



Minutes
Board of Zoning Appeals
January 22, 2018
Council Chambers, City Hall
Fredericksburg, Virginia

MEMBERS PRESENT

Jay Jarrell III, Vice Chair
Helen P. Ross
Matthew Muggeridge
Frank Reyes
Tom O'Toole (*alternate*)

MEMBERS ABSENT

Beatrice Paolucci, Chair

STAFF

Mike Craig, Zoning
Administrator
Camilla Jacobs, Secretary

Mr. Jarrell called the meeting to order at 4:30 p.m.

OPENING REMARKS

Mike Craig, Zoning Administrator, announced the appointment of Tom O'Toole to serve as an alternate to the Board of Zoning Appeals. Beatrice Paolucci has resigned from her position with the BZA. She was also a member of the Social Services Board and is not permitted to serve on more than one Board. The BZA will need to elect officers, as there is no longer a Chair.

It will be necessary to elect officers.

APPROVAL OF AGENDA

Mr. Muggeridge made a recommendation to first approve the agenda and to determine that a quorum is present prior to the election of officers. Mr. Muggeridge made a motion to approve as recommended. Ms. Ross seconded. The motion carried unanimously.

Mr. Jarrell determined that a quorum was present.

ELECTION OF OFFICERS

Mr. Jarrell called for nominations for Chair and Vice Chair positions.

Ms. Ross made a motion to nominate Mr. Frank Reyes for the position of Vice Chair. Tom O'Toole seconded. The motion carried unanimously.

Ms. Ross made a motion to nominate Mr. Jay Jarrell for the position of Chair. Mr. O'Toole seconded. The motion passed unanimously.

PUBLIC NOTICE REQUIREMENTS

Mike Craig stated that public notice requirements had been met.

DISCLOSURE OF EX PARTE COMMUNICATIONS

Mr. Jarrell asked if any Board member had engaged in *ex parte* communications on any item before the Board. No one indicated they had participated in any *ex parte* communications.

DISCLOSURE OF CONFLICTS OF INTEREST

Mr. Jarrell asked if any Board member had any conflicts of interest on any item before the Board. No one indicated that they had any conflicts of interest.

APPLICATIONS

VAR 2017- 03 - Dreamland, LLC (Owner) requests a variance to the height requirements at 1709 Caroline Street (GPIN 7789-08-2108) in the Commercial Highway Zoning District. § 72-31.5B of the City's Unified Development Ordinance states that multi-family buildings in the R-12, Residential Zoning District shall be a maximum of 50 feet; the requested variance would permit a 58 foot tall multifamily building. Multi-family residential use in the Commercial Highway Zoning District is regulated by the Residential 12 dimensional standards. The property is within the Old and Historic Fredericksburg Overlay District and the Floodplain Overlay District. The property currently contains the historic VEPCO power plant structure but it and the rest of the property are vacant.

Presentation by Staff

Mr. Craig, Zoning Administrator, presented the staff report and power point.

The applicants were present and expressed their reasons for requesting the height variance. Mr. Leming distributed real estate listings showing ceiling / price points and documents outlining three court cases. A petition was also submitted by residents of the City who were in favor of the variance request, not necessarily the project, but the variance.

Mr. Clark Leming presented to the BZA and explained their request for the height variance. He explained their hardship due to the physical condition of the property. They are seeking to determine the location and size of the building. Mr. Leming expressed that the City Council, through ordinances and the BZA, through variances, are the only two entities that can regulate height, not the ARB. Mr. Leming reviewed the development scheme and the various challenges the property presents.

Mr. Bruce Reece, Legacy Engineering presented to the BZA and reviewed the City's analysis regarding the various building location site options presented by Mike Craig.

Mr. Reece commented that building site # 1, is a viable site, but there are concerns with the soils under the building, the tunnel under Caroline Street (they want to preserve for future use) and all elements into building site # 1. The applicant would need to add an additional building resulting in the need to have 2 construction sites in order to fit all the elements in the building site #2 space. That would potentially raise the cost between 2 and 7 million dollars.

Mr. Reece commented that building site #2 is the ideal location that would accommodate the construction of the 23 units. They would prefer to make that building bigger, but then it would intrude into the floodway and the RPA. It would require the applicant to remove a floor of approximately 14,000 square feet resulting in the need of another 14,000 sqft. of buildable area. Mr. Reece said he's only able to gain an additional 6,000 sqft. Mr. Reece doesn't recommend that the power plant be used for residential housing development.

Mr. Leming commented that the top floor of the power plant could be used for residential, there are issues with not having multiple entrances or elevators for residential use. Mr. Leming expressed that the applicant has plans that include a multi-story restaurant and maybe a tech center or other use on the top floor. For a by-right use, the applicant isn't required to build another building on the property, which is what a variance is for. Mr. Leming rejects the two conditions.

PUBLIC COMMENT

Mike Skidmore, owner La Casa Realty, 111 Hunt Lane. Mr. Skidmore presented costs of comparable properties in the area, not to support or justify any particular dollar amount or square footage but wanting to compare apples to apples of like properties. He suggested .79 per square foot, month to month rent, square footage to square footage ratio used to suggest the various properties that the applicant will be in competition with. He provided handouts to the BZA Members. He spoke neither for nor against the project, but was asked to provide information.

Max Brock, 1701 Caroline Street. Mr. Brock spoke against the project.

Christy Poux, Silk Mill Retreat, 1711 Princess Anne Street. Spoke in favor of this project.

An email received on January 22, 2018 was distributed to BZA Members via email earlier in the day and hard copies were provided at the beginning of the meeting.

Mr. Jarrell closed the Public Hearing and waived the by-laws to allow the BZA members to directly question the applicant.

Board Comments & Questions

The Board of Zoning Appeals (BZA) discussed the application and asked questions to staff and the applicant.

Mr. Reyes inquired about the height of the applicants' proposed variance with relation of the height of the elevation from Caroline Street. Mr. Reece commented that from Caroline Street, the building would be approximately 48 feet in height.

Mr. Muggeridge asked for clarification regarding Mr. Leming's use of "by-right", and the question of more units or fewer units, and not a question of whether or not you can have residential property. The case study presented was an example of whether there was a restaurant or no restaurant, not the size of the restaurant. As Mr. Muggeridge understands it, by-right, there can be a number of residential units, up to 23.

Mr. Leming commented that the commercial use wouldn't be subject to a density but if there were a by-right commercial use to have a restaurant of a certain size then we might have apples to apples. Residential is a by-right use in the Commercial Highway District, but it has a by-right density. Mr. Leming feels this is as much by-right as anything else listed in the zoning ordinance, the applicant should be able to have 23 units. Under the circumstances of hardship and unreasonable restrictions the applicant is asking for an 8 foot variance so that they can obtain his by-right residential use, which is 23 units, not just residence or no residence.

Mr. Muggeridge asked if the applicant has a right to the 23 units in this situation. Mr. Leming says yes, the applicant has already had to cut the number of units down because of the floodway. In this context there is a way for the applicant to obtain his by-right use and it goes directly to the physical condition of the property and the only thing preventing the applicant from doing this is not having the height to build this project. Mr. Leming commented that by-right use is a sound justification for supporting this and the engineer has determined this is the best location.

Mr. Muggeridge asked about square footage vs. cubic footage and the correlation between the added value and higher ceilings in loft apartments. Mr. Muggeridge asked about the variance exceeding the limit. The applicant shouldn't be made to build two buildings. Mr. Leming said the height variance isn't going to affect any or pose any detriment to any other property. Mr. Muggeridge clarified that this building, if it were 8 feet shorter, it would be approved where it is located.

Mr. Jarrell agrees with Mr. Leming that he doesn't know of another piece of property in the City that is constricted more by regulations and easements than this property is. We should be thankful to the applicant for trying to do anything with this property. Easements, setbacks, steep slopes, and a canal through the property are all restrictions that Mr. Jarrell sees as posing a hardship.

Mr. Jarrell asked Kathleen Dooley, City Attorney, if the BZA is allowed to impose the conditions staff has requested. Ms. Dooley said yes, with respect to the character of the development, it is the purview of the ARB and that would go to the first condition that staff recommended. Mr. Leming stated that the ARB has no purview over the height of a structure but that is incorrect. Ms. Dooley commented that the HFD regulations are an overlay in our zoning district and they specifically state that where they are more restrictive than the underlying zoning, then the HFD, or the more restrictive regulation, prevails. Ms. Dooley gave an example of a person who may have a right to build an up to fifty foot structure on their property but if that fifty feet isn't architecturally compatible with the historic structures in the vicinity, then the ARB may impose a more restrictive height limitation on the property.

Mr. Jarrell wanted clarification on if the BZA can impose that condition at all and does the BZA have the authority to establish a timeline. Ms. Dooley commented that it's inherent in the BZA's ability to issue the variance at all and would be very helpful in this case. She commented any permit can have an expiration period and she currently is in court arguing about whether an approval in 1972 still constitutes a vested right today in 2018. In order to avoid that type of confusion in the future she suggested it would be helpful and it's inherent in the board's authority to grant the variance at all, if there were some sort of sunset on the permit. She commented that the other condition goes to the character of the structure that is in the statute.

Mr. Muggeridge asked where the conditions were laid out. Mr. Craig referenced the Staff Report, page 7. There are two proposed conditions listed if they were to approve the variance.

Mr. Jarrell asked Mr. Leming if the BZA were to grant the variance would the applicant be in a position to stipulate that the elevation would comply with exhibit B. Mr. Leming said that could be a condition the BZA could impose.

Mr. Jarrell commented that moving forward the ARB could approve or deny it, whatever the action they would want to take.

Ms. Dooley commented that it's important to include the condition in the variance if the board grants it. She doesn't think that the application merits the grant of the variance but in order to make it perfectly clear, that the ARB retains full authority, it would need to be a condition of the variance because it will not be clear otherwise.

Mr. Jarrell questioned whether the BZA was changing the zoning ordinance height of this building. He commented that the ARB isn't bound by the normal zoning ordinance height, they wouldn't be bound by this zoning ordinance height. Ms. Dooley commented that it would be very important to include that condition in any grant of the variance because it is already contested as to whether or not the ARB would be bound by this decision.

Ms. Ross understands the applicant and his team have tried to work with the City and work within the limitations of the property in question with the setbacks that are established and the BZA already denied the variance last November. Ms. Ross commented that knowing what the developer wants to do, with a height differential of another 8 feet, as shown in exhibit B, she finds this could be a viable option project for this parcel with the understanding that the applicant has many discretionary hurdles with other commissions and boards that are going to need to grant permissions and permits. She appreciates the work the applicant has put in to make changes and she would probably vote in favor of the granting of the variance.

Mr. O'Toole comments are inaudible. He asked if the BZA grants the variance does the ARB still have control. If the BZA approve the variance, it doesn't mean the applicant has the right to build it, it would still need to go through the ARB?

Ms. Dooley wanted to make clear, if the BZA grants the variance it should be stated clearly that it is still subject to the ARB's review as they administer an overlay zoning district. She reminded the BZA when the HFD conditions or regulations are more restrictive than the underlying zoning district than the HFD restrictions apply. In reviewing Exhibit B, in the staff report, she noted it looks to be squarely in the purview of the ARB to review. It is very important that if the BZA grants the variance the board should be very clear that it's conditioned upon ARB review and approval of the final architecture.

Ms. Dooley voiced her concern that the applicant would go to the ARB and convey that the BZA's authority to do anything lower than 58 feet had been decided and is final by the BZA. She would like to see the ARB retain the authority to work with the landowner to get an architecturally compatible structure.

Mr. Jarrell asked to clarify that the BZA has no jurisdiction over the ARB, the BZA isn't handling an appeal with the ARB and there is no jurisdiction to tie their hands what so ever. The City Attorney commented that the granting of a variance is a significant affirmative governmental act that would constitute a finding by the BZA that without this variance the property can't be developed. If she

were the applicant she would tell the ARB the height is a settled matter and the ARB doesn't have any authority to look at an application in respect with height. Ms. Dooley reiterated that if this is the boards understanding then she would like it to be clearly stated in the variance and it is statutorily authorized because it goes directly to the character of the development. Mr. Jarrell understood her argument.

Mr. Jarrell would like to reword and / or spell out our intent, "subject to ARB approval". He feels the three year time period is short and feels a five year period is more appropriate.

After discussion, Mr. O'Toole made a motion to approve Mr. Leming's record of decision to include extending the time period of three years to five years.

Mr. Jarrell clarified that this variance is subject to the project being approved by the ARB. The BZA's decision is granting the ARB to give the applicant the options of the height.

Ms. Ross seconded the motion. The motion to Approve was passed 4- 1.

Mr. Jarrell proposed the following wording: *The grant of the variance is for a height of up to 58 feet, subject to the ARB's issuance of a Certificate of Appropriateness which may address the height of the building.*

REVIEW OF MINUTES

Ms. Ross made a motion to approve the meeting minutes from December 18, 2017 as presented. Mr. Reyes seconded. Motion carried unanimously.

STAFF / BOARD COMMENTS

- A. Discussion on process of asking and answering questions via the Chair and the general public.

ADJOURNMENT

Mr. Reyes made a motion to adjourn. Mr. Muggeridge seconded.

Meeting adjourned at 5:56 p.m.

Jay Jarrell III, Chair

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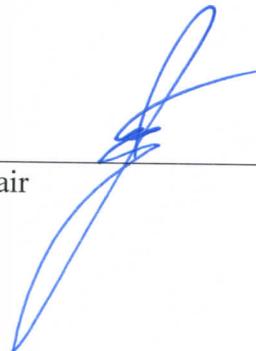
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Meeting adjourned at 5:56 p.m.

Jay Jarrell III, Chair



Fredericksburg Board of Zoning Appeals

Record of Decision Variance 2017-03 – Dreamland, LLC

The Fredericksburg Board of Zoning Appeals heard Dreamland, LLC's ("Dreamland") application for a variance from the fifty (50) foot building height limitation of City Code §§ 72-32.4(c)(1) and 72-31.5(B) to accommodate the location of a proposed multifamily residential apartment building, at its meeting on January 22, 2018. Upon consideration of the record as a whole, the Board of Zoning Appeals adopts this Record of Decision approving the application.

Findings of Fact

A. The subject parcel consists of approximately 3.931 acres of land, zoned CH-Commercial, Highway, and is shown on the City's GIS records as GPIN 7789-08-2108 (the "Property").

B. The Property is encumbered by unique site conditions and situations which include but are not limited to:

1. The Property lies almost entirely within the one hundred year Floodplain, and the vast majority of the Property lies within the Floodway Area in Zone AE (the "Floodway"), as mapped by the Federal Emergency Management Agency ("FEMA") Firm Map dated September 19, 2007.

2. The Property is burdened by a pump station site acquired by the City which is located in the center of the Property (GPIN7789-08-1198).

3. The City has acquired multiple permanent stormwater, water and sewer easements, and multiple pump station Operation and Maintenance ("O&M") easements on the Property as shown on the "Exhibit Showing Mill District – River Lofts," by Legacy Engineering, submitted as part of the Variance Application (the "Exhibit") .

4. The City possesses a 20 foot scenic easement on the Property along the Rappahannock River.

5. The historic Old Vepco Power Station is located on the Property.

6. The topography of the Property varies widely, and features steep slopes that exceed 40% in some areas.

C. Dreamland purchased the Property in an arm's length transaction from C&G Properties L.C. by deed dated April 17, 2014, and recorded in the City's land records as instrument number 2014-706. The Property conditions set forth in paragraph (B) above existed at the time Dreamland acquired the Property.

D. Dreamland seeks to develop a three level, twenty-three (23) unit "River Loft" apartment complex with appropriate surface and subsurface parking on the Property as part of an integrated mixed use project which will also feature the redevelopment of the historic Old Veeco Power Station as a by-right "Power Plant Restaurant." The River Lofts and Power Plant Restaurant will share parking facilities and will be connected by pedestrian walkways.

E. The proposed 23 unit River Loft apartment complex is a by-right use of the Property.

F. As shown on the Exhibit, Dreamland seeks to construct the by-right River Lofts building in a location utilizes the highest ground elevation available in the buildable areas of the Property that could accommodate construction of the River Lofts building at the maximum allowable by-right density. The average existing ground elevation in the proposed location is approximately twenty-two and one-half (22.5) feet. Construction in such location requires an eight (8) foot variance from the 50 foot building height limitation of City Code Sec. 72-31.5(B).

G. At the proposed location, the River Lofts building would be constructed such that the lowest occupied dwelling units (i.e. the first level) are at least one and one-half (1.5) feet above the 40 foot Floodway elevation so as to minimize the risk of flooding and to comply with the City's and FEMA's development criteria. The proposed location enables Dreamland to comply with the City's twenty-five (25) foot front setback requirement and further ensures no encroachment upon the City's various easements and interests on the Property, including the City's O&M utility easements and the City's pump station site. The proposed location further enables Dreamland to maximize the allowable by-right density of the Property and does not result in a substantial reduction in the number or size of units which would render the project significantly less marketable.

H. The abutting property to the West of the Property (GPIN 7789-98-8948) is an approximately 17.9 acre City-owned park. The abutting property to the East of the Property (GPIN 7789-07-3845) is a vacant lot. One of the adjacent properties directly across Caroline Street to the South (GPIN 7789-07-0802) is owned by an affiliated entity of the applicant. The other adjacent property directly across Caroline Street (GPIN 7779-98-8220) is improved with a structure which fronts Princess Anne Street and is also owned by an affiliated entity of the applicant. The other nearby properties are primarily vacant and undeveloped.

Conclusions of Law

1. The applicant has shown by a preponderance of the evidence that strict application of the 50 foot height limitation would unreasonably restrict the utilization of the Property.

2. The applicant has shown by a preponderance of the evidence that granting of the height variance would alleviate a hardship due to a physical condition related to the Property.

3. The applicant has shown by a preponderance of the evidence that Dreamland acquired the Property in good faith and that any hardship was not created by Dreamland.

4. The applicant has shown by a preponderance of the evidence that the granting of the height variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.

5. The applicant has shown by a preponderance of the evidence the conditions or situation of the Property are not of so general or recurring a nature among CH-zoned properties so as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance. Such conditions or situations of the Property include but are not limited to: (a) the Property lies almost entirely within the Floodplain and the vast majority lies within the Floodway; (b) the City owns various utility and O & M easements throughout the Property; (c) the City owns a pump station site in the center of the Property; (d) the City owns a 20' scenic easement on the Property along the Rappahannock River; (e) the Old Vepeco Power Station, a historical structure, is located on the Property; and (f) the topography of the Property varies widely, and features steep slopes that exceed 40% in some areas.

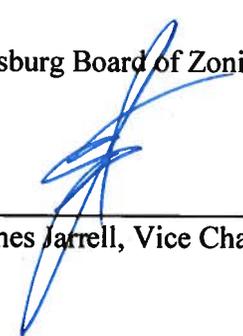
6. The applicant has shown by a preponderance of the evidence that the granting of the height variance does not result in a use that is not otherwise permitted on the Property or a change in the zoning classification of the Property.

7. The applicant has shown by a preponderance of the evidence that the requested height variance is not available through the City's special exception process or the City's administrative zoning modification process.

NOW WHEREFORE, the Fredericksburg Board of Zoning Appeals finds that Dreamland has shown by the preponderance of the evidence that Variance Application 2017-03 meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in Virginia Code § 15.2-2309, and hereby approves Variance Application 2017-03 with the following conditions:

- The grant of the variance is for a height up to 58 feet, subject to the Architectural Review Board's issuance of a certificate of appropriateness which may address the height of the building.
- This variance shall remain in effect for a period of five years, unless the applicant obtains an approved site plan before the expiration of this period.

Fredericksburg Board of Zoning Appeals

By: 
James Jarrell, Vice Chair

Date: 10/15/18