



# Town of Vienna

127 Center Street South  
Vienna, Virginia 22180  
p: 703.255.6341  
TTY 7111

## Meeting Minutes Board of Zoning Appeals

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Wednesday, July 18, 2018

8:00 PM

COUNCIL CHAMBERS-VIENNA TOWN  
HALL

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### 1. Roll Call

The Board of Zoning Appeals (BZA) held one advertised public hearing in the Council Room of the Vienna Town Hall, located at 127 Center Street, South, Vienna, Virginia, on July 18, 2018, beginning at 8:00 PM with Michael Gadell presiding as Chair. The following members were present: Robert Dowler, Bill Daly, Gregory Haight, Robert Petersen, and George Creed. Also attending and representing staff were Frank Simeck, CZA, Senior Zoning Inspector and Sharmaine Abaid, Board Clerk.

Mr. Gadell called the meeting to order and began by reviewing the purview of the Board of Zoning Appeals.

### 2. Public Hearings

610 Kearney Ct SW - Variance - Case No. BZA-36-18

Request for approval of a variance from Section 18-24.F of the Vienna Town Code in order to construct a new screened in porch in excess of the maximum permitted lot coverage on the property located at 610 Kearney Ct, SW; in the RS-12.5, Single-Family Detached Residential zone. Application filed by Elina & Alexander Xanttopoulos, owners.

Alexander Xanttopoulos is a member of the Virginia State Bar.

Elina Xanttopoulos was sworn in to speak.

Mr. Xanttopoulos began by thanking the board for hearing their request of seeking an additional 1.93% additional variance for their property at 610 Kearney Ct SW. Mr. Xanttopoulos approximated that the variance would be 204 feet making it possible for them to construct a screened in porch on their existing deck. He continued by telling the board that they had moved into Vienna a year earlier, work locally, and have a daughter. Mr. Xanttopoulos also stated they had grown up nearby in Oakton. Mr. Xanttopoulos explained that they were not aware of a storm drain easement on their property until after they had purchased the home and a survey had been completed. The storm drain sits approximately thirty feet from the deck. The slope of the backyard forces the water run-off from the four adjoining properties to flow to that storm drain. Mr. Xanttopoulos expressed his understanding of Virginia Code Section 15.2-2201 regarding variances. He continued explaining that they were unaware that the easement and storm drain would create an issue. Mr. Xanttopoulos presented to the board pictures showing how the property had been staged to cover the storm drain when they purchased. In the spring, they found that the water run-off from their property and the neighboring properties created massive pooling, standing water, and mud. The Xanttopoulos's had installed French Drains, a drainage swell, and hired a pest and mosquito company (spraying double the recommended amount) to try to alleviate the issue, but it had not worked. The hardship that they are suggesting, per VA Code Section 15.2-2201, is that their back yard is unusable due to the

amount of bugs and mosquitos from the standing water and pooling. Mr. Xantopoulos stated the existing deck was the only flat surface, but the bugs are so bad it prevents them from using the space. He reiterated that they had tried to address it by installing the French Drain, and the catch basin, but it did not work. They realized that a screened in porch was the only solution and then found out lot coverage would be a problem the Xantopoulos's had discussed the issue of grading with Mr. Simeck. Mr. Xantopolous said that Mr. Simeck encouraged them to have a soil and structure grading company come to their property to see if grading would fix the issue. A soil and structure report, include in the board members packets, found that there were grading issues from neighboring properties making it apparent that the water ponds. In addition, the area around the rear property line suffers periodic saturation, lending itself for additional pests and mosquitos. Mr. Xantopolous stated their property was unique to the neighborhood because it was the only property with a sewage drain and it was different from other properties throughout the township because the grading and the location of the storm drain to their property. Mr. Xantopolous said that re-grading would not fix the issue of the pooling of water due to the storm drain being thirty feet from the property and the other four properties storm water funneling to their space. He wanted a few items from the report to be highlighted. First, that their property is not just unique to the neighborhood, but also to all the properties in the township. Second, everything they had done to address the issues had been unsuccessful making the backyard unusable. Mr. Xantopoulos stated the Town of Vienna water quality engineer had gone to their residence to verify the drain was working and found that it was. He continued saying the issue wasn't the drain, but the grading of the property, the way the adjoining properties funnel into their space, and the location of the drain to their deck. Mr. Xantopoulos stated he knew they needed to show that the granting of the variance would not be substantially detrimental to the adjoining or adjacent properties. He said the four adjoining properties have all signed statements that they consent to approval of the variance and that there would be no issue of sight lines from the front of the property since the porch is in the back.

Mr. Creed voiced his concern about the drainage issue and easement. Mr. Creed stated that it is up to the town to maintain the easement and expressed that public works should go take a look at the drain and if it is creating issues then the town needs to fix the problem. Mr. Creed then asked Mr. Simeck if he could give direction regarding the easement.

Mr. Simeck stated that Christine Horner, the water quality engineer, had gone out to the property to inspect the storm drain after a rain and found that it was working properly. She had submitted a memo to the Department of Planning and Zoning which stated her findings and had pictures attached. Mr. Xantopoulos explained that they were not stating that the storm drain did not work, but that the grading of the adjoining properties is what is causing the issue. Mr. Creed said that he understood, but that it was in the easement and the Xantopoulos's do not own the easement so they have to allow the town to go into their property to maintain the storm drain. Mr. Creed conveyed that his opinion was that the town needed to go out and fix the drainage problem.

Mr. Xantopoulos stated that what Mr. Creed said might be correct, but that what they were trying to do was to utilize their backyard. He continued restating that everything they had done to try to fix the drainage problem has been unsuccessful causing a hardship in utilizing the backyard. Mr. Xantopoulos explained that the condition of the property was not generally reoccurring in nature to make a general regulation adopted as part of an amendment to the ordinance. As stated in their soil and structure report their property is unique. He indicated there were no other options available as the property was already at 25% and the reports say 25.6%, which is how it was purchased. The only possible solutions would be to tear down the garage or driveway, which still may not allow them to

stay within the 25%. Mr. Xantopoulos stated what they proposed is within the setbacks; they would be installing rain barrels in attempts to control some of the rainwater run-off. He explained to the board that they would like the variance for the 204 square feet granted so their daughter can enjoy spending time in the back yard as they currently are not comfortable letting her in the back yard due to the mosquitos. Mr. Xantopoulos said he understood the policy to keep the permeated surface to a minimum, which is why they would be installing rain barrels. The last thing he expressed was that their small cul-de-sac, with fourteen homes, six of the homes have screened in porches. He said they were also trying to conform to the township and build what the six neighbors have as well as utilizing the backyard.

Mr. Dowler asked if the current deck exceeded lot coverage and Mr. Xantopoulos said no. He then asked if the proposed screen porch would be in the same deck footprint. Mr. Xantopoulos stated it would be, they would be coming into the property 2 feet, and they would not be putting it over the entirety of the deck, but only about half of the deck. Mr. Dowler asked if it exceeded lot coverage because it was a structure, which is different from a deck; Mr. Xantopoulos stated that was correct. Mr. Dowler asked when water accumulates on their property how often it was, how much, and where did it accumulate. Mr. Xantopoulos stated they had pictures showing it accumulated on all four corners at the back of the property or the rim of the property. He then explained that their property was on a hill and that the water accumulated on all the outlying areas of the property. Mr. Xantopoulos used the illustration of a bowl to describe their property and that all the neighbor properties funnel down and the drain is only in one corner of the property so the water saturates and sits in the back of the property. Mr. Dowler asked if it was standing water. Mr. Xantopoulos stated it depended on the amount of rain. He also expressed that the catch basin can keep away standing water, but the soil remains saturated for an extended amount of time since the adjoining properties water is funneling on to their property. Mr. Dowler asked if the town representative had come shortly after a rain event. Mrs. Xantopoulos stated the morning before the water quality engineer had come out there had been rain and the ground was saturated. She said the engineer and her associate had inspected the storm drain and taken pictures of the area, but had made no comments of the ground saturation, as she was there to inspect the drain. Mr. Xantopoulos said that a property behind them does not have grass, which causes additional water run off since there was no grass to pick up the water.

Mr. Gadell asked if there were any other questions.

Mr. Creed asked why the town is recommending that the variance not be granted. Mr. Simeck stated they were supporting the findings of the water quality engineer. He also stated he had met with the Xantopoulos's to come up with a solution to fit the screened in porch to meet the code. Mr. Simeck mentioned that they could possible shift their carport up by the BRL giving a little footage and take away some of the driveway to be able to meet lot coverage. Mr. Creed asked if the Xantopoulos's would be expected to spend additional money to remove a garage to pick up about 2% in lot coverage. Mr. Simeck stated it was an effort to follow the code.

Mr. Dowler asked if it was around .69%. Mr. Simeck stated that it was currently over. Mr. Dowler asked how it could be currently over if the porch had not been built. Then he asked if Mr. Simeck was saying the deck was over. Mr. Simeck stated that decks have their own 5% lot coverage, but that if they built the covered screened porch they would 2.62% over lot coverage. Mr. Dowler stated the deck was not over, but putting the porch on top of the deck would cause it to be over because the coverage is computed differently. Mr. Dowler asked if it was 27% and Mr. Xantopoulos stated it was 27.6%.

Mr. Gadell asked if there were no further question was there a motion to close the hearing for the first agenda item. Mr. Dowler made the motion and Mr. Creed seconded the motion.

505 Princess Ct SW - Variance - Case No. BZA-37-18

Request for approval of a variance from Section 18-24.C of the Vienna Town Code in order to convert an existing carport into a garage, expand roofline over main house and replace the existing stoop with a new covered porch; all of which encroach into the front Building Restriction Line (BRL). Property located at 505 Princess Court, SW, in the RS-12.5, Single-Family Detached Residential zoning district. Application filed by Rick Moyssiadis, agent for Mursch & Rico, LLC, owners.

Richard Moyssiadis was sworn in to give his testimony.

Mr. Moyssiadis stated he was applying for the variance due to the front property line follows the line of the cul-de-sac on the 30 foot BRL (building restriction line). He believes the house, in its current condition, three bedrooms with one bath upstairs, is out dated for today's family. The company would like to make the house four bedrooms, two baths, a large living area, and a two-car garage. The current carport currently encroaches the BRL with a variance granted in 1969. Mr. Moyssiadis said they were requesting to close the carport in and raise the roof of the existing house that is encroaching in the BRL. The front porch they proposed to build would only encroach six square feet more than it currently does. Mr. Moyssiadis spoke on the impact to the neighbors stating the height of the home would be twelve feet lower than the allowable height and 6 ½ feet taller than the existing house currently. They would not be exceeding the lot coverage as it is currently on a large lot. Mr. Moyssiadis stated they have worked on a few homes in the town and their experience was that the neighbors were very supportive renovating the property rather than tearing down which is the reason for the variance.

Mr. Petersen stated the issue he saw with the proposal was for the addition of a covered front porch, which would not be in the current footprint of the building. Mr. Petersen asked if enclosing the carport and adding the height to the home remains within the current footprint, Mr. Moyssiadis stated that was correct. Mr. Petersen said the issue is simply the covered porch. Mr. Moyssiadis stated the covered porch is the only item that would encroach that doesn't encroach already, but his understanding was that since they would be changing what was currently there they would still need a variance. He continued stating it would only be an additional six square feet on the front porch. Mr. Petersen asked that with the proposed changes how important it would be to have the covered front porch. What if the board looked at the request and agreed to enclose the carport and increase in height, but not agree to add a covered porch. Mr. Petersen then asked what the impact would be for Mr. Moyssiadis and the proposed changes. Mr. Moyssiadis stated it would be cosmetic in efforts to conform to the look of the town as well as neighboring houses.

Mr. Creed indicated that, looking at the BRL at the right front corner of the house, gives the appearance that the house would not be able to be built in that location today. He then asked if his summation of the property was true, Mr. Moyssiadis stated that was correct. Mr. Creed then asked if the irregular shape of the lot was creating the problem, Mr. Moyssiadis said that was true. Mr. Creed asked if the same line that fits the right front corner of the house is the same line that would cut through the front porch and Mr. Moyssiadis said it was.

Mr. Gadell asked for any other questions and then asked for a motion to close the public hearing. Mr. Daly made a motion to close the public hearing. Mr. Creed seconded the

motion.

### **3. Regular Meeting - The Board will reach a decision on the above-listed agenda items at the conclusion of the scheduled public hearing**

The Board of Zoning Appeals (BZA) met in regular session to review one advertised public hearing in the Council Room of the Vienna Town Hall, located at 127 Center Street, South, Vienna, Virginia, on May 22, 2018, beginning at 8:00 PM with Michael Gadell presiding as Chair. The following members were present: Robert Dowler, Bill Daly, Gregory Haight, Robert Petersen, and George Creed. Also attending and representing staff were Frank Simeck, CZA, Senior Zoning Inspector and Sharmaine Abaied, Board Clerk.

#### **Item No. 1**

Request for approval of a variance from Section 18-24.F of the Vienna Town Code in order to construct a new screened in porch in excess of the maximum permitted lot coverage on the property located at 610 Kearney Ct, SW; in the RS-12.5, Single-Family Detached Residential zone. Application filed by Elina & Alexander Xanttopoulos, owners.

Mr. Dowler made a motion that request for approval of a variance from Section 18-24.F of the Vienna Town Code in order to construct a new screened in porch in excess of the maximum permitted lot coverage on the property located at 610 Kearney Ct, SW be granted.

Mr. Creed seconded the motion

Mr. Dowler stated it was more than an issue of lot coverage in excess of limitations. He felt there were other factors that support the application. First, the typography of the property, described as going into an area where water accumulates, causing more than a nuisance due to it causing mud, water, and other problems. Second, the easement effects the shape of the lot making it unusual with an unusual easement contributing to the legitimacy of their request for excess lot coverage. Mr. Dowler stated that the solution the applicant was asking for was de minimis as they were only asking for 2% over the town code. Mr. Dowler said that with all those things considered it was a reasonable solution to that problem.

Mr. Creed agreed with Mr. Dowler's assessment, also expressing his concern about the easement. He felt the town should make sure the water flows directly into the storm sewer. Mr. Creed continued requesting the planning and zoning department construct a letter to the public works department in reference to the water run-off. Mr. Gadell asked if that was in the purview of the board to request the letter. Mr. Dowler stated the answer from the town, in the memo, was that there was no issue with the easement therefore the town would not do anything about it. Mr. Dowler stated they can grant the variance for the lot coverage, but they could not go beyond the variance. The board does not have control over what the town does and cannot recommend that the town go out and do something with the property. Mr. Creed stated that it had been done in the past around Moore Street between 3-5 years earlier. Mr. Petersen asked if the issue of the letter to the town officials regarding changes in the grading be kept separate from the motion to approve or disapprove the variance request.

Motion: Dowler

Second: Creed

Passed: 6-0

Mr. Creed asked that the board make a recommendation to the Department of Planning and Zoning to request the Department of Public Works prepare an analysis of the property along the easement to ensure the water is flowing properly to the storm drain. Mr. Gadell stated that it had been entered into the meeting minutes and asked Mr. Creed if he would like it taken a step further. Mr. Simeck stated that a recommendation would need to come from the board itself because the memo from the water quality engineer states that the storm drain is functioning properly. Mr. Simeck continued by stating, if the board did not agree with the report they would have to take it upon themselves to request the Department of Public Works process and analysis of the property. Mr. Creed asked to go on record stating water was not draining off the property. Mr. Simeck explained that the towns engineer processed a report that stated otherwise. Mr. Daly said that the variance should solve the Xantopoulos's problem and if they did believe the drainage was not working they could make a complaint to the town. Mr. Daly stated that the report indicates the drain is working, but perhaps the initial grading was not what it should have been. The concern of the drainage, and what is in the easement, is immaterial to the existing problem and the correction would require extensive grading. What exists now, along with the variance, will take care of the problem. Mr. Dowler stated the easement was only a small portion of the property and the town has no right or interest in the grading. Mr. Simeck stated the only time the town would do something within an easement is if a pipe sticks out, fails, any cause of depression, pooled water, and maintenance of the easement. The town will not go in and regrade a yard due to ponding. If the piping is functioning properly then the town has done its due diligence. Mr. Gadell stated there was not enough information before the board due to the other homes flooding into the home as well. Mr. Creed mentioned that on Audrey's Court, there was drainage problems years ago, that had been rectified by the town.

#### Item No. 2

Request for approval of a variance from Section 18-24.C of the Vienna Town Code in order to convert an existing carport into a garage, expand roofline over main house and replace the existing stoop with a new covered porch; all of which encroach into the front Building Restriction Line (BRL). Property located at 505 Princess Court, SW, in the RS-12.5, Single-Family Detached Residential zoning district. Application filed by Rick Moyssiadis, agent for Mursch & Rico, LLC, owners.

Mr. Dowler made a motion that request for approval of a variance from Section 18-24.C of the Vienna Town Code in order to enclose the carport and reconstruction of the front of the house beyond the front setback on property located at 505 Princess Court, SW, be granted.

Mr. Creed seconded the motion.

Mr. Dowler explained that the unusual lot shape, the building envelope consists of diagonal and curved lines. The existing house was already situated within those lines and the only way to effect improvements is to allow it to exceed the front lot setback.

Mr. Petersen stated he was planning to oppose the motion. He explained that not permitting the construction of a covered porch would unreasonably restrict the utilization of the property. There is no issue with the other two parts of the request, increasing the height and enclosing the carport, remaining within the current footprint. Adding to the footprint is problematic which Mr. Petersen stated he was unable to support the motion. Mr. Dowler explained that 1/3 of the front porch can be built by right and that a small

portion is in need of a variance. With consideration of the whole structure, the request did not appear unreasonable.

Motion: Dowler  
Second: Haight  
Opposed: Petersen  
Passed: 5-1

#### 4. Approval of the Minutes

Mr. Gadell asked if there was a motion to approve the meeting minutes from May 22, 2018

Mr. Creed mentioned that he had two questions. One was regarding the mention of letters from neighbors in the minutes. He had asked if they had been admitted into the record and questioned why they had not been read into the record. Mr. Gadell asked if they could be added. Mr. Creed stated it was too late, but going forward letters should be made matter of record. The other item was a specific paragraph. The clerk stated it was the paragraph after the motion had been seconded regarding different plats and schematics. Mr. Creed stated the conversation was not as he remembered so he would give language to the clerk to correct that paragraph to amend the minutes.

Mr. Gadell asked for any other amendments to the meeting minutes and then asked for a vote for the amended minutes. There was some discussion regarding who was present for the May BZA meeting.

Motion: Petersen  
Second: Haight  
Passed: 6-0

#### 5. Meeting Adjournment

Mr. Petersen commented that he appreciated the town for providing digital access for meeting documents. The month flowed very well using the iPad and it is an improvement from using paper in the past. Mr. Petersen expressed his thanks to the town as well as speaking on behalf of the board thanking the town. There was continued discussion regarding use of the iPads.

Mr. Gadell asked for a motion to adjourn the meeting.  
Mr. Daly made a motion to adjourn the meeting

Mr. Dowler seconded the motion

The meeting was adjourned at 8:54 pm.

Respectfully submitted,  
Sharmaine Abaied  
Board Clerk

*THE TOWN OF VIENNA IS COMMITTED TO FULL COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT STANDARDS. TRANSLATION SERVICES, ASSISTANCE OR ACCOMMODATION REQUESTS FROM PERSONS WITH DISABILITIES ARE TO BE REQUESTED NOT LESS THAN 3 WORKING DAYS BEFORE THE DAY OF THE EVENT. PLEASE CALL (703) 255-6341, OR 711 VIRGINIA RELAY SERVICE FOR THE HEARING IMPAIRED.*

#### About the Board of Zoning Appeals

The Board of Zoning Appeals is a quasi-judicial board comprised of seven members – all of whom are residents of the Town of Vienna, VA. The Board serves as an arm of the Fairfax County Circuit Court, as all members are appointed to the Board by the Court after receipt of recommendation from the Vienna Mayor and Town Council.

The Board is empowered by the Code of Virginia to:

1. Hear and decide appeals from any order, requirement, decision or determination of the Zoning Administrator.
2. Grant variances from the Zoning Ordinance – as defined in Section 15.2201 of the Code of Virginia – as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions will unreasonably restrict the utilization of the property to a degree that is not shared generally by other properties within the same zone or district, and its authorization will not be of substantial detriment to adjacent properties or change the character of the neighborhood
3. Hear and decide applications for interpretation of the Zoning District Map when there is any uncertainty as to the location of the boundary line.
4. Grant Conditional Use Permits in accordance with the provisions of Section 18-209 – 216 of the Vienna Town Code.

The Board of Zoning Appeals does not have the power to change the Zoning Ordinance or the rezone property. Those powers rest with the Mayor and Town Council. Please be advised, the Board decides each application on its own merit – there are no precedents.

The Board will first consider each application during the Public Hearing portion of the meeting. As part of the Virginia Court System, the Board of Zoning Appeals takes sworn testimony and each participant will be sworn in prior to offering comments.

The second portion of the meeting – the Regular Meeting – will convene after the Public Hearing has been closed. The Board will reach a decision on each item. The grant of any appeal from a decision by the Town's Zoning Administrator requires an affirmative vote of the majority of the entire membership of the Board. The grant of a Conditional Use Permit or variance requires an affirmative vote of the majority of those present and voting. If you are unable to stay for the last portion of the meeting, you may learn the Board's decision by contacting staff.

If any party is not satisfied with the decision of the Board, an appeal may be filed with the Circuit Court of Fairfax County within 30 days after the issuance of the Board's decision on the matter.