

BEFORE THE BOARD OF ZONING APPEALS
TOWN OF WASHINGTON GROVE

IN THE MATTER OF:

CAROLYN SANFORD
115 Chestnut Avenue

:
:
: Case No. 08-02
:

OPINION AND ORDER

Carolyn Sanford, owner of a detached, single-family dwelling unit located at 115 Chestnut Avenue, has requested a variance from the requirements of the side yard set-back requirements described in Section 9 of the Washington Grove Code of Zoning Ordinances.

The Board conducted a public hearing on this variance request on April 26, 2008, and continued the hearing on May 10, 2008.

Based on the matters admitted into evidence, the Board makes the following findings of fact and conclusions of law:

1. Notice of Hearing. The Board finds that a notice of public hearing to consider the applicant's variance request was given in compliance with Section 11.311.¹
2. Denial of Building Permit. In September 2005, the applicant requested a building permit to demolish her current house and construct a new house at that location. The Washington Grove Planning Commission ("Commission") approved her request for a demolition permit but denied her request for a construction permit. By letter signed by Secretary Margaret Ebner on September 7, 2005, the Commission issued this denial because the house the applicant seeks to construct would exceed by about 2-1/2 feet the combined 25-foot side yard setback requirement as described in Section 9.

¹ Section references are to Article VII of the Washington Grove Code of Ordinances.

3. Applicant Requests Relief from Development Standards of the Code of Zoning Ordinances. Section 12 limits variance requests to relief from the requirements of the Ordinances governing development standards, including setback requirements. The applicant's variance request is therefore in compliance with Section 12.

4. Ownership. The applicant is the owner of 115 Chestnut Street and is therefore in compliance with Section 12.2(a)(3).

5. Not Contrary to the Public Interest. In order to grant a variance, an applicant must demonstrate that the variance, if granted, would not be contrary to the public interest. *See* Section 12.2(a)(4). The southern side of the applicant's existing house lies less than four feet from the fenced boundary she shares with her neighbors at 113 Chestnut Avenue. The house is sufficiently close to this fenced boundary as to violate the current minimum side yard setback requirement of 10 feet.² The applicant proposes to demolish the existing structure and construct a new, premanufactured house on the lot. She proposes that the footprint of the new house shift to the north, so that the new house is located 15 feet away from the boundary she shares with 113 Chestnut. This shift of the footprint location will allow more light and air between the southern side of the applicant's house and the fence that separates her property from 113 Chestnut. Even more significantly, the relocation of the house away from the fence on her southern perimeter will enhance the ability of responders to access that side of the house in the event of an emergency.

The Board believes that granting the variance would do substantial justice to the applicant, to her neighbors at 113 Chestnut, and to other property owners in the vicinity. Zoning presumes that a certain amount of space between uses or between structures is necessary for the public safety and welfare; the Board does not believe that rebuilding the

² Note that the applicant's house was constructed before the Town of Washington Grove (the "Town") adopted the Zoning Ordinances and that the location of the current house was grandfathered into the Ordinances.

existing house on the current footprint would secure public safety. The Board therefore concludes that granting this variance would be in the public interest as long as the applicant can satisfy the other criteria for receiving a variance.

6. Practical Difficulty. The Board cannot grant a variance unless the applicant demonstrates that complying with the Zoning Ordinances (*i.e.*, in this case, the combined 25-foot side yard setback) would be unnecessarily burdensome. *See* Section 12.2(a)(5). The applicant wishes to construct a premanufactured home on the property ("Lot 6") once the current structure has been demolished. A premanufactured home is largely constructed off-site; it is then assembled, and any remaining construction is finished, on location.³

Rather than buying a premanufactured home, the applicant could choose to build a custom home, fully constructed on site, that meets the combined 25-foot side yard setback requirement. She testified that a custom home would be significantly more expensive. The Board believes that requiring her to build a custom home, rather than a premanufactured home, would unnecessarily burden the applicant. Denying the variance on this basis would essentially force her to incur significantly higher costs, all to construct a home 2-1/2 feet narrower than the home she seeks to build.

As evidenced by letter dated April 29, 2008 from the applicant to Marc Hansen, Chair of this Board, the applicant was unable to find a premanufactured home that would meet the combined side yard setback requirement of 25 feet, and would also be similar in style to the model she ultimately selected, Haven Homes' Foxchapel model. The Foxchapel model is approximately 27-1/2 feet wide; given the 50-foot width of Lot 6,

³ Whether the applicant may or may not build a premanufactured home is not at issue. The Planning Commission did not deny the applicant's request for a permit because the home is premanufactured, and the Town already includes a handful of recently built premanufactured homes. One witness testified during the hearing that constructing a premanufactured home is consistent with the Town's Master Plan in that it promotes innovative and cost-saving design while protecting the environment (*i.e.*, due to the relatively high energy efficiency of such homes).

constructing the house would exceed the combined side yard setback requirement by about 2-1/2 feet. The applicant explored with her builder the possibility of customizing the Foxchapel model by narrowing it so that it would meet the combined side yard setback requirement. Her builder indicated that modifying the house to reduce its width to 25 feet would significantly increase the cost, due to the re-engineering required to change the roof line, as well as the stairway location. The Board believes that this significant increase in cost would unnecessarily burden the applicant.

The applicant admits that she could have selected a premanufactured home in a style not compatible with other houses in Town, but that would meet the side yard setback requirements. In her investigations of those home styles, the front doors are inevitably located on a long side of the model. Placed on her long, narrow lot, none of these models could front Chestnut Avenue or Chestnut Road; the front door would instead face the applicant's side yard. This feature, while not prohibited by the Zoning Ordinances, would not be considered harmonious with the surrounding neighborhood or with the historic layout of the houses in the Town.

The Board, therefore, finds that compliance with the combined 25-foot side yard setback would unnecessarily burden the applicant.

7. Extraordinary Characteristics; Uniqueness. An applicant must demonstrate that the condition that forms the basis for granting a variance arises exclusively from the dimension, shape, topography, or other extraordinary characteristics of the lot. *See* Section 12.2(a)(6). In addition, the Board must find that the condition that forms the basis for granting the variance is peculiar to the lot in question and is not common to other lots in the vicinity. *See* Section 12.2(a)(7). Lot 6 is 7,500 square feet and is zoned RR-1 but is located in the RR-2 zone, a zone generally designated for properties with a minimum lot

size of 11,250 square feet. Lot 6 is therefore considered non-complying.⁴ The non-complying nature of Lot 6 is an extraordinary characteristic: peculiarly narrow and small compared to other lots in the area, Lot 6 is disproportionately impacted by the zoning restrictions, to the applicant's detriment. However, other lots in the vicinity, *e.g.*, the property located at 123 Chestnut, are also 7,500 square feet and are non-complying. As a result, the applicant's property, although extraordinary, is not in itself unique, and the non-compliance alone does not satisfy the requirements of Section 12.2(a)(7).

The north side yard of Lot 6 borders an 860-square-foot parcel (the "surplus lot") also owned by the applicant. She purchased this parcel from the Town in April 1990, subject to a number of restrictive covenants, including

that the land conveyed shall not be combined with adjoining land to meet minimum building lot square footage requirements, percentage of lot coverage requirements, or set-back requirements, for purposes of erecting a residential structure.

The applicant's request for a variance does not seek to use the surplus lot to meet the zoning requirements. The Board believes, however, that a combination of physical characteristics – (1) Lot 6's non-compliance within the RR-2 zone, and (2) the fact that Lot 6's side yard borders a surplus lot also owned by the applicant – creates a condition unique to Lot 6. This condition arises exclusively from the extraordinary characteristics of Lot 6, and is peculiar to Lot 6; no other lots in the vicinity share this combination of characteristics.

One witness at the hearing suggested that the surplus lot is a benefit to the applicant and asked whether variances should only be granted where the physical characteristic(s) of the lot that forms the basis for granting the variance is a burden to an applicant. Section 12.2(a) does not indicate that unique physical characteristics must be considered burdens.

⁴ As noted previously, both Lot 6 and the applicant's house pre-date the Code of Zoning Ordinances and the designation of the RR-1 and 2 zones, and so have been grandfathered.

In addition, the same characteristic might be considered both a benefit and a burden; in this instance, as owner of the surplus lot, the applicant must pay taxes on it, but does not have full and complete use of the lot.

Because the applicant has met the burden of proof and persuasion with respect to all of the criteria that the Board must find in order to grant a variance under Section 12.2, the Board resolves that applicant's variance request of 2 ½ ft. from the side yard setback established in Section 9 is GRANTED, conditioned on:

- 1) The applicant must construct on Lot 6 the Haven Homes Foxchapel model.
- 2) The designed front of the house must face Chestnut Avenue.
- 3) The house must be placed on Lot 6 so that the side yard setback from the southern lot line is 15 feet.

Marc Hansen
Marc Hansen, Chair
Board of Zoning Appeals

Date: 6/3/08

The Board of Zoning Appeals of Washington Grove
Minutes

The Board of Zoning Appeals met on April 26 and May 10, 2008, at 11:00 a.m. in the Town Hall to conduct a public hearing on the variance request of Carolyn Sanford, 115 Chestnut Avenue, for a variance from the minimum standards for setbacks described in section 9.1 of Article VII of the Washington Grove Code of Ordinances.

Christine Dibble and Marc Hansen sat as the Board.

After conducting a public hearing on the variance application of Carolyn Sanford, the Board adopted a resolution granting the variance application for the reasons set out in the attached Opinion and Order.

Respectfully submitted,

Marc Hansen

Marc Hansen,
Board of Zoning Appeals

Approved:

6/3/08
Date