




STAFF REPORT COVER SHEET

July 17, 2019

Address:	919 Ware Street, SW	Case Number:	Continuance of BZA-09-13
Public Meeting Date:	7/17/2019	Applicant:	R. Jonas A. Geissler, Esq.
Board/Commission:	Board of Zoning Appeals	Owner:	R. Jonas and Darcey K. Geissler,
Existing Zoning:	RS-10	Existing Land Use:	Low Density Residential
Brief Summary of Request:	<p>Continuation of a request for approval of a variance from Section §18-33.C of the Vienna Town Code to construct a front porch beyond the front-yard setback line on the property located at 919 Ware Street SW in the RS-10, Single-Family Detached Residential zone. Filed by R. Jonas and Darcey K. Geissler, owners.</p> 		
Site Improvements:	Homeowners wish to build a six-foot wide front porch that encroaches into the front building restriction line (BRL).		
Size of Property:	11,464 Square Feet		
Public Notice Requirements:	Code requires 10 days written notice shall be given to the owner of the property and posting Ads in local newspaper for two successive weeks prior to Board of Zoning Appeals meeting; advertisement published in Washington Times newspaper on July 3, and July 10, 2019. Public notice placard on July 3, 2019.		
Brief Analysis			
<p>PROPERTY HISTORY</p> <p>Built in 1958, this single-family property includes a two-story dwelling, front concrete stoop, one-story rear addition, rear deck, two patios and asphalt driveway. The BZA approved a variance on September 19, 2013 to allow a right side-yard setback encroachment, in order to build a 1-story rear addition and a staff calculated lot coverage of 21.87%.</p> <p>COMPATIBILITY WITH THE ZONING ORDINANCE</p> <p>The proposed front porch does not comply with the Town's 25' front-yard setback requirement listed in Code section §18-33.C. The applicant resubmitted a "Land Boundary Survey" provided by Sam Whitson Land Surveying, Inc. dated 8/14/2013 that does not calculate the lot coverage by a licensed professional and may exceed the Town's 25% maximum lot coverage allowed under Town Code Section §18-33.F which references sections §18-15.F. Note: Various hand calculated lot coverages ranging from 21.87% to 24.59% have been submitted which is very close to the 25% maximum allowed by Town Code and needs to be field verified by a licensed professional.</p>			
Attachments:	Original 2013 BZA Application <input checked="" type="checkbox"/> 2013 BZA Minutes, 2013 TC Minutes <input checked="" type="checkbox"/> 2019 Continuance Documents Summited by Owners <input checked="" type="checkbox"/> 2013 Plat with proposed porch <input checked="" type="checkbox"/> Approved BZA-10-13 Bay Window <input checked="" type="checkbox"/>		

ITEM NO. 2:

Request for approval of continued July 17, 2013 **variance** from Sections §18-33C of the Vienna Town Code to construct a front porch beyond the front-yard setback line on the property located at 919 Ware Street SW and in the RS-10, Single-Family Detached Residential zone. Application filed by R. Jonas and Darcey K. Geissler, owners.

Introductory Comments / Characteristics of the Existing Property:

The property is best described as a "relatively-narrow trapezoid," the subject property is located on Ware Street SW, mid-block between its intersection with Kingsley Road SW and Kibler Circle SW. The parcel ranges in width from 65.93 to 71.04 feet, and 164.42 to 170.79 feet in depth and encloses an area of 11,464 square feet. Existing improvements include the two-story dwelling, front concrete stoop, one-story rear addition, open rear deck, two separate patios areas and an asphalt driveway.

A review of the Town's records revealed a continued July 17, 2013 BZA variance application for a proposed seven-foot deep front porch addition that would encroach 2.2 feet into the front-yard setback.

A variance granted on September 18, 2013, for the construction of a rear 1-story addition with attached Bay window that encroaches into the side yard setback (see attached BZA order). The approved BZA variance included a "Land Boundary Survey" prepared by Sam Whitson Land Surveying, Inc. dated August 14, 2013 with a staff calculated lot coverage of 21.87%.

The applicants wish to modify their variance request to construct a six-foot deep front porch addition that would encroach 1.2 feet into the front-yard setback. One foot shorter than originally requested seven-foot porch in their original July 17, 2013 variance application.

Prior Activity / Board Review:

On July 17, 2013, Ms. Darcey Geissler, owner of the property, appeared at a public hearing before the Board of Zoning Appeals requesting a variance to add a seven-foot porch along the entire front elevation of the existing dwelling that would encroach into the front-yard 25-foot setback by 2.2 feet or 22.8 ± feet from the front property line.

After the receipt of testimony at evening held on July 17, 2013, a motion was made to approve the application. Upon conclusion of discussion, pertaining to the Board's motion but prior to the vote, the proponent was given the opportunity to seek a continuance for further evaluation of

the request with the Town Staff. Mrs. Geissler accepted this opportunity to continue the variance.

Proposed Improvements:

The property owners desire to build a six-foot front porch along the entire front elevation of the existing dwelling. The existing front setback of $29.8 \pm$ feet would not accommodate the desired 6-foot-deep porch given the minimum 25-foot front-yard setback as specified in section 18-33.C of the Vienna Town Code. The proposed six-foot front porch will extend approximately 1.2-feet into the front building restriction line (BRL), or a distance of $23.8 \pm$ feet from the property line. Staff calculates that 51.6 square feet (0.45 percent) of the proposed 258-square foot porch would encroach beyond the minimum front set back line.

The proposed 6' X 43' front porch also counts towards the 25% maximum lot coverage and adds an additional 258 square feet or approximately $24.86\% \pm$ square feet to the previously calculated staff lot coverage of 21.87% used in the approved BZA September 18, 2013, variance for the construction of a rear 1-story addition. Varying lot coverage calculations discrepancies have been submitted with past and present variance applications. Should the Board approve this variance application then the Board shall consider conditioning a motion for a new updated Survey, which shows the current conditions and lot coverage calculations prepared by a licensed professional.

The homeowner requests the variance based on claims that there is an arbitrary and ambiguous definition of "street" line. The applicants are unwilling to build a by-right 4.8-foot deep front porch addition that would not require a variance.

Vienna Town Code:

Section §18-33. - Area requirements.

The following area requirements shall apply in the RS-10 zone:

- A. *Lot area.* Minimum lot area shall be 10,000 square feet.
- C. *Front yard.* The building line shall not be less than 50 feet measured from the centerline of the street, when fronting upon a street of less than 50 feet in width; and not less than 25 feet measured from the street line fronting upon a street of 50 feet or more in width. In case of a through lot, the building line on any street or streets shall be determined in the aforesaid manner or as hereinafter required.
- F. *Lot coverage.* Lot coverage shall be the same as specified for RS-16 zone.

Section §18-15. - Area requirements.

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

- A. *Lot area.* All lots other than in approved subdivisions shall have a minimum area of 16,000 square feet.
- 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.

ARTICLE 23. - BOARD OF ZONING APPEALS

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.
- B In authorizing a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.

Findings of Facts:

1. The applicants are proposing a new six-foot front porch instead of the previous July 17, 2013 proposed seven-foot front porch. The property can accommodate a by-right 4.8-foot deep front porch.
2. The Town Council held a Work Session on October 21, 2013 to consider BZA Chairman's Don Chumley's memo requesting to reduce the minimum required setback for front porches. The Council agreed to leave the minimum front-yard setback line as it is. The zoning regulations remain unchanged. Town Code Section §18-33.C *Front yard. The building line shall not be less than 50 feet measured from the centerline of the street, when fronting upon a street of less than 50 feet in width; and not less than 25 feet measured from the street line fronting upon a street of 50 feet or more in width. In case of a through lot, the building line on any street or streets shall be determined in the aforesaid manner or as hereinafter required.*
3. Survey description and lot coverage discrepancies have been revealed and should be addressed with an updated Survey prepared by a licensed professional.
4. This previously approved Vienna Woods Subdivision Section 7 Lot 17 subject parcel is legally nonconforming with respect to its width at the lot midline. The parcel measures about 67 feet in width, which is some 8 feet below the minimum width of 75 feet as now required for the midline width of RS-10 zoned lots.
5. By statute, a variance is a "reasonable deviation from" certain provisions of a locality's zoning ordinance. A variance is a reasonable deviation from the 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 strict application of the ordinance would unreasonably restrict the utilization of the property. If there is an existing reasonable use of the property, neither an unreasonable restriction nor a hardship exists and a variance may not be lawfully granted.
6. The 2015 amendments to the variance definition are as follows. "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 ~~result in unnecessary or unreasonable hardship to the property owner~~

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 ~~intended spirit and purpose of the ordinance, and would result in substantial justice being done.~~ It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

Required Board Approval:

A granting of the following variance will be necessary to permit the owner to construct a six-foot deep porch along the entire front elevation of the house, as referenced on the “Land Boundary Survey” prepared by Sam Whitson Land Surveying, Inc. dated August 14, 2013:

1. § 18-33.C: Front-yard setback line: The front yard setback line is 25 feet away from the front property line and runs contiguously with Ware Street, SW. This setback line causes the proposed six-foot porch, to encroach into this front Building Restriction Line (BRL).

If the Board grants approval of the pending application, the Board shall require the applicant to demonstrate that the property meets the Town Code lot coverage requirement of section §18-33.F. The Board shall consider conditioning a motion that requires the applicants provide a new Physical Improvement Survey prepared a licensed professional upon completion of an approved permit for a proposed six-foot front porch. The following lot coverage calculations demonstrates the need for a licensed professional to calculate lot coverage.

The original variance application dated July 17, 2013, included a “Property Survey” prepared by Lester V. Johnson dated August 12, 1958 that was submitted for the proposed seven-foot front porch that **does not calculate the total lot coverage for this property.**

The BZA approved a rear addition that encroaches into the side yard setback on September 19, 2013, which included a “Land Boundary Survey” prepared by Sam Whitson Land Surveying, Inc. dated August 14, 2013 with a **staff calculated lot coverage of 21.87%.**

The applicants have hand calculated the currently proposed six-foot front porch included in their packet and have **hand calculated the lot coverage as 24.59%** which is very close to the Town’s maximum required lot coverage of 25%

2. §18-33.F: Lot Coverage: (by reference from §18-15.F): Subparagraph F of this Code provision specifies that “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.”

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Planning & Zoning Staff Report to the Board of Zoning Appeals

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The applicants have provided a justification statement in support of the variance request. 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 of the variance.