

The Madison County Board of Zoning Appeals met on the above date at 9:00 A.M. with, Mary Jane Baker, Chairman, presiding.

Members Present: Mary Jane Baker, John Simmermon, Bill Hobbs, Bill Maxwell, and Rick Durham.

Members Absent: None

Also Present: Ken Ellis, Planning Director, Gerald Shine, Jr., Attorney, and Elizabeth Bruns, Board Secretary.

**CURRENT BUSINESS**

1. Pledge of Allegiance
2. Prayer
3. Roll call taken with all members being present.
4. The minutes for May 24, 2011, were mailed to each member prior to this meeting. Member Simmermon made a motion, seconded by Member Maxwell, to approve the minutes as presented. Vote was unanimous in favor of the motion.

**NEW BUSINESS**

1. Petition: 2011-V-006 Variance Zoning: CR  
Address: 4712 West 400 South  
Location: NE Corner of 475 West and 400 South  
Petitioner: JTB Partnership  
Request: Variance for relief of non-conforming structures.

Director Ellis read the Staff Report, with the following Findings of Fact and Staff Recommendations.

**Findings of Fact:**

1. *Would the approval be injurious to the public health, safety, morals, and general welfare of the community? Without the proposed voluntary commitment agreement or similar protections in favor of Madison County, it is not in the public interest to allow the expansion of nonconforming structures in any platted right-of-way. Every dwelling in this neighborhood is similarly affected under a right-of-way take. To protect the general public and scarce public funds, the variance requires a property owner commitment to no future building that encroaches within the 100-foot front*

- building line, except the existing 1,178 (SF) square foot footprint of the house and 576 square foot attached garage will be legally established with the front elevation maintained as it exists today. It is in the public's best interest to restrict new construction from breaking the plane of the front elevations of the subject dwelling. There are no public health, safety, or welfare issues if expansion of the dwelling is only allowed on the rear articulated. If eminent domain action were to proceed, the fair market appraisal would be for the existing 1,754 square foot first story footprint and excludes any new construction. The Madison County Health Department reported they have no knowledge of leech field problems or septic failure. New bedrooms would require Madison County Health Department approval.
2. *Would the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?* The front yard remains as is; compatible with structures in the neighborhood. New construction is allowed in-line or behind the existing front and rear dwelling elevations. All new structural improvements will not exceed 1.5 times the minimum square foot living area (including the garage) for the Conservation Residential (CR) zone district up to 2250 square feet (1500 SF x 1.5) which increases the dwelling's assessed value and complements the appearance of immediate neighborhood and adjacent lots. If the expansion is constructed as presented under the proposed commitment agreement, there will be no negative impact on the adjacent lots or immediate neighborhood.
  3. *Would the strict application of the terms of the zoning ordinance result in a practical difficulty in the permitted use of the property?* This situation is self-imposed. The proposed administrative plat creates legally nonconforming structures subject to current nonconforming codes and the 100-foot front yard setback (building line). The existing dwelling cannot be reasonably made conforming because of the limitations put on it by the Madison County Thoroughfare Plan and CR zoning requirements. The front building line is not reduced but maintained and the essential character of the neighborhood remains rural residential. The county is protected from increased expense and litigation in a right-of-way taking because the appraiser's report will be confined to examination of the fair market value of the 1899 dwelling occupying the original 1,754 square foot first story footprint and encroaching accessory building at the 2011 assessed value. The granting is a win-win situation.

**Staff Recommendation:**

**Grant Variance 2011-V-006 as presented, adopt BZA staff findings of fact as your own, and accept the petitioner's voluntary commitment agreement, effective and binding, to be signed and duly recorded.**

Keith Van Wienen with Precise Land Surveying is representing the petitioners.

Discussion held between Mr. Van Wienen and Board Members regarding lot size, septic area, intent of single family dwelling, and assessed value agreement.

**Motion:** Member Maxwell made a motion to approve petition 2011-V-006 per the findings of facts and staff recommendations set before us today, and the recording of an agreement

establishing assessed value as of this date, by the property owners. Member Simmermon seconded the motion. Vote was unanimous in favor of the motion. **Petition 2011-V-006 Approved with recorded agreement.**

**MISCELLANEOUS**

**Nothing presented.**

Chairman Baker moved to adjourn the meeting.

Adjournment: 9:24:07 A.M.

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Mary Jane Baker, Chairman

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Elizabeth Bruns, Secretary