

REGULAR MEETING  
TOWN OF WAYNESVILLE  
BOARD OF ADJUSTMENT  
APRIL 4, 2006  
TUESDAY - 5:30 P. M.  
TOWN HALL

The Board of Adjustment held its regular meeting Tuesday, April 4, 2006. Members present were Gail Cross, Mack Noland, Mike Erwin, Neal Ensley and Garnell Day. Also present at the meeting were Land Development Administrator Byron Hickox, Planning Director Paul Benson and Deputy Town Clerk Freida Rhinehart. Chairperson Mike Erwin called the meeting to order at 5:30 p.m.

Approval of Minutes of March 7, 2006

Gail Cross moved, seconded by Garnell Day, to approve the minutes of March 7, 2006 as presented. The motion carried unanimously.

Variance - Haywood Habitat for Humanity, Inc. - 290 Meadow Street

Byron Hickox stated that last year shortly after his employment with the Town, Haywood Habitat for Humanity requested a Certificate of Zoning Compliance. Mr. Hickox checked the Haywood County GIS mapping system for the proper zoning district. The County mapping system listed 290 Meadow Street in the North Main Street Neighborhood District. There is no North Main Street Neighborhood District but there is a North Main Street Boulevard District and Main Street Neighborhood District. Mr. Hickox looked up side setback requirements for the North Main Street Boulevard District which are zero. He informed the Habitat representative that there were no side setbacks for the property at 290 Meadow Street. Later when a neighbor approached the Town about the setbacks, it was discovered that 290 Meadow Street is actually in the Main Street Neighborhood District which has a side setback requirement of 10 feet. There is also a minimum lot size requirement of 7000 sq. ft. in this district under the current Land Development Standards. This lot was grandfathered as a non-conforming lot at 4068 sq. ft. The house is too close to the west side of the property with only a 6" side setback. Haywood Habitat for Humanity is requesting a variance.

Mr. Hickox then presented the following Finding of Facts in this case:

**Findings of Fact for the Granting of Variances (Section 154.084(F)(2)(a))**

- a. That there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this chapter.

**Finding: Created before the current Land Development Standards were adopted, the lot in question is considered a non-conforming lot. The minimum size for lots in the Main Street Neighborhood District is 7000 square feet; this lot is 4068 square feet. The narrowness of the lot would prevent the construction of any reasonably designed house.**

- b. That if the applicant complies with the provisions of the chapter, the property owner seeking the variance can secure no reasonable return from, or make no reasonable use of his property.

**Finding: The only reasonable use of the property is a home site. As mentioned above, the size of this lot with the accompanying setbacks makes the construction of a home nearly impossible.**

- c. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings located in the same land development district.

**Finding: Because this lot was created before the current Land Development Standards were adopted, the special conditions associated with it are peculiar and are applicable to very few other lots in the same land development district.**

- d. That the special conditions and circumstances do not result from the actions of the applicant.

**Finding: The special conditions and circumstances do not result from the actions of the applicant.**

- e. That the variance is in harmony with the general purpose and intent of this chapter and preserves its spirit.

**Finding: The variance would allow the construction of a building type that is one of the few types allowed in this district by the Land Development Standards. While the variance would allow construction to take place very close to the property line, many buildings that predate the Land Development Standards are similarly close to their property lines.**

- f. That the variance is the minimum necessary to afford relief.

**Finding: The variance is the minimum necessary to afford relief.**

- g. That the public safety and welfare have been assured and substantial justice has been done.

**Finding: The public safety and welfare would be assured and substantial justice would be done by granting the variance.**

Town Staff concludes that the conditions precedent to the granting of a variance have been satisfied.

Neal Ensley asked about the size of the lot. Mr. Hickox responded that the tax records indicate that the lot is .0934 ac. which converts to 4068 sq. ft.

Marnette Colborne spoke on behalf of Haywood Habitat for Humanity. She stated that she had first come to Mr. Hickox on November 4, 2005 and was informed that in the North Main Street Neighborhood District the front setback was 20 ft., side setbacks 0 and rear setback was 5 ft. Habitat closed on the property on January 3, 2006 and construction was begun January 10, 2006. This particular house is under the sponsorship of 10 churches and about 30 days of actual work has already taken place. On March 16, 2006 Mr. Hickox called to inform her that there was a 10 ft. setback requirement at 290 Meadow Street since it is actually in the Main Street Neighborhood District and that she would need to submit a variance request. The house was already well on its way and stopping construction would create a undue financial hardship for Habitat since construction schedules were already established. Had Habitat known about the correct setback requirement, they would not have purchased the lot in the first place.

Garnell Day asked if there had been complaints from the neighborhood about the house. Ms. Colborne replied that no one had approached them directly. She made the commitment to purchase from Mr. Van Daam who did not indicate that he had received any complaints. Mr. Hickox said that Town Staff has received some concerns about the setbacks.

Gail Cross asked about the size of the house. Ms. Colborne answered the house is three bedrooms, two baths and is 1204 sq. ft. After construction is complete, the house will be purchased by the partner family from Habitat for Humanity.

Dick Young, a neighbor at 191 Meadow Street, stated that he had nothing against Habitat for Humanity and is a concerned citizen of Waynesville. The lot at 290 Meadow formerly owned by Mr. Richard Van Daam has been vacant for years. Mr. Van Daam knew this was not a buildable lot but sold it to Habitat. The Habitat house is set back 10 ft. on one side and 2 ft. on the other, 15 ft. in the front and 6 ft. in the back. Mr. Young said that he came to Mr. Benson on March 2 since Mr. Hickox was out of the office and learned that the zoning permit issued was according to requirements in the North Main Boulevard District. On that date the foundation was complete and the house was ready to be started. He thought construction would be stopped. Since that time the framing, outer walls, windows and roof are in place. Mr. Benson was questioned about this and Mr. Young was informed that construction could continue since Habitat had made application for a variance.

Mr. Hickox further stated that Habitat was informed that they could continue construction at their own risk depending on granting of the variance.

Mr. Young said that his main concern is the setting of a precedent of disregarding setback requirements in similar situations on small lots. Mr. Young reiterated that this lot has never been a buildable lot and Mr. Hickox issued the zoning certificate by mistake.

Mike Erwin pointed out that this lot was subdivided prior to the adoption of the current Land Development Standards. The owner of the lot would have the right to apply for a variance in order to build on the lot.

Board of Adjustment Minutes

Page 4

April 4, 2006

Byron Hickox added that the lot is simply a non-conforming lot which does not mean that it is not buildable.

Gail Cross asked Mr. Young how Mr. Van Daam knew that the lot was not buildable. Mr. Young responded that Mr. Van Daam had tried to get the town to let him build on the lot without success.

Neal Ensley asked Mr. Young if he felt that the Habitat house hurts the neighborhood. Mr. Young responded that he did not.

Tommy Nichols, owner of the adjoining property, disagreed with the size of the lot on which the Habitat house sits. He also felt that property owners should have been notified earlier that Habitat had applied for a variance and that Habitat should have applied for a variance before construction began.

Barbara Woody stated that Mr. Nichols had warned Habitat that they were building too close to the property line, but Habitat had assured him that Mr. Hickox had informed them that there were no side setback requirements in that district. Mr. Young informed Mr. Nichols and Ms. Woody that he had spoken with Mr. Benson and found that there were in fact side setback requirements of 10 ft. Mr. Nichols and Ms. Woody then came to meet with Mr. Benson.

Mr. Nichols stated that he felt the Town should make some restitution since he did not know that a variance would be required for Habitat to build on the lot. Mr. Van Daam was aware of the setbacks when he sold the property to Habitat.

Ms. Colborne stated the reason for moving the house so close to the property line was to allow for a porch on that side and parking on site on the other side of the house. Ms. Colborne had approached Mr. Nichols about selling them ten extra feet of property so that a variance would not be required. Mr. Nichols told her that he would be willing to sell her the property for \$422/lineal ft. or a total of \$4220. Ms. Colborne said that this price is cost prohibitive for Habitat.

Mack Noland asked Mr. Nichols about the size of the lot he owns adjoining the Habitat lot. Mr. Nichols said that the lot is 7895 sq. ft. Gail Cross asked if Mr. Nichols could sell some property to Habitat to allow them to meet the setback requirements.

Mr. Nichols also anticipates having drainage problems from the Habitat house. He said that the eave of the house is on the line and has no gutters. Ms Colborne told Mr. Nichols that the house will have gutters which will be approximately 6 inches from the property line. The water will be diverted away from Mr. Nichols' property.

Neal Ensley asked about the location of additional property that might be purchased from Mr. Nichols. Ms. Colborne said it would be along the length of the house adjoining Mr. Nichols property.

Mr. Nichols stated he had made an offer to sell property to Ms. Colborne for \$422/lineal ft. but later spoke with a real estate agent and found that the property is worth more. If she wants to purchase the property now, it will be more expensive.

Mr. Luis Quevedo, president of Haywood Habitat for Humanity, then spoke. He stated that since the cost of Habitat houses are shifted directly to the residents, Habitat strives to purchase property as cheaply as possible. The lady who will live in this house requested the purchase of this particular lot since it is close to her daughter's school. The total cost of the lot was \$20,000 which is a little more than Habitat normally pays. For this reason, the extra \$4200 would be excessive and Habitat chose to apply for the variance rather than purchase additional property. If the variance is not granted, Haywood Habitat for Humanity will be at Mr. Nichols' mercy in trying to purchase additional land. This is not fair.

Mr. Quevedo also addressed the question of stormwater runoff onto Mr. Nichols property. He said that the water will not flow onto Mr. Nichols' property. Since there was no grading done, there will be no more water running onto the Nichols property than has done so in the past.

Garnell Day asked Mr. Quevedo if he feels that negotiations have broken down with Mr. Nichols. Mr. Quevedo stated that he feels they have because of the amount Mr. Nichols is asking for the property.

Ms. Woody said that Habitat for Humanity should not be liable for the purchase of additional property since they were building in good faith. The Town of Waynesville should purchase any additional property to allow the Habitat to be in compliance with the setback requirements since the Town is responsible for the house's being constructed so close to the current property line.

Neal Ensley asked how the proximity of the structure to the property line is determined. Mr. Hickox said that measurements are taken to the edge of the structure. The side of the house is 3 ft. from the property line. Mr. Ensley asked if only 6 ½ to 7 ft. would be required to be in compliance. Mr. Hickox responded that about 7 ft. would be required.

Mr. Hickox further stated that he is not concerned about setting a precedent with granting a variance to Habitat. The purpose of a variance is to allow exceptions to the requirements of the Land Development Standards. The precedent was set when variances were first allowed.

Gail Cross asked if Habitat had questioned the zero setbacks on this property. Mr. Hickox said they did not. Ms. Colborne said they have written documentation that there are zero setbacks.

Mr. Hickox explained that variance applications are taken on a case by case basis. When considering a variance application, no other properties are considered. For example, this particular lot was chosen by the lady who will be living there. The lot itself is long and narrow. One variance does not affect anything else, so no precedent can be set.

Mr. Peter Sterling, another Meadow Street neighbor, feels that this granting of a variance might set a precedent in their neighborhood. He feels that others might want to encroach on the 10 ft. minimum setback especially near the three historic homes in that area. There is a vacant long, narrow lot in the neighborhood which neighbors have attempted to buy so that no one can come in and build on it by obtaining a variance. He would also like to know about the issue of variances and how they are obtained. Mr. Hickox repeated that variances are considered on a case by case basis.

Paul Benson then offered some words of explanation. The North Main Street Boulevard District is primarily commercial, thus the zero setbacks. The Main Street Neighborhood District has 10 ft. setbacks. The North Main Neighborhood District does not exist. This was an error of the Haywood County GIS office.

Mr. Benson continued that this particular lot is 45 ft. wide. It is not true that the lot is unbuildable. Single family residences can be built on non-conforming lots. If the lot is big enough to comply with setbacks, it is buildable. This is a very unique situation.

Garnell Day commented that we cannot blame Haywood Habitat for Humanity. He does not want to see the house torn down.

Ms. Woody said the issue should have been handled earlier before the house was so far along.

Haywood Habitat for Humanity applied for a variance within 24 hours after they were notified that a variance would be necessary. Ms. Colborne feared that if construction were stopped, momentum and sponsorship might be lost.

Gail Cross asked Mr. Nichols if he would be willing to work around the number of \$422/lineal ft. and talk with Habitat for Humanity about it. This would eliminate the need for a variance and the house would not be so close to the property line. Mr. Nichols said he would think about it.

Ms. Colborne said that she felt negotiations had already been made after the error was discovered on the zoning compliance form.

Mike Erwin asked Mr. Hickox if there has been discussion with the Town Attorney regarding the Town's liability. Mr. Hickox replied that no such discussion has taken place. Mr. Erwin stated that the Town's liability needs to be investigated by the Town Attorney and asked for a motion for a continuance. This situation is not only Mr. Hickox's mistake but an error on the part of the Haywood County GIS system. Mr. Hickox said that he is willing to accept full responsibility for the error. If the variance is granted, the Town might face liability.

Board of Adjustment Minutes  
Page 7  
April 4, 2006

Mack Noland moved, seconded by Gail Cross, to schedule a continuance for Tuesday, April 18, 2006 at 5:30 p.m. The motion carried unanimously.

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Mike Erwin  
Chairperson

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Freida F. Rhinehart  
Secretary