



## Meeting Minutes Board of Zoning Appeals

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Monday, August 3, 2020

4:00 PM

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### 1. Call To Order

The Harrisonburg Board of Zoning Appeals met in regular session in the City Council Chambers on Monday, August 3, 2020, in order to consider the following request which was duly posted. Members present were Matthew Phillippi, Glen Stoltzfus, Thomas Jenkins, Patrick Ressler, and Gil Colman. Also present were Rachel Drescher, Zoning Administrator; Alison Banks, Senior Planner; and Wesley Russ, Assistant City Attorney.

Ms. Drescher called the meeting to order at 4:00 PM.

**Present** 5 - Matthew Phillippi, Thomas Jenkins, Glen Stoltzfus, Patrick Ressler, and Gil Colman

### 2. Election of Officers

Ms. Drescher: The first item on the agenda is the election of officers. Do we have a nomination for Chair?

Mr. Stoltzfus: I nominate Matthew Phillippi.

Mr. Colman: I second.

Ms. Drescher: All in favor of Mr. Phillippi as Chair of the Board of Zoning Appeals, please say aye.

The Board unanimously approved Mr. Phillippi as Chair of the Board of Zoning Appeals.

Ms. Drescher: I hand over the meeting to Chair Phillippi.

Chair Phillippi: The second item on the agenda is the nomination for Vice-Chair.

Mr. Stoltzfus: I nominate Gil Colman.

Mr. Colman: I do not know that I can be nominated. I am the liaison to the Planning Commission.

Ms. Drescher: You can be nominated. You do not have to accept.

Mr. Colman: I decline. I nominate Thomas Jenkins as Vice-Chair.

Mr. Stoltzfus: I second.

Chair Phillippi: All in favor of Mr. Jenkins as Vice-Chair of the Board of Zoning Appeals say aye.

The Board unanimously approved Mr. Jenkins as Vice-Chair of the Board of Zoning Appeals.

### 3. Approval of December 2, 2019 Minutes

Chair Phillippi: This meeting will be held as an electronic meeting due to the emergency and disaster represented by the spread of COVID-19. This meeting will be conducted by the following electronic communication means: electronically through GoToMeeting and Granicus. The public had the opportunity to provide comments in advance via email and will have the

opportunity to provide comments by phone at designated times during this meeting. Because calls are taken in the order that they are received, we ask that the public not call the comment line until the item you are interested in is being presented or discussed.

Are there any corrections, comments or a motion regarding the minutes from December 2, 2019?

Mr. Stoltzfus: I move to approve the December 2, 2019 meeting minutes.

Mr. Jenkins: I second.

Chair Phillippi: All those in favor of approving the December 2, 2019 meeting minutes say "aye".

The Board unanimously approved the minutes.

**A motion was made by Stoltzfus, seconded by Jenkins, that this be approved. The motion carried by a voice vote.**

December 2, 2019 Board of Zoning Appeals Minutes

#### 4. New Business

##### Variance Request for 1345 Sparrow Court

The first item of business is the variance request for 1345 Sparrow Court. Ms. Drescher read the following request:

The use of the property at 1345 Sparrow Court is a single-family detached dwelling. Currently, the bedrooms within the dwelling are all located upstairs. The applicants are planning to renovate the dwelling to add bedrooms on the first floor in order to avoid use of the stairs because of health issues. All bedrooms are planned to be handicap accessible, including an addition of a bedroom that would be placed in front of the house to allow for wheelchair accessibility and for emergency personnel to access the bedroom more easily and quickly than the upstairs bedrooms. The handicap accessible bedroom is 13 feet by 13 feet to allow for maneuverability and access. This bedroom, along with a new living area, would project into the required 30-foot front yard setback by two feet.

Virginia State Code Section 15.2-2309 addresses the criteria required to approve a variance. This section begins *"Notwithstanding any other provision of law, general or special, a variance shall be granted if the 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, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability."*

The Board must evaluate whether this request shows the strict application of the ordinance unreasonably restricts 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. Previous variance requests have been scrutinized based on whether there is an unreasonable restriction or hardship on the property. To the best of staff's knowledge, there have been no previous cases brought before Harrisonburg Board of Zoning Appeals that address the interpretation of a 'reasonable modification' requested by a person with a disability. The City Attorney's Office was able to find

cases from other Virginia localities to allow for the construction of ramps within setbacks or for tenants to have service animals living with them, where restrictions would have prohibited otherwise.

Chair Phillippi asked if there any questions from the Board to staff regarding this request.

Mr. Colman: It looks like they are recommending a ramp. That is going to have to meet building codes. It seems that there is no room in that location for the ramp to the front porch. It would have to be on the south end.

Ms. Drescher: If the roof is not covered, then we would allow that access by right.

Chair Phillippi: My question is for Mr. Russ. The way I read the Fair Housing Act (FHA) and the Americans with Disability Act (ADA), we are looking at reasonable modifications. Everything I found on reasonable modifications with FHA and ADA, talked about ramps and structure changes. There was nothing about additions. Could you give us some guidance on reasonable modification because there is not a lot in the code about this?

Mr. Russ: The ADA modification usage addresses whether a deviation from your standard rule would undermine the normal purpose of whatever it is the ordinance is trying to accomplish. In the Zoning Ordinance, would changing the setbacks have a significant detrimental effect on neighboring properties? They are not looking at changing the use, but if they were, would it create odor, noise or anything that might affect neighboring properties? There is not a lot of guidance on what is reasonable and what is not. It is a case by case decision on how large of a deviation it is, or how noticeable it is. Is it permanent or temporary?

Mr. Ressler: Why is the setback 30 feet? I understand that between buildings there needs to be enough space between structures. From the road, is it for uniformity or another reason?

Ms. Drescher: For zoning, in general, we have setbacks to create uniformity. In the R-1 district, we have further separation from the road, whereas in the downtown district the buildings are closer to the street. The regulations for the R-1, single-family residential district require the 30-foot front yard setback.

Mr. Russ: Do any of the other residential districts have different front yard setbacks?

Ms. Drescher: The R-5 and R-8 have a 10-foot front yard setback. The U-R, urban-residential district has a 25-foot setback.

Mr. Stoltzfus: Are there any other residences on that street that have deviated from the 30-foot setback?

Ms. Drescher: Nothing in that immediate area.

Chair Phillippi asked if there were any more questions from the Board to the staff. Hearing none, he opened the public hearing portion of the meeting. Staff, please forward the applicant's call.

Nancy Wimer: This is Nancy Wimer, 1345 Sparrow Court. I would like to thank you for the opportunity to further explain what we feel is a necessary variance request. Granting the variance will alleviate the hardship due to our physical conditions and the limitations that exist within our house right now. The two-foot variance would not create any harm to the public interest or the neighborhood but would enhance the way that emergency personnel enter and maneuver around the house. It would also solve the hardship that we have on a daily basis. Our house is very narrow in scope and not conducive for disabled individuals. Reasonable access can be obtained by the variance for the addition and give us the ability to maneuver around our house. It should also increase the value of the property and the neighborhood without any harm to the public interest and the neighborhood as a whole. It would not change the character of the neighborhood.

If the site visit was done, one can see that there are only three windows in front of our house which makes it obvious just how narrow it is and also compared to the other homes around the neighborhood as they have much bigger homes. Our lot is a curved lot and at certain points we could have gotten by with a one foot-variance, but because of the curve we have had to request a two-foot variance. The need for this variance is for accessibility and movability to alleviate the hardships we endure. We have looked into stairlifts a couple of years ago. It is not recommended due to the stairs being narrow and the railing that it would ride on would end up blocking the entrance to the bedroom upstairs at the end of the steps. It would cause a problem for anyone using that room if they should step out of the hallway due to tripping over the rail. It is also hard to get in the chairlift while you are in a walker or a wheelchair. It also makes the stairwell smaller for emergency personnel which is a problem right now. A stairlift is a problem starting at the bottom of the steps to the top. There is no way that we can take the house we have now and open it up to make it handicap accessible without building an addition. Every room is too small. The biggest room is a 24 by 24-foot family room, which is not enough to alleviate our problem, although it is one of the rooms that will help us gain access to the new addition and help with movability and accessibility.

We feel that we have explained this in the original application, but I wanted to further explain our daily struggle. We have lived in the City of Harrisonburg for approximately 44 years in different locations. In this location, for approximately 33 years. This is home to us. We love living in the City of Harrisonburg with all its conveniences. For example, the police department, fire, rescue, hospital, doctors, drugstores, restaurants, etc. which we use quite often. Harrisonburg Electric, we have found, is rarely down compared to the County. It is less costly than other electric companies. There are no houses within the City of Harrisonburg that meet our needs. With our health issues we do not want to move further out. We feel that this is a justifiable request to help meet our health needs. It not just a convenience but a necessity. Our house no longer works for us with our health issues. The house as it stands right now is not beneficial to us in our situation and trying to use the stairs to gain access to our bedrooms is becoming very dangerous. If you need medical information to verify our health issue, we are more than willing to give that to you.

Chair Phillippi asked if there were any questions for the applicant.

Mr. Colman: Where is the accessible entrance to the addition? Where is that going to be?

*Kevin Wimer, son of Nancy Wimer, gets on the phone.*

Mr. Wimer: To the addition on the front, we will be able to enter through the garage, through the existing kitchen and the 24 x 24 room, then enter into the dining room, then into that bedroom. The dining room that is going to be added on, as well, with this addition will have access that will allow people to come up through the sidewalk. It will have a six-foot entrance door there.

Mr. Jenkins: Have you explored any options that would allow you to obtain the living arrangements you would like but not require adjustments to the setbacks?

Mr. Wimer: Yes, we have. The variance would help give us the accessibility of the room. It would make it a bigger room to be able to move around in. We are going to build two bedrooms in the back of the house that will take up the remaining room of being able to add onto the back. That will not need a variance unless we have to go closer to the property line which we are at the max with what we will be building.

Mr. Colman: You say you are adding also to the back of the house. Is that behind the garage and behind the kitchen? Is that where you are adding the bedrooms?

Mr. Wimer: Correct.

Mrs. Wimer: It would block the kitchen. No, we cannot come over that far.

Mr. Wimer: It is on the back side. We cannot come over any further towards the kitchen area. It would be more towards the garage and straight back.

Mrs. Wimer: It would block the kitchen window.

Mr. Stoltzfus: The bedroom that is out on the front, beside the new covered porch, looks like it is 13 x 14. Is that correct?

Mrs. Wimer: We are making the porch go across the front to make it look better.

Mr. Stoltzfus: Looking at the floor plan that you submitted, it appears that the living room would be 12 x 24, and the new bedroom would be 13 x 14. I am assuming those are the interior dimensions. Is that correct?

Mrs. Wimer: On this drawing it is outside dimensions.

Mr. Wimer: I believe it is outside dimensions. The bedroom is going to be an L-shape. It is an oddly shaped bedroom.

Mrs. Wimer: To be able to sit and sleep at the same time and get wheelchairs and stuff in there...

Mr. Wimer: That drawing was done when we thought we might add a living room. We are not going to be adding a living room. It is going to be an L-shaped bedroom leading into a dining room. There might be another drawing that we submitted in the packet. It shows where there has been a bed added and a dresser.

Mrs. Wimer: It is drawn in.

Mr. Wimer: That drawing has arrows showing the access points into those rooms. It will also have the access points into the bedrooms that are going to be built onto the back. We did draw the back part in because it is not part of the variance.

Mrs. Wimer: Using a wheelchair takes some space to get through.

Mr. Stoltzfus: I found the floorplans now that we are referring to, that the bedroom is an

L-shape. It appears to me that with the dresser in there, there is a lot of room between the door and the dresser but depending on how the bed would be put in there, it could limit the area because it is 12 feet. There should still be plenty of room between the end of a bed and that corner to get a wheelchair through there, especially if the bed would be pushed towards the back of the house two feet and have that come out two feet less from the front. Then you would comply. I do not understand why it cannot be done that way and not be usable.

Mr. Wimer: Depending on what type of equipment we will need. To be able to lift someone out of bed, that is a pretty big piece of equipment. We had one, a Hoyer lift, when my grandmother was here, and we were taking care of her. We could not maneuver it in the house. We had to send it back. We had to rely on someone to come in and lift her. They are setting the room for any type of medical equipment that we may need now or might need in the future.

Mrs. Wimer: It could be oxygen tanks, Hoyer lifts. We are so used to this. It is hard.

Mr. Stoltzfus: I certainly do not want to imply that I am trying to design your house for you or tell you where your bedrooms ought to be, but it looks like the master bedroom in the back would be large enough to do that kind of thing. I do not know who would be in which bedroom and where you need the equipment. I was wondering if the bedroom that needs the wheelchair accessibility and the extra equipment, if that could not be used in the back where you have a lot more room.

Chair Phillippi: Correct me if I am wrong, but that back addition is going to be two bedrooms and two bathrooms.

Mr. Wimer: Correct.

Mrs. Wimer: That is correct. All four of us here are not well. We are all struggling to get up and down the stairs. I have back issues. My brother had a heart attack. We are trying to design this so that we all can stay downstairs, together. We are up half the night watching each other. My husband wanders around. He has dementia and Alzheimer's and is legally blind. My brother has had a heart attack. Kevin and I are not well. I believe that I said in my statement that we are willing to give medical information to that effect. We need a ranch house and we cannot find one in the City of Harrisonburg that would meet our needs.

Chair Phillippi: It is tough. I understand. The house I bought last year, that I am in now, is a ranch. We had to get it because my father-in-law has moved in with us. We required some of those things.

Mrs. Wimer: It is very hard to find a house in the City of Harrisonburg that is not two-story. I do not know of any at all. We have looked. We have lived here all these years. We felt we would modify our house. We did not think that the two feet would be a big problem. Maybe it is to zoning. We were wondering if maybe it would not be. It only serves to make the house look better, too. It is not so boxy, as it looks now. It is probably one of the smallest in the neighborhood. If it were not so small to begin with, we might be able to get around better.

Mr. Colman: Are the bedrooms in the back going to be accessible bedrooms as well?

- Mrs. Wimer: Handicap accessible, yes, absolutely.
- Mr. Colman: All the addition will be handicap accessible?
- Mrs. Wimer: Absolutely. We have learned our lesson about that.
- Mr. Wimer: We found the limitations of the house when my grandmother was with us and we were taking care of her, being able to get gurneys in and out, any type of equipment, wheelchairs. She got to the point where she couldn't walk. When we would get her to her room, we would have to have someone there to help us lift her and get her into the room. Now, all of us have gotten into the same shape.
- Mrs. Wimer: We do not want to leave from here. We love it here. We have been here all these years. It is home. We are trying to be able to stay.
- Chair Phillippi asked if there were any callers wishing to speak to the request. Hearing none, he closed the public comment portion and opened the matter for discussion.
- Mr. Colman: My question about the rooms in the back was related to if those rooms were not accessible rooms, they could be switched, then they would not need the extra two feet. It sounds like they are all accessible rooms, so it had to be.
- Chair Phillippi: That is what it sounds like to me as well. I am very much a stickler for the way the variances are ruled through the Cochran rule, but from everything I am reading related to the Cochran rule, the statutes, ADA and Fair Housing, it looks to me like this would fall under a reasonable accommodation. I do not think that the two-foot variance is something that is detrimental to the neighborhood or to the Zoning Ordinance. I do not see us falling into that category. That is my opinion on that. I see that as a reasonable accommodation as far as the ADA and the FHA are concerned.
- Mr. Colman: I move to approve the variance request as presented by staff.
- Mr. Stoltzfus: I second the motion.
- Mr. Colman: The way the housing is, there is very little accessible housing. With more people retiring and trying to age in place, it is more difficult to find a one level home where they can live. Also, a lot of people are moving in with their kids and people are going to expand their homes to accommodate that. When you look at a neighborhood like this, I would expect that people put additions to accommodate their family. As a City, we should look at that and consider if this is a reasonable concern or modification that would have to be allowed for families to add bathrooms and half kitchens, which are not necessarily allowed in certain districts. I expect that we will see more things like this coming before the Board, unless things change.
- Mr. Jenkins: This is reasonable. I still wonder if there could have been a little more thought, a little more creativity in accommodating the 30-foot setback. Looking at the neighborhood, I think it is reasonable.
- Mr. Stoltzfus: I agree.
- WHEREAS: Chairman Phillippi called for a roll call vote: Mr. Jenkins: Aye; Mr. Colman: Aye; Mr. Ressler: Aye; Mr. Stoltzfus: Aye; Chairman Phillippi: Aye, and,
- BE IT, THEREFORE, RESOLVED: The Board voiced a decision of 5-0 to approve the variance request.

A motion was made by Colman, seconded by Stoltzfus, that this Report be approved. The motion carried with a recorded roll call vote taken as follows:

Yes: 5 - Phillipi, Jenkins, Stoltzfus, Ressler and Colman

No: 0

**5. Old Business**

None.

**6. Adjournment**

With no further business, the meeting adjourned at 4:43 PM.

**Notice to Public:**

In accordance with the Emergency Ordinance to effectuate temporary changes in certain deadlines and to modify public meeting and public hearing practices and procedures to address continuity of operations associated with pandemic disaster, adopted on April 6, 2020, the public will not be able to physically attend the Board of Zoning Appeals meeting.

However, a phone line will be live where community members will be allowed to call in and speak with the Board of Zoning Appeals during the Public Hearing portion of the meeting. The telephone number to call in is: (540) 437-2687

Community members also may provide comment prior to the meeting by emailing: Rachel.Drescher@harrisonburgva.gov

Community members will be able to watch the meeting live on:

- The City's website, <https://harrisonburg-va.legistar.com/Calendar.aspx>
- Public Education Government Channel 3