

At a regular meeting of the Board of Zoning Appeals of Warren County held in the Warren County Government Center on May 5, 2022, at 7:00 PM.

Present: Gary Kushner, Chairman; David Feiring, Vice-Chairman; Robert Myers, Ron Weckenman and M.W. Robinson, Members; Chase Lenz, Zoning Administrator; Matt Wendling, Planning Director.

Call to Order:

At 7:00 PM, Mr. Kushner called the meeting to order.

Mr. Kushner invited all present to join in the Pledge of Allegiance.

Adoption of Agenda:

Mr. Myers moved to adopt the agenda as presented, which was seconded by Mr. Feiring and approved by the following vote:

Aye: Kushner, Feiring, Myers, Robinson, and Weckenman

Adoption of Regular Meeting Minutes of April 7, 2022:

Mr. Feiring moved to adopt the regular meeting minutes of April 7, 2022 as presented, which was seconded by Mr. Robinson and approved by the following vote:

Aye: Kushner, Feiring, Myers, Robinson, and Weckenman

BZA2022-05-01 Robert & Crystal Dolan:

Mr. Robinson announced he will abstain from participating in this subject to avoid any perceived conflict of interest.

A request for a variance to Warren County Code §180-21C(1)(a) to allow a fifth lot containing less than 10 acres for a single-family dwelling from a single parcel of land existing of record as of 12:01 a.m. April 6, 1977; in lieu of the maximum limit of four lots. The property is located on Gruver Grade Drive and identified on tax map 11, lot 24E. The property is zoned Agricultural (A) and located in the North River Magisterial District. The property is owned by Robert & Crystal Dolan.

Mr. Lenz presented the following during his staff report:

PROPERTY HISTORY

The subject property was part of a Class A Subdivision in 2018 by Stickley Enterprises LP. An Exempt Subdivision was completed in 2019, with a subsequent Boundary Line Adjustment in 2019, creating the lots as they exist today. The result of the parcel history is the subdivision rights have been exhausted for more than four lots, each lot containing less than 10 acres from a single parcel of land existing of record as of 12:01 a.m. April 6, 1977.

A Subdivision Variance to allow the voluntary transfer of a proposed subdivided lot to an immediate family member within the required five (5) years of having held fee simple title to the property was approved by the Warren County Board of Supervisors April 19, 2022. The applicants purchased the property in 2019.

VARIANCE SUMMARY

A request for a variance to Warren County Code §180-21C(1)(a) to allow a fifth lot containing less than 10 acres for a single-family dwelling from a single parcel of land existing of record as of 12:01 a.m. April 6, 1977; in lieu of the maximum limit of four lots.

STAFF SUMMARY & RECOMMENDATION

Attached you will find the variance application with letter, proposed subdivision plat, and a location map.

The application for a zoning variance was submitted to the Warren County Planning Department on April 14, 2022. Upon review of the submitted documents, it is evident the applicant is requesting a variance to the maximum limit of lots containing less than 10 acres subdivided from a single parcel of land in the Agricultural Zoning District.

Upon receiving the application, staff communicated to the applicant they should explore all potential options for subdividing the property to ensure the variance is necessary to alleviate any hardship. Since there is only one option to subdivide the subject property without creating a nonconformity, only the following suggestion was discussed:

A Family Subdivision creating two parcels containing at least 10 acres.

The maximum limit of four lots containing less than 10 acres from a single parcel of land existing of record as of 12:01 a.m. April 6, 1977 when subdividing in the Agricultural Zoning District was adopted to the Warren County Code on January 20, 1998.

When discussing subdivision potential of parcels in the Agricultural Zoning District, our office always informs property owners of the four lots under 10 acres from a single parcel of land existing of record as of 12:01 a.m. April 6, 1977 limit first and advise researching the parcel history to determine if any subdivision rights for the parcel remain.

Chapter 4 Growth Management and Land Use of the 2013 Warren County Comprehensive Plan lists, “The need to preserve Warren County's rural character which includes open space and agricultural lands...” as a major concern identified by the Planning Commission and County residents through the 2009 Citizen Survey. This limitation has contributed to the preservation of the rural character of Warren County for over 24 years. If this request is approved, it will set a precedent for owners of properties in the Agricultural Zoning District requesting additional subdivision rights, undermining the intent and success in managing growth with this codified limitation.

Given the applicant has not eliminated all possibilities for subdividing the property in compliance with the Warren County Zoning Ordinance, the variance request appears to only be for a more desirable lot size and not a condition of the property that prevents the owner from utilizing their property. It is my recommendation that the Board of Zoning Appeals deny the application for a variance, as the 22.2009-acre lot can be subdivided into two lots over 10 acres without needing a variance and a hardship has not been established that eliminates the possibility of subdividing the property in compliance with the Warren County Code.

Mr. Kushner asked Mr. Lenz how the subdivision variance for the subject property approved by the Board of Supervisors affects this zoning variance request.

Mr. Lenz explained the subdivision variance and zoning variance are for deviations from requirements under two separate ordinances of the Warren County Code with separate codified procedures for how the variances are processed and with separate guidelines for granting the variance. Mr. Lenz clarified the approved subdivision variance allows a deviation from the requirement that the grantor hold fee

simple title to the property for 5 years prior to eligibility for a family subdivision. Mr. Lenz explained the Board of Supervisors has typically approved variance requests to the timeline for a family subdivision with the condition that the grantee of the family subdivision lot hold fee simple title for the outstanding amount of time in addition to the required 5 years. Mr. Lenz clarified the subdivision variance allows them to move forward with a family subdivision now, but if the zoning variance is denied, then they will be limited to parcels of ten acres or more and they will not be able to family subdivide a 2-acre parcel off from the parent tract as requested.

Mr. Kushner stated he recognizes the potential for setting a precedent but pointed out each variance request is unique to the subject property and the circumstances would need to be identical to impact future decisions by the BZA.

Mr. Kushner invited the applicant to address the BZA.

Mr. Robert Dolan, owner of 3320 Gruver Grade Drive, was sworn in and spoke regarding his request for the variance. Mr. Dolan introduced his sister, Jennifer Dolan, the grantee of the proposed family subdivision.

Mr. Dolan referred to the discussion of the terrain of the parent parcel from the scheduled site visit on May 3, 2022 and specified the ravine beyond the two-acre portion with road frontage along Gruver Grade Drive combined with wetlands makes accessing the rear portion of the property challenging. He stated he would like to separate the ideal 2-acre building site from the remainder of the parent parcel and he suggested such a subdivision would complete the development along Gruver Grade Drive.

Mr. Dolan stated this variance request will not result in financial gain and his sister is unable to purchase a 10-acre parcel, furthering stating he will sell his sister the 2-acre parcel for a minimal amount of money.

Ms. Jennifer Heflin, 3320 Gruver Grade Drive, was sworn in and reaffirmed Mr. Dolan's reasons, clarifying the ravine and wetlands make the land inaccessible behind the 2-acres of land along Gruver Grade Drive, indicating they would not be able to use portions of a 10-acre parcel.

Mr. Dolan added he has two sons and would like to be able to complete a family subdivision of two 10-acre parcels from the subject property in the future in addition to the proposed 2-acre family subdivision for which he is requesting the zoning variance.

Mr. Dolan stated he is available for any questions the BZA members may have.

Mr. Kushner opened the public hearing.

Mr. Kushner asked if there is anyone in attendance who would like to speak regarding this matter.

Mr. Wendling stated there is no one signed up to speak for this public hearing.

Mr. Kushner closed the public hearing.

Mr. Myers stated the Comprehensive Plan recommends the preservation of agricultural open land and 10 acres accomplishes that. He clarified this variance would allow for 3 dwellings to be constructed from the original parent parcel once subdivided instead of 2 dwellings.

Mr. Myers stated he recognizes Mr. Dolan's intentions are good, but at some point in the future there will be another property owner who will not have the same intentions.

Mr. Kushner agreed stating the Comprehensive Plan is an important tool to manage growth in the County. The reason why this is a great place to live is because it is still a rural County and by permitting more lots you are inviting more growth.

Mr. Kushner asked Mr. Lenz for further clarification of the subdivision variance approved for the property. Mr. Lenz explained the stipulation with which it was approved and clarified the approval of the subdivision variance only affects the timeline for the subdivision and not the lot size.

Mr. Kushner asked if there are any further questions or comments from the Board, and hearing none, requested a motion.

Mr. Feiring moved that the Board of Zoning Appeals deny the variance request of Robert and Crystal Dolan to allow for a variance to Warren County Code § 180-21C(1)(a) to allow a fifth lot containing less than 10 acres for a single-family dwelling from a single parcel of land existing of record as of 12:01 a.m. April 6, 1977 in lieu of the maximum limit of four lots, as evidence does not support a finding of undue hardship. The motion was seconded by Mr. Myers and passed, denying the application, by the following vote:

Aye: Kushner, Feiring, Myers

Nay: Weckenman

Abstain: Robinson

BZA2022-05-02 Craig Tabor:

A request for variances to Warren County Code §180-22H(1) to allow a ten foot front yard setback for an accessory building in lieu of the required fifty foot setback and to Warren County Code §180-31A(1)(d) to allow an eighteen foot maximum height for an accessory building in lieu of the required twelve foot maximum height restriction for accessory buildings in the Residential-One Zoning District. A forty-foot variance to the required front setback and a six foot variance to the maximum height restriction are sought. The property is located at 573 Dogwood Farm Road and identified on tax map 15E, section 2, block 2, lot 661A1. The property is zoned Residential-One (R-1) and located in the Shenandoah Magisterial District. The property is owned by Craig Tabor.

Mr. Lenz presented the following during his staff report:

VARIANCE SUMMARY

Requests for variances to Warren County Code §180-22H(1) to allow a ten-foot front yard setback for an accessory building in lieu of the required fifty-foot setback and to Warren County Code §180-31A(1)(d) to allow an eighteen-foot maximum height for an accessory building in lieu of the required twelve-foot maximum height restriction for accessory buildings in the Residential-One Zoning District. A forty-foot variance to the required front setback and a six-foot variance to the maximum height restriction are sought.

STAFF SUMMARY & RECOMMENDATION

Attached you will find the variance application with letter, site plan, and a location map.

The application for zoning variances was submitted to the Warren County Planning Department on April 13, 2022. Upon review of the submitted documents, it is evident that the applicant is requesting variances to the front yard setback and maximum height restriction for accessory buildings in residential zoning

districts. The 3.974-acre property is divided by a platted private access easement which provides access to five lots off Dogwood Farm Road. The private access easement follows the crest of a ridge with land sloping downward on either side. The single-family dwelling, located between private access easement and Old Oak Lane, is set back approximately 70 feet from the edge of the private access easement. The slope from the private access easement down to Old Oak Lane ranges from 6% between the easement and the single-family dwelling to 20-40% between the single-family dwelling and Old Oak Lane.

Upon receiving the application, staff communicated to the applicant that a detailed site plan is required for the request, and they should explore all potential options regarding the placement and size of the accessory building to ensure the variances are necessary to alleviate any hardship. Suggestions discussed that would not create a nonconformity with the existing dwelling, included but were not limited to, the following:

- Constructing the accessory building as an addition to the single-family dwelling.*
- Constructing the accessory building along the driveway near the single-family dwelling and connecting it to the dwelling with a covered breezeway.*

The front yard minimum setback of 50' has been part of the Warren County Zoning Ordinance since the adoption of the Code on August 19, 1992. Our office regularly approves both single-family dwellings and accessory buildings on smaller lots with similar topographic challenges that are able to meet the minimum setback requirements. The single-family dwelling on the subject property meets all required minimum setbacks.

The maximum height restriction for accessory buildings in residential zoning districts was adopted to the Warren County Code on July 18, 1995. The provisions for accessory buildings in residential zoning districts are in place to regulate the type and size of accessory buildings in residential zoning districts throughout the county. Approving a variance request would directly conflict with the intent of these codified provisions.

Our office frequently receives inquiries regarding proposed accessory buildings to be used to store major recreational vehicles on lots with single-family dwellings. We advise looking into the possibility of attaching the accessory building to the dwelling and refer to the Memorandum from the County Zoning Administrator, dated December 8, 2009, which allows for a structure connected to a single-family dwelling by a covered breezeway to be considered "attached" to the single-family dwelling. If this request is approved, it will set a precedent for owners of properties with single-family dwellings requesting an increased maximum height limit for accessory buildings in residential zoning districts.

In the applicant's statement of justification, he mentions a possible building location that would comply with the required minimum setbacks; however, he cites increased construction costs, impacts to the environment from erosion due to proximity to a stream on the property, and the steep slope of the driveway as hardships he would incur if the accessory building were placed in the alternate compliant location. According to 4' contour topographic mapping, the most extreme slope begins approximately 170 feet from the edge private access easement with more mild elevation change upslope where the single-family dwelling and alternate location for the accessory building are located. This topographic mapping also indicates a slope of 6% along the driveway. Additionally, with the small stream on the property over 150 feet away from the alternate building location, appropriate land disturbance practices could be employed to minimize erosion reaching the stream.

Given the applicant has not eliminated all possibilities for constructing the accessory building with a design and location compliant with the Warren County Zoning Ordinance, the request for a variance appears to only be for a more desirable location and design, not a condition of the property that prevents

the owner from utilizing their property. It is my recommendation that the Board of Zoning Appeals deny the application for variances, as the principal use of a single-family dwelling on the property has already been established and a hardship has not been established other than additional construction costs involved with locating the accessory building in a compliant location.

Mr. Kushner invited the applicant to address the BZA.

Mr. Craig Tabor, owner of 573 Dogwood Farm Road, was sworn in and spoke regarding his request for a variance.

Mr. Tabor referred to the two possible building sites for the proposed accessory building discussed during the scheduled site visit on May 3, 2022. He stated he understands the alternative location and suggested attachment to the principal dwelling on the property will meet the zoning requirements from the Warren County Code; however, it would create a situation where he would incur unnecessary expense on his part, it could introduce additional environmental hazards related to erosion and sediment control during the course of construction, and the alternative location would unsafely require him to drive his recreational vehicle down the steep driveway toward the dwelling.

Mr. Tabor stated the uphill location near the private access easement would not detract from the neighboring properties or the rural character of Warren County. He stated it would add value to his property without negatively impacting the neighboring properties.

Mr. Tabor indicated he would forego restating the items discussed during the site visit and he is available to answer any questions from the BZA members.

Mr. Kushner thanked Mr. Tabor for his military service to our country and opened the public hearing.

Mr. Kushner asked if there is anyone in attendance who would like to speak regarding this matter.

Mr. Wendling stated there is no one signed up to speak for this public hearing.

Mr. Kushner closed the public hearing.

Mr. Feiring stated this is an interesting property with an interesting situation related to the recreational vehicle and its maneuverability on a sloped property.

Mr. Kushner asked the applicant how recently he purchased the recreational vehicle.

Mr. Tabor responded that it was very recently.

Mr. Kushner asked if the applicant was aware of the zoning requirements at the time he purchased the recreational vehicle.

Mr. Tabor responded indicating they purchased the recreational vehicle with every intent to comply with the County's requirements, but also want to ensure the vehicle is properly covered and protected from the weather.

Mr. Kushner stated the Warren County Board of Supervisors is the sole body authorized to adopt zoning regulations into the County ordinance. He stated it is not the place of the BZA to question the setback and height restrictions adopted by the Board of Supervisors.

Mr. Kushner stated after seeing the alternative building location which would comply with zoning requirements during the scheduled site visit, despite the challenges and inconvenience, he finds it challenging to support the approval of the variances. He stated the physical characteristics of the lot have no bearing on the height of the accessory structure. He stated he cannot support the approval of the variances for this reason.

Mr. Feiring asked if it is more appropriate to classify the proposed accessory building as a barn.

Mr. Lenz stated the district regulations for each zoning district list the types of accessory buildings permitted in each district. He further clarified barns are permitted as a matter of right in the Agricultural and Rural Residential district where agricultural pursuits are permitted. He clarified agricultural pursuits are completely restricted in the Residential-One district except for backyard chickens upon issuance of a zoning permit. He explained accessory buildings have a 40-foot height limit in the Agricultural district, a 20-foot height limit in the Rural Residential district, and a 12-foot height limit in all other residential districts.

Mr. Feiring asked for clarification on the backyard chickens zoning requirements. Mr. Lenz and Mr. Wendling briefly went over the zoning requirements and limits for backyard chickens in the Residential-One district.

Mr. Myers stated if the owner were to attach the accessory building to the dwelling with a covered breezeway in the alternative building location suggested by Planning staff, then we would not be here.

Mr. Feiring asked Mr. Lenz if such an attachment and relocation would eliminate the need for the zoning variances.

Mr. Lenz confirmed that is correct, provided all other setback requirements are met. He further explained attachment to the dwelling would make the structure part of the principal building and the restrictions related to accessory buildings would not apply.

Mr. Myers moved that the Board of Zoning Appeals deny the variance request of Craig Tabor to allow for variances to Warren County Code §180-22H(1) to allow a ten foot front yard setback for an accessory building in lieu of the required fifty foot setback and to Warren County Code §180-31A(1)(d) to allow an eighteen foot maximum height for an accessory building in lieu of the required twelve foot maximum height restriction for accessory buildings in the Residential-One Zoning District as evidence does not show that strict application of the terms of the ordinance would unreasonably restrict the utilization of the property. The motion was seconded by Mr. Robinson and passed, denying the application, with the following vote:

Aye: Kushner, Feiring, Myers, Robinson, Weckenman

Open Discussion:

Mr. Kushner asked if there are any open discussion items from the Board members.

Upon hearing none, Mr. Kushner asked if Planning staff has anything to discuss.

Mr. Lenz and Mr. Wendling had nothing to discuss.

Mr. Kushner asked for an update on filling the open Secretary officer position.

Mr. Wendling stated the County has started interviews with candidates to fill the Office Manager position in the Planning Department and hopes to have it filled soon. He stated the BZA may elect the new Office Manager to Secretary position during the course of the next election of officers.

Mr. Lenz confirmed there are no outstanding applications for a zoning variance or appeal at this time and he will reach out to the BZA members for availability once there is upcoming business to address.

Adjournment:

Mr. Myers moved to adjourn the meeting, which was seconded by Mr. Feiring and approved by the following vote:

Board of Zoning Appeals Meeting Minutes – May 5, 2022

Aye: Kushner, Feiring, Myers, Robinson, and Weckenman

** The meeting minutes have been drafted from staff notes and observations due to staff changes and IT issues. Audio files of the meeting are available upon request.*