



COUNTY OF PRINCE WILLIAM

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STAFF REPORT

Appeals Case #APP2006-00020, Sanford and Barbara Kreisler
Board of Zoning Appeals Public Hearing Date: April 24, 2006
Continued from March 27, 2006

REQUEST

This is an appeal of a Violation Notice and Correction Order ("VNCO") for the construction of a dwelling foundation located within front yard setbacks at 2900 Martin Terrace. The VNCO was issued on December 13, 2005, and received by the appellant on December 28, 2005. (Exhibit 2). The appeal was filed on January 27, 2006. (Exhibit 1).

The Appellant contends that the violation in the VNCO is unfounded because he received a letter from the Zoning Administrator dated, June 1, 1999, (Exhibit 3) stating that an "Encroachment of seven (7) feet for unroofed or roofed accessory additions is permitted for the thirty-five (35) foot right-of-way setback area" and concludes with "Therefore, the setback for all accessory additions for the yards abutting the streets is 28 feet..." The appellant has an approved lot grading plan from 1999 (LGR2000-00104) that shows the proposed dwelling in compliance with both the zoning ordinance and the above determination from the Zoning Administrator. The required front yard setback is thirty-five (35) feet in the A-1 Zoning District. The appellant was erroneously under the impression that he could build the dwelling as close as twenty (20) feet from the front lot line, based on a copy of the lot grading plan showing the appropriate building restriction line and required setback lines signed by the zoning administrator and dated June 7, 1999, (Exhibit 4). The Zoning Administrator's determination and map were intended to indicate that, with a covered porch, the appellant could encroach up to seven (7) feet into the front yard (or 28 feet from the front property line), as per the Zoning Ordinance in effect in 1999. In placing the foundation for the dwelling, including the foundation for the covered porch, the appellant actually constructed the foundation approximately 25 feet from the front property line. The current foundation for the dwelling appears to be in accordance with an unapproved lot grading plan submitted to the County on October 3, 2005.

SITE AND AREA CHARACTERISTICS

The property is located at 2900 Martin Terrace, (GPIN 7101-80-4546), is zoned A-1, Agricultural, and totals approximately 0.635 acres. The property is located south of the Y intersection of Martin Terrace and Rodgers Terrace. Martin Terrace is considered a private road. The property is semi rectangular in shape and contains sloping terrain which runs higher along the west side parallel to Rodgers Terrace and slopes down towards the east parallel to Martin Terrace. The majority of the site contains mature trees except for the areas which have been cleared in order to locate the dwelling foundation and septic field. The surrounding properties are also zoned A-1, Agricultural.

STAFF ANALYSIS

BACKGROUND

The subject property is located in the Bull Run Mountain subdivision and legally described as being Lot 71 of section 15. The property has had several approved lot grading plans in the past. The most recent approved lot grading plan (LGR1999-02697) was approved on June 23, 1999. (Exhibit 4). The 1999 approved grading plan showed a thirty-five (35) foot building restriction line and the proposed dwelling to be located appropriately behind the building restriction line. In addition, the appellant received at that time a zoning approval for the desired encroachment of the covered porch into the 35-foot front setback requirement (Exhibit 5). A subsequent lot grading plan (LGR2006-00231) was submitted on October 3, 2005, depicting an approximately 10 (ten) foot encroachment of the front porch. As depicted on the current pending lot grading plan, the dwelling and front porch would be located approximately 20 feet from the front property line. The pending lot grading plan is attached as Exhibit 6. The Department of Public Works' Watershed Management Branch reviewed the pending grading plan and commented that "Building Encroachment in the Building Restriction Line (BRL) as shown on the revised plan is not permitted until specifically approved by the Zoning Office." The plan review summary comment letter is attached as Exhibit 7. Property Code Enforcement inspected the Property and photographed the construction of the foundation encroaching into the required front yard. The photographs of the latest inspection dated November 4, 2005, are attached as Exhibit 8. The inspector issued a VNCO to the property owner for building within the required front yard setback.

The appellant is appealing the Violation Notice & Correction Order (VNCO).

Construction of a dwelling foundation located within building setback requirements

Section 32-301.06 of the Prince William County Zoning Ordinance states:

1. *All buildings, including accessory structures, shall be setback at least thirty-five (35) feet from the front lot line, all streets, and all private access easements or right-of-way.*
2. *The minimum rear setback shall be twenty-five (25) feet.*
3. *The minimum side setback shall be fifteen (15) feet*

As currently constructed, the foundation of the house encroaches by approximately 10 feet into the 35 foot front setback requirement of §32-301.06(1) above. The only lot grading plan applicable to the property was approved on June 23, 1999. Per the Zoning Administrator's determination of June 1, 1999, the Zoning Ordinance, as it existed in 1999, enabled roofed porches to encroach into the 35-foot required yard setback by 7 feet. The 1999 lot grading plan as depicted in Exhibit 5 shows a 30 foot setback between the porch and the front property line. Therefore, the five foot encroachment of the porch into the front setback, as depicted on that plan, was permissible under the 1999 Zoning Ordinance. (With the adoption of the Zoning Text Amendment in 2004 by the Board of County Supervisors, roofed porches are no longer permitted to encroach into the 35 foot front yard setback.)

In this case, the currently constructed foundation does not conform to the current 35-foot setback requirement of §32-301.06(1) above. It is Watershed Division's position that the 1999 lot grading plan is still valid. Therefore, the zoning ordinance standards in effect at that time are applicable. The appellant still fails to conform to the setbacks required in the ordinance in effect in 1999. The 1999 Zoning Ordinance allowed encroachment of up to 28 feet from the front property line, while the current foundation is approximately 25 feet from the front property line.

APPLICANT'S JUSTIFICATION

The applicant's purported justification for an appeal is that the VNCO was issued without consideration of the Zoning Administrator's 1999 determination. That determination permitted encroachment of a roofed porch up to 7 feet into the required front yard setback, as per the setback requirements in the A-1 district as they existed at that time. The applicant also argues that the violation on the Property is not warranted, because of an approved lot grading plan that was issued on June 23, 1999. The appellant believes the June 7, 1999, signature of the zoning administrator along with the description of the building restriction line on the lot grading plan inferred the front of the porch could be 20 feet from the front property line. That is an incorrect inference.

RECOMMENDATION

Deny the appeal and uphold the VNCO due to the unlawful encroachment of the foundation of the proposed single family dwelling into the 35-foot front setback requirement of §32-301.06(1). Moreover, the construction currently underway differs greatly from the 1999 approved lot grading plan and the determination made by the zoning administrator in that same year.

EXHIBITS

- Exhibit 1: Appeal Application, dated, January 27, 2006, and received January 27, 2006
- Exhibit 2: Violation Notice and Correction Order (VNCO), December 13, 2005
- Exhibit 3: Zoning Administrator's Determination, June 1, 1999
- Exhibit 4: Approved Lot Grading Plan, June 23, 1999
- Exhibit 5: Zoning Approval for Front Setback Encroachment, June 23, 1999
- Exhibit 6: Pending grading plan received, October 3, 2005
- Exhibit 7: Plan Review Summary Comment Letter, October 17, 2005
- Exhibit 8: Photos of site work and violation.