



# STAFF REPORT COVER SHEET

September 16, 2020

<b>Addresses:</b>	604 Beulah Road, NE	<b>Case Number:</b>	BZA-03-20
<b>Public Meeting Date:</b>	9/16/2020	<b>Applicant:</b>	Mr. Vipul Masih & Mrs. Sonia Kannadan
<b>Board/Commission:</b>	Board of Zoning Appeals	<b>Owners:</b>	Mr. Vipul Masih & Mrs. Sonia Kannadan
<b>Existing Zoning:</b>	RS-12.5	<b>Existing Land Use:</b>	Low Density Residential
<b>Brief Summary of Request:</b>	Request for approval of a <b>variance</b> from Section 18-24.F of the Vienna Town Code in order to retain the recently expanded driveway that exceeds the maximum permitted lot coverage on the property located at 604 Beulah Road, NE; in the RS-12.5, Single-Family Detached Residential zone. Application filed by Mr. Vipul Masih & Mrs. Sonia Kannadan, owners.		
<b>Public Notice Requirements:</b>	Code of Virginia section <a href="#">15.2-2204</a> governing body notice of intention guidelines; have been followed for advertisement, posting and written notices requirements. Code requires a representative of governing body file an affidavit; affidavit filed on behalf of the Board Clerk certifying proper mailing notification requirements where made and sent to applicant and adjoining property owners.		
	Advertisement for two successive weeks of meeting in a newspaper having paid general circulation in the Town prior to Board of Zoning Appeals meeting	Advertisement for BZA meeting scheduled September 16, 2020; published on September 2, 2020 and September 9, 2020.	
	Posting of the property at least ten days prior to the public hearing	One sign posted in front of subject property on September 2, 2020 with Board of Zoning Appeals meeting date.	
<b>Brief Analysis</b>			
<b>PROPERTY HISTORY</b>			
The single-family dwelling, constructed in 2007, includes a two-story Hardiplank /brick house; attached two-car garage, covered front stoop, enclosed rear porch, open rear deck with an asphalt driveway. The updated house location survey dated 10-23-2019 revealed that the recently expanded driveway exceeds the allowable lot coverage by 610.5 square feet or 4.33% over the allowed 25%.			
<b>COMPATIBILITY WITH THE ZONING ORDINANCE</b>			
The recently expanded driveway does not comply with lot area coverage requirements and exceeds the Town's 25% maximum lot coverage allowed by Town Code Section §18-24.F, which references section §18-15.F. The applicant is requesting to retain 610.5 square foot or 4.34% increase in lot coverage for the expanded driveway, bringing the total lot coverage of the property to 29.33% or 4.33% over the 25% maximum lot coverage allowed by code.			
<b>Attachments:</b>	BZA Application <input checked="" type="checkbox"/> Justification Statement <input checked="" type="checkbox"/> Variance package <input checked="" type="checkbox"/> Submitted Plats <input checked="" type="checkbox"/> Neighbor Letters <input checked="" type="checkbox"/>		
Author: Frank Simeck, CZA			

ITEMS NO. 1:

Request for approval of a **variance** from Section 18-24.F which references section §18-15.F of the Vienna Town Code in order to retain the recently expanded driveway that exceeds the maximum permitted lot coverage on the property located at 604 Beulah Road, NE; in the RS-12.5, Single-Family Detached Residential zone. Application filed by Mr. Vipul Masih & Mrs. Sonia Kannadan, owners.

***Introductory Comments / Characteristics of the Existing Property:***

This property is located on the northwesterly side of Beulah Road, NE; located between MacArthur Avenue, NE and Sideling Court, NE; on Lot 2 of the John Marshall Property subdivision. The subject property is mostly rectangular shaped and measures 112.94 to 97.13 feet in width and 143.06 to 116.42 feet in depth; with the exception of a small piece of property line that dog-ears left and measures 30.33 feet in length, for a total land area of 14,070 square feet.

A review of the Town's records reveals a newly built home in 2007 and the accompanying House Location Plat prepared by Land Design Consultants dated 10/16/2007 reflects a lot coverage calculation of 23.3% or 3,268 square feet of the total 14,070 square foot lot. This 2007 lot coverage calculation includes the house, front stoop and incorporates a small turnout asphalt driveway.

An approved building permit was issued on 8/3/2009 to build an enclosed screened porch and open rear deck. The rear-screened porch adds an approximate 164 square feet to the existing lot coverage of 3,268 square feet. This additional square footage brings this properties total of 3,432 square feet or 24.39% total lot coverage. A review of the Town's records did not reveal prior variances or approved permits that addresses this lot coverage overage.

The applicants purchased the home in November 2018 and recently expanded their driveway without the benefit of an approved driveway permit. The newly expanded driveway exceeds lot coverage. This property meets all other zoning requirements for height, setbacks, and lot coverage. It also meets the 5% deck coverage requirement.

***Recent Improvements:***

The applicants expanded their driveway without the benefit of an approved driveway permit. The applicants applied for a permit after they expanded the driveway but were denied based on a lot coverage overage of 29.33%; as shown on the "Plat showing lot coverage calculation" prepared by Jeff Warner Land Surveying, Inc., dated October 23, 2019, (see attached plat).

***Relevant Zoning Ordinance Sections:***

**Section 18-24. - Area requirements.**

The following area requirements shall apply in the RS-12.5 zone:

F. *Lot coverage.* Lot coverage shall be the same as specified for the RS-16 zone.

**Section 18-15. - Area requirements.**

The following area requirements shall apply in the RS-16 zone:

F. *Lot coverage.* Not more than 25 percent of a lot shall be covered by buildings, accessory buildings, automobile parking spaces and access, sport courts, tennis courts, patios and terraces. Decks, as regulated in section 18-169, may not cover more than five percent of the total area of a lot.

***Variance Criteria:***

**Code of Virginia Section 15.2-2201 & Town Code Section 18-4 Definitions:**

*Variance* means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land, or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

**Section 18-233. - Variances.**

The board of appeals shall have the power to grant, upon appeal or original application in specific cases, such variance from the terms of this chapter provided the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that the application meets the standard for a variance and the criteria set out in this section.

A. Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and

(1) The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;

- (2) The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
- (3) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;
- (4) The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and
- (5) The relief or remedy sought by the variance application is not available through the conditional use permit process or, when permitted by this chapter, determination by the zoning administrator.

**Code of Virginia Section 15.2-2309**

§ 15.2-2309. Powers and duties of boards of zoning appeals

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.
2. Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application. Any variance granted to provide a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance, subject to the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable....

***Staff Analysis:***

1. The single-family dwelling, constructed in 2007, included a small turnout driveway with a calculated lot coverage of 23.2%.
2. An approved building permit to build an enclosed screened porch and open rear deck issued in August 2009 with a calculated lot coverage of 24.43%.
3. The current owners acquired the property on November 20, 2018.
4. It was brought to the Towns attention that the driveway was expanded without the benefit of an approved driveway permit.
5. The applicants applied for a driveway permit after installation of the expanded driveway but were the denied due to the property exceeding the Towns 25% lot coverage requirement on August 2019.
6. The total lot coverage including the expanded driveway is currently 29.33%.
7. A review of the Town's records did not reveal prior variances or approved permits that addresses this lot coverage overage.

***Required Board Approval:***

The Board shall consider granting the variance to permit the applicant to keep the existing driveway improvements with a lot coverage overage of 690 square feet as shown in the “Plat showing lot coverage calculation” prepared by Jeff Warner Land Surveying, Inc., dated October 23, 2019, (see attached plat).

1. §18-24.F: Lot Coverage: According to the “Plat showing lot coverage calculation” prepared by Jeff Warner Land Surveying, Inc., dated October 23, 2019 shows the total lot coverage including the expanded asphalt driveway, that yields 4,128 square feet, or 29.33% percent lot coverage, which is 690 square feet above the maximum permitted lot coverage of 25 percent.

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The applicant has provided a justification statement. By copy of this staff report, all interested parties are reminded that it will be necessary to attend the public hearing and to provide sworn testimony in support or denial of the variance request.