

**MINUTES  
BOARD OF BUILDING AND ZONING APPEALS**

**April 4, 2013**

**MEMBERS PRESENT:** Pat Zoller, Clinton Sanders, Doug MacMillan and Tate Emerson

**MEMBERS ABSENT:** Adrian Eriksen and Gregg McIlvaine

**STAFF PRESENT:** Andrew Dutton

**I. MINUTES**

Pat Zoller moved, Doug MacMillan seconded, to approve the Minutes of March 7, 2013 as received. Motion carried by a 4-0 vote.

**II. PUBLIC HEARINGS**

**A. Appeal #2013-4. Pamela Hahn** is requesting an area variance from Planning and Zoning Code Section 1133.03(c)(4) to allow lot coverage exceeding the maximum in an R-2 (Single Family) District at 705 Washington Street.

Pam Hahn, 705 Washington Street, stated she wished to construct a garage for security of her possessions and would like to make going from the house to the garage as easy as possible, especially during the winter months. Ms. Hahn stated she felt the garage would improve the appearance of her home.

Mr. Emerson questioned if she currently had a garage. Ms. Hahn stated no but she did have a driveway. Mr. Emerson asked if the driveway came off of Spring Street. Ms. Hahn stated the driveway came off of Washington Street.

Mr. MacMillan questioned what the plans were for the existing shed on the property. Ms. Hahn stated it would be removed.

Mr. MacMillan noted that most of the residents in the area had detached garages on their property. Ms. Hahn stated she believed she was the only property owner in the immediate area that did not have a garage.

Ms. Hahn noted the garage was needed in order to deter vandalism and to provide shelter during inclement weather conditions. Ms. Hahn stated she planned to live at the property "as long as possible" as she was retired. Ms. Hahn stated with the garage and attached breezeway, it would be safer.

Ms. Hahn noted there would be vinyl siding on the garage and breezeway.

Mr. Emerson questioned the necessity of a 2 ½ car garage and attached breezeway. Mr. Emerson stated if the size of the garage were reduced or the breezeway were eliminated, a variance may not be necessary. Ms. Hahn noted she had two vehicles and also had plans to put a hot tub in the garage as well. Ms. Hahn noted the existing storage building and wood deck on the property added to lot coverage, and the deck and storage building would both be removed as part of the project.

Mr. Emerson stated if the breezeway were eliminated and the garage were made to abut the home, necessitating a reduction in paved surface, a variance may not be needed. Ms. Hahn indicated the house was small, and the breezeway would provide additional living space. Ms. Hahn noted the home was currently less than 1,000-sq. ft. in size. Mr. MacMillan questioned when the home was constructed. Ms. Hahn stated the home was constructed in 1986.

Elaine Dian, 3880 Batdorf Road, friend of Ms. Hahn, questioned if removing the existing concrete drive which came off of Washington Street would help the situation. Mr. Emerson stated yes—that would reduce lot coverage by 669-sq. ft. Ms. Hahn stated she would be willing to do that as it was something she had planned to do. Mr. Emerson stated according to his estimate, if the existing driveway were moved, it would result in a variance of 470-sq. ft. as opposed to 1,100-sq. ft.

Doug MacMillan moved, Pat Zoller seconded, to grant the request of Pamela Hahn of an area variance from Planning and Zoning Code Section 1133.03(c)(4) to allow lot coverage exceeding the maximum in an R-2 (Single Family) District at 705 Washington Street, contingent upon the existing shed and existing driveway being removed.

Mr. MacMillan voted yes, and stated the lots along Washington Street were small, and garages were important for both security and resale value. Mr. MacMillan also noted that the other residents in the neighborhood had detached garages.

Mr. Sanders voted yes, and cited the same reasons as Mr. MacMillan.

Ms. Zollers voted yes.

Mr. Emerson voted yes, and indicated by eliminating the existing driveway and storage building, he felt the minimum necessary was being requested.

Motion carried by a 4-0 vote.

- B. Appeal #2013-5. Alan and Laurie Ratliff, represented by J. Douglas Drushal and Matthew Long of Critchfield, Critchfield and Johnston, Ltd.,** are requesting area variances from Planning and Zoning Code Section 1135.08(h)(6) to allow for open space less than 50 ft. in width and to Section 1135.08(h)(8) to include setbacks areas, patios and similar private

space, and area within 15 ft. of buildings in the open space calculation for property on Mindy Lane near Mechanicsburg Road in an R-4 (Multi-Family) District.

Matthew Long, Critchfield, Critchfield and Johnston, 225 North Market Street, representing Redwood Acquisition and Redwood Management Company; Chris Conwill from Redwood; and John Long from Shaffer, Johnston, Lichtenwalter & Assoc. were present.

Mr. Long stated the land in question was one parcel, consisting of approximately 7 acres, was near the intersection of Mindy Lane and Mechanicsburg Road, and was zoned R-4. Mr. Long stated the project originally derived from a failed development from the late 1990's/early 2000's known as the Cottagewood Condominium project. Essentially, the condominium project contemplated using all of the subject land as well as Phase 1 which was developed immediately adjacent to Mechanicsburg Road. Mr. Long stated that project ultimately ceased and only two of the condominium buildings were ultimately constructed, and then in early 2000, the remainder of the undeveloped land was severed from the condominium project. Mr. Long indicated that before it was severed though, a series of utilities were put into place within what would be the future development/subject property. Mr. Long indicated all was done before the City's current code and with a similar use with different rules that were in place at the time of the split as well as the development of the original portion of the Cottagewood condominiums. Mr. Long indicated that Redwood Acquisitions approached the current property owners, the Ratliff's, and entered into a purchase agreement subject to obtaining the appropriate approvals and variances.

Mr. Long stated the proposed site plan had already been reviewed and approved by the Planning Commission. Mr. Long indicated the issue of the 50' width for open space was also resolved by the Planning Commission as it was within the Commission's discretion to waive the 50' requirement. Mr. Long indicated the variance being requested was for the 20% open space requirement. Mr. Long stated Section 1135.08 (h)(8) was the relevant Code section that dictated how to calculate the open space. Mr. Long stated a strict interpretation of the Code yielded about 10.2% open space requirement.

Mr. Long stated the open space provided was a high quality use of the open space and was not just greenspace but rather a hiking trail and a green area with foliage. Mr. Long stated the proposed density for the property was fairly low for an R-4 District. Mr. Long stated the units would all be single story, apartment units with a fairly low density measure compared to many other R-4 uses. Mr. Long stated 54 units were proposed but that easily double that amount could exist on the property under the current Code.

Mr. Long stated the lot was somewhat narrow for an R-4 District and was slightly irregular in shape primarily because of the lot being split out from the original parcel. Mr. Long stated there were built-in expenses that had already been put into the development—road and utilities, that if the Code were not varied from, would have to be changed substantially in order to develop the lot in conformance with the Code. Mr. Emerson questioned what

changes would have to take place in order for the variance not to be required. John Long, engineer for the developer, stated the entire development would have to be reconfigured; the majority of the grading had already taken place and all of the utilities were in including electric, telephone, and cable. John Long stated to avoid a variance, a fair number of units would have to be eliminated and a significant amount of utilities would need to be installed—sanitary sewer, waterlines, laterals. Mr. Emerson questioned that, in order to utilize the existing utilities, how many units would have to be eliminated. John Long stated offhand, he was not certain. Chris Conwill stated the development was already a small project for Redwood. Mr. Conwill stated they were proposing 8 units per acre as opposed to 15 units per acre, so it was felt that there was nothing more that could be taken away from the number of units being proposed and still make the project feasible. Mr. Conwill stated if a multi-story development were proposed, it would not be an issue but with the style of living proposed, there was no reduction in units to be made and have the project move forward and be feasible. Mr. Emerson questioned if the size of the units could be reduced. Mr. Conwill stated the units would be high end: Two bedroom, two bathrooms, 2-car garage and designed to appeal to a certain demographic. Mr. Long noted that this was not a low income housing development but rather a high end rental unit and meant to attract the top of the rental market. Mr. Long stated Redwood had another development (Milltown Villas) at the corner of Milltown and Melrose which was a similar style development.

Mr. Long stated looking in all directions from the development, there were properties which were substantially similar to the current site plan and were multi-family and multi-storied with increased density.

Mr. Long stated to not grant the variance would be a substantial destruction to delivering public services and a substantial cost would have to be factored into the re-routing/re-configuration of all of the established public services that were being delivered. Mr. Long stated the circumstances with respect to the utilities was not Redwood's fault as the utilities were installed in the late 1990's/early 2000's under a different Code criteria.

Mr. Long stated the variance was the last solution to the economic use of the property. Mr. Long stated the spirit and intent of the Zoning Code would be preserved in that the quality of the open space being provided as well as the lower density by the persons using the open space fit within the criteria set in the Code.

Mr. Long indicated that any special privilege would not necessarily be granted in the same sense that many of the adjacent properties were developed before the 2007 Zoning Code change, and most enjoyed rules outside of the current Code.

Mr. Long stated the literal interpretation of the Code would make the property undevelopable at least from the high quality use being proposed.

Mr. Long stated Redwood had already reached out to the condominium association that was part of the first development and was working with that condo association (adjacent to Mechanicsburg Road) on the proposed development. Mr. Long stated as a practical point, they needed to cooperate as they shared a common road with easements and rights-of-way.

Mr. Long stated in view of the area variance, the use was not being addressed and was only a question of the open space and development requirements. Mr. Long stated the density proposed was low density in an R-4 District making good use of the land.

Mr. MacMillan questioned constructing multi-story units on the property. Mr. Long stated nothing would prevent moving from a single story and taking out enough units to meet the 20% requirement and provide high rise living, but that was not the quality of product that Redwood wanted—they wanted single family, single level, low density, high rental value use for the property.

Mr. Emerson questioned the reasoning behind the open space requirements from the City's perspective. Mr. Dutton stated for multi-family developments, it was to provide an area which was usable for recreation and to break up the pavement within the development.

Joe Polovich, 2009 Mechanicsburg Road, Unit 8, stated his association with Redwood was not that good; the road that was mentioned was a driveway. The base was not good. Mr. Polovich stated the increase in traffic on the driveway would create maintenance problems. Mr. Emerson questioned the driveway surface. Mr. Polovich stated it was blacktop. Mr. Polovich expressed concern with sewers backing up and decreased water pressure. Mr. Polovich stated the area was originally planned as a condominium development and not apartments. Mr. Polovich stated he was concerned with water runoff. Mr. Polovich questioned if the City had looked into these issues and could offer the condominium residents some assurance as he was concerned with 58 units being constructed "on the hill" and their units being located at the bottom of the hill. Mr. Polovich expressed concern with increased traffic. Mr. Long stated there were certain development issues which were not planning and zoning related, and Redwood had reached out and was working directly with the condo association to resolve those issues. Mr. Long stated the road was not an issue tonight and satisfied the Code and was built in contemplation of the same density use, i.e. the condominium complex that was originally planned as opposed to what was being proposed and the appropriate legal documents, easements, right-of-way, shared maintenance agreements, etc., were in place determining the private rights between the parties.

Mr. Emerson questioned sewer and water issues on the property. John Long stated his firm designed the original development, and it was all fully intended and planned for a very similar stormwater capacity. Mr. Polovich stated originally, an additional 48 condominium units were proposed but 58 apartment units were proposed all being two bedroom/two bathroom, the same as the condominium development proposed. Mr. Polovich stated an

increase in the number of units from what was originally planned was now being proposed. John Long stated 8" in diameter sewers were installed; waterlines were installed that were adequate for fire protection. Engineering Department review would be needed before the plans were officially approved and constructed, and the engineering department would address any issues it felt were needed.

Donna Reed, 1044 Patrick Place, stated she did not understand why the number of units could not be reduced in order to meet the open space requirements negating the need for a variance. Ms. Reed stated she was not opposed to the parcel being development, but she felt it would be in everyone's best interest to have the required amount of open space.

Mr. Emerson questioned what the development would look like not requiring a variance. Mr. Long stated the current layout was based on utilizing existing utilities, so to reconfigure the development, there would be obvious costs of removing/moving the utilities which went into what return needed to be achieved in order for the project to be viable. Mr. Long stated the economics were contemplated for the best possible development. Mr. Long indicated building had been down for a substantial amount of time, and the project would provide much needed housing to the community. John Long stated from the standpoint of the type of project, the existing utilities which were in place and the topography of the land, the proposed layout was the best use of the land. Mr. Conwill stated they looked at many variables when laying out the proposed development. Mr. Conwill stated a zoning change to the open space requirement had occurred (in 2007), and to develop the property as it was once proposed would have been a challenge. Mr. Conwill stated the plan before the Board differed from the initial plan for the land in that the buildings had been reconfigured which allowed them to get "a couple more units". Mr. Conwill stated they would not be changing the impervious area of the project. Mr. Conwill stated knowing that they would not have the required amount of open space, they looked at providing a recreational use (walking trail) to meet the spirit of the open space requirement. Mr. Conwill noted that the walking trail encompassed nearly 7 acres to give the residents true recreation. Mr. Conwill further noted that they still had open space—right down the center of the property in addition to the walking trail. Mr. Conwill stated they were asking the Board to give them credit for the walking trail that they had provided towards meeting the open space requirement.

Ms. Reed questioned plantings on the property. John Long stated a portion of the open space would affect the landscape plan and would be taken into account.

Mr. Emerson questioned if Staff had been in contact with other residents in the area. Mr. Dutton stated no.

Doug MacMillan moved, Pat Zoller seconded, to enter into Executive Session. Motion carried by a 4-0 vote.

Doug MacMillan moved, Clinton Sanders seconded, to enter back into the public portion of the meeting. Motion carried.

Mr. Emerson questioned if there were no utilities on the site and new utilities had to be installed, if the property would be a good financial investment for Redwood. Mr. Long stated the issue was not just limited to the existing utilities—it was also the configuration of the lot. The lot was fairly narrow for this type of development and was awkwardly cut between several other developments. Mr. Emerson questioned how this lot was uniquely shaped in comparison to other lots. Chris Conwill stated not only were the utilities in place, but the road was also in place. Mr. Conwill stated the development was a slight reconfiguration from what was original proposed on the property in question. Mr. Conwill stated the previous development was comprised of a square building surrounded by concrete, whereas in the proposed development, the plan included a road with a roadway in between units. Mr. Conwill stated the development in question essentially conformed to what had already been approved for the property and merely the buildings were configured differently which netted them “a few more units” from what was originally intended for the property. Mr. Emerson questioned how many units were proposed. Mr. Conwill stated 58. Mr. Emerson questioned how many units were planned with the original development. Mr. Conwill stated he believed it was a 52 unit complex. Mr. Long indicated under the R-4 density requirement of the Zoning Code, the proposal before the Board was less than what was permitted. Mr. Conwill stated under the Code, 15 units per acre would be permitted; the proposal was for 8 units per acre.

Mr. Emerson questioned where the patios were on the layout of each individual unit. John Long indicated the patios were to the rear of each unit; there would be a grass area around each of the patios. Mr. Long indicated there would be a concrete stoop to the front of each unit.

Mr. Emerson noted that it was stated that the original design would not meet the current Code. John Long stated that was correct. Mr. Emerson questioned if the original design met the previous Code (prior to 2007). John Long indicated it did.

Pat Zoller moved, Doug MacMillan seconded, to grant the request of Alan and Laurie Ratliff for area variances from Planning and Zoning Code Section 1135.08(h)(6) to allow for open space less than 50 ft. in width and to Section 1135.08(h)(8) to include setbacks areas, patios and similar private space, and area within 15 ft. of buildings in the open space calculation for property on Mindy Lane near Mechanicsburg Road in an R-4 (Multi-Family) District.

Ms. Zoller voted yes, but stated she hoped the Board was not setting a precedent with others who may come before the Board with respect to changes to the open space requirements.

Mr. Sanders voted yes.

Mr. MacMillan voted yes. Mr. MacMillan stated he liked the idea of the walkway around the development. Mr. MacMillan noted the development was originally platted under the Code which existed at that time and noted the lot was oddly shaped/rectangular. Mr. MacMillan also indicated he liked that the development would be comprised of half of the units that would be allowed which showed that the developer was making an attempt at meeting the open space requirement.

Mr. Emerson voted yes. Mr. Emerson stated based on how the amount of open space related to the allowable density of the R-4 District, he felt the applicant did not simply ask for the variance without first putting forth an effort. Mr. Emerson stated he felt the additional use of the setback area to provide more open space illustrated that the applicant had met enough of the criteria.

Motion carried by a 4-0 vote.

Mr. Polovich stated he felt the Board made a serious error and that the repercussions were real and would affect eight homeowners and citizens of the community. Mr. Emerson stated comments were considered and the Board could only address the open space requirement and not that of utilities or use or structure of the road. Mr. MacMillan stated the only item before the Board was the open space and that the other concerns, such as water runoff which were mentioned, needed to be addressed by the City and developer. Mr. Dutton noted that the City Engineering Staff was reviewing the development for compliance.

- C. Appeal #2013-6. Kathy Bressi** is requesting area variances from Planning and Zoning Code Section 1133.03(c)(4) to allow lot coverage exceeding the maximum in an R-1 (Suburban Single Family) District and Section 1133.04(e)(1)(B) to allow a structure within the required corner side setback at 124 Cannon Drive.

Kathy and Bob Bressi, 124 Cannon Drive, were present. Mr. Bressi stated they wished to construct a garage which would be attached to their current garage. Ms. Bressi stated lot coverage and setback variances were being requested. Ms. Bressi noted that their lot was a corner lot and indicated that their neighbors had covered 44% of their lot which was done prior to the 2007 Zoning Code change. Ms. Bressi stated a side setback of 25' was required. Ms. Bressi noted that the front of their home faced Burbank Road, but their driveway came off of Cannon Drive. Ms. Bressi stated they would construct a concrete pad as well. Ms. Bressi noted they would be 25' from Burbank Road, but would not meet the setback off of Cannon Drive. Ms. Bressi stated when the home was constructed, it was a bit skewed on the lot.

Mr. Emerson questioned the distance the existing garage was from the property line. Ms. Bressi stated it was 25'; the Zoning Code required the garage addition to be 31' from the property line. Mr. Emerson noted that in order to meet the 31' setback, the garage would

have to be moved into the front of the house and would not be flush with the front of the home. Ms. Bressi stated that was correct.

Ms. Bressi stated they also wished to increase the size of the existing porch and enclose it. Ms. Bressi stated moving the proposed garage addition 10' to meet the setback would mean that their living room window would be hidden. Ms. Bressi stated they wished to maintain the existing setback that was established when the home was built. Mr. Emerson questioned if the addition would meet the Code which existed prior to 2007. Mr. Dutton stated no. Mr. Emerson questioned if the house, as constructed, met the old Code. Mr. Dutton stated yes. Mr. MacMillan asked how long they had lived at their residence. Mr. Bressi stated since 1996; the home was constructed in 1993.

Ms. Bressi stated the lot coverage would be exceeded by 5-7%. Mr. MacMillan asked the Bressi's if they had approached others in the neighborhood about the proposed variances. Ms. Bressi stated she discussed it with one of their neighbors, and she did not express concern. Mr. MacMillan noted that where the garage was proposed, it would be further away from the neighbors. Ms. Bressi stated that was correct, and also noted they were at the end of the street. Mr. Bressi noted that there were large, pine trees on the property and felt the addition would look nice.

Mr. MacMillan questioned whether staff had received any comments from neighbors. Mr. Dutton stated he did receive one call, but that the person thought it had something to do with a fence which was not the case.

Mr. Emerson questioned why this was the minimum necessary to make reasonable use of the land and structure. Mr. Bressi stated they currently had two vehicles and three motorcycles, and they needed additional storage space. Ms. Bressi stated one of the motorcycles was currently housed inside the home.

Mr. Emerson stated essentially, the Bressi's were 1,500-sq. ft. over the allowable, covered impervious area. Mr. Emerson questioned if, under the Code in place prior to 2007, variances would be needed. Ms. Bressi stated she did not feel they would have met the coverage regulations previously in place, and they likely would have needed a variance of 1' for the setback. Ms. Bressi noted that the prior Code did not include concrete pads or driveways in coverage calculations. Mr. Dutton stated driveways, patios and swimming pools were not used in calculating coverage prior to the 2007 Zoning Code.

Doug MacMillan moved, Pat Zoller seconded, to grant the request of Kathy Bressi for an area variance from Planning and Zoning Code Section 1133.04(e)(1)(B) to allow a structure within the required corner side setback at 124 Cannon Drive in an R-1 (Suburban Single Family) District.

Motion carried by a 4-0 vote.

Pat Zoller moved, Doug MacMillan seconded, to grant the request of Kathy Bressi of an area variance from Planning and Zoning Code Section 1133.03(c)(4) to allow lot coverage exceeding the maximum in an R-1 (Suburban Single Family) District at 124 Cannon Drive.

Doug MacMillan voted yes. Mr. MacMillan stated the Bressi's had live at the home for a long time and indicated the variance request was only for 5%. Mr. MacMillan noted that granting the variance would not be problematic for the neighborhood and would not be an eyesore.

Pat Zoller voted yes for the reasons cited by Mr. MacMillan.

Mr. Sanders voted yes.

Mr. Emerson voted yes. Mr. Emerson stated he felt the spirit of the Zoning Code was observed, and that the essential character of the neighborhood would not be substantially altered. Mr. Emerson stated he saw no negative effects to approving the variance.

Motion carried by a 4-0 vote.

Meeting adjourned at 7:33 p.m.

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**Tate Emerson, Chairman**

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**Laurie Hart, Administrative Assistant**