

**MINUTES**

***ZONING BOARD OF ADJUSTMENT***

***June 10, 2013***

Members Present:

Beth Walker, Chairman  
Patricia Williams, Vice Chairman  
Bryant Lindsey  
David Rader

Members Absent:

City Staff Present:

Crystal Reed, Recording Secretary  
Russ Cochran, Senior Planner

OLD BUSINESS:

Item #1 Select a Board Chairman & Vice Chairman

**Mrs. Patricia Williams** said the board needed to nominate a Chair and Vice Chair for the Board of Adjustment.

**Mr. Bryant Lindsey** made a nomination to elect **Beth Walker** as Chairman and **Patricia Williams** as Vice Chairman.

**Mr. Dave Rader** seconded the nomination.

All in favor-Passed

NEW BUSINESS:

Item #1 Request to place a house on a lot not served by a city or state maintained road.

**Mr. Russ Cochran**, Senior Planner for City of Morganton explained the reason for the request. The applicant is requesting to place a home on a lot not served by a city or state maintained road. Truax Road is a private road. City ordinance requires that residences be developed off of a city or state maintained road, otherwise, a variance is required. The lot is zoned Residential Transition and meets the size requirements for the zoning at just over one-half acre. The lot is served by City of Morganton water and will require a septic tank for sewer.

Truax Road is approximately 10 feet wide, 671 feet long, and is dirt for the entire length. It is zoned Residential Transition (RT) which allows any type of residential dwelling. The applicant is requesting to put a doublewide manufactured home on the property. There are three other houses currently located along Truax Road.

**Mrs. Patricia Williams** asked **Mr. Cochran** if he could clarify whether the mobile home is currently on the property .

**Mr. Cochran** said that it still remains on the church property.

**Mrs. Walker** said it is her understanding that it is currently being used as a fellowship hall.

**Mr. Cochran** explained that the lot they are discussing tonight is vacant and the lot next to it is a manufactured home.

**Mrs. Walker** asked are there structures on each side of the lot in question.

**Mr. Cochran** answered yes.

**Mr. Lindsey** said so the practical difficulty is that even if they place the unit there, it could not be connected to city water, sewer etc.

**Mr. Cochran** said there is water available on Truax Road.

**Mr. Lindsey** said so they could connect without the variance.

**Mr. Cochran** said *without the variance they wouldn't be allowed to place the mobile home on the lot.*

**Mr. Lindsey** asked if there was septic available and would they have to go through city approval for that if they received the variance.

**Mr. Cochran** said yes if they receive the variance then the city would take the proper steps to make sure septic is available before they could place the mobile home on the lot. *He stated everything is depending on the decision the board makes tonight.*

**Mr. Lindsey** asked if the variance goes with the property.

**Mr. Cochran** said yes.

**Mr. Lindsey** asked if the property is transferred in the future will the variance still apply to the property even if they built a multi-family dwelling on the lot.

**Mr. Cochran** answered yes. He said whatever is allowed by this particular zoning.

**Mr. Lindsey** asked **Mr. Cochran** how much increase in density does this particular zoning allow now.

**Mr. Cochran** said he would have to check but he believes if it allowed an increase for a multi-family dwelling it would be very small.

**Mr. Lindsey** asked if they are seeking to add more density.

**Mr. Cochran** said as of right now they are just wanting to add a manufactured home but they are allowed to do whatever the RT zoning allows but that's not in question tonight. He added if they were allowed to develop then they would be allowed to develop to the maximum density.

**Mr. Lindsey** asked would they have to come back to this board and ask for a new variance if they decided to increase the density.

**Mr. Louis Vinay**, City Attorney stated as he understands it, the applicant is requesting action in the nature of a variance under Zoning Section 9-40004C which makes certain exceptions to the requirements that the property have street access. That ordinance specifically says, there is an exception for (1) single family dwelling or (1) mobile home if allowed by the Board of Adjustment even though the lot does not abut a public street.

**Mr. Lindsey** asked **Mr. Vinay** so if in the future someone wanted to increase the density then would they be able to come back to this board and ask for another variance.

**Mr. Vinay** said he understands this to be a special exception which refers only to a single family dwelling whether stick built or mobile home. He said he can't say something else wouldn't be considered in the future.

**Mr. Lindsey** said he appreciates the clarification from **Mr. Vinay**.

**Mrs. Walker** asked if the applicant would like to speak.

**Mr. Lindsey** said he would like to determine who owns the property.

**Mr. Walter Vinson**, 202 Park Street was sworn in before speaking.

**Mr. Lindsey** asked **Mr. Vinson** if he owns the property.

**Mr. Vinson** said he wants to purchase the property and he has already paid a deposit pending this Board's decision tonight.

**Mr. Lindsey** verified with **Mr. Vinson** that he is seeking to buy the land.

**Mr. Vinson** said yes.

**Mrs. Walker** asked **Mr. Vinson** if the current owner agreed to sale him the property.

**Mr. Vinson** answered yes.

**Mr. Lindsey** added that it seems like a very nice thing that **Mr. Vinson** is doing to help the people involved.

**Mr. Vinson** said they are trying.

**Mr. Lindsey** pointed out that some areas on the application were hard to read so he wasn't clear on some of the comments included.

**Mr. Cochran** said he would be glad to clarify anything he could.

**Mr. David Rader** added that the paper that was included by Table Rock Baptist Church is pretty clear.

**Mr. Lindsey** said he just wanted to point out that parts of the application were not legible.

**Mr. Cochran** said he accepted the application and thought it contained enough information for the variance to be heard.

**Mr. Cochran** stated that he knew any further questions could be addressed to **Mr. Vinson** at this hearing.

**Mrs. Walker** asked **Mr. Vinson** if he had any questions of the Board.

**Mr. Vinson** said no.

**Mr. Rader** asked **Mr. Vinson** who keeps up the maintenance of the road. He said he is concerned about it being maintained.

**Mr. Vinson** answered he had no idea. He said he believes a brother-in-law comes over to work on it sometimes but he isn't exactly sure who he is or when he does it.

**Mr. Lindsey** asked if the church would be the owners of the property or individuals.

**Mr. Vinson** said he would be the owner.

**Mrs. Walker** asked **Mr. Cochran** to clarify that once a 4<sup>th</sup> house is placed on this street then that makes it eligible for state maintenance.

**Mr. Cochran** said that was something **Mr. Vinson** has pursued.

**Mr. Vinson** said he spoke with **Mr. Tim Anderson** with DOT and he said once there were (4) four families then they could look at getting the state to maintain the road and paving the road.

**Mrs. Walker** asked if this would make the 4<sup>th</sup> house.

**Mr. Vinson** said he wasn't sure but thought there were only (3) three.

**Mr. Lindsey** said there appeared to be (3) houses there now.

**Mrs. Walker** asked **Mr. Cochran** if the first house would be considered Truax Road.

**Mr. Cochran** said he did not know.

**Mr. Vinay** said he would like to make a clarification as City Attorney. The particular section of the ordinance as **Mr. Cochran** has pointed out, you could act under is 9-4004c, which states certain requirements for the exception and one you have already dealt with. The exception also requires (2) additional things, (that the lot be within 300 feet of a publicly maintained street and that access to the property be available by easement, neighborhood road or other adequate means). **Mr. Vinay** said he is merely calling that to that board's attention to note, and he thinks you will need to have evidence before you make findings if you chose to do that.

**Mr. Lindsey** asked if the board has evidence that the property is within 300 feet of a publicly maintained street and also is the property accessible by easement, neighborhood road or other adequate means.

**Mr. Lindsey** stated he assumes the property isn't accessible by easement, and he doesn't know how to define a neighborhood road.

**Mr. Vinay** said it's not defined anywhere in the ordinance but obviously you have evidence that the property is accessible. What he is more concerned about is that you didn't have evidence if it is within 300 feet from a publicly maintained street.

**Mrs. Walker** asked **Mr. Cochran** if he knew how far the property is from the main road.

**Mr. Cochran** answered it would be less than 300 feet.

**Mrs. Walker** stated she feels they have established that all the criteria have been met.

**Mrs. Walker** asked if we have a motion.

**Mr. Rader** made the motion that they approve the variance, contingent that within 30 days they have a written statement or document of who will maintain the road.

**Mr. Lindsey** said to **Mr. Rader** that **Mr. Vinson** is not located at the end of the road so he doesn't feel he can control the other property owners, but maybe he can make a pledge he will maintain it to his property.

**Mr. Cochran** interrupted and said the board needed to make a second before anymore discussion.

**Mrs. Williams** seconded the motion.

**Mrs. Walker** stated the motion has been made and seconded .

**Mrs. Walker** asked that an amendment be included to the contingency and an offer to purchase agreement be included with the road maintenance agreement.

**Mr. Rader** and **Mrs. Williams** agreed with the amendment.

**Mrs. Walker** states the motion: A variance has been approved as requested contingent upon receiving within 30 days an offer to purchase the property negotiated between **Mr. Vinson** and **Mrs. Carswell** and evidence of a road maintenance agreement .

**Mr. Lindsey** says he doesn't know what constitutes a road maintenance agreement, and he doesn't know if it would have any binding on any of the parties after a variance was granted. He asked if he is misunderstanding something.

**Mr. Cochran** answered and says he doesn't really know if the Board has any way to require **Mr. Vinson** to get a road maintenance agreement because he does not have control of the road. He said he doesn't know to what extent they can bind him.

**Mr. Vinay** said no, he doesn't have control over the whole road that he is aware of. He said it's possible there is already an easement in place that effects this whole road but he doesn't know that. **Mr. Vinay** stated it's obvious the other residents have access to their properties but it's not Mr. Vinson or this Board's concern. What's important is that he has access to the property in question.

**Mr. Lindsey** stated that in order for this to move forward **Mr. Vinson** needs (4) votes. He said would it be fair to ask that this item be continued to the next Board meeting to give **Mr. Vinson** time to have more information pertaining to some of the concerns and some of the issues be addressed.

**Mrs. Walker** asked **Mr. Cochran** if **Mr. Vinson** would have to provide all the information to him.

**Mr. Cochran** answered that any information that the board requested would come to him to be put in the record.

**Mr. Lindsey** said going back to his first question. Should the item be continued to the next meeting.

**Mr. Cochran** said that is an option the Board has, however, he said he might suggest that the Board ask the applicant if that's within his time table.

**Mrs. Walker** said in her opinion if the items stated have to be given to **Mr. Cochran** anyway then she doesn't feel the need to postpone the item any longer.

**Mr. Rader** said he went by there and they are already taking the underpinning out from under the trailer that's there now so they are getting ready to move it. He thinks postponing one more month will put a hardship on **Mr. Vinson**. He said all that has to be done is for someone to put into writing that the road is being maintained. He said the road's in pretty good shape, it's just the limbs are hanging down and need to be cut back.

**Mrs. Walker** asks **Mr. Vinson** if he would be able to comply with the conditions the Board has implicated within 30 days.

**Mr. Vinson** said he would have to do research on the maintaining of the road but he can provide everything else. He said he can ask the lady that is selling him the property who does it.

**Mr. Lindsey** asked **Mrs. Walker** to confirm that **Mr. Vinson** isn't sure he can comply with the road maintenance issue. **Mr. Lindsey** asked **Mr. Vinson** if the 30 days is an issue.

**Mr. Vinson** said yes, they need to move the mobile home as soon as possible. They need a new sanctuary and the mobile home is in the way. He said they can't start on the sanctuary until the mobile home is gone.

**Mr. Lindsey** asked so that he understands that he would like to move it before 30 days.

**Mr. Vinson** said yes, yesterday.

**Mrs. Walker** said motions have been made, seconded and discussed. She needs to take a vote. She again reads the motion, all in favor of granting a variance to **Mr. Vinson** with the conditions that he supply an offer to purchase contract signed between himself and **Mrs. Carswell**, the current owner of the property and some type of road maintenance agreement within the next 30 days.

**Mr. Lindsey** asked if that's exactly the motion the Board is passing.

**Mrs. Walker** said yes.

All in favor.

Motion passed.