

MINUTES
PAGE COUNTY BOARD OF ZONING APPEALS
May 15, 2018

MEMBERS PRESENT:

Phillip Mims, District 1
Kevin Moyer, District 3
William J. Turner, District 5

John Coleman, District 2
Danny Comer, District 4

MEMBERS ABSENT:

None

STAFF PRESENT:

Tracy Clatterbuck

CALL TO ORDER:

Vice Chairman Comer called the meeting to order of the Page County Board of Zoning Appeals at 10:01 a.m., in the Board of Supervisors Room located at the Page County Government Center, 103 S Court Street, Luray, Virginia.

PUBLIC HEARING:

A. Matthew & Erin Yoder- Variance Request

Vice Chairman Comer opened the public hearing of Matthew & Erin Yoder at 10:02 a.m.

Ms. Clatterbuck presented the following staff report:

Matthew & Erin Yoder have filed an application for a variance to allow for the re-subdivision of an existing lot located off Mill Run Road, Shenandoah, VA 22849 (Mill Run Subdivision). The parcel is identified by tax map # 96-1-D, is zoned as Residential (R-1), and contains 6.09400 acres. The first proposed lot division will contain 3.677 acres with the lot width being 146.24 feet. The second proposed lot division will contain 2.417 acres with the lot width being 100 feet. If granted, there could be future plans to construct a single family dwelling on each proposed lot. (Exhibit 1)

Pursuant to § 125-11.E of the Page County Zoning Ordinance, the minimum lot width (frontage) per dwelling unit required for residential zoned lots is 150 feet with on-site water and sewer (Exhibit 2). As shown on the attached plat, neither proposed lot meets the minimum lot width according to the Page County Code today (Exhibit 3).

In June 2005, the county changed the minimum lot size for new lots from $\frac{3}{4}$ of an acre to $1\frac{3}{4}$ acres. Amongst other changes reflected in the full text amendment, they also changed the minimum lot width requirements in the Residential zoning district from 100 feet to 150 feet (Exhibit 4). Prior to this change in minimum lot width, Mr. Yoder would have exceeded the minimum lot width required for each lot and the variance would have not been necessary.

Pursuant to § 100-10.B(4)(e) of the Page County Subdivision Ordinance, any street, road or right-of-way providing means of ingress and egress for the tract to be subdivided shall be of a minimum width of 50 feet. As shown on the attached plat, the existing right-of-way (Mill Run Road) is only a 20 foot right-of-way. Staff would note that the county has approved other re-divisions in this subdivision (that exceeded the minimum lot width), and in other areas of the county, and did not require the new lots to have a 50 foot right-of-way. If

required though, Mr. Yoder has agreed to install a new 50 foot right-of-way (Exhibit 5).

The applicant has reached out to Gerald Dovel at the Page County Health Department. As you will see on the attached variance application, Mr. Dovel has no objections to the request as there are sewage disposal and well locations available to both sites as shown on the attached proposed plat. The applicant also reached out to Don Williams, Page County Building Official, and R. Scott Snider, with the Virginia Department of Transportation, who returned no objections to the request as well.

Finally, the applicant has also reached out to the President of the Home Owners Association, Michael Clapper, who has noted the following: "Do not approve this application, because landowner's are not informed at this time." Staff would note that she had a meeting with Mr. Clapper on May 9, 2018 to explain the request being presented to the Board so that he could take the explanation back to the landowners for clarification (Exhibit 1).

Pursuant to §15.2-2204 of the Code of Virginia, adjoining and adjacent property owners were notified. Written comments from landowners are attached for your review (Exhibit 1). Also, staff has spent numerous days in the office and on the telephone speaking to neighbors in the subdivision whom have concerns related to this request. Staff encouraged them to provide written explanations as to what their concerns are so that the information could be passed to the Board for review. Staff has also reminded them that the variance hearing is open to the public.

Section 100-9.G(1)(2) of the Page County Subdivision Ordinance states:

"G. Resubdivision of existing lots. [Amended 9-6-1994]

(1) Lots in an existing subdivision may be resubdivided if the lots resulting from such resubdivision meet all other requirements of the Code of Page County, Virginia, including, but not limited to, lot size, acreage and road or right-of-way access. The owner of such lot requesting a resubdivision shall furnish to the Zoning Administrator certified copies from the Clerk's Office of the Circuit Court of Page County, Virginia, evidencing the restrictive covenants and restrictions currently in effect in such subdivision. If the restrictive covenants or restrictions in effect in such subdivision disallow redivision of lots in the subdivision, then such proposed resubdivision shall not be approved by the Zoning Administrator. Prior to the Zoning Administrator authorizing approval of the resubdivision, the owner of such lot shall apply for and receive written approval of the Page County Health Department that the proposed lots resulting from said resubdivision shall meet preliminary approval for a sewage disposal system installation. [Amended 9-15-1997; 6-21-2005]

(2) Resubdivided lots shall not be smaller in size than those lots allowed in the original subdivision. Requests for such resubdivision shall be accompanied by the appropriate plat as required by this chapter." (Exhibit 6)

As you will see in the covenants attached to Mr. Yoder's deed, they do allow for a re-subdivision of lot "D" provided that lot size, acreage, roads, etc. are met in accordance with the Page County Code (Exhibit 7).

The proposed lot divisions do exceed the minimum acreage requirement of 1 ¾ acres. However, the proposed lot divisions do not meet the minimum lot width of 150 feet as required by the current zoning ordinance.

Mr. & Mrs. Yoder were under the impression when they purchased the property in 2011, per the covenants, that they would be able to do a one-time subdivision of this existing lot in accordance with the Page County Code. From 1989-2005, the minimum lot width required was only 100 feet. Effective June 21, 2005, the minimum lot width required increased to 150 feet. Staff recognizes the circumstances surrounding the

covenants and the current zoning ordinance, but does not have the authority to grant the re-subdivision due to the issues stated above. Staff has explained to Mr. Yoder that only the Board of Zoning Appeals have the authority to grant such a variance; thus, the reason this application is before you today.

Matthew Yoder- In the ad for the variance, it noted single family dwellings would be constructed on each lot if the variance was granted. Mr. Yoder began by clarifying that he did not have immediate intentions to build. He stated they had plans in the next five years to build one house. However, he could die tomorrow and he doesn't know what his kids would do with the property. Ms. Susie Guberman is one of the adjoining neighbors that sent in an adjoining landowner comment form objecting to the request with concerns over multiple dwellings being constructed that would affect the tranquility and peace of the subdivision. Mr. Yoder explained that he had spoken to her in depth about his proposal. She lives out of state and they are friends. They even rent her cabin sometimes so there is no ill feelings toward each other over this. Her biggest concern is that he will continue doing additional divisions of the property if this request is granted. He has explained to her that the covenants of the subdivision only allow one division. Back in 2005 when the minimum lot size changed, after reading through the minutes, he thinks the reason for that was on a busy rural road that VDOT wanted a little more road width to put a driveway in. He further detailed that the road to this property is a gravel road that VDOT does not maintain. It has a limited number of cars using it daily. VDOT has commented that they do not have any objections to the variance request. He is not trying to mislead or get around the intent of the subdivision ordinance. Lot B in this subdivision was subdivided last year, and the only reason it didn't need a variance was because they have a curve in the road and they exceed the minimum lot width requirement for both lots. He would argue the intent of the code was not met because the back side of the lot is only 35 feet. In the variance request before you today, he explained that he exceeded the minimum lot width requirements if it were taken from the back of the property because he has over 300 feet in total. There are not disturbing the peace and tranquility of the subdivision because it is in all landowners' deed that they can subdivide one time and four of the owners have done so. Also, the racetrack is right across from this subdivision. The one neighbor told him they want to control who lives next door to them but you can't really do that. Mr. Moyer stated he was in the process of subdividing some land when the code changed back in 2005 so he is somewhat familiar with the history of when those changes occurred. It was a county requirement, not a VDOT requirement. VDOT is only concerned with ensuring the minimum sight distances are met. They don't care what the lot width requirement is. Mr. Yoder concluded to point out again that the covenants allow a one-time division of the lot. He is requesting a variance of 4 feet on one lot and 50 feet on another (road frontage). Mr. Moyer asked staff how many homes he could build on this property without the subdivision. Ms. Clatterbuck responded that he could do one primary residential dwelling and a guest home provided setbacks are met and water and septic are available. Mr. Moyer asked if the variance was granted, would that then allow one primary dwelling and guest home on each lot with a total of four homes on the two lots? Ms. Clatterbuck confirmed. Mr. Moyer stated he felt it would set a precedent if they granted the variance because then all the other landowners in the subdivision could come in requesting the same thing. Chairman Coleman stated he didn't feel they would be setting a precedent because the covenants allowed the one-time division. Mr. Moyer pointed out that the covenants allow it provided the Page County Code is met, and the proposed divisions do not meet the county code. Chairman Coleman stated that the original creator of the subdivision put in the deed that the lots could be subdivided and there was no consideration of road frontage. It is his opinion that the road frontage requirement is somewhat arbitrary because this subdivision was created prior to that code change in 2005. Mr. Moyer stated again he was caught between the code changes and was not allowed to divide either due to the road frontage requirement. He didn't agree with it but the code is the code. Mr. Yoder concluded to note they were not increasing traffic count by much, he has met the intent of the code, and they would not be disturbing the tranquility and peace of the subdivision.

Vice Chairman Comer closed the public hearing at 10:23 a.m.

Mr. Turner stated he would feel more comfortable knowing what the intent of the property will be, however,

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as Mr. Yoder noted he could pass tomorrow and his kids could do whatever with the lots. Mr. Moyer noted that if the variance is granted he or anyone could build dwellings as long as setbacks are met and health approval is received. He stated he would love to be able to allow the variance but then anyone could come in requesting the same thing, and if the others aren't approved and the Board has approved this one, the county could be subject to lawsuits. Mr. Mims said that he agreed and that the Board did not have the authority to change the county code. He agreed that it would open a revolving door. Chairman Coleman stated that when changing the code you can't think of everything. The way it should have been written is that the new restrictions applied to new subdivisions and new creations of land. He recommended the Board make a recommendation to the Planning Commission and Board of Supervisors that this section of the code be revisited for possible amendments.

Mr. Turner made a motion that the Board of Zoning Appeals deny the variance request as presented for Matthew and Erin Yoder. The motion was seconded by Mr. Mims. The motion passed unanimously.

NEW BUSINESS:

None

NEW BUSINESS:

A. Approval of Minutes- February 20, 2018

Mr. Turner made a motion to approve the February 20, 2018 minutes as presented. The motion was seconded by Mr. Coleman. The motion passed unanimously.

ADJOURN:

The meeting was adjourned at 10:38 a.m.



Danny Comer, Vice Chairman