

BOARD OF ZONING APPEALS, TOWN OF VIENNA, VIRGINIA

Request approval by the Board of Zoning Appeals for a variance per Section 18-219 of the Vienna Town Code to construct a single-unit dwelling on the newly created non-conforming parcel, subject to Town Council approval of the proposed consolidation, on a portion of the parcel known as 130 Wilmar Place NW, Map No. 0384 03 0061 (Lots 61 & 62), in the RS-10, Single-Unit Detached Residential zone. The applicant requests the following variances: 1) lot size - 7,000 sq ft is provided, 10,000 sf is required; 2) lot width at front building line - 50 ft. lot width provided, 60 linear ft is required; 3) lot width at midline - 50 ft is provided, 75 linear ft is required. Application filed by Michael Van Atta of McGuire Woods LLP & Sekas Homes, LTD, contract purchaser.

ORDER

THIS MATTER was considered by the Board of Zoning Appeals during a public hearing held on November 20, 2024, request for approval of a variance Section §18-219 of the Vienna Town Code. Based upon testimony offered by the applicant, exhibits offered into evidence, and comments offered by members of the public and other interested parties, the Board has determined the following findings of fact:

- A. The subject site is in the 100 block of Wilmar Place NW, approximately 115 feet from the intersection of Wilmar Place NW and Lawyers Road NW. Combined, Lots 61 and 62 are a total of 7,000 square feet; each lot is 25' by 140' feet.
- B. The subject lots are part of the original subdivision of "Wilmar Place". This subdivision predates the Town's 1955 zoning ordinance, which introduced a minimum 10,000-square-foot lot size for the RS-10 zoned parcels. The parcels within the Wilmar Place Subdivision were originally established as 25' in width and 140' deep, resulting in a total of 3,500 square feet.
- C. The parcels are zoned RS-10, Single-Unit Detached Residential, on the Town of Vienna Zoning Map. The RS-10 zone primarily allows, by right, single-unit detached dwellings and associated accessory buildings; and select institutional uses, generally conditional uses, on lots no less than 10,000 square feet. Land to the north, east, and west is also zoned RS-10, and to the south is land zoned CS (Church Street).
- D. The proposed use for the property, development as a single-unit residential structure, requires variances from the Board of Zoning Appeals because the consolidated lot will not meet the minimum standards of the Zoning and Subdivision Ordinance for the RS-10, 10,000 square foot, residential zoning district.

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- E. As proposed, and as indicated above, the application for consolidation of lots 61 and 62 does not meet the requirements for 1) minimum Lot Area, 2) Minimum Lot Width at Front Building Line, and 3) Minimum Lot Width at Midline. Table 1 below shows the requirements, from *Section 18-219* of the Zoning and Subdivision Ordinance, of the RS-10 zone.
- F. Development-specific zoning requirements, such as lot coverage and building height, will be reviewed at the time of the site plan by staff.

AND FROM THE FINDINGS OF FACT AS DETERMINED ABOVE, the Board of Zoning Appeals makes the following conclusions of law:

The Board voted 5-0 to approve the request for a variance as required by Section 18-219 of the Vienna Town Code, to construct a single-unit dwelling on the newly created non-conforming parcel, subject to Town Council approval of the proposed consolidation, on a portion of the parcel known as 130 Wilmar Place NW, Map No. 0384 03 0061 (Lots 61 & 62), in the RS-10, Single-Unit Detached Residential zone.

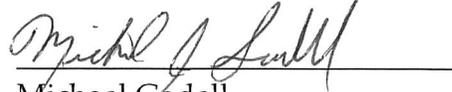
The board supported the application for the following reasons:

- I. This is a reasonable use of the property because other than that it will remain an overgrown lot.
- II. This is in the scope of what the comprehensive plan is looking for.

IT IS, THEREFORE, ORDERED, this 26 day of NOV., 2024 that the application requesting a variance as required by Section 18-219 of the Town of Vienna Zoning Code, to construct a single-unit dwelling on the newly created non-conforming parcel, subject to Town Council approval of the proposed consolidation, on a portion of the parcel known as 130 Wilmar Place NW, Map No. 0384 03 0061 (Lots 61 & 62), in the RS-10, Single-Unit Detached Residential zone, be approved.

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Michael Gadell

Board of Zoning Appeals, Vice Chair
Town of Vienna

Board of Zoning Appeals

The Board of Zoning Appeals met for the regular meeting in the Vienna Town Hall at 127 Center St S, Vienna, Virginia, on Wednesday, November 20, 2024, at 7:30 pm.

Roll Call: Mr. Petersen, Mr. Rettinger, Mr. Creed, Mr. Gadell, and Mr. Nash were present.

Absent members: Mr. Dhanjal and Mr. Lowther

Staff present: Zoning Administrator Andrea West and Board Clerk Yaska Camacho Castillo.

In light of the Chair (Mr. Dhanjal) and Vice Chair (Mr. Lowther) being absent, Mr. Nash was nominated to serve as temporary Chairman, and Mr. Gadell was nominated to serve as temporary Vice Chair to lead the meeting.

Motion: Mr. Peterson

Second: Mr. Creed

The motion carried unanimously.

Chairman Mr. Nash opened the meeting by noting a request to defer agenda item#3.

Item#3.BZA-24125: Request to hear an appeal of the Zoning Administrator's Determination in accordance with the requirements of Section 18-820 Appeals of Zoning Administrator Decision., of the Town of Vienna Zoning and Subdivision Ordinance, affecting property located at 430, 440, 444 Maple Ave W, Vienna, Virginia, tax map numbers: 0383 02 0139, 0383 02 0140, 0383 02 0141, in the AW - Avenue West zoning district. Filed by Sara Mariska, of Odin Feldman Pittleman, on behalf of Vienna Development Associates LLC, property owner.

The Zoning Administrator Andrea West was sworn in. Ms. West stated that there has been some progress and indicated that the proposed plans for the project have been received since the last deferral. Additional time is requested to resolve the violation notice on this application.

Mr. Peterson questioned whether this could be resolved in a timely manner. He noted that the determination was dated May 8, 2024. More than six months have passed, and all the Board has seen from the developer is a request to defer (which has occurred several times). The Board has seen no action from the developer to suggest that they have made the adjustments required on the determination.

Mr. Peterson stated that he believes the Board can make one of three decisions 1) Uphold the Zoning Administration's determination of May 8, 2024; 2) Overturn it; or 3) Accept deferral, which is what the developer seeks. He is uncomfortable continuing to defer the matter. He feels the Board has a role in protecting the interests of the community.

Mr. Rettinger agreed with Mr. Petersen's statement. Perhaps the Board needs to set a specific deadline for the developer to reach an interim state of compliance and address the violations. If the developers fail to meet the deadline, fines will be imposed.

Mr. Nash asked Ms. West if she could lay out a timeline for the board to understand when the site plan would be reviewed by other boards to have a concrete plan moving forward.

Ms. West indicated that the applicant has provided a preliminary plan that is part of the request in the violation notice. The goal is always to work with the applicant to reach a point of resolution, rather than move to court proceedings. The violation was intended to begin communication and start working with the applicant to get a plan in place to improve the condition of the site, not to force construction, which is outside of the Zoning purview.

Ms. West stated that the interim site plan was received by Zoning on October 17, 2024. The applicants met with the Zoning Staff on November 18, 2024, and are awaiting a response from that meeting. There will be a 30-day review period with formal comments. At the same time, the applicant plans to proceed to a work session with the Board of Architectural Review regarding fencing on the property which would be in mid-January.

Mr. Creed suggested that given this information, the Board give the applicant until the March 2025 Board of Zoning Appeals meeting. If the matter is not finalized by that time the Board will move forward and make a decision.

With no further discussion, Mr. Nash closed the public hearing.

Mr. Creed made a motion to give the applicant and the town until the March 2025 Board of Zoning Appeals meeting to allow the matter to be resolved by that time. By March 2025 no matter what occurs the board would make a final determination.

Motion: Mr. Creed

Second: Mr. Rettinger

The motion carried unanimously.

Item#1. BZA 24121: Request for approval of variances from Section 18-219 Residential - Single-Unit, 10,000 sq. ft. Zone (RS-10), Buildable Lot Dimensions, of the Town of Vienna Zoning Code, to create a new non-conforming lot from existing non-conforming parcels,

known as 0384 03 0061 (Lots 61 & 62), to construct a single-unit dwelling on the newly created lot, on a portion of the parcels known as 130 Wilmar Place NW, in the RS-10, Single-Unit Detached Residential zone. The proposed non-conforming lot will not meet the following Buildable Lot Dimensions: 1) Lot area, 2) Lot Width at Front Building Line, and 3) Lot Width at Midline.

Mr. Nash called on Andrea West, the Zoning Administrator, to provide information on the item.

Ms. West stated that the property in question is part of a multi-phase process to consolidate two lots (lot 61 & lot 62) on Wilmar Place, a subdivision dating back to at least 1924. The two lots each 3,500 square feet are proposed to be combined into a single non-conforming lot of 7,000 square feet which is below the required 10,000 square feet for the RS-10 zoning district. Additionally, the lots do not meet the required width at the front building line or at the midline. The variance is needed because this new lot has not been previously developed, unlike other lots on Wilmar Place that have been re-developed and met zoning requirements. This requires the approval of the board as part of the consolidation process to then be a buildable lot. Lot 63A (the second proposed consolidation (lots 63,64,65, and part of 66) is a different matter that would meet the basic requirements of the zoning code which will not require any approval from the Board of Zoning Appeals. It will go from the Planning Commission and then to the Town Council.

Michael Van Atta of McGuire Woods LLP on behalf of Sekas Homes, LTD, the contract purchaser, and the Estate of Robert & Mary Thompson, owner, was sworn in. He indicated that the goal is to match the two parcels. The variance is necessary to build on these lots due to their size and width. The proposal includes consolidating two lots, 61 and 62, to create a 50-foot wide, 7000-square-foot parcel, which would still fall short of the RS10 zoning requirements but would better align with the surrounding neighborhood. Several nearby properties have similar dimensions, with some even smaller than the proposed consolidated lot, which is consistent with the character of the area. The justification for the variance is based on the hardship caused by the existing lot dimensions, which predate the zoning ordinance. Without the variance, development on the property would not be feasible. The applicant emphasizes that the proposed lot consolidation reduces non-conformity and does not create any new hardship. The development would align with the existing neighborhood, with similar lot sizes and home scales, and would not negatively impact adjacent properties. The project also aligns with the town's comprehensive land use plan, which encourages more diverse housing

stock in transitional areas, including smaller lots. The variance and consolidation would help meet this goal and provide additional housing options.

Mr. Gadell asked if lots 61 and 63 would be a plot for one house to which the applicant clarified that Lots 61 and 63 will each contain one house that will conform to no more than 25% lot coverage. Mr. Nash questioned if it was not feasible to combine the lots, and then split the combined lots in half to bring the properties into greater compliance.

The applicant indicated that while this is not unreasonable, it is not practical, as it would require additional variances. It is a more complex process/solution. The home on lot 61 will be much smaller than the home on lot 63 but will align with "what's out there".

Mr. Creed wondered what was being looked at when it came to the home for lot 61. It would be a small home. Since the neighborhood is developing, he would like for it to be simpatico. The applicant responded that the home would align with what is out there today.

Mr. Gadell stated that he passed by the area and although it is a small lot it matches the other homes that the applicant is proposing on that street.

Mr. Rettinger asked if there was any opposition from the community about this application to which Ms. West responded she had not received any communication about the variance application.

Mr. Petersen commented on how a board member suggested that a better solution might be to consolidate and adjust the lot sizes of parcels 61 and 63, as they are under single ownership, to make them more compliant with the RS-10 zoning and the applicant, however, rejected the idea, stating that doing so would require a second variance request, which they prefer to avoid. Mr. Petersen found this reasoning unconvincing, viewing the second variance as a minor step to improving the parcels' compliance. He noted how the applicant also argued that without the requested variance, the property's use would be "unreasonably restricted." However, Mr. Petersen disagreed, asking why granting the variance would be necessary and suggesting that it might create a future problem for others to handle.

The applicant responded that if the variance is not granted, use of the property will be unreasonably restricted. Parcels 61 and 62 cannot be developed under the zoning ordinance. Even with the proposed dimensions, without a variance, the property cannot be developed. Without a variance parcel 61 has only one option – consolidation.

Mr. Peterson stated that he cannot accept the inability to build a parcel in Vienna as an unreasonable restriction. There may be parcels of land that simply cannot withstand development, due to the lot size or other factors.

Mr. Nash opened the floor for public comment.

Penny Oszak, 221 Nutley St., NW – (previously sworn in) suggested consolidating all the lots and building one big house to have all of their needs met.

With no additional speakers, Mr. Nash called for a motion to close the Public Hearing.

Motion: Mr. Gadell

Second: Mr. Rettinger

The motion carried unanimously.

Mr. Gadell made a motion to approve variances from requirements of Section 18-219 Residential - Single-Unit, 10,000 sq. ft. Zone (RS-10), of the Town of Vienna Zoning Code, to construct a single-unit dwelling on the newly created nonconforming parcel, subject to Town Council approval of the proposed consolidation, on a portion of the parcel known as 130 Wilmar Place NW, Map No. 0384 03 0061 (Lots 61 & 62), in the RS-10, Single-Unit Detached Residential zone.

Motion: Mr. Gadell

Second: Mr. Rettinger

Further discussion by the Board included the following points:

- As long as this conforms to the code, it is reasonable.
- Supporting this action is tantamount to approving a problem; Approval endorses a property that is 30% less than what the RS10 requires.
- Dividing properties equally creates two nonconforming properties, which might create additional problems.
- The current situation features an overgrown 25-foot strip of land.

Mr. Nash closed the discussion and called for a vote on the motion on the floor.

Motion: Mr. Gadell

Second: Mr. Rettinger

The motion carried unanimously.

Mr. Sekas commented that there is a need for smaller homes, especially for elderly people.

Item#2.BZA-24122: Request for approval of variances from 1) Section 18-219 Residential - Single-Unit, 10,000 sq. ft. Zone (RS-10), Building Placement Standards, Rear Yard, 2) Section 18-219, Residential Coverage, and 3) Section 18-213 Lot Coverage, 2.A. Outdoor living coverage., of the Town of Vienna Zoning Code, to construct: A) A covered deck, and B) an addition to the rear of the property, attached to an existing non-conforming single-family dwelling located at 409 East Street NE, in the RS-10, Single-Family Detached Residential zone. The proposed structures will encroach into the required rear yard setback of 35 feet, exceed the 25% lot coverage requirement, and deviate from the standards of Outdoor Living Coverage.

Andrea West, Zoning Administrator, (previously sworn in) presented the Item to the board.

Me. West stated that the property at 409 E Street Northeast is 11,020 square feet, with a home built in 1989. The property was developed under Fairfax County's regulations before being annexed into the town of Vienna. Some features of the property, including a deck and a second nonconforming deck, were permitted by Fairfax County. However, the rear of the house encroaches into the 35-foot rear yard setback required by Vienna.

The property is located in the RS10 single-family residential zone. While decks are allowed to encroach into the rear yard setback by up to 10 feet, the existing decks do not conform to this standard. The applicant seeks approval to cover one of the decks, which requires review due to its nonconformity. Additionally, the lot coverage is an issue, as the property includes a road in the front yard that counts toward lot coverage, which differs from current Vienna regulations.

The proposed modifications involve adding a new compliant deck, an addition to the rear of the house that encroaches into the setback, and covering the existing deck within the rear setback. There is also a patio under the deck, which requires a variance due to the town's regulations on outdoor living coverage. The applicant provided a plan and design drawings to the board, indicating the complexity of the proposal. The lot coverage increase is minimal, but a variance is still needed.

Mr. Nash called for the applicant to be sworn in for testimony.

Rich Sedlak, 409 East St NE, the property owner is seeking variances to modify their home in Vienna to allow for aging in place. After struggling to find suitable housing in the