

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
February 24, 2009

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, February 24, 2009, was called to order with the determination of a quorum at 7:00 p.m. by Chairman Ernest Ackermann in the Board of Supervisors Chambers. Mr. Ackermann introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. He asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

Mr. Ackermann stated the Bylaws of this Board state the applicant would be allowed up to ten minutes to state their case, the other speakers would be allowed three minutes to testify, and the applicant would be allowed three minutes for rebuttal.

Members Present: Ernest Ackermann, Larry Ingalls, Ray Davis, Robert Gibbons, Marty Hudson and Karl D. Larson

Members Absent: Steve Beauch

Staff Present: Rachel Hudson, Zoning Administrator
Melody Musante, Senior Zoning Technician
Aisha Hamock, Recording Secretary

Mr. Ackermann asked if there were any changes to the advertised agenda.

Mrs. Musante stated no.

DECLARATIONS OF DISQUALIFICATIONS

None

PUBLIC HEARINGS

- 1. V08-4/2800632 - BROOKE FIRE SAFETY ASSN. INC.** - Requests a Variance from Stafford County Code, Section 28-35, Table 3.1, "District Uses & Standards", front yard requirement, to allow an addition to an existing nonconforming structure on Assessor's Parcel 39-101F. The property is zoned A-1, Agricultural, located at 222 Andrew Chapel Road (Brooke Fire Station).

Mrs. Musante presented the staff report. She stated the applicant was requesting a Variance to construct a second story addition to an existing nonconforming building. She stated the current structure was five (5) feet from the front property line, which did not meet the minimum requirement of fifty (50) feet for this Zoning District. She stated the proposed addition was twenty-eight (28) feet by sixty-two (62) feet (1,736 square feet) and would be constructed above the original structure built in 1963 and would not further encroach into the nonconforming area. She stated the need for this addition was to house additional fire/rescue personnel due to the increase of volunteer members and the addition of career staff. She stated the original building was constructed in 1963 with an addition in 1978 and increase of septic field in 1992. She stated the current building was 5,704 square feet. She stated the BZA received a letter from Mr. Milde, Board of Supervisors, concerning this case.

Mr. Gibbons asked if the firehouse was a public facility.

Mrs. Musante stated yes.

*Stafford County Board of Zoning Appeals
February 24, 2009*

Mr. Ackermann opened the public hearing.

George Langford, Fire Chief, Brooke Fire and Rescue, 222 Andrew Chapel Road, stated currently Fire and Rescue lacked the proper setback distance on the property, not permitting the expansion of the building. He stated Brooke Fire Station was built in 1963 and after four (4) years of population increase and the increase in different emergencies, this station added an addition in 1977 to house increased equipment. He stated it was a struggle to accommodate overnight fire and rescue personnel due to the increase in volunteer member and the additions of career staff. He stated the current building conditions did not allow for separate shower facilities for the male and female members. He stated the only shower available was located in the men's bunkroom and was difficult for female members to take showers if the male bunkroom when occupied by male members. He stated that due to inadequate space in the women restroom, the privacy doors were replaced by shower curtains in the front of the stall. He stated the bathroom space was inadequate and offered little privacy and was not handicap accessible for public use. He stated currently six department officers use one common office space, which was approximately 210 square feet, because the administrative space and storage was limited and not adequate. He stated the bunkroom was inadequate to accommodate multiple staff and providing them with a place to sleep. He stated the current day room/ television room doubled as sleeping quarters for the overnight duty crew and because of the conditions, members were moving to other stations that offered better living accommodations, which created an undo hardship for the Brook Fire Safety Association. He stated the hardship was placed upon them due to circumstances beyond their control. He stated with the population increase, the need to respond to more emergency calls was greater. He stated the Brook Fire Safety Association was requesting to add a story and a half, an additional twenty-eight (28) feet by sixty-two (62) feet structure. He stated the current Zoning Ordinance did not allow the increase or change to the footprint of a non-conforming building. He stated if the Variance was not granted it would cause an undo hardship such as a reduction in membership to the daytime duty crews and overnight crews. He stated if the Variance was granted it would increase call times and would better serve the community. He stated the Brook Fire Safety Association was in a position to have to remodel and would need to take into consideration the growing commitment to the community. He stated it was an opportune time to remodel the original structure by adding a story and a half to meet the needs for bunkroom, sanitation, storage, training and administrative space for both volunteers and career staff. He stated as a community center organization, the building was made available for public use and with the requested change there would be an increase in the accessibility to the facility with other community organizations and not approving the request would cause an undo hardship by not allowing the Brook Fire Safety Association to officially accomplish the current and future mission of preservation of life and property and preservation of community service. He stated the undo hardship situation the Brook Fire Safety Association faced was unique as they were the only fire station in the vicinity providing emergency services to the Brooke Community. He stated no other property in the same zoning district and in the same vicinity share an undo hardship, which Brook Fire Safety Association faced. He states Brook Fire Safety Association relied heavily on the volunteer membership to respond to emergencies, public education and day-to-day administrative activities. He stated without adding additional square footage to the existing building, which would provide better living and administrative accommodations, volunteers would move to other stations leaving the station with inadequate personnel to respond to emergencies, provide public education and provide day-to-day administrative duties. He stated according to previous county studies, Brook Fire Safety Association was located in the proper location as to serve the county effectively. He stated if the variance was approved it would not be detrimental to any adjacent properties and in addition to the one and a half stories keeping in the character of the zoning district. He stated the new addition would be designed in such a way that it would compliment the building and adjacent properties and would not encroach upon surrounding buildings and or properties. He stated the footprint of the building would not

*Stafford County Board of Zoning Appeals
February 24, 2009*

change with the addition. He stated there were no significant changes made in the past thirty-one (31) years and the request for a variance was not a convenience but a necessity.

Mr. Hudson thanked the Brooke Fire Safety Association for the work they do for the community and stated the list of volunteers was impressive. He asked if this station would be a first responder to any of the high schools and if Brooke Fire Safety Association was the closest station to Brooke Point High School.

Mr. Langford stated yes.

Mr. Gibbons stated a few years earlier the Brooke Fire Safety Association attempted to obtain another parcel to build a new station and was determined that site was not suitable. He stated when the Planning Commission updated the Comprehensive Plan they decided that the current location of the station was the best suitable site to serve the area.

Mr. Langford agreed.

Mr. Gibbons stated this station was the closest station to the Virginia Railway Express (VRE) and was the most accessible to any fire on the railroad.

Dr. Larson stated it was easy to see the necessity for the addition and asked if the applicant examined placing the addition on the 1977 part of the building toward the rear. He stated it seemed not conflict with the ordinance.

Mr. Langford stated the station did not consider that. He stated the left side of the building was easier to place the addition because of the footing arrangement.

Mr. Ingalls stated the Variance would still be required because it was a non-conforming structure. He stated there was an indication on the staff report stating there was an addition in 1992.

Mr. Langford stated that was an upgrade to the septic field with no upgrade to the structure.

Mr. Ingalls stated the building was used for fire and rescue and confirmed that the building be used also for public events.

Mr. Langford stated yes. He stated homeowner associations had their meetings there, CRP programs were held there and for community functions.

Mr. Ingalls stated by not offering proper facilities it would limit the applicant with the uses offered to the community.

Mr. Langford stated that was correct.

Mr. Ingalls asked if there was a picture for the Board to review showing the addition to the building.

Mr. Langford showed an elevation to the Board and discussed the addition. He stated according to the picture the addition would be directly above the bay doors shown on the photo.

*Stafford County Board of Zoning Appeals
February 24, 2009*

Mr. Ingalls stated the addition would go up eight (8) or ten (10) feet and have a roof on that.

Mr. Langford stated yes.

Mr. Ingalls confirmed that the location of the station was critical to the county, in terms of serving the surrounding area.

Mr. Langford stated that was correct.

Mr. Ackerman asked if the applicant inquired about moving to a different property.

Mr. Langford stated the fire station would be best suited at the current location. He stated the topography of the land around the area and the excavation cost would be very large

Mr. Ackermann stated he joined the Board with the appreciation of the work the applicant does. He stated he would have to consider the value of the volunteer station the changes made. He asked where the Board would find the balance between the needs of the public and what the laws were. He asked if there was anyone present to speak in favor of the application.

Paul Milde, representing the Aquia District, Board of Supervisors, stated in his capacity as a Supervisor he could address some of the issues brought up. He stated the topography was so steep behind Brooke Fire Station that they would not be allowed to build on the property. He stated to the left of the building was an elevated train track and to the right was a continuation of a water feature that ran beneath their existing building. He stated there was no way that the building could be reconstructed, even if the building was demolished. There was no spot on the existing property for the expansion that would be allowable, not just practical. He stated speaking to the issue of practicality, as a Board of Supervisors member he knew the road plan for the county did not anticipate any expansion of Andrew Chapel Road, which the fire station was five (5) feet off the road. He stated as currently planned, a completely new Andrew Chapel Road was planned in another area on the other side of the bridge because the underpass did not permit the passage of two vehicles. He stated VRE did approximately 16,000 passenger trips per day and roughly half were on the Fredericksburg line. He stated approximately 15,000 of the trips were from Stafford residents from the Leeland and Brooke Station. He stated the public interest was a good question and the county was in a budget crisis unlike any other, with no money to expand the fire and rescue facilities. He stated there was no plan in the immediate future to fund a new Brooke Fire Station and would be luckily if the in the next few years the county found money to put full time fire responders there instead of just full time rescue. He stated he supported this project one hundred percent.

Irene Egan stated she was a neighbor and asked the Board to give the Brooke Fire Station the tools they needed to better enhance the functionality of the station. She stated she supported it, her husband supported it and her neighbors support the application.

Michelle Clay stated she owned all the adjacent property around the fire station and was in support of the project. She stated that area of the county needed the firehouse and the station needed more equipment to handle the emergencies in the county and supported the application.

George W. Langford stated there was a hardship at the Brooke Fire Station, which was the turnaround with members.

***Stafford County Board of Zoning Appeals
February 24, 2009***

He stated the station was trying to keep members and there were two reasons why members did not stay at the Brooke Station, one, because the Brooke Station did not get as many calls as other stations in the area and two, they did not have the facilities to maintain their members. He stated the living conditions should be better for the members, since they worked 24 hours straight. He stated he was the District 10 Vice President for the Virginia Association of Volunteer Rescue Squads and served as the Treasurer for the state treasure. He stated he had opportunities to travel all over the state. He stated the accommodations were nice and he was always proud of the station. He stated the members needed a larger facility to accommodate the growth of members and calls. He stated the station saved \$100,000 over the years to renovate the building and add the addition. He asked the Board to support the application.

Mr. Ackermann asked if there was anyone to speak in opposition of the application. With no one coming forward, he asked if Mr. Langford had any other information to add for the Board to consider.

Mr. Langford stated in 1995 the Hartwood Volunteer Fire Station needed a Variance and was granted. He stated the Brooke Station was asking for the same consideration.

Mr. Ackermann closed the public hearing.

Motion:

Mr. Hudson made a motion to approve application V08-4/2800632. He stated there were many people that lived in the Brooke area with the need of a Fire Station. He stated the Stafford County Fire Department had saved his sons' life because of their quick response. He stated quick response was important and without a facility to do top of the line service, quick response would not be achievable. He stated he felt this met the standards and the footprint was available already and there would be no changes to the original building built in 1963. He stated the applicant was trying to modernize the building to give the community better service. He stated the VRE and a school was in the Brooke area and certainly met the standards of the Variance.

Mr. Gibbons seconded the motion.

Mr. Ingalls stated he would support the motion because he believed that it met the requirements set forth in the Zoning Ordinance of the four issues that the Board looks at and found in a positive way. He stated the applicant addressed the four issues and this was a unique situation that it was a Fire Station in a critical location.

Mr. Gibbons stated he would support the motion because it did meet the criteria. He stated the Station would have easy access to the new Stafford Hospital. He stated the location of the Station was ideal for the county and giving living quarters to the women was essential.

Mr. Davis stated that station was used as an election-polling place and the facilities were inadequate and had to be moved. He stated it was proven tonight that there was a severe hardship and met the requirements of the Variance.

Vote:

The motion to approve application V08-4/2800632 passed 6-0-1.

*Stafford County Board of Zoning Appeals
February 24, 2009*

Mr. Ackermann – yes
Mr. Ingalls – yes
Mr. Gibbons – yes
Mr. Beauch – absent
Dr. Larson – yes
Mr. Hudson - yes
Mr. Davis - yes

- 2. A08-6/2800772 - MICHAEL J & CINDY MONGRAIN** - Appeal of a Notice of Violation dated November 12, 2008 for the height of an existing fence located in the front yard on Assessor's Parcel 54L-26-336. The property is Zoned R-1, Suburban Residential, located at 2 Julie Lane, Grafton Village subdivision.

Mrs. Musante presented the staff report. She stated a violation notice was issued November 10, 2008 for the construction of a fence located within the front yard setback area higher than four (4) feet. She stated according to Section 28-39(a) "fences, walls and hedges" shall not exceed four (4) feet in height within any front yard or within that portion of the side yard in front of the front setback line. She stated Little Whim Road was considered the front yard by definition, which requires the fence to be no higher than four (4) feet within the front yard setback. Julie Lane was considered the "street facing sideyard" by definition of corner lot, which requires a fence not to exceed four (4) feet in height unless placed a minimum of twenty-five (25) feet from the property line. She stated the applicant had indicated on submitted photo, fence was fourteen (14) feet from property line. She stated the violation notice issued November 12, 2008 for accessory structure built without proper permits. She stated the applicant submitted permit application December 12, 2008. She stated the single- family dwelling was constructed in 1999, permit to construct shed tiki bar was submitted December 12, 2008 and approve December 22, 2008 but had not been issued.

Mr. Gibbons asked if Little Whim Road was considered the front of the property.

Mrs. Musante stated Little Whim Road was the front by definition of corner lot because it was the shortest side, which was how staff determines the front of the property.

Mr. Ackermann asked if that was the way the house faced.

Mrs. Musante stated that was correct.

Mr. Ingalls asked if the violation was for the height of the fence and not the location.

Mrs. Musante stated both.

Mr. Ackermann opened the public hearing for public comment.

Michael and Julie Mongrain, stated only one front setback was required on a residential corner lot and his side street fence was forty plus feet away from the front set back line. He stated in reading the Ordinance, under Section 28-39 Special Regulations, it stated, "fences, walls and hedges would not exceed eight (8) feet in height within any side or rear yard". He stated that according to county staff the front setback was Little Whim Road. He stated there was nothing wrong with the height of his fence. He stated he agreed that his structure could not be within twenty-five (25) feet of the side set back, so he moved the fence,

*Stafford County Board of Zoning Appeals
February 24, 2009*

filed for and received a new permit. He stated his fence was installed in 2002 and the complaint was filed in retaliation from his neighbor.

Mr. Ingalls asked if the applicant drew the plat given to the Board.

Mr. Mongrain stated it was the plat that was recorded with the county.

Mr. Ingalls stated the location of the fence was not an issue according to the Ordinance. He stated the height was the issue and unfortunately, he agreed with the applicant regarding what the Ordinance states. He stated until today, he would have thought the Zoning Administrator was correct and would have never assumed she was not right. He stated after reading the Ordinance, he felt the intent was that there should not be a fence allowed along the road. He stated he agreed with the applicant understanding of the ordinance.

Mr. Ackermann asked if there was any member of the public to speak in favor or in opposition to the application.

With no one coming forward, Mr. Ackermann asked if any of the Board had any other questions.

Mr. Ingalls asked staff why the location of the fence was an issue.

Mrs. Musante stated the location was not an issue; the issue was the height of the fence.

Mr. Hudson asked if the complaint received stated that the height of the fenced impaired visibility at the intersection or was it a complaint primarily out of retaliation.

Mrs. Musante stated the applicant filed a complaint against their neighbor and the neighbor came back with this complaint.

Mr. Ackermann stated he visited the site and did not see any issues with visibility.

Mr. Mongrain stated people in Stafford County that had corner lots were at a disadvantage because there was almost 4,000 square feet of his lot that was useless. He recommended that the County adopt a triangular setback, which would allow residents with corner lots to better utilize their lots.

Dr. Larson stated he had trouble seeing where there was a violation based on what he read.

Mrs. Musante stated it had been the interpretation of Zoning staff and the County Attorney's office agreed with staff, that if a fence was within the twenty-five (25) setback on a corner lot, it shall be no higher than four (4) feet. She stated they had practiced that for at least ten years.

Mr. Ackermann closed the public hearing.

Motion:

Mr. Ingalls made a motion to overturn the Zoning Administrators determination that a fence greater than four (4) feet was not allowed in that particular area.

***Stafford County Board of Zoning Appeals
February 24, 2009***

Mr. Gibbons seconded the motion. He stated he would like to have the Ordinance go back to the Planning Commission and Board of Supervisors to get the language cleaned up.

Mr. Ingalls stated at some point after 1994 the wording of the Ordinance changed and the side facing or street facing side term was thrown into the Ordinance in one place. He stated there was no definition of a street facing side. He stated in Section 28-38, Performance Regulations, it stated “residential lots shall be considered to have one front”.

Mr. Hudson made a substitute motion to defer the action to allow staffs time to reevaluate the language of the Ordinance. He stated he did not want to create a pattern of appeals and when something was changed after doing it for ten years, there would be a fall out from people that live on corner lots. He asked staff to re-review the violation to see if it could be abated.

Mr. Gibbons seconded the motion. He stated the violation was filed and if the County Attorney did not agree with the decision of the BZA, it could go above the BZA through the courts.

Mr. Hudson asked staff if there was room to reevaluate the violation.

Mrs. Musante stated staff could go back and do research of prior Ordinances to see if changes were made.

Mr. Ackermann stated if the BZA tabled the motion at this point to wait for staff to come back then the BZA could make a determination.

Mr. Hudson stated it would be in the best interest to clean up the language.

Dr. Larson asked if after reconsideration, staff decided to withdraw the violation, would the applicant get their six hundred (\$600) dollars back.

Ms. Hudson stated it was the applicant’s choice to appeal the violation and would not get a refund.

Mr. Ingalls stated until the BZA made a decision on the appeal, the opinion of the Zoning Administrator would still be her opinion until such a time when the wording was changed in the Ordinance.

Vote:

The motion to defer application V08-7/2800772 passed 6-0-1.

Mr. Ackermann – yes

Mr. Ingalls – yes

Mr. Gibbons – yes

Mr. Beauch – absent

Dr. Larson – yes

Mr. Hudson – yes

Mr. Davis – yes

ELECTION OF OFFICERS

Mr. Ackermann asked if there were any nomination for officers.

Motion:

*Stafford County Board of Zoning Appeals
February 24, 2009*

Mr. Ingalls nominated Mr. Gibbons for Chairman.

Mr. Davis seconded the motion.

Vote:

The motion to nominate Mr. Gibbons as Chairman passed 5-0-1-1.

Mr. Ackermann – yes
Mr. Ingalls – yes
Mr. Gibbons – abstained
Mr. Beauch – absent
Dr. Larson – yes
Mr. Hudson – yes
Mr. Davis – yes

Motion:

Mr. Gibbons nominated Dr. Larson for Vice Chairman.

Mr. Hudson seconded the motion.

Vote:

The motion to nominate Dr. Larson as Vice Chairman passed 5-0-1-1.

Mr. Ackermann – yes
Mr. Ingalls – yes
Mr. Gibbons – yes
Mr. Beauch – absent
Dr. Larson – abstained
Mr. Hudson – yes
Mr. Davis – yes

Motion:

Mr. Gibbons nominated Mr. Hudson for Secretary.

Dr. Larson seconded the motion.

Vote:

The motion to nominate Mr. Hudson as Secretary passed 5-0-1-1.

Mr. Ackermann – yes
Mr. Ingalls – yes
Mr. Gibbons – yes
Mr. Beauch – absent

*Stafford County Board of Zoning Appeals
February 24, 2009*

Dr. Larson – yes
Mr. Hudson – abstained
Mr. Davis – yes

UNFINISHED BUSINESS

Mr. Ackermann stated he completed the annual report and asked the Board if they had any comments.

Mr. Gibbons commended Mr. Ackermann for the excellent job on the annual report.

Mrs. Musante stated staff did not receive a copy of the annual report.

Mr. Ackermann apologized and stated it was in the form of what the previous Chairman submitted for 2007. He stated it showed the number of applications and summaries of the application. He stated the report discussed the need for legal support and provided a table at the end of the document listing all application submitted in 2008.

Mr. Hudson stated he would abstain from voting because he was not a member in 2008. He stated this was a well written document.

Motion:

Mr. Gibbons made a motion for the Board of Zoning Appeals to accept the Annual Report and forward it on the Board of Supervisors.

Mr. Ingalls seconded the motion and asked that the document be sent to staff for review and corrections.

Vote:

The motion to accept the Annual Report and forward it on the Board of Supervisors passed 4-0-2-1.

Mr. Ackermann – yes
Mr. Ingalls – yes
Mr. Gibbons – yes
Mr. Beauch – absent
Dr. Larson – yes
Mr. Hudson – abstained
Mr. Davis – abstained

REPORT BY ZONING ADMINISTRATOR

Mrs. Musante stated there was no report from the Zoning Administrator. She stated there would be one Special Exception for the March Meeting.

ADOPTION OF MINUTES

September 23, 2008

***Stafford County Board of Zoning Appeals
February 24, 2009***

October 28, 2008

November 25, 2008

Motion:

Mr. Gibbons made a motion to approve the September, October and November 2008 minutes as presented.

Mr. Hudson seconded the motion.

Vote:

The motion to approve the September, October and November 2008 minutes passed 6-0-1.

Mr. Ackermann – yes

Mr. Ingalls – yes

Mr. Gibbons – yes

Mr. Beauch – absent

Dr. Larson – yes

Mr. Hudson – yes

Mr. Davis – yes

OTHER BUSINESS.

None

ADJOURNMENT

Mr. Hudson made a motion to adjourn.

Mr. Gibbons seconded the motion.

The meeting adjourned at 8:36 PM.

Robert C. Gibbons, Chairman
Board of Zoning Appeals