the meeting to order and read the Board of Zoning Appeals Introductory Statement, which explains the proceedings of the meeting. The applicant and those appearing in support of an application speak first, followed by those appearing in opposition.

BZA 17-2019 (CONTINUED TO A LATER MEETING OF THE BOARD WITHOUT FEE)

APPLICANT: Robert and Magdalen Ferguson

PREMISES: 411 NORTH 22nd STREET
(Tax Parcel Number E000-0257/020)

SUBJECT: A building permit to construct a new single-family detached dwelling.

DISAPPROVED by the Zoning Administrator on February 15, 2019, based on Sections 30-300, 30-413.15(2)a & 30-710.3:1 of the zoning ordinance for the reason that: In an R-8 (Urban Residential District), the side yard (setback) and parking requirements are not met. A side yard of three feet (3') is required; none is proposed. The minimum aisle-width and stall-depth are not met. An aisle width of twenty-three feet (23') is required; twelve feet (12') is proposed. A stall depth of seventeen and one-half feet (17.5') is required; seventeen feet (17') feet is proposed.

APPLICATION was filed with the Board on February 15, 2019, based on Section 15.2-2309.2 of the Code of Virginia.

BZA 18-2019

APPLICANT: Congregation Beth Ahabah

PREMISES: 1111 WEST FRANKLIN STREET
(Tax Parcel Number W000-0531/009)

SUBJECT: A building permit to construct a metal 8' security fence accessory to an existing place of worship.

DISAPPROVED by the Zoning Administrator on March 13, 2019, based on Sections 30-300, 30-412.5(1)c & 30-630.9(b) of the zoning ordinance for the reason that: In an R-6 (Single-Family Attached Residential District), the maximum permitted height for a fence is exceeded. No fence or wall located within a rear yard shall exceed six and a half feet (6.5') in height. An eight foot (8') fence is proposed on the rear property line.

APPLICATION was filed with the Board on March 13, 2019, based on Section 15.2-2309.2 of the Code of Virginia.

APPEARANCES:

For Applicant: Larry Salzman

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Congregation Beth Ahabah, has requested a variance to construct a metal 8 foot security fence accessory to an existing place of worship for property located at 1111 W. Franklin Street. Mr. Larry Salzman, president of Congregation Beth Ahabah, testified that the Congregation has been located at 1111 W. Franklin Street since 1904. Mr. Salzman stated that last year they constructed a new building which allowed the creation of the courtyard which opens to the rear alley. Mr. Salzman noted that after receiving approval from the Commission of Architectural Review and the zoning office that a 6 foot opaque metal privacy fence was installed at the back of the courtyard along the alley. Mr. Salzman explained that they would like to install 18 inch finials at the top of the fence for security purposes. Mr. Salzman stated that there was no objection from their neighbor St. James Church. Mr. Salzman further stated that there was no objection from the West Avenue Improvement Association or the Fan District Association. Mr. Salzman indicated that 36 neighbors were apprised of the proposed plans and that there was no negative response received.

In response to question from Mr. Poole, Mr. Salzman stated that they had been visited by the Homeland Security Office and advised of the need for additional security.

The Board finds that evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a variance from the maximum permitted height for a fence be granted to Congregation Beth Ahabah for a building permit to construct a metal 8' security fence accessory to an existing place of worship.

ACTION OF THE BOARD: (5-0)

Vote to Grant

affirmative: Pinnock, Poole, Samuels, Hogue, Winks

negative: None

BZA 19-2019

APPLICANT: CC Richmond II, LP

PREMISES: 1225 NORTH 38th STREET
(Tax Parcel Number E000-1768/012)

SUBJECT: A building permit to construct a new single-family detached dwelling.

DISAPPROVED by the Zoning Administrator on March 13, 2019, based on Sections 30-300 & 30-710.1(a)(1) of the zoning ordinance for the reason that: In an R-5 (Single-Family Residential District), the off-street parking requirement is not met. One (1) off-street parking space is required; none is proposed.

APPLICATION was filed with the Board on March 13, 2019, based on Section 1040.3(11) of the City of Richmond Zoning Ordinance.

APPEARANCES:

For Applicant: Mark Baker
Gregory Shron

Against Applicant: Gray O'Dwyer

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, CC Richmond II, LP, has requested a special exception to construct a new single-family detached dwelling for property located at 1225 N. 38th Street. Mr. Mark Baker, representing the applicant, testified that

under §30-710.1 (a) (1) one off-street parking space is required and none can be provided for property located in an R-5 Single-Family Residential District. Mr. Baker noted the property is an interior lot located on the south side of North 38th Street and backs up to a large DPW owned tract of land which was formerly a landfill. Mr. Baker stated that the property was a legal lot of record and one of the larger lots in the block being 49 feet wide and 95 feet deep for a total of 4655 ft.² of lot area. Mr. Baker indicated the lot is vacant and the request is to construct a bungalow style dwelling with a second-floor built into the roofline. There will be 1400 ft.² of floor area having appropriate architectural design and detail consistent with the neighborhood utilizing quality materials. Mr. Baker noted that the request meets the standards outlined in the code of Virginia §15.2-2309 as follows:

- a. Strict application of the zoning would unreasonably restrict use of the property
- b. The granting of a variance would relieve a hardship due to a physical condition relating to the property
- c. In this case the physical condition relates to the exceptional topography at the rear of the property

Mr. Baker stated that the property abuts a public alley which is unimproved. Mr. Baker noted that there are topographical issues relating to the alley, the existence of mature vegetation in the alley, the length of the alley which would need to be improved all of which make improvement of the alley infeasible within the scope of the proposed development. Mr. Baker noted that the Department of Public Works has no desire to permit driveway access to 38th Street. Mr. Baker indicated that absent relief the ability to provide parking prevents use of the property. Mr. Baker advised the Board that notices to all owners within 150 foot radius of the property were sent out and no responses were received. No opposition was expressed by the Church Hill Center Association. Mr. Baker concluded by stating that the variance request is only about a waiver of a parking space which cannot technically/feasibly be provided and that the variance standards prescribed by the Code of Virginia have been met.

In response to a question from Mr. Poole, Mr. Baker stated that there wasn't much discussion of building materials at the neighborhood meeting. Mr. Poole expressed concerns over the proposal to utilize vinyl siding.

Speaking in support, Mr. Gregory Shron testified that the quality of design or more specifically utilization of vinyl siding is dependent on the detail that you are attentive to or not attentive to with respect to all exterior features of the house. Mr. Shron noted that inexpensive vinyl siding can go down to .038 of an inch in thickness which is indicative of poor quality. Mr. Shron stated that he would commit to utilizing siding which is .044 of an inch in thickness which is higher quality. Mr. Shron stated that with respect to affordability the difference in cost

between vinyl siding on the subject dwelling and cementitious siding is between \$7500 and \$8000. Mr. Shron noted with a price point of \$250,000 targeted toward 80% of AMI for a family of four that requiring cementitious siding would make the project unaffordable. Mr. Shron questioned the nexus between requesting a parking waiver and the requirement for provision of cementitious siding. Mr. Shron stated that the overriding concern should be providing affordable housing and providing infill development. Mr. Shron stated that we should disassociate the idea that if there is going to be BZA action that there has to be a trigger for cementitious siding.

Mr. Poole stated that what is being requested is a deviation from a long-standing policy of the Richmond Board of Zoning Appeals regarding provision of Hardy plank/cementitious siding as a condition precedent to approving various applications. Mr. Shron stated that he hoped that there is a willingness and desire on the part of the Board and all city officials to make sure that these properties can be brought back into service and obstructions are not being erected that are not meaningful with respect to serving the public interest for the type of development/infill that is desirable.

Mr. Poole asked if Mr. Shron shared the Boards concern regarding the lack of a complete presentation being made to the homeowners association regarding substitution of vinyl siding for cementitious siding. Mr. Shron did not feel that their proposal would be disappointing to the neighborhood and it was very much in keeping with other construction in the surrounding area. Mr. Shron stated that there are all types of cladding in the surrounding neighborhood. Mr. Poole stated that Mr. Shron is asking that his judgment regarding vinyl siding be substituted for a long-standing policy of the Board. Mr. Pinnock noted that the Board does not have information regarding the length of time the specific product has been on the market, the number of projects utilizing the product, showing viability and duration based on time-tested measures. Mr. Sharon agreed with Mr. Pinnock's statement.

Speaking in opposition, Ms. Gray O'Dwyer, testified that she was concerned about the parking issue and noted that the developer acknowledged that this was one of the larger lots on the block. Ms. O'Dwyer noted that the property has alley access but the developer chooses not to improve it based on cost considerations. Ms. O'Dwyer expressed concern over inferior housing being built in Church Hill and the quality of materials.

Mr. Poole asked that Mr. Baker elaborate on the requested special exception. With respect to the parking special exception, Mr. Baker explained the following parking special exception criteria.

- a. Based on the availability of parking in the surrounding area the exception will not result in an adequate supply of parking or other adverse impact on the neighborhood;
- b. There is an adequate supply of parking to serve the needs of the use within reasonable and convenient proximity of the use;
- c. The number, location and arrangement of parking spaces intended to serve the use is sufficient to provide for its parking needs based on the nature of the use;

Mr. Baker stated that the requested parking special exception meets the criteria set out in intent statement.

The Board is satisfied that the property was acquired in good faith and pursuant to Section 114-1040.3 (11) of the zoning ordinance, the applicant has demonstrated that the exception will not result in an inadequate supply of parking or other adverse impact on the neighborhood; adequate parking to serve the needs of the use is provided on-site and within convenient proximity and the number, location and arrangement of parking spaces intended to serve the use is sufficient to provide for its parking needs based on the nature of the use and the characteristics of its operation.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a special exception from the off-street parking requirement be granted to CC Richmond II, LP for a building permit to construct a new single-family detached dwelling, subject to substantial compliance with the plans submitted to the Board with the exception of substituting vinyl siding with meeting the primary specifications of cementitious siding.

ACTION OF THE BOARD: (4-1)

Vote to Grant Conditionally

affirmative: Pinnock, Poole, Samuels, Hogue

negative: Winks

BZA 20-2019 (CONTINUED TO A LATER MEETING OF THE BOARD WITHOUT FEE)

APPLICANT: Catherine & Samuel Jones

PREMISES: 2214 CARRINGTON STREET
(Tax Parcel Number E000-0469/018)

SUBJECT: A building permit to construct a new single-family detached dwelling.

DISAPPROVED by the Zoning Administrator on March 15, 2019, based on Sections 30-300, 30-419.6(2)a & 30-710.1(a)(1) of the zoning ordinance for the reason that: In an R-63 (Multi-family Urban Residential District), the side yard (setback) and off-street parking requirements are not met. A side yard of three (3') feet is required; 1.39' is proposed along the western property line. One (1) space is required; none is proposed.

APPLICATION was filed with the Board on March 15, 2019, based on Section 15.2-2309.2 of the Code of Virginia.

BZA 21-2019

APPLICANT: Watchtower Homes and Construction

PREMISES: 1213 NORTH 32nd STREET
(Tax Parcel Number E000-0802/018)

SUBJECT: A building permit to construct a new single-family attached dwelling.

DISAPPROVED by the Zoning Administrator on March 15, 2019, based on Sections 30-300 & 30-412.5(2)b of the zoning ordinance for the reason that: In an R-6 (Single-Family Attached Residential District), the side yard (setback) requirement is not met. A side yard of three feet (3') is required; one foot (1') is proposed along the southern property line.

APPLICATION was filed with the Board on March 15, 2019, based on Section 15.2-2309.2 of the Code of Virginia.

APPEARANCES:

For Applicant: Mark Baker

Against Applicant: none

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Watchtower Homes and Construction, has requested a variance to construct a new single-family attached dwelling for property located at 1213 N. 32nd Street. Mr. Mark Baker, representing the applicant, testified that a variance is being requested to construct two single-family attached dwellings on 1213 and 1215 N. 32nd Street. Mr. Baker explained that in both instances a side yard waiver of 2 feet is being requested in order to construct the subject dwellings within 1 foot of the side property lines. Mr. Baker noted that both of the lots are legal lots of record and each of the lots have a width of 15 feet and a depth of 124 feet and a lot area of 1860 ft.². Mr. Baker indicated that both of the lots had previously been occupied by dwellings which have been condemned. Mr. Baker explained that original intent was to attempt to rehabilitate the subject structures but it was found that they were not salvageable. Mr. Baker indicated that the dwellings will be attached at the common property line. Mr. Baker explained that the dwellings will be three stories in height, contain 1748 ft.² of floor area and include three bedrooms. Mr. Baker stated that a request meets the Code of Virginia with respect to §15.2-2309. Mr. Baker noted that strict application of the zoning would unreasonably restricts the use of the property and the granting of a variance would relieve hardship due to a physical condition relating to the property. Mr. Baker further noted that with respect to the physical condition that the lots are exceptionally narrow. Mr. Baker stated that the goal is to seek minimal relief that meets the minimum expectations of the market in terms of livability and results in the development of units which are consistent in terms of their size with similar situated properties in the neighborhood. Mr. Baker pointed out that Mr. Dave Siebert, who has 13 years of experience as a realtor, has confirmed that to meet current livability standards the dwelling requires three bedrooms and 2 1/2 baths. Mr. Baker noted that the extent of the proposed request has been reduced by virtue of controlling both properties and in so doing developing attached dwellings which eliminate the side yard setback requirement along the common property line. Mr. Baker stated that the request is reasonable with respect to the configuration which results in a building width of 14 feet. Mr. Baker expressed concern over the marketability of attempting to develop units of lesser width. Mr. Baker explained that three-story dwellings are necessary from a configuration standpoint to achieve three bedrooms that meet modern-day standards in terms of the layout. Mr. Baker noted that three stories are permitted by right. Mr. Baker indicated that the upward expansion reduces the extent of the requested side yard waiver. Mr. Baker further noted that from a design standpoint the third floor is limited in size encompassing only 258 ft.². The third floor is built into the roofline and utilizes dormers. When viewed from the street the dwelling has the appearance of being two and one half stories. Mr. Baker stated that Hardy plank will be utilized on the front and rear façades and has requested the ability to utilize the vinyl siding on the sides of the dwelling. Mr. Baker explained that notices were sent to property owners within 150 feet and no

opposition was received. Mr. Baker stated that with respect to the Church Hill Central Civic Association there were six members in support of the request and two members who voiced concern one of which concerned the front yard setback which complies with zoning and the second was located seven blocks away. Mr. Baker concluded by stating that the variance standards prescribed by the code had been met and that approval is warranted based on a demonstrated hardship.

Mr. Poole inquired of Mr. Baker if he could solve the hardship issue by combining the two lots into one lot. Mr. Baker replied by stating that there are two separate owners. Mr. Poole questioned if it were not possible for one owner to purchase the other owners property.

Mr. Poole inquired of Mr. Baker if there is not a lot that is too narrow to build on. Mr. Baker agreed that a lot can be too narrow but indicated that the approach being taken here is to foster quality development. Mr. Baker stated in the absence of a variance that it would result in a substandard product that would not be marketable.

Mr. Poole asked Mr. Baker if the dwelling could be constructed on the subject properties without benefit of a variance. Mr. Baker stated there would be a hardship with respect to the marketability of the property. Mr. Poole questioned whether a variance was dependent upon economic viability. Mr. Baker stated it was livability issue.

Mr. Pinnock stated that what was being discussed was the difference between an interior building width of 13 feet versus 11 feet. Mr. Baker stated that the sidewalls would have to be rated.

Mr. Poole questioned whether construction of a 12 foot wide house constituted an undue hardship. Mr. Pinnock responded by stating that it is possible to design a house that is 12' x 60' that is viable.

The Board finds that the applicant failed to show an extraordinary or exceptional situation whereby strict application of the side yard setback requirements unreasonably restricts its use or that there is a clearly demonstrable hardship. The Board is satisfied that reasonable use can be made of the property under applicable zoning regulations. The granting of a variance in this case would constitute a special privilege or convenience to the owner and would not be in harmony with the intended spirit and purpose of the ordinance and the powers of the Board.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a variance from the side yard (setback)

requirement be denied to Watchtower Homes and Construction for a building permit to construct a new single-family attached dwelling.

ACTION OF THE BOARD: (5-0)

Vote to Deny

affirmative: Pinnock, Poole, Samuels, Hogue, Winks

negative: None

BZA 22-2019

APPLICANT: Equity Trust CC FBO Richard W. Reese IRA

PREMISES: 1215 NORTH 32nd STREET
(Tax Parcel Number E000-0802/019)

SUBJECT: A building permit to construct a new single-family attached dwelling.

DISAPPROVED by the Zoning Administrator on March 15, 2019, based on Sections 30-300 & 30-412.5(2)b of the zoning ordinance for the reason that: In an R-6 (Single-Family Attached Residential District), the side yard (setback) requirement is not met. A side yard of three feet (3') is required; one foot (1') is proposed along the northern property line.

APPLICATION was filed with the Board on March 15, 2019, based on Section 15.2-2309.2 of the Code of Virginia.

APPEARANCES:

For Applicant: Mark Baker

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Equity Trust CC FBO Richard W. Reese IRA, has requested a variance to construct a new single-family attached dwellings for property located at 1215 N. 32nd Street. Mr. Mark Baker, representing the applicant, testified that a variance is being requested to construct two single-

family attached dwellings on 1213 and 1215 N. 32nd Street. Mr. Baker explained that in both instances a side yard waiver of 2 feet is being requested in order to construct the subject dwellings within 1 foot of the side property lines. Mr. Baker noted that both of the lots are legal lots of record and each of the lots have a width of 15 feet and a depth of 124 feet and a lot area of 1860 ft.². Mr. Baker indicated that both of the lots had previously been occupied by dwellings which have been condemned. Mr. Baker explained that original intent was to attempt to rehabilitate the subject structures but it was found that they were not salvageable. Mr. Baker indicated that the dwellings will be attached at the common property line. Mr. Baker explained that the dwellings will be three stories in height, contain 1748 ft.² of floor area and include three bedrooms. Mr. Baker stated that a request meets the Code of Virginia with respect to §15.2-2309. Mr. Baker noted that strict application of the zoning would unreasonably restricts the use of the property and the granting of a variance would relieve hardship due to a physical condition relating to the property. Mr. Baker further noted that with respect to the physical condition that the lots are exceptionally narrow. Mr. Baker stated that the goal is to seek minimal relief that meets the minimum expectations of the market in terms of livability and results in the development of units which are consistent in terms of their size with similar situated properties in the neighborhood. Mr. Baker pointed out that Mr. Dave Siebert, who has 13 years of experience as a realtor, has confirmed that to meet current livability standards the dwelling requires three bedrooms and 2 1/2 baths. Mr. Baker noted that the extent of the proposed request has been reduced by virtue of controlling both properties and in so doing developing attached dwellings which eliminate the side yard setback requirement along the common property line. Mr. Baker stated that the request is reasonable with respect to the configuration which results in a building width of 14 feet. Mr. Baker expressed concern over the marketability of attempting to develop units of lesser width. Mr. Baker explained that three-story dwellings are necessary from a configuration standpoint to achieve three bedrooms that meet modern-day standards in terms of the layout. Mr. Baker noted that three stories are permitted by right. Mr. Baker indicated that the upward expansion reduces the extent of the requested side yard waiver. Mr. Baker further noted that from a design standpoint the third floor is limited in size encompassing only 258 ft.². The third floor is built into the roofline and utilizes dormers. When viewed from the street the dwelling has the appearance of being two and one half stories. Mr. Baker stated that Hardy plank will be utilized on the front and rear façades and has requested the ability to utilize the vinyl siding on the sides of the dwelling. Mr. Baker explained that notices were sent to property owners within 150 feet and no opposition was received. Mr. Baker stated that with respect to the Church Hill Central Civic Association there were six members in support of the request and two members who voiced concern one of which concerned the front yard setback which complies with zoning and the second was located seven blocks away. Mr. Baker concluded by stating that the variance

standards prescribed by the code had been met and that approval is warranted based on a demonstrated hardship.

Mr. Poole inquired of Mr. Baker if he could solve the hardship issue by combining the two lots into one lot. Mr. Baker replied by stating that there are two separate owners. Mr. Poole questioned if it were not possible for one owner to purchase the other owners property.

Mr. Poole inquired of Mr. Baker if there is not a lot that is too narrow to build on. Mr. Baker agreed that a lot can be too narrow but indicated that the approach being taken here is to foster quality development. Mr. Baker stated in the absence of a variance that it would result in a substandard product that would not be marketable.

Mr. Poole asked Mr. Baker if the dwelling could be constructed on the subject properties without benefit of a variance. Mr. Baker stated there would be a hardship with respect to the marketability of the property. Mr. Poole questioned whether a variance was dependent upon economic viability. Mr. Baker stated it was livability issue.

Mr. Pinnock stated that what was being discussed was the difference between an interior building width of 13 feet versus 11 feet. Mr. Baker stated that the sidewalls would have to be rated.

Mr. Poole questioned whether construction of a 12 foot wide house constituted an undue hardship. Mr. Pinnock responded by stating that it is possible to design a house that is 12' x 60' that is viable.

The Board finds that the applicant failed to show an extraordinary or exceptional situation whereby strict application of the side yard setback requirements unreasonably restricts its use or that there is a clearly demonstrable hardship. The Board is satisfied that reasonable use can be made of the property under applicable zoning regulations. The granting of a variance in this case would constitute a special privilege or convenience to the owner and would not be in harmony with the intended spirit and purpose of the ordinance and the powers of the Board.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a variance from the side yard (setback) requirement be denied to Equity Trust CC FBO Richard W. Reese IRA for a building permit to construct a new single-family attached dwelling.

ACTION OF THE BOARD: (5-0)

Vote to Deny

affirmative: Pinnock, Poole, Samuels, Hogue, Winks

negative: None

Upon motion made by Mr. Poole and seconded by Mr. Samuels and, Members voted (3-0) to adopt the Board's April meeting minutes.

The meeting was adjourned at 3:15 p.m.

Roger D. Yorks
VICE Chairman

Lay W. Barber
Secretary