

**TOWN OF HARRISBURG, NORTH CAROLINA
BOARD of ADJUSTMENT MEETING
TUESDAY, JANUARY 19, 2016
6:00 PM**

MINUTES

**1.
CALL TO ORDER**

Lloyd Quay called the meeting to order.

PRESENT: Lloyd Quay, John Overcash, Mike Hamamgian, Andy Rathke, Thelma Thorne-Chapman, Scott Noel (alternate)

**2.
CONSENT AGENDA**

**3A.
OLD BUSINESS**

None.

**4A.
NEW BUSINESS**

H2016-01 (V) – Courtyards @ Harrisburg, Phase II Front Setback Variance request. All those speaking for or against this case were sworn in by the Clerk. Wayne Krimminger, Zoning Administrator presented the background information. Adam Fiorenza, representing New Style Communities has approached the Planning and Zoning Department to request a blanket front setback variance for all the buildable lots with Phase 2 of the Courtyards @ Harrisburg. The request is to reduce front setback from the required 20ft. to 15ft throughout all Phase 2 lots. All lots in Phase 1 maintained a minimum front setback of 20ft.

Wayne Krimminger

H2016-01 (V) is a variance request on setbacks. The applicant is New Style Communities, 1919 South Boulevard, Charlotte. Property owner, same. Property location is on Robinson Church Road right beside the Courtyards, Phase 1. The current zoning is CZ-RC. The request is the reduction of the residential compact district minimum front setback of 20ft to 15ft. To reduce it by 5ft to 15ft for all buildable lots within the Courtyards Phase II subdivision. The applicant's reasons for requesting the variance, I am just going to read those: Due to the size of the site as well as topographic challenges and the proximity to neighbors, New Style is seeking this variance to allow us to achieve as close to a "zero" entry home as possible for our age-restricted community. It will also allow us to create a uniform look and limit a significant amount of retaining walls. The applicant also believes the elimination of the one lot deeded back to the Town created more challenging and tighter configurations for all lots within the subdivision. Additionally, the applicant believes granting this variance would greatly reduce the height and length of retaining walls necessary to the development as well as aid the topography to the point of creating mostly zero rise entryways. If granted, a final site plan must be submitted to the zoning office for review to ensure that all other regulations are met per the Harrisburg UDO, as well as the approved variations from the ordinance granted by the Board of Adjustment. The applicant has submitted a complete application and has complied with the process of review per Article 3, Section 3.7 of the Harrisburg USO. The public hearing notice has been published as required by the Harrisburg UDO. The adjacent property owners have been notified by US Mail. A sign has been placed on the property stating the time, date and location of the public hearing. If approved, a variance granting order must be notarized and filed

at the Cabarrus County Register of Deeds. I will be happy to answer any questions and the applicant is here, but basically the request is that they want to reduce the front setback by 5ft to 15ft.

Mike Hamamgian

What is a zero entry home?

Adam Fiorenza

I appreciate your time and consideration. My name is Adam Fiorenza, Charlotte, NC. To answer your question sir, zero entry to us is really no steps in the home at all, and this is the second phase for this Courtyards @ Harrisburg community. If you drive in there currently you will see some large retaining walls in different areas of the properties, the goal there is get our site as flat as possible. Being an age restricted community, typically our buyers; we have people who are in wheelchairs, walkers, people who just can't do steps anymore. So zero entry to us is really no steps in the home. When you go over the threshold of the front door there is no rise. In the garage you might have about a four inch rise, and that's typically what we try to limit it to. Included in that is level driveways as much as possible also, because people can't walk up steep driveways either. I'd be glad to give you guys a real brief background which I think would explain how we got to this point.

Lloyd Quay

In Phase I that you've already built, are they zero entry also? Every one of them?

Adam Fiorenza

Yes sir.

John Overcash

Do they have 20ft setbacks?

Adam Fiorenza

They do not. That was a much easier site to work with. As we got into the engineering of this particular site, we were really restricted. In fact, one of limiting factors; we're still not able to eliminate the walls, but again the background was this particular acre property which is what the Town's walking trail was on; became a hot button issue so when we originally entered discussions with the Town, this particular property was included and we were expecting to take that. What happened was it just came up that that was not going to be an option. The Town really wanted to keep the integrity of that. So we actually peeled off and lost two lots. It had kind of a trickle-down effect on the site itself because we were actually going to pull a lot of good dirt from this site as well as get our grading where we needed it to be. When we pulled that out it made this retaining wall and all these retaining walls around the retention pond extremely expensive and very tall. In addition to all of that, again the good dirt was really the focus up in here; we've done extensive testing and this is really bad down here. We are potentially going to have to haul a lot of this out and we don't have the opportunity to replace it with the good dirt from here anymore.

Andy Rathke

But that one acre wouldn't cover all those lots.

Adam Fiorenza

It would cover a significant amount and we would be able to cover quite a bit of that. That's just one of the challenges that we ran into. I would also say that the residents did have some strong opinions of the neighborhood particularly on the back side. We had a series of meetings with those folks and tried to do the best we could, and what we really could do if we could push these lots forward another 5ft is to limit this wall, which as you see now generally starts here behind lot thirteen and runs up, at its tallest point in its current state with the 20ft setback, you'd be looking at about a five or six foot wall back here going up to about seven feet

and then transitioning along here back down. What we are able to do if we accomplish the 5ft setback; I'm sorry, the variance of 5ft, is actually eliminate this whole portion of the wall so the wall would actually start here and go to about here, probably about two or three feet in height. It will also allow us to eliminate this portion of this wall which is very high as well. There is really not a lot you can do with the side setback, it is what it is. A 5ft setback on these two particular lots really helps us (?). Unfortunately even a 5ft variance allow us to save about two or three feet on that wall, so not a significant help to that, but nonetheless every little bit helps. On this particular wall, we think we will actually be able to eliminate this wall in its entirety because we were able to structure a deal with the church back here to get out of their property (?). So we are hoping to eliminate this whole wall here.

Lloyd Quay

Did you say that the Phase I did not have 20ft setbacks?

Adam Fiorenza

It does have 20ft setbacks.

Lloyd Quay

It does have them.

Adam Fiorenza

This particular site; I'm not sure if anybody has walked it; it goes from this point here basically straight up hill. We don't get real creative with how we build. Some builders will go in with crawl spaces, big retaining walls, fences, but we build basically a long ranch home. So we're very limited on what we can do and we know what we can sell the homes for so we try to be aware of that and control development costs. Development costs on this site (?).

Andy Rathke

When you designed Phase I were you aware of these constraints?

Adam Fiorenza

We didn't have the same constraints in Phase I. We had a little bit more room to work with.

Andy Rathke

Were you aware of this?

Adam Fiorenza

In the first phase?

Thelma Thorne-Chapman

About Phase II.

Adam Fiorenza

No.

Andy Rathke

You didn't master plan Phase I and Phase II?

Adam Fiorenza

No sir. This came up well after we were; we saw the success of Phase I and the demand for this product in Harrisburg so we entered into negotiations for the second phase, knowing that there were going to be challenges, but we just didn't know how bad (?).

Lloyd Quay

The 15ft setback; what does that do to driveway length and parking? You can't get two cars in 20ft so I would think it would be hard to unless they are very small, but it's going to cramp the parking scenario out there.

Adam Fiorenza

We actually do like 20ft lengths. The residents in our community average one car. We have oversized two-car garages so most of the time cars are parked in the garage. We generally go for about 20ft in the driveway. There's plenty of room typically for our residents. We never have a concern with that. We try to allow for two cars to be parked in the driveway; the goals being when someone is driving around in the street there aren't cars parked there. The residents in all of our communities average 1.2 cars per unit so typically it's not an issue.

Andy Rathke

Josh, what's the normal setback for a garage? 22ft from the back of the sidewalk?

Josh Watkins

(?)

Andy Rathke

I noticed when you drive around in the neighborhood there's a couple of cars that actually extend into the sidewalk and you always have to walk around out into the street to get around it.

Josh Watkins

(?)

Andy Rathke

So if you move it to 15, you lose that distance right there.

Lloyd Quay

Where you are showing the retaining wall back on this side, is it a really steep hill that you are dealing with as far as...?

Adam Fiorenza

Yes sir.

Lloyd Quay

What is the change in grade there from where you are to the top?

Adam Fiorenza

There is a 40ft drop from this area down to this area. It's interesting what happened. These houses sit up really high and make a significant drop down to where the creek somewhat ends down in here and then it goes straight up hill to the Town's site, where over the years (?).

Lloyd Quay

What percentage reduction in retaining wall are you anticipating if the variance is granted?

Adam Fiorenza

I think it will be about 50% reduction.

Lloyd Quay

In the amount; in the linear feet or just the height?

Adam Fiorenza

Total amount; so linear feet we should see about 50% reduction. That really comes about through good grading in this back section as well. The real expense comes with this wall here at the pond and like I said (?) really close to the cul-de-sac and sidewalk system. It gets quite high in that area, so anything we can do to reduce the size (?)

Andy Rathke

And those are engineered retaining walls, right?

Adam Fiorenza

Yes sir. I would tell you that one of the things we try to accomplish is consistency in our neighborhoods, so we don't want to do the staggered setbacks. I did originally, when I proposed this; and I wish we had caught this earlier on in the process. It would have made things a lot easier. But we do want to keep the consistency of the neighborhood in terms of (?). We likely wouldn't need the 5ft in all cases but we want to make sure we maintain that consistency here. There are some here that it really wouldn't impact. But in our minds it's hard to get that consistency (?).

Andy Rathke

I'm not a big fan of retaining walls because I've seen too many of them fail personally. My neighbor's just collapsed two months ago. I mean, I think if we do something, we should do it for the lots that are really affected by this.

Lloyd Quay

Anybody have any more questions for Mr. Fiorenza? Is that all or is there additional information you have?

Adam Fiorenza

No that's all.

Lloyd Quay

How does the Board feel about this? Andy, you spoke up. You're looking at possibly modifying the variance as to only applying to those which are affected by the, I guess the rear retaining wall.

Andy Rathke

Yes the rear one (?).

Thelma Thorne-Chapman

(?)

Andy Rathke

(?) the retaining wall and those lots right there. (Andy stood up and pointed them out on the map).

Adam Fiorenza

It would actually really help; three or four feet off that wall (?) there will still be (?) at that point (?).

Lloyd Quay

There's a total of how many lots?

Adam Fiorenza

22.

Andy Rathke

There's six that are not affected, right?

Adam Fiorenza

Yes sir.

Lloyd Quay

Along the entrance there.

Adam Fiorenza

I would say at the top of the cul-de-sac, that one would not really be affected; this one here. These two here would be affected a little bit because the cul-de-sac kind of throws us off a bit and we want that consistency so we don't have that staggered line there.

Lloyd Quay

So it would need to be along this whole back line.

Adam Fiorenza

Yes sir.

Lloyd Quay

So you don't have 15ft on some and 20...

Andy Rathke

(?)

Adam Fiorenza

Yes I would say in terms of appearance and things we would be fine with maintaining that 20ft setback through here especially as you come through the entrance you get that feel that they are pushed back off the road a little bit. The real challenge again is (?)

Lloyd Quay

So we need to work it then that, if the Board is in agreement, that the variance will only be granted for those lots affected by the retaining walls in addition to the two back lots, because I don't see a wall drawn right there on those two, is that correct?

Adam Fiorenza

No. There is no wall there.

Lloyd Quay

But they include those in the setback, right, so that would be consistent in that area, and then the ones as you come in where the retaining wall is on the upper area right there.

Rich Koch

I think it may be better if you are going to consider something like that if you identify the lot numbers.

Josh Watkins

That would be lots 1, 2, 19, 20, 21, and 22.

Rich Koch

That's 1, 2, 19, 20, 21, and 22?

Lloyd Quay

So those are the ones being excluded and all the rest would be included in the granting of the 5ft variance. Correct? Am I right?

Andy Rathke

How do we address the parking concern though? When you only have 15ft then would they not be allowed to park on the driveway?

Adam Fiorenza

We haven't had any complaints of people parking, but I wouldn't doubt that's the case, people parking on the sidewalk. We can control that with our covenants and restrictions. Make it a part of the covenants that you don't block the sidewalk. They'll know as far as the process that if you have a big truck then they are going to have to buy one of the first six lots with the longer driveways. So we can definitely control that.

Thelma Thorne-Chapman

Is it enough space for one car?

John Overcash

Without going over the sidewalk?

Adam Fiorenza

Well, we'll still try to push it back as much as we can, again we try to push them back so that there will be as long a driveway as possible (?). I definitely understand your concerns about parking. We don't want; it doesn't work in our communities for people to block the sidewalks because they are being used.

Andy Rathke

It's a very walkability neighborhood right there and it's important.

John Overcash

Once that railroad track there is closed it will become even more walkable over to the shopping center. So the garage is not going to be (?) on some of these.

Andy Rathke

So can we push the garage further back? Would that be something that would work with your design?

Adam Fiorenza

We, we build what we build, and we don't really have the ability to go back to the drawing board. I will tell you we have actually come up with a; it's the same plan but we have been able to shrink it a little bit (?). These homes will not have that. They will have hardy board, but we were able to condense the homes a little bit and push them back a little further but it would be a really nice (?). They look great. We just started using them in

Greenville, SC. We can do things like that in terms of (?) but we are an active franchisee for a larger company and they give us the plans and say this is what you build.

Lloyd Quay

I was talking to Rich. Forgive me. What was your condition to the variance regarding parking? Restate what you...

Andy Rathke

Ensure that the cars don't stay in front of the sidewalk when they park in the driveway.

Rich Koch

And that would be placed in their recorded restrictions.

Lloyd Quay

Okay is there anything else from any of the Board members? Is this satisfactory at this point in time? Do you have any questions or any points to bring up to Mr. Fiorenza?

John Overcash

So in your sales pitch you are going to warn prospective buyers that if they have a big truck they're going to be in trouble?

Adam Fiorenza

Yes sir. Certain lots will be more conducive to the longer driveways so we are just going to have to understand the things these people have in their life. That's what helps us in this process because they are not looking at 22 home sites any more; they are probably looking at 6. So we are well aware of that. We will also tell our sales reps to be real clear, if this does go through in terms of the variance, then the sales reps will be the first to know that (?) and these things will be in our covenants and restrictions. Our neighborhood is already set up pretty well with a Board already put in place and it's very well managed (?) and everybody does, a lot of them do currently walk down to the Farmer's Market and they utilize those sidewalks all the time. We have a cluster mailbox so people are walking to that.

Lloyd Quay

Well I need a motion from the Board to grant or deny the variance. To grant it will be to include the conditions that we've just enumerated, but I'm open for a motion at this point in time.

Andy Rathke

I will make the motion:

MOTION:

To approve H2016-01 (V) with the conditions to exclude lots 1, 2, 19, 20, 21, and 22 as well as requiring the applicant to add to the neighborhood covenants and restrictions that there can be no vehicle blocking any part of the sidewalk when parked in the driveway.

Lloyd Quay

I have a motion. Do I have a second?

Thelma Thorne-Chapman

Second.

Lloyd Quay

Thelma. Is there any more discussion regarding this? Well, no more discussion, so all in favor raise your right hand. All opposed, same. Unanimous.

All board members voted in the affirmative. **The motion passed 5-0.**

Rich Koch

Would the Board like me to prepare the appropriate Findings of Facts?

FINDINGS OF FACT
VARIANCE H 2016-01(V)
Courtyards @ Harrisburg Phase II
6776 Robinson Church Road
PIN 5507650107

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - a) See Findings of Fact #1 from the Application, which are incorporated by reference.
 - b) The project proposed for this site is an age-restricted community for persons over the age of 55 years.
 - c) The underlying topography of the parcel will require extensive retaining walls to provide the zero entry (no steps) needed by owners of these residences, unless a variance of the front setback from 20 feet to 15 feet is granted for certain lots.
 - d) The retaining walls in height and length will be substantially reduced if the variance is granted, reducing safety and drainage concerns.
 - e) Reduction of the front setback to 15 feet will create possible blocking of the sidewalk by vehicles parked in these shorter driveways.
 - f) The Applicant has offered to withdraw its application for a variance of the 20 foot front setback on Lots 1, 2, 19, 20, 21 and 22 since these lots are not affected by the topography as are the other lots.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. 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.
 - a) See Findings of Fact #2 from the Application, which are incorporated by reference.
 - b) The project proposed for this site is an age-restricted community for persons over the age of 55 years.
 - c) The underlying topography of the parcel will require extensive retaining walls to provide the zero entry (no steps) needed by owners of these residences, unless a variance of the front setback from 20 feet to 15 feet is granted for certain lots.

d) The retaining walls in height and length will be substantially reduced if the variance is granted, reducing safety and drainage concerns.

e) Reduction of the front setback to 15 feet will create possible blocking of the sidewalk by vehicles parked in these shorter driveways.

f) The Applicant has offered to withdraw its application for a variance of the 20 foot front setback on Lots 1, 2, 19, 20, 21 and 22 since these lots are not affected by the topography as are the other lots.

3. The hardship did not result from actions taken by the Applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

a) See Findings of Fact #3 from Application, which are incorporated by reference.

b) The project proposed for this site is an age-restricted community for persons over the age of 55 years.

c) The underlying topography of the parcel will require extensive retaining walls to provide the zero entry (no steps) needed by owners of these residences, unless a variance of the front setback from 20 feet to 15 feet is granted for certain lots.

d) The retaining walls in height and length will be substantially reduced if the variance is granted, reducing safety and drainage concerns.

e) Reduction of the front setback to 15 feet will create possible blocking of the sidewalk by vehicles parked in these shorter driveways.

f) The Applicant has offered to withdraw its application for a variance of the 20 foot front setback on Lots 1, 2, 19, 20, 21 and 22 since these lots are not affected by the topography as are the other lots.

4. The requested variance is consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

a) See Findings of Fact #4 from the Application, which are incorporated by reference.

b) The project proposed for this site is an age-restricted community for persons over the age of 55 years.

c) The underlying topography of the parcel will require extensive retaining walls to provide the zero entry (no steps) needed by owners of these residences, unless a variance of the front setback from 20 feet to 15 feet is granted for certain lots.

d) The retaining walls in height and length will be substantially reduced if the variance is granted, reducing safety and drainage concerns.

e) Reduction of the front setback to 15 feet will create possible blocking of the sidewalk by vehicles parked in these shorter driveways.

f) The Applicant has offered to withdraw its application for a variance of the 20 foot front setback on Lots 1, 2, 19, 20, 21 and 22 since these lots are not affected by the topography as are the other lots.

Lloyd Quay

Yes we would. Is there anything else from staff that we need to address before this Board of Adjustment?

Josh Watkins and Wayne Krimminger

No sir.

5.

ADJOURNMENT

There being no further business, Lloyd Quay made a motion to adjourn, with a second from Thelma Thorne-Chapman. **The motion passed 5-0.**

Lloyd Quay, Chairman

Janet Rackley, Secretary