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**REGULAR MEETING OF THE
BOARD OF ZONING APPEALS**
City Council Chambers
300 Park Avenue
Falls Church, Virginia 22046
May 13, 2010

1. **CALL TO ORDER:**

Chair Murphy called the meeting to order at 7:30 p.m.

2. **ROLL CALL:**

Members Present: Mr. John Murphy, Chair
Mr. Howard Stoodley, Vice Chair
Mr. Justin Castillo
Mr. Kent Taylor

Absent with notice: Mr. Darcy Williamson

City Staff Present: Mr. John Boyle, Zoning Administrator
Ms. Karin Battle, Department of Development Services

Mr. Stoodley moved and Mr. Taylor seconded, to advance Agenda Item No. 7 New Business to precede Item No. 3 Minutes & Resolutions. Upon voice vote, the motion passed unanimously.

7. **NEW BUSINESS:**

Chair Murphy began with a reading of the two variance applications:

a. **Variance Application V1500-10** (MUNIS #20100298) an application for a variance to Chapter 48-238(3)(a) of the City Code to allow a front yard setback of twelve (12) feet instead of thirty (30) feet along the Oak Haven Drive frontage, on premises known as **601 Oak Haven Drive**, Lot 1 of the Oak Haven subdivision, RPC # 51-121-001 of the Falls Church Real Property Identification Map, Zoned R-1A (Low Density Residential) by William C. Fauver, property owner.

b. **Variance Application V1501-10** (MUNIS #20100298) an application for a variance to Chapter 48-238(3)(a) of the City Code to allow a front yard setback of fourteen (14) feet instead of thirty (30) feet along the Great Falls Street frontage, on premises known as **601 Oak Haven Drive**, Lot 1 of the Oak Haven subdivision, RPC # 51-121-001 of the Falls Church Real Property Identification Map, Zoned R-1A (Low Density Residential) by William C. Fauver, property owner.

Chair Murphy stated that he wished to poll the Board regarding the BZA's authority to actually hear the case. His concern was that under State Code, variances are allowed for specific applications and one of the issues that the Board has to consider with a variance is the impact of the particular project on the surrounding neighborhood, its character, etc. The variances before the Board this evening had no specific development plan, so Chair Murphy explained that he would poll the Board regarding whether it wished to hear this matter at this time and whether the Board had the authority to grant a variance in the absence of a specific plan as he stated was required by State Code.

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56
57 Mr. Stoodley suggested that the question might be posed to the City Attorney.
58 Chair Murphy responded that the issue had been raised with City Attorney John
59 Foster, who indicated that he did feel that a specific project is necessary in
60 order to grant a variance.
61
62 Mr. Stoodley moved that the Board not hear this case based on the advice of the
63 City Attorney; and Mr. Taylor seconded. Chair Murphy called for any discussion.
64
65 Mr. Castillo wondered if the Board intended to give the applicant the opportunity
66 to discuss his perception of what was happening: he thought there might be some
67 confusion as to the effect of a variance in this situation.
68
69 Chair Murphy indicated that he would be happy to allow a statement from the
70 applicant.
71
72 Applicant Mr. William Fauver began by recognizing that the Board was finding itself
73 in a peculiar situation. He said that Zoning Administrator John Boyle had informed
74 him "from the get go" that this was unconventional, but had relayed that the City
75 Attorney apparently previously felt that Virginia law did allow a request of this
76 sort. Mr. Fauver explained that he understood that the Board had now received a
77 subsequent citation, tying its actions to a specific development plan. He stated
78 that if the Board would allow him to speak very practically, he wanted to talk
79 about this matter as a property owner. The situation that he finds himself in, is
80 that he is essentially unable to sell his property. Mr. Fauver stated that he needs
81 to move and described the property as "the entirety of [his] retirement investment
82 to date." The house is dilapidated and all of the immediate neighbors "want
83 something new in there." He said that he had spoken to all of his neighbors and
84 there is "a universal perception that it is a beat-up house."
85
86 Mr. Fauver asserted that the practical problem posed by the Code is that regarding
87 this property, in the broad sense, the City would seem to prefer as a typical
88 building lot of the neighborhood. He remarked that it is taxed at the third highest
89 land value property tax in the neighborhood. However, when somebody looks at it,
90 they see a tear-down: "it's a beat-up old house." Mr. Fauver expressed his belief
91 that anyone who looks at it is going to say, "What a large piece of property, let
92 me talk to my architect." And the architect is then going to say, "You can't build
93 a one-car garage on this, this property is worthless."
94
95 In terms of how this plays out, Mr. Fauver continued, he said that he has no
96 options: he will be selling this property. Even if he "goes underwater" - which he
97 says should be impossible because he has a lot of equity -- it's a forced move, and
98 he has no option but to sell. According to Mr. Fauver, a purchaser is going to say
99 that this is worthless, and they are going to buy it at a very low price. In his
100 view, it will be "monstrously difficult to sell." And any purchaser will be back
101 before the BZA in three or four months with "frankly, an unattractive, cookie-
102 cutter house." This is because anyone buying contingent on a variance is not going
103 to invest in design costs up front. Mr. Fauver's preference is to sell to a family
104 looking to build in Falls Church, that would be the ideal client for him.
105
106 The applicant further stated that there are different things coming together to
107 force a situation where he thinks the code term "confiscation" actually does apply
108 in this instance. He believes that the discussion involves "a substantial transfer
109 of wealth of \$50,000 to \$150,000" from him to an unknown third party, in a way that
110 benefits nobody. He stated that this third party would return to this Board in the
111 future, making the same request. The Board would then be looking at the property in

112 pretty much the same way and saying, "Wow, that is an extraordinary, specific
113 handicap of Code: this property has always held a house, it is designed to hold a
114 house, and it should continue to hold a house."
115

116 Mr. Fauver said that he realized the Board has its technicalities and its
117 particulars. He is from a legal family, his father was an ALJ and thus Mr. Fauver
118 says he understands the letter of the law and Code. However, he asked if this Board
119 could find a way to do anything to benefit the applicant, it would be "equitable
120 and greatly appreciated." Mr. Fauver continued on to say that it would not
121 necessarily have to be an "open-ended variance." For instance, he wondered if the
122 Board had the power to say, "We look with relative favor upon this footprint but we
123 cannot formally do this without a development plan." Then at least he could
124 demonstrate to a buyer that, in the view of the BZA, "this is not a piece of land
125 that we're supposed to make into a wilderness preserve." It is actually suitable to
126 have a house on, because that is really the question, -- whether it is 12 ft, 13-
127 1/2 feet or whatever.
128

129 Mr. Fauver commented that the Board had seen "the extremity of the handicap." He
130 remarked that the real question is, is this a house-worthy property? He asked if he
131 could have any sort of reliance to pass along to a buyer so that he could sell it.
132 To be "house-worthy," Mr. Fauver said, it doesn't have to be specifically what is
133 there. What is requested is what would bring the existing house into Code.
134

135 Reiterating that he did not know what latitude the BZA had or desired to have, Mr.
136 Fauver said that he is in "an incredible situation." He concluded by saying he
137 believed from reading the philosophy of this Board that it is not only a planning
138 Board but that it has "equitable powers," and that the BZA exists to some degree to
139 help people who are put in a bad position relative to the Code.
140

141 Zoning Administrator John Boyle commented that he believed Mr. Fauver stated the
142 situation accurately; however he also believed it was important that the BZA
143 recognize that Mr. Fauver underplayed staff's involvement in why the matter was
144 even here tonight. Mr. Boyle expressed his belief that this citizen, this
145 applicant is deserving of an apology because this matter had been brought to the
146 City Attorney some time ago. Perhaps through a lack of communication or a lack of
147 the significance of the points being raised, the City Attorney advised that this
148 was an appropriate matter for the BZA, that it was an interesting question, and
149 "why not have the discussion?"
150

151 Mr. Boyle continued, stating that all applicants, all citizens have a right to
152 petition their government. In reality, he said, staff does from time to time
153 indicate to an applicant whether this is a matter that just has never been
154 approved, is unlikely to be approved, or is appropriate to go, -- trying to advise
155 them as to whether it is worth their time and effort. But of course they always
156 have the option to apply and appear before the Board.
157

158 After speaking with the City Attorney, Mr. Boyle was very confident in telling Mr.
159 Fauver that this was a matter that was at least worth the conversation. That was
160 before the City advertised, before Mr. Fauver went to the expense of paying the
161 application fee, making the application, having his neighbors noticed, and the work
162 that staff has put into this. Mr. Boyle remarked that to then have this 180 degree
163 reversal come out at four o'clock this afternoon speaks to a very poor process that
164 our citizen has been put through.
165

166 Mr. Boyle explained that his comments were in the hopes that the Board could agree
167 that it at least owed this applicant some consideration. Mr. Boyle said he had some

168 issues to take up internally the next day, but that he had never seen a citizen
169 brought before the Board, to have the rug pulled out from under him as abruptly as
170 this. Mr. Boyle stated that he was not pleased with this. He was not sure how
171 things could have been done differently, but said that the Board has an applicant
172 who believed he was bringing a matter to the BZA that was worth the discussion. Mr.
173 Boyle concluded by saying that he would simply ask the Board to not casually
174 discount what discretion it may have, based on the City Attorney's cold
175 interpretation of the Code.

176
177 Mr. Castillo asked Mr. Boyle if he could point the Board to anything in the Code
178 which Mr. Boyle believed provided that current latitude.

179
180 Mr. Boyle responded that he would give some thought to this, and that he did have
181 an opinion. He asked the Board if it decided that there was no application here,
182 that it was not a matter for the Board to consider -- did not that then encourage
183 the property owner to return with a very simple stoop addition to a porch on both
184 sides of the house? A porch that protrudes into the setbacks, so he could then ask
185 for the setbacks, never intending to build the stoops? If the applicant had a plan
186 in front of the Board tonight showing a stoop on the front and the back, would the
187 Board then approve the setbacks?

188
189 Mr. Boyle repeated that the Board had an unusual situation before it, where this
190 applicant would be denied because Mr. Fauver did not have a building permit
191 application. And as Mr. Fauver said, someone will be back before the Board with a
192 building permit, and they will get exactly what [the current applicant] is hoping
193 to apply for. Or not. If the Board recalled, Mr. Boyle pointed out, variances
194 frequently come before the Board without permits. Those that the Board sees are
195 "typically ones that the staff catches." They submit their building permits, they
196 come through the Zoning office for review and Mr. Boyle detects that a setback has
197 been intruded on, -- then it is put on the docket for the BZA.

198
199 Mr. Boyle continued, stating that most people would not go to the expense of
200 consulting with an architect and in some cases a land use attorney, unless they
201 know what their building envelope is. He said that we don't ask this of our
202 commercial builders, observing that with all of the mixed use projects that have
203 been built in town, every one of them went through considerable discussion so they
204 "knew what the playing field was, before they invested in it."

205
206 How does that impact the fact that the Board did not have a building permit in
207 front of it, a "cut and dried situation?" Mr. Boyle offered, only to the extent
208 that there is some discretion, is it appropriate in this case. He asked if it was
209 possible for this party to request a continuance and come back with a simple
210 building permit application. Or could he sketch something out on paper for the
211 Board right now, at the risk of that being ridiculous?

212
213 Secondly, Mr. Boyle acknowledged that this Board does not like to operate in
214 hypotheticals, but if Mr. Fauver did come back with a permit that satisfied the
215 City Attorney's threshold for the Board to hear it, could the Board limit the life
216 of that variance to that applicant and that project? Or once it approves that
217 variance, does that stamp the property with those setbacks and could Mr. Fauver
218 then turn around and sell it, never having built it? Mr. Boyle pointed out that
219 the Board does have that authority with a Special Use Permit, but did not recall if
220 there had been language in a Resolution that limited a variance to this applicant
221 for this purpose. The Board had definitely had done it for a Special Use Permit.

222
223 So if Mr. Fauver could get his variance for this hypothetical stoop, Mr. Boyle

224 asked, -- could he then tell a prospective buyer that the variance runs with the
225 land forever? Mr. Boyle said that he believed the Board had discovered in the
226 Goyonaga case, that "variances run with the ground even if the house is gone now."
227 The Code was changed, if his understanding is correct, so if Mr. Fauver gets his
228 variance for his hypothetical stoop and those setbacks are imposed, could he then
229 turn around and market it to a third party who can enjoy those setbacks?

230
231 Those are two important although hypothetical questions. And with that, Mr. Boyle
232 said that he would retreat into his Zoning Code and try to find some "wigggle room"
233 for the Board, as Mr. Castillo asked.

234
235 Mr. Stoodley stated that it was a well-put case, but regardless of whether the
236 Board could hear this case or not (and he believed that it could not), the Board
237 had an exactly similar precedent with the corner of Park and West, a triangular
238 shaped lot, for which it denied variances. The lot had been purchased in full
239 knowledge of what the restrictions were.

240
241 Mr. Stoodley remarked that he did not believe in giving premature advice as to
242 whether an applicant could get a variance, but he could certainly sympathize with
243 this applicant's position. The variances requested by Mr. Fauver are basically to
244 take a non-conforming building (whether it exists or not) and make it conforming,
245 which Mr. Stoodley does not think the Board is here to do. The law says very
246 clearly that to build in the same footprint, then the Board can act on that and can
247 give variances for the existing building which can be expanded vertically or in any
248 direction, at least into the setbacks. Mr. Stoodley indicated that he would
249 personally be opposed to giving an opinion about the applicability of variances'
250 availability to the applicant or to some other buyer.

251
252 Mr. Taylor commented that he had a lot of opinions about this, most of which he
253 would keep to himself, but he wished to address the comment. He said that whether
254 the Board could hear it or not, it would not be a denial, not to hear it. Mr. Boyle
255 responded that's correct.

256
257 Regarding the fee, Mr. Taylor encouraged the City to refund the fee if in fact the
258 Board did not hear this matter. He said that he thinks we do know what the current
259 building envelope is, so there is not really an ignorance about what can be built.
260 He said that it is true that if the Board decides it could not hear it (as he was
261 leaning), that the applicant could return, and he didn't think the applicant would
262 be committed to moving forward on that plan. It would be an option. For what it is
263 worth, to reiterate what was just said, he said that someone could build using the
264 same footprint. Mr. Taylor explained that he didn't see the jurisdiction, didn't
265 see the hardship. He sees the issue, the problem and why the applicant was before
266 the Board, but did not see where the Board could address this.

267
268 Applicant Mr. Fauver said he wished to make an inquiry of Mr. Stoodley. He
269 explained that he is not a lawyer or a real estate professional, and this was the
270 only house he had ever owned. He explained that he bought it "quite accidentally:"
271 he had been renting for years and the owner died. Lawyers showed up at his door and
272 said that he needed to leave. Because he hated to move, he asked if there were any
273 options and when told the house would be put up for sale, he asked to buy it.

274
275 In terms of what Mr. Stoodley had said about the Board's function in terms of
276 bringing existing property into Code, Mr. Fauver expressed his hope that the Board
277 would not "over read the vernacular of [his] cover letter as being a lawyerly
278 argument." He said that he does not have a "lawyerly argument" to make: his cover
279 letter was intended to be a practical statement of the situation he is in. He

280 realized that the phrase mentioned was in the cover letter, but he did not mean
281 that to be a literal definition of the Board's purview.
282
283 Mr. Stoodley responded that he was not quoting the applicant's letter, that he
284 understood this and that he agreed with the others: he did not think the Board
285 could hear this case. As to the second point, Mr. Stoodley wanted to make it clear
286 to the applicant that he didn't believe in giving a pre-judged opinion so that the
287 applicant could sell his property.
288
289 Mr. Stoodley said that looking at the State Code, it is not "confiscation:" there
290 is still some value to the property. The fact that Mr. Fauver bought the property
291 with the existing setbacks was a voluntary action, and to come to the Board and ask
292 the Board to correct his mistakes (if there were any) would not be appropriate. It
293 is not a lack of empathy: the Code is pretty clear. If one buys property with
294 existing setbacks, -- if you didn't understand, you should have understood because
295 you paid money for it. Mr. Stoodley said that the Board did not have the power to
296 make a non-conforming property conforming by merely changing the setbacks. It has
297 the power to allow someone to replace the property with existing setbacks, or to
298 raise the property vertically. He expressed that he didn't believe the Board has
299 the power to grant variances based on existing situations.
300
301 Mr. Fauver responded that had he been sufficiently cognizant of that, he imagined
302 he would be coming before the Board with a somewhat modified argument.
303
304 Mr. Stoodley said that he had no problem in giving the applicant a continuance and
305 that he personally would not pre-judge the matter.
306
307 Mr. Fauver stated that he understood and asked if he would be able to rebuild
308 within the existing footprint.
309
310 Mr. Stoodley responded, "Absolutely," but then clarified that the Board would have
311 to look at it. In other words, the Board has the power to grant, because of the
312 Code that exists, an addition or a structure on the original foundation to a
313 nonconforming property. What the Board could not do, is throw away the setbacks. He
314 told Mr. Fauver that he was asking for a substantial change, but Mr. Stoodley's
315 point was that "his ears are closed, he can't hear this."
316
317 Chair Murphy than encouraged the applicant to look at some of the options within
318 the City Code. He said that Mr. Stoodley mentioned there are certain things the
319 Board could do with non-conforming uses. It has been a fairly common practice of
320 the Board in the past to allow a second story to be put on a nonconforming
321 structure: that is allowable by Code. Mr. Murphy explained that the type of
322 variance being requested, under both State Code and City Code, requires the BZA to
323 consider the impacts and to set conditions in the public interest.
324
325 In the absence of a plan, Mr. Murphy opined, it is very hard to evaluate what the
326 impact might be. Going to one side, it could be 65 feet long, 12 feet from the
327 street, and 35 feet high. That would have a very different impact on the
328 surrounding properties than a house that was shaped somewhat differently or placed
329 on another lot line within the building envelope. So it is very hard for the Board
330 to consider those, and even if it were to hear this case, it couldn't make those
331 distinctions without being arbitrary and capricious. Chair Murphy observed that
332 there are some real problems to even hearing this without having specifics to
333 consider.
334
335 There are a number of things that Mr. Murphy said he would encourage the applicant

336 to look into. Particularly, it might be best to get some representation to find out
337 what the issues are with nonconforming properties. He encouraged Mr. Fauver to find
338 out what's involved with generating the type of evidence necessary to have a
339 legally nonconforming use, things like that. Because if one has a legally
340 nonconforming use, he said, it may continue into the future. Which would mean the
341 house could be rebuilt and, Mr. Murphy said, in most cases there are requirements
342 that 25% of the value has to remain, and some other things are included in the
343 Code.

344
345 Mr. Murphy encouraged the applicant to look into what the Code currently allows,
346 warning him that the City is in the process of rewriting the Zoning Code again,
347 which hasn't been done substantially since 1959. What is in the Code now may not be
348 there in the future in the same way: we will not know until the new Code comes
349 forward, along with the public hearing process, and Council makes a decision one
350 way or another.

351
352 Chair Murphy said that he empathizes greatly with the applicant and on behalf of
353 the Board, he wished to apologize: it is not a good situation for a citizen to be
354 "put through the wringer" like this. But the Board is a creature of statute and
355 only has those powers and authorities granted to it by the law. Mr. Murphy stated
356 that the language and the combination of State Code requirements in specific cases
357 in 15.2309-2, along with the requirement in the same section for imposing
358 conditions regarding the location, character and other features of the proposed
359 structure or use as may be necessary in the public interest. The Board did not have
360 the type of information available to it to make that decision; therefore Chair
361 Murphy did not feel that it was appropriate for the Board to hear it at this time.

362
363 Mr. Fauver responded that there is of course considerable guidance as to what could
364 conceivably be brought before the Board, which is imposed by other aspects of the
365 Code. For instance, he said, the footprint of any structure on the property cannot
366 exceed 2846 SF. A structure cannot be more than 35 feet tall, or two and a half
367 stories. Visibility code says that it has to be 52 feet from the corner arc, that
368 sort of thing. So there are some interlocking things to "prevent monstrosity" and
369 Mr. Fauver said this because he assumes that it will be the same Board a month or
370 two months from now. He knows that it has no effect on the particular decision
371 being made now, he was just noting that he is a "pretty creative" person: if
372 someone handed him this plat and these setbacks, and told him that his project was
373 to create a monstrosity, he could find a way to do it. But in practice, the
374 monstrosity is unlikely. The applicant further said that he accepts that the Board
375 is a creature of statute, this is not really the situation and he recognizes that.

376
377 Mr. Stoodley began to make a motion, but Chair Murphy indicated that there was
378 already a motion on the table -- or rather, that the Board was being polled to find
379 out whether it would hear the case.

380
381 Mr. Fauver asked if this would be a motion to continue the case.

382
383 Mr. Stoodley indicated that an applicant has to ask for a continuance; the Board
384 could not just give it to him. He said Mr. Fauver would have to see if he could get
385 his case together and after that, he could reapply.

386
387 Mr. Fauver asked if, before requesting such a continuance, whether a continuance is
388 particular to the request he had already made. And if so, in that case, if the
389 Board could not hear the case already made, a continuance would seem to be "kicking
390 a bad thing down the road." The applicant observed that it sounded like he needed
391 to come back with something new. If a continuance were open-ended, so that he

392 didn't have to get feedback and pay the fee again, and could come before the Board
393 again, that would be fine. But with "even a meager understanding of the world of
394 letters and scriptures," he guessed that if he had a continuation, it would be for
395 substantially the same case, and he asked if that were correct.

396
397 Mr. Stoodley responded yes.

398
399 Mr. Fauver replied that in all likelihood, he would be coming before the Board with
400 a new request: same address, different request.

401
402 **MOTION:** Chair Murphy stated that the Board had before it a motion by Mr. Stoodley,
403 seconded by Mr. Taylor, not to hear the case. He called for discussion and Mr.
404 Stoodley asked if the Board was dismissing this or just not hearing the case? Chair
405 Murphy said that the Board was not hearing the case. Mr. Stoodley clarified that
406 this meant it was as though the applicant had never been before the Board.

407
408 There was discussion amongst the Board as to dismissing the matter without
409 prejudice. Mr. Stoodley said that he made his motion because the Board did not have
410 the authority to hear the case, therefore there is no prejudice.

411
412 Mr. Boyle reconfirmed that the case could come back in a different format which
413 addressed the City Attorney's concerns. Mr. Stoodley responded yes, exactly.

414
415 Chair Murphy wished to clarify the motion on the table: Mr. Stoodley motioned that
416 the Board not hear the case because it did not have jurisdiction to hear the case
417 based on the information presented. He asked if that was an appropriate summary.
418 Mr. Taylor then seconded the motion.

419
420 Chair Murphy asked the motioner and seconder to consider adding one more point,
421 encouraging the City to use whatever administrative authority or power it has to
422 consider refunding this applicant his fee, since the Board did not hear it. He said
423 that the Board did not have that authority, again, that it was a creature of law
424 and could not rule that the fee must be refunded. But the Board strongly encouraged
425 the City to do this -- or to waive the fee upon re-application, whatever is most
426 appropriate, if it is possible within the administrative procedures of the City.

427
428 Mr. Stoodley and Mr. Taylor agreed that the language regarding the fee was to be
429 included in the motion as well.

430
431 Mr. Fauver inserted that his preference would be to waive the fee upon
432 reapplication.

433
434 Mr. Stoodley reminded the applicant that the Board would be making a
435 recommendation, not a pronouncement.

436
437 Chair Murphy asked if there was any more discussion on this matter, and hearing
438 none, called for a roll call vote [on the motion not to hear the case]:

439
440 **Roll Call Vote:**

441 Chair Murphy: Yes
442 Mr. Stoodley: Yes
443 Mr. Castillo: Yes
444 Mr. Taylor: Yes

445
446 Chair Murphy stated that the motion carried, 4-0. He apologized to applicant
447 William Fauver for having him come before the Board; however, Mr. Murphy stated

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448 that the act of the Board of Zoning Appeals was the decision not to hear the case.
449 He informed the applicant of his right to appeal the decision to the Circuit Court
450 within 30 days, should he choose to do so. Chair Murphy again apologized, stating
451 that he thought this was not what anyone was expecting, however, it was the
452 situation that all found themselves in this evening.

453
454 Mr. Fauver thanked all four Board members for allowing him to speak and for
455 responding to what he had to say somewhat informally and outside the scope of the
456 matter. He appreciated this and realized that the Board could have proceeded very
457 formally, observing that he would have been "in and out in 30 seconds and none the
458 wiser."

459
460 The Chair indicated that the Board would move forward with Agenda Item No. 3:

461
462 **3. MINUTES AND RESOLUTIONS:**

463
464 **a. Draft Minutes from March 11, 2010 Meeting**

465
466 Chair Murphy received one correction to the March Draft Minutes at line 412,
467 offered by Mr. Stoodley.

468
469 **MOTION:** Mr. Stoodley moved, and Mr. Taylor seconded, to approve the Minutes of
470 March 11, 2010 as amended. Upon voice vote, the motion passed unanimously.

471
472 **b. Resolutions**

473
474 Zoning Administrator John Boyle made a statement to the Board, indicating that a
475 matter had been raised by Planning Director Sue Cotellessa regarding BZA
476 resolutions that were to be discussed. He explained that an interesting question
477 had arisen, due to the process. If a resolution was voted on at a hearing and the
478 Board did not have the hard copy in front of them to view for accuracy and if it
479 then comes back a month later for review, is this what the Board approves? In her
480 capacity as General Manager of Development Services, Mr. Boyle said that Ms.
481 Cotellessa's question is: when the Board reviews what was approved a month ago,
482 does that constitute a new clock? For example, the Board was about to discuss
483 resolutions that were passed at the previous meeting: if the Board is satisfied
484 that they accurately reflect [its decisions], does that constitute a new clock for
485 appeal?

486
487 Mr. Stoodley stated his opinion that it does not, that unless the Board actually
488 changes the intent of the language, that should not strike the clock again. If the
489 Board changes the intent of the Resolutions, then the clock would strike.

490
491 Mr. Boyle suggested that the Board may want to not take a vote as it had already
492 voted, if they believe a Resolution is accurate to what the Board passed the
493 previous month. [This is in contrast to its] Minutes, where practice was to bring
494 them back a month later, and the Board votes to approve them as amended. Mr.
495 Boyle's suggestion was not to take a vote if it was happy with the Resolutions, to
496 make no change.

497
498 Mr. Stoodley stated that it was a very good point and Mr. Boyle responded that yes,
499 it is. He relayed that both of these resolutions were "in the hopper" and that the
500 applicants were approaching Ms. Cotellessa, wanting to know if they can move
501 forward or not, -- or if they needed to wait another 30 days before they invest.

502
503 Chair Murphy added that current Rules of Procedure for the Board of Zoning Appeals

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504 make this clear under Section 4, Item 12: "Final decisions are effective on the
505 date the tape recordings of the Board's actions are filed." So that would be on the
506 day of the decision. Regarding whether or not the Board should vote, Mr. Murphy
507 said that he thought the record should show somewhere that these are the motions
508 that had been reviewed and approved as accurate and setting the final decision
509 which became effective the night of that decision when the tapes were filed in the
510 office. He said that he would leave this up to the Board as to whether a vote is a
511 harmful or a useful thing, but BZA Rules of Procedure make it clear that the
512 decision is final at that time.

513
514 Mr. Stoodley expressed his opinion that the Board was voting on the accuracy of the
515 transcript and the accuracy of the grammar in the document, not the intent of the
516 thing, which is established at the time the tape is filed.

517
518 Mr. Taylor indicated his agreement, as did Mr. Castillo.

519
520 Chair Murphy said that in that case, the Board would continue as it had in the
521 past, although he wished to add this as another item under Other Business for
522 further discussion.

523
524 **Resolution 1 from the March 2010 Meeting (U1488-08, Special Use Permit for a**
525 **BB&T bank drive-through facility at 1230 West Broad Street):**

526
527 No comments were forthcoming from the Board.

528
529 **MOTION:** Mr. Stoodley moved, and Mr. Taylor seconded, to approve Resolution 1 as
530 presented. Upon voice vote, the motion was passed with three Board members in
531 favor. Mr. Castillo abstained.

532
533 **Resolution 2 from the March 2010 Meeting (U1495-09, Special Use Permit for a**
534 **Group Home at 209 East Broad Street):**

535
536 **MOTION:** Mr. Stoodley moved, and Mr. Taylor seconded, to approve Resolution 2 as
537 presented. Upon voice vote, the motion was passed with three Board members in
538 favor. Mr. Castillo abstained.

539
540 4. **OTHER BUSINESS:**

541
542 **a. Distribution of revised/finalized 2010 BZA Rules of Procedure**

543
544 Chair Murphy explained that this was an informational item only, which had just
545 been referenced. The only items which had been changed were Code references, from
546 Chapter 38 to Chapter 48.

547
548 **b. 2010 General Assembly legislation related to Board of Zoning Appeals**

549
550 Chair Murphy thanked Mr. Boyle, who thanked Ms. Battle for preparing the summary.
551 Mr. Murphy said that he had one question regarding an item which he thought was not
552 listed. He said there is a change in how cases appeal to BZA decisions and how they
553 are described and handled beginning July 1st. Chair Murphy believed that the bill
554 started out as House Bill 855, and stated that in essence his understanding was
555 that after July 1, the Board of Zoning Appeals will not be party to any suits, and
556 any suits against the BZA will actually be against the City of Falls Church in
557 regards to a decision of the BZA. He was sure that one passed, he just didn't know
558 the exact number, but explained that although the legislation was a technical issue
559 for legal filing, it had considerable impact on the Board. He stated that the Board

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560 would not a direct legal party in a suit from this point forward, so that is a
561 substantial change in how the legal system operates.

562
563 **4. Other Business:**

564
565 **Requested Discussion of BZA Resolutions**

566
567 Chair Murphy said that the Board had discussed in the past its desire to have draft
568 Resolutions, preferably prepared by staff, prior to the meetings, so that it can go
569 through and make whatever modifications and changes are necessary and have the
570 final Resolutions available on the same evening as the meeting. He reiterated that
571 he thinks this is a very good practice; he was not sure the current practice is
572 necessary wrong, but observed that the Board does have to act by Resolution. He
573 said that most other Boards or Commissions, or Councils, that are required to act
574 by Resolution are actually voting on a Resolution, and the motion is to accept or
575 modify.

576
577 Mr. Murphy thought it would be worthwhile to have [prepared] Resolutions that the
578 Board can change, modify as necessary based on the findings of fact and the
579 decision of the Board.

580
581 **Presentation of the Annual Report to City Council**

582
583 This item is still pending. Chair Murphy indicated that this has been a scheduling
584 problem for him due to baseball and Boy Scouts. He has not had a free Monday night,
585 but will make a concerted effort to see that the Annual Report is presented to
586 Council before the Board's next meeting, tentatively scheduled for June.

587
588 Mr. Stoodley offered one additional item of business: he wanted to express thanks
589 to Ms. Battle for an outstanding job on preparing the Minutes. Other Board members
590 concurred.

591
592 5. **OLD BUSINESS:** None

593
594 6. **PETITIONS:** None

595
596 8. **ADJOURNMENT:**

597
598 **MOTION:** Mr. Stoodley moved to adjourn and Mr. Taylor seconded. Upon voice vote, the
599 motion passed unanimously.

600
601 The meeting was adjourned at 8:22 p.m.

602
603 Respectfully Submitted,

604
605 Karin U. Battle
606 Department of Development Services
607 Recording Secretary

608
609 *The City of Falls Church is committed to the letter and spirit of the Americans*
610 *with Disabilities Act. This document will be made available in an alternate format*
611 *upon request. Call 703.248.5015, TTY711.*