

CITY OF GASTONIA
ZONING BOARD OF ADJUSTMENT

April 26, 2018

Minutes

The regular meeting of the Zoning Board of Adjustment was held on Thursday, April 26, 2018, at 9:00 a.m. in the City Council Chambers at City Hall.

Board Members present: Chairman Don Grant Jr., Vice-Chair Lee Taylor Jr., William Marino, Melanie Blankenship, and Sidney Craig

Board Members absent: None

Staff present: Charles Graham, Assistant City Attorney; Joe Gates, CZO, Zoning Administrator; Keith Lineberger, Subdivision Administrator, Brian Pruett, Building Code Administrator; and Chrystal Howard, Secretary

Chairman Grant called the Board of Adjustment meeting to order.

Item I: Approval of October 26, 2017 Minutes

Board Member Taylor made a motion to approve the minutes as presented and Board Member Blankenship seconded the motion. The motion was approved unanimously.

Chairman Grant explained the variance process. Because of the quasi-judicial format of these hearings it is required by North Carolina law to swear in persons that speak before the commission and offer evidence. Ms. Chrystal Howard administered the oath.

Item II: Public Hearing #8949 – Crescent Structures, Inc. (Eric L. Riley) – 319 Linwood Rd.

Chairman Grant addressed Item II on the agenda, Public Hearing #8949 – Crescent Structures, Inc. (Eric L. Riley) – 319 Linwood Road. The applicant has submitted a variance request to allow for a reduction to the side yard setbacks.

Chairman Grant opened the public hearing and recognized Mr. Joe Gates, CZO, Zoning Administrator for staff presentation.

Mr. Gates thanked the board for being present. Mr. Gates recognized exhibits in the back of the agenda for reference purposes. Mr. Gates reiterated the public hearing item and variance request. Mr. Gates stated that the property is in the I-U (Urban Industrial District) and the standard minimum side yard setback for this district is 10'. Mr. Gates recognized the applicant, Mr. Eric L. Riley who is present on behalf of Industrial Electroplating Co., Inc. Mr. Gates stated that the applicant is asking for relief from the standard setback to have a 0' setback from the side lot line. Mr. Gates stated that the subject site currently has an existing industrial building approved on January 10, 2000 by site plan 3783 (Agenda 2-6) which met the 10' side setback. On February 27, 2017 a new site plan 8731 (Exhibit D) was submitted to the Technical Review Committee (TRC) that illustrates a proposed building addition crossing the property line between the two adjacent parcels.

Brief discussion occurred regarding a demolished house.

Mr. Gates explained the site plan review process. Staff directed the owner/applicant to combine the property 226897 (Exhibit A), 226898 (Exhibit B), and 106405 (Exhibit C) to ensure that the new building addition would be located on one parcel and could comply with the development regulations for the City of Gastonia, including but not limited to zoning building setbacks. Discussion occurred amongst staff and the applicant on seeking ways to build the proposed addition that would satisfy the building code. Satisfaction of the building code alone did not address the zoning/subdivision ordinance requirements that prompted the instructions to combine the properties into one parcel.

Board Member Taylor inquired about the proposed distance from the edge of the building to the side of the road and Mr. Gates answered that in the I-U district the front setback can have a 0' lot line. The Linwood Road is considered the front with a 10' setback. The site plan shows 20' setback. Discussion ensued on front and side setbacks.

Mr. Gates summarized earlier comments of the new site plan, the site plan review process, and recombination of properties. Mr. Gates stated that a note was added on the site plan submitted to staff that states “Recombination Plat/Maps of 2 properties required for new building construction”; however, this recombination has yet to be done.

Board Member Taylor asked if the applicant plans to recombine properties or do they want to keep one parcel owned by Prescott and the other owned by Industrial Electroplating Co. Mr. Gates answered that the recombination did not occur and referred this question of owner’s intent to the applicant.

Mr. Gates pointed out that an illegal subdivision of properties occurred on November 8th, 2017 without review or approval by City of Gastonia staff as required by Section 13.11- Approval of Plats Required.

Board Member Taylor asked what was considered to be illegal and Mr. Gates answered that in November the property owner recorded by deed a new property line, creating a new third parcel known as parcel 226898 (Exhibit B). The instructions and requirements by staff was to combine two parcels, 106406 and 106405, into one parcel. After discussion with staff, the owner chose to create a new parcel without review or approval by the City. The result of this action caused the existing building and site known as 319 Linwood Rd to be in nonconformity. The side property line has been moved by deed (Agenda 2-8) from compliance (property line 10’ from the building wall, shown on site plan 3783) to the new property line on the south side of the building being flush with the existing building wall line resulting in a 0’ side yard setback for parcel 226897 (Exhibit A). Mr. Gates stated that the owner wishes to move forward with the building addition. However, the applicant/owner does not want to restructure their existing family ownership and deed to make the necessary changes. Mr. Gates reiterated the applicant’s request. Lastly, Mr. Gates informed the board that if they have questions pertaining to building code or subdivision requirements, Keith Lineberger, Subdivision Administrator, and Brian Pruett, Building Code Administrator are present.

District zones and setbacks were briefly discussed.

Mr. Gates made a comment that other zoning districts do not play a part in the zoning and setbacks for this particular property. In comparison to other zoning districts, the I-U district is probably the least restrictive in an industrial context including setbacks.

Board Member Taylor is trying to understand the purpose for setbacks, such as safety concerns, distance from roads, esthetics standpoint, neighbors not having something right on the road, and/or complaints. Board Member Taylor asked if any neighbors complained regarding this situation and Mr. Gates answered that staff has not received any opposition to this hearing item.

Chairman Grant asked what criteria was used to determine front and side setbacks and Mr. Gates answered the definitions are in chapter 2 of the Unified Development Ordinance (UDO) and then explained the criteria to the board. Ultimately, the owner designated the front to be along Linwood Road; therefore, establishing front, side and rear setbacks under the ordinance.

Mr. Gates also read Section 7.4 – Location of Required Yards on Corner and Irregular Lots

If a lot is abutted on three (3) sides by streets, the front yard (for setback purposes) shall be designated by the property owner. Notwithstanding, the front and rear yards, and subsequent placement of structures on said lot, to the greatest degree possible, shall be in keeping with the architectural fronts and rears of other pre-existing structures situated on that block.

The location of required front yard setbacks and side and rear yards on other irregularly shaped lots shall be determined by the Administrator based on the spirit and intent of this Ordinance to achieve an appropriate spacing and location of buildings and structures on individual lots.

Chairman Grant inquired about the owner’s intent of purchasing the property and Mr. Gates stated that he cannot speak on their behalf. Mr. Gates provided the recorded deed information of when the property was purchased and referred the Board to the site plan.

Mr. Gates reiterated the nonconformance and applicant's zoning request.

Chairman Grant asked if the subdivision was made on the advice of their attorney and Mr. Gates stated he has a copy of the deed, but he cannot speak on either behalf. Mr. Gates stated that it is a violation of the ordinance regardless and the ordinance stands that this is in violation.

No further questions were asked by Board.

Chairman Grant recognized Mr. Eric L. Riley, 914 Moose Street Suite E of Gastonia, NC. Mr. Riley is the Vice-President of Crescent Structures, Inc. Mr. Riley thanked the Board for their time and thanked Mr. Gates for his report. Mr. Riley stated that there are three parcels. Mr. Riley stated that he has a deed and survey conveying the small new parcel to the larger corner lot to do away with the property line that runs oddly through the building. Interpretations and discussion on an acceptable application ensued between the applicant and Mr. Pruett, Office of the State Fire Marshall, and Department of Insurance in Raleigh. The reason the property line was moved was to meet building standards requirements. The intent was to place the property line in the building line because the state building codes would allow this attachment to the existing building based on a 3 or 4 hour masonry fire wall. Mr. Riley stated that the owner is intending to build to meet building code requirements. He proceeded to explain the fire wall location and their interpretation of the three parcels. Mr. Riley stated that the tax records are in error because the deed explains it differently. Mr. Riley continued that most requirements, including the fire wall, have been met for building standards; however, zoning is an issue for the property line. The building was purchased by Mr. Prescott in order for the building expansion. Mr. Riley noted a conversation between Mr. Prescott and Freightliner. Mr. Riley stated that Mr. Prescott does not want to separate buildings, because it doesn't work well with the business flow and provided examples of similar combined buildings. Therefore, Mr. Prescott stated that it was absolutely necessary to combine buildings. Mr. Riley explained about the ownership of all three parcels stating the new parcel had been combined with the corner parcel. Mr. Riley stated that Mr. Prescott had the covenant deed recorded as part of the requirement from building codes and it explains what would happen to the building upon the sale of the business even though it is not the intent. Mr. Riley mentioned that Mr. Prescott made an investment upgrading his wastewater treatment process to meet rigorous requirements for the City of Gastonia.

Chairman Taylor asked what their setback was from the road to the building and Mr. Riley answered that Mr. Gates was correct with the allowable setback dimensions and that they established a 20' setback from the right-of-way of Linwood Road to the front of the building considering any future widening of the road.

Attorney Graham enlightened the board and public that their stated intent is that parcel 226898 (Exhibit B) be combined with parcel 106405 (Exhibit C) the corner piece. The deed in the agenda packet does not accomplish that stated intent that these parcels are combined. Board Member Blankenship asked if the new deed combines these parcels as one property, would that make a difference. Attorney Graham answered that a new deed could combine the parcels as they intend but it would not affect the side setback issue and that is why the variance request is before the Board. Attorney Graham briefly reiterated the variance request and what would need to be voted upon and reminded that the building code is a separate issue which has been addressed. Attorney Graham stated that this hearing item is for 319 Linwood Road and the next hearing item is on 323 Linwood Road, and the Board will have to grant an identical side setback variance for 323 Linwood. Mr. Riley commented that the deed describes parcel 226898 (Exhibit B) being conveyed to the corner lot, but the deed will need revised to incorporate it into the corner lot. Mr. Riley believes that the deed has been revised, but he did not have a copy of it.

Discussion ensued on other properties.

Mr. Gates stated that while there may be conditions existing around the property, hardships resulting from personal circumstances, as well as, hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. While there may be other properties and other similar situations, those cannot be taken into consideration when granting a variance per Section 5.14.1 of the UDO.

Further discussion ensued on other properties.

Chairman Grant asked Mr. Riley to explain his requests. Mr. Riley explained the property lines and their variance request to allow for a reduction to the side yard setbacks for both hearing items. Mr. Riley explained Mr. Prescott's request to allow the variance request, as well as, his available options.

Mr. Gates explained the variance requests due to confusion of the two public hearing items on the agenda. Discussion ensued on clarification. Attorney Graham stated that the ordinance deals with parcels. We are dealing with two parcels owned by two different owners requiring two different hearings and this is why these items are confusing. Attorney Graham reiterated there are two different property owners with two different parcels making it inappropriate to combine these as a joint hearing item. Attorney Graham continued that the hearing item currently taking place is where the existing building sits. The owner already deeded away the 10' side setback creating a nonconforming building because it sits on the property line. The applicant is asking to grant a variance to make what they have done appropriate under the ordinance for that building, which is a 0' side setback. The next hearing will be on the corner lot and it is to allow the owner to build a new addition with a 0' side setback between the two parcels. These variance requests have nothing to do with setbacks on any streets. Mr. Gates provided a visual.

Board Member Taylor stated that the only hardship that could be found was the intent to provide relief where the requirements of this ordinance create an unnecessary hardship because of some unique physical attribute of the property itself or some one factor unique to the property for which the variance is being requested.

No other questions were asked by the Board.

Chairman Grant entertained a motion to grant the request. Upon no motion received, Chairman Grant made a motion. It was acknowledged that the Chairperson cannot make a motion. Board Member Taylor made the motion to approve the request between parcel 226897 Amelia J. Prescott and parcel 226898 Industrial Electroplating Company to reduce the side yard lot line to 0' as long as it meets building code and zoning requirements and based on the hardship of parcel 226898 being a very unique odd shaped property with the adjacent property lines, and that it would be very difficult to build on. Therefore, this was the only use that they can have at the property, the purchase of the property had nothing to do with it, it remains the same shape no matter the owner, and as far as the 0' lot line it would be consistent with the spirit, purpose and intent of the ordinance, such that public safety as long as building code and zoning requirements are met. Board Member Craig seconded the motion. The motion was approved unanimously.

Item III: Public Hearing #8950 – Crescent Structures, Inc. (Eric L. Riley) – 323 Linwood Rd.

Chairman Grant addressed Item II on the agenda, Public Hearing #8949 – Crescent Structures, Inc. (Eric L. Riley) – 323 Linwood Road. The applicant has submitted a variance request to allow for a reduction to the side yard setbacks.

Chairman Grant opened the public hearing and stated that discussion of this hearing item occurred in the prior hearing and information was included in the agenda. Chairman Grant asked if anyone wanted to speak. No one came forward to speak.

Board Member Taylor asked to summarize the variance request for this item and Mr. Gates reiterated the request. Mr. Gates also stated that parcel 106405 and parcel 226898 would need to become one parcel, so the new property would come in and take shape. Board Member Taylor asked if the combination of parcels need to be included in the motion. Attorney Graham answered to grant the variance for a 0' setback based on what is presented to us in deed, the grant will need to include a condition for the owner to provide the additional deed combining parcel 106405 and parcel 226898.

Board Member Craig asked if the setback for parcel 106405 is the same and Mr. Gates said yes, that it is the same district. Mr. Gates explained the parcel has sufficient room for the building and can meet all other zoning setbacks. The building would need to be shifted 10' to be compliant and would no longer need a variance if the building were shifted. Mr. Gates commented that attaching the building was a choice made by applicant.

Clarification of property lines in question regarding setbacks and illustration was given. Mr. Riley read a section on the map stating that 0.71 acre is to be combined with deed book 4751 page 38.

Mr. Riley stated that this is the deed for the corner property and he does not have a copy of this deed.

Board Member Taylor made the motion to approve the request to reduce the side yard setback to 0' between parcel 226897 Amelia J. Prescott and parcel 106405 Industrial Electroplating Company to reduce to side yard lot line to 0' as long as it meets building code and zoning requirements and based on the hardships stated in file #8949's motion. Also stipulating that the deed combining parcel 226898 Industrial Electroplating Company and 106405 Industrial Electroplating Company be finalized to the City of Gastonia staff's satisfaction before any construction can take place. Board Member Marino seconded the motion. The motion was approved unanimously.

Item IV: Other Business or Announcements

The next Board of Adjustment meeting is scheduled on Thursday, May 24, 2018. Mr. Gates stated that we currently have three applications scheduled for the May meeting.

Mr. Gates informed the Board that staff is currently updating the Board of Adjustment application in an effort to incorporate as much information about variances and hardships, as well as, resemble other applications.

Chairman Grant noted there was no other business or announcements.

There being no further business or announcements, Chairman Grant entertained a motion to adjourn the meeting. Board Member Marino made the motion to adjourn the meeting and Board Member Taylor seconded the motion. The motion was approved unanimously. The meeting adjourned 10:20 a.m.

Respectfully Submitted:

Chrystal Howard, Secretary

Zoning Board of Adjustment
City of Gastonia, NC

Chairman Don Grant, Jr.

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