

**MINUTES
FARRAGUT BOARD OF ZONING APPEALS**

October 22, 2014

7:00 p.m.

Present: Keith Alley, Corky Ives, Cleve Porter, Louis LaMarche, and Ron Williams

Absent: None

Staff: Mark Shipley, Community Development Director
Tom Hale, Town Attorney

Item 1. Approval of Minutes for the September 24, 2014 meeting

A motion was made by Porter to approve the minutes. The motion was seconded by Alley. Motion passed 5-0.

Ayes: Alley, Ives, LaMarche, Williams, and Porter

Nays: None

Absent: None

Abstaining: None

Item 2. Public hearing on a Public hearing on a request for a rear yard setback variance for the property located at 614 Chapel Point Lane, Zoned R-4 (Edward N. and Vicki F. Atchley, Applicants).

The staff reviewed this item and noted that it involves a request for a rear yard setback variance of almost sixteen (16) feet in association with a covered porch that has already been largely completed without a permit at 614 Chapel Point Lane. As background, the staff indicated that on June 25, 2014 the Town received a citizen request that a porch (roughly 16 feet x 26 feet) was being covered without any approval at 614 Chapel Point Lane. The request was investigated by the codes staff and, since no permit had been applied for, the staff asked that all construction cease until the proper permit was applied for and issued.

The staff noted that the codes officer was concerned that the covered porch was in violation of required setbacks. The owners were asked to provide a survey so this could be accurately determined. Upon receipt of the survey the staff found that the covered porch was encroaching approximately 16 feet into the required 50 foot peripheral building setback associated with the Chapel Point Subdivision and that is required in the R-4 Zoning District.

On July 18, 2014 the staff (Shipley and Price) visited with the applicant to discuss this matter. The staff expressed their disappointment that this had been constructed without any approvals and noted that the contractor should have checked with the Town prior to initiating any construction. As a follow up to the visit, it was expressed in a letter that was sent to the applicant on July 21, 2014 that they would either need to proceed with removing the encroachment or they could apply for a variance.

After sending a follow up reminder letter, the applicant applied for the variance and, as the staff noted, provided a very detailed application which included some arguments which they contend support their variance request. The staff indicated that some key points from the staffs' perspective regarding these arguments were as follows:

- a) **Improvements Made Without a Permit.** Significant construction, that a contractor doing work in the Town of Farragut should know requires a building permit, was completed without a permit. Thus, what has been constructed has not been assessed for compliance with the building code. Had an application been submitted to the Town prior to construction, this issue would have been avoided.
- b) **Reasonable Use.** The property already has a reasonable use. The home has been occupied since 1995. Not permitting a covered porch in a required setback does not lessen any reasonable use of the property. Preference and self-inflicted hardships are not grounds for granting a variance;
- c) **Lot Configuration.** The property owner bought the property knowing the lot configuration and its relationship to the 50 foot peripheral building setback. If a covered porch was ultimately desired, the owner should have selected a different lot where this could be an option in the future. Again, this is a self-inflicted hardship; and
- d) **Fairness.** The applicant mentions that fairness should be a factor in any decision made by the board. The staff indicated that they were in full agreement with this point. To grant a variance for a building that has been constructed without a permit and that is in significant violation of required setbacks (and possibly certain aspects of the building code) would be completely inequitable and in contrast to previous board actions on comparable requests. As the staff noted, this variance is similar to the one that was unanimously denied for the accessory structure at 333 Wardley Road. The staff indicated that the property owner at 333 Wardley Road has, in fact, already removed the portion of their accessory structure that was in violation and has

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obtained a building permit for completing the project in compliance with all Town requirements. The staff mentioned that being “citizen friendly” is an equitable application of the zoning ordinance or any Town requirements.

For all of these reasons the staff strongly recommended that the requested variance be denied. The staff will then work with the applicant on a reasonable time frame for removing the covered porch.

A lengthy discussion ensued. Ed Atchley spoke on behalf of his request for the variance. Jeanie Draughn and John Cobb spoke in favor of the variance request. Board member Porter asked Town Attorney, Tom Hale, to review the board’s legal authority for granting variances. In particular, the McClurkan vs. Board of Zoning Appeals case was reviewed where the courts affirmed that a variance was not authorized for a structure which was created or altered in violation of the zoning ordinance.

After some additional discussion a motion was made by Alley to deny the variance request for the reasons outlined by staff which included the failure to follow procedures and ordinances in place that would have avoided this issue and the lack of authority in TCA to grant a variance in this case. Motion was seconded by Williams. Motion passed unanimously.

Ayes:	Alley, LaMarche, Ives, Williams, and Porter
Nays:	None
Absent:	None
Abstaining:	None

Meeting adjourned at 8:02 p.m.

Louis LaMarche, Secretary

