CITY OF CHESTERFIELD
BOARD OF ADJUSTMENT
MEETING SUMMARY
Thursday, November 5, 2009

The Board of Adjustment meeting was called to order at 7:03 p.m. on Thursday, November 5, 2009 by Ms. Laura Lueking, Chair of the Board of Adjustment.

I. Introduction of Board and City Staff

The following individuals were in attendance:

Ms. Laura Lueking, Chair
Ms. Marilyn Ainsworth
Mr. Richard Morris
Mr. Robert Tucker
Mr. Gerald Schwalbe, Alternate

Councilmember Barry Flachsbart
Mr. Harry O'Rourke, representing City Attorney, City of Chesterfield
Ms. Annissa McCaskill-Clay, Lead Senior Planner, City of Chesterfield
Ms. Mary Ann Madden, Office Manager, City of Chesterfield
Court Reporter, Midwest Litigation Services

II. Approval of May 7, 2009 Meeting Summary

Marilyn Ainsworth made a motion to approve the Meeting Summary. The motion was seconded by Richard Morris and **passed by a voice vote of 5 to 0.**

III. Request for Affidavit of Publication

The Chair noted that the Affidavit of Publication and exhibits for the Petition had been placed on the dais.

IV. Public Hearing Items:

The Chair read the Opening Comments for the Public Hearing.

A. **B.A. 02-2009 1215 Walnut Hill Farm Drive (c/o Lauren Strutman Architects):** A request for a variance from City of Chesterfield Zoning Ordinance Section 1003.105.7(3)(a) to permit an existing residence in Walnut Hill Farms subdivision to maintain a 45 foot front yard setback in lieu of the required 50 foot front yard setback. (18T120179)

Staff Presentation:
Ms. Annissa McCaskill-Clay, Lead Senior Planner for the City of Chesterfield, outlined the exhibits supporting the request for a variance to permit the existing residence at 1215 Walnut Hill Farm Drive to maintain a 45-foot front yard setback in lieu of the required 50-foot front yard setback.

The Petitioners are Timothy and Diane Schoen, who own 1215 Walnut Hill Farm Drive located in the Walnut Hill Farms subdivision. The property was zoned "NU" Non-Urban District by St. Louis County prior to the incorporation of the City of Chesterfield. The Schoens are seeking permission to add an addition over the existing parking garage of their home, which was built in 1971. The current home encroaches on the setback, which the Schoens discovered when applying for Municipal Zoning Approval. It was noted that the Schoens are not the original owners of the property.

In reviewing the subdivision plat, Staff felt it was possible that the builder may have made a mistake in interpreting where the setbacks were to be. Typically, the zoning ordinance requires the setback to be from the *property line*. In this particular case, the setbacks are to be 50 feet from the *right of way line.* It is possible that there was a misinterpretation as to where the right of way line is.

The Municipal Zoning Approval for the requested addition was rejected on October 5th because of the encroachment issues. The only relief from the established setbacks is a grant of variance from the Board of Adjustment.

Petitioners' Presentation:
Ms. Lauren Strutman of Lauren Strutman Architects, representing the Petitioner, was sworn in by the Court Reporter.

Ms. Strutman noted that she is the architect for the proposed project and is also a neighbor of the Schoens. When the Schoens purchased their home, it came with a Surveyor's Real Property Report, which is a less accurate survey than what is typically done when a home is purchased. This survey did not show the home encroaching over the front yard setback. In preparing a submittal to the City of Chesterfield for a new addition over the existing garage, a boundary survey was ordered, which indicates that a very small corner of the existing garage encroaches the setback.

The proposed addition would be directly over the garage – there are no plans to extend any of the walls further into the setback.

Ms. Strutman then responded to the *Approval Criteria* for a variance, as outlined in the Staff Report:

- *The applicant did not bring the burden upon himself. An individual cannot create a situation and then claim he needs a variance:* The Schoens did not build their home and were unaware of the encroachment at the time of purchase.

- *The burden of proving the elements is on the applicant*: The house is located on a "winding, hilly" street with each house situated on a large lot varying in size from 3-7 acres and with each house facing a different direction. Because it is "not a regular, straight street" the encroachment is not visible. Ms. Strutman showed slides of the street and home depicting the area of encroachment.

  Ms. Strutman stated that she is also working on the home at the end of the street. These homeowners have reviewed the plans for the Schoens' home and have no objection to the requested variance. It was further noted that there are twelve homes on Walnut Hill Farm Drive, which is a private street. All the residents who live at the same end of the street as the Schoens agree that the variance should be granted.

- *Applicant has established practical difficulties or unnecessary hardship:* The logical place to expand a new master bedroom on the second floor of the home is over the garage. The existing small encroachment has created a practical difficulty in doing so and was not a situation created by the Schoens.

  The Board of Adjustment shall have the power to permit a variation in the yard requirements of any zoning district or the building or setback lines from major highways as provided by law where there are practical difficulties or unnecessary hardships in the carrying out of these provisions due to an irregular shape of the lot, topographical or other conditions, provided that such variance will not seriously affect any adjoining property or the general welfare of the public: It is felt that it has been demonstrated that this variance will not affect any adjoining property owner or the welfare of the public. The five surrounding property owners, along with two other property owners, have signed a petition supporting the variance request. The proposed project also has Trustee approval.

Ms. Strutman noted that this was the first home to be built on the street. She has spoken to the son of the original owner of the house, who advised that when the home was built there were not any roads yet – only a dirt trail led up to the house.

Speakers – In Favor:
Ms. Merrell Hansen, one of the Trustees of the subject neighborhood and a neighbor of the Schoens, stated that they support the proposed project and asked that the Board grant the variance.

Speakers – In Opposition:
No Speakers were present to speak in opposition to the variance request.

CONCLUSION

Richard Morris made a motion to approve the variance to permit an existing residence in Walnut Hill Farms subdivision to maintain a 45-foot front yard setback in lieu of the required 50-foot front yard setback as requested under B.A. 02-2009 1215 Walnut Hill Farm Drive (c/o Lauren Strutman Architects). The motion was seconded by Gerald Schwalbe. Upon roll call, the vote was as follows:

Marilyn Ainsworth	**Yes**
Robert Tucker	**Yes**
Gerald Schwalbe	**Yes**
Richard Morris	**Yes**
Laura Lueking	**Yes**

The motion passed 5 to 0.

V. Approval of 2010 Meeting Schedule

Marilyn Ainsworth made a motion to approve the 2010 Board of Adjustment Meeting Schedule. The motion was seconded by Richard Morris and **passed by a voice vote of 5-0.**

Because he is serving as an Alternate Board Member, Mr. Schwalbe asked that he be called prior to the meeting to confirm whether his attendance is required. Ms. McCaskill-Clay replied that Board members are asked to notify Staff if they are unable to attend a particular meeting otherwise it is assumed they will be present.

Discussion was held on the number of members required to attend the meetings. It was noted that while only five members can vote at a meeting, City Attorney has requested that as many of the members as possible attend each meeting. Regarding Alternate Members, Ms. McCaskill-Clay stated she could prepare a meeting schedule indicating which Alternate Member should be in attendance at each meeting.

Ms. Lueking suggested that each Board member respond to the e-mail notifying them of the upcoming meeting as to whether they can attend or not.

VI. Adjournment

The meeting adjourned at 7:30 p.m.