

**BOARD OF ZONING APPEALS
PUBLIC HEARING
MINUTES
July 17, 2013**

The Board of Zoning Appeals (BZA) held one (1) advertised public hearing in the Council Room of the Vienna Town Hall located at 127 Center Street, South, Vienna, Virginia, on July 17, 2013, beginning at 8:00 PM with Donald Chumley presiding as Chair. The following members were present: Marshall Potter, Gregory Haight, Robert Dowler, Robert Petersen, George Creed and William Harrison. Also attending and representing staff were Gregory M. Hembree, AICP, Director of Planning & Zoning and Emily Goodman, Board Clerk.

Item No. 1:

Request for approval of a variance from Sections 18-33C and 18-208 of the Vienna Town Code to construct a front porch beyond the front yard setback line on nonconforming property located at 919 Ware Street SW and in the RS-10, Single-Family Detached Residential zone. Filed by R. Jonas and Darcey K. Geissler, owners.

Darcey Geissler of 919 Ware Street SW approached the Board to speak. As she is a member of the Virginia State Bar, it was unnecessary for her to be sworn in.

Ms. Geissler handed out some photos she had taken of her house. She explained that she and her husband are requesting a variance to encroach 25.2 inches into the front yard setback to construct a front porch onto their house. In 2010, they consulted with a licensed contractor to construct a second floor onto their home. The plan was to ultimately put a ten-foot covered front porch on the home as well. The builder told them that they were familiar with Vienna Town Code and that it would not be a problem. So instead of demolishing the house and moving it back on the lot, which is what they would have done, they went ahead with plans to build up on the original home. They also felt that by building up on the original home, the end result would blend better with the neighborhood than would a brand new home. Now that they are applying for permits for the porch, they have discovered that their house is built closer to the street line than other houses on their street. There is a house four dwellings down the street that is in the same eye-line as their house and they were able to build a second-story addition and ten-foot porch with no problem. Even though the houses are in line with each other, the way the street line goes makes it so the neighbors could build a porch with no problem but they must seek a variance to do the same thing. One reason they would like a porch is because they have small children and it can be difficult getting in and out of the front door with strollers. Additionally, having a front porch to sit on would help in their efforts to get to know their neighbors.

Chairman Chumley asked if he was correct in thinking that both Ms. Geissler's house and the houses on either side of her have the same problem, that they are built closer to the street line than the other houses on the street, and Ms. Geissler said yes, that is true. Part of their goal in putting the front porch on is to keep the same roof line as everyone else on the street. Right now their roof line jumps up but a front porch would solve that.

Ms. Geissler continued that in addition to the other factors mentioned, they were defrauded by the earlier mentioned contractor; so not only did they get to pay for the work twice, but they had to do the work themselves the second time. Without a front porch the house looks unfinished, if they have to put in a shallower porch it will be unusable and doesn't increase the value of the house. Her neighbors are in support of the porch and she has attached their signature.

Chairman Chumley said there seems to be two options lately in Town; people either live in the older original homes or they knock them down and build new ones. This is a better third option.

Mr. Potter asked Ms. Geissler what her hardship is and Ms. Geissler said her house is placed further forward on the lot than most of the others in Vienna Woods. Everyone else can put on a front porch. A front porch will add value, usability and safety to their home. They have already lost so much value because they relied on Class A Builders who have been found guilty of fraud and lost their license. The additional hardship is the fact that now they have a house that isn't finished and a shallow front porch will not look right. They would like to grow old in the house and one of their dreams is to have a front porch to sit on.

Mr. Dowler said Ms. Geissler is saying her house is situated closer to the street than others but from his observation, all the houses look to be situated the same distance from the street. Ms. Geissler said that it does look that way. It is the way the street line runs that creates a problem for her. All the houses are in line and neighbors of theirs have been able to build front porches.

Mr. Dowler said those porches are 25 feet from the street and Ms. Geissler answered it is not the street but the street line. There is no physical marker. It's the line drawn on the land plat showing the boundary line that you have to count the setback from.

Mr. Creed said while he understands what curb line means, he's not sure he understands what is meant by street line. Mr. Hembree explained that Ware Street SW has a 60-foot-wide street right-of-way. Citing the Town Code, he stated that the Geissler's front property line and the edge of the street right-of-way is the same thing noting that the Vienna Town Code book calls it "street line." In this case, and with all the houses on Ware Street SW, the center of the street is five feet further from their house than other streets in the neighborhood because it is situated on a 60-foot-wide street. Most streets in Town have a 50 foot right-of-way. Mr. Hembree reiterated that "street line" is their front property line, and by Code, a front porch would need to be 25 feet back from the front property line.

Mr. Creed asked if the line was at the front or the rear of the sidewalk and Mr. Hembree said that it is generally one foot from the rear of the sidewalk.

Ms. Geissler said that at her property it is farther than one foot from the sidewalk and that is the issue they are facing. When they first read the Code and saw the 25-foot setback rule they went out and measured their street and the sidewalk and thought they could build a 13-foot porch. The problem they have with this is that all the houses appear to be in a line but some houses can build porches while they cannot. The street line has no physical demarcation, it floats somewhere between the edge of the sidewalk and the beginning of their yard.

Mr. Hembree clarified that Ms. Geissler indicated that her street is 36 feet wide. Stating that if one assumes that the street is in the middle of the right-of-way, the physical street portion on her half is

18 feet in width, and then there is 12 feet of additional width that belongs to the Town, and in which there is probably a 4-foot-wide sidewalk. He estimates that the street line is probably two or three feet beyond the sidewalk towards her house. However, that condition would be expected to exist for all of the houses on the same street.

Chairman Chumley asked Mr. Hembree if he was right in thinking that the situation with the right-of-way on Ware Street SW is unique to Ware Street SW and Mr. Hembree replied some streets in Town do have the same situation. Tapawingo Road SW has a 60-foot right-of-way, Nutley Street SW is wider than 50 feet and parts of Cottage Street SW are as well.

Mr. Hembree said he was looking at the house on Google Earth and there seemed to be a significant amount of space between the street and the sidewalk, perhaps six or seven feet of green space.

Mr. Dowler asked to see the plans for the front porch and Ms. Geissler showed the Board her plans.

Mr. Harrison asked Ms. Geissler what she meant when she earlier spoke of maintaining the sight line on the block. Ms. Geissler explained that if they were allowed to build a front porch on their home, the roof of the porch would match the roof line of the other homes on the street. This way when you look down the street, even though there may be a difference between one- and two-story homes, the viewer's eye travels along the same line. Mr. Harrison asked if they are the only two-story home on the block and Ms. Geissler said there is one other. Mr. Harrison said it seems to him the sight line is already altered by building a second-story addition. Ms. Geissler agreed that the sight line is modified but stressed that keeping the roofline in symmetry is an architectural method studied by her husband with the goal of fitting their home into the street as best as possible.

Mr. Harrison wished to summarize that as he understood it, Ms. Geissler was saying her hardship is that her house, which was built before the Town Code, is placed on the lot in such a manner that they are unable to do what some other people on the street are able to do. Ms. Geissler agreed. Mr. Harrison explained that to grant a variance, the Board must find a hardship in the lot that makes it unusable. He is having a hard time finding that because the lot is being used just fine at the present time. Ms. Geissler countered that Code Section 18-233 A (2) does not require the lot to be unusable; it states "unreasonably restrict the use of the property." She feels it is an unreasonable restriction because a porch would not violate the aesthetics of the neighborhood; it would actually help their house stay in line with the other houses on the street. Also, their house is placed shallow on the lot and they have been faced with a significant hardship due to the fraud committed by their contractors. They would have designed the house completely different if they had known that they would not be able to build a front porch.

Mr. Creed said there are older houses on either side of the Geisslers', there is no telling what will happen to them in the future so keeping the sight line of the street is not a good argument. Ms. Geissler responded that she cannot foretell what will happen to the houses in the future but for now she is trying to maintain the sight line. Also, the porch would enable them to better use their front yard.

Mr. Petersen told Ms. Geissler that he had visited her property twice and read her submittal carefully. He feels sympathy for the situation they went through but he does not feel that she has established the case that the fraud they went through with the contractor is germane to this case. The proposed

porch equates to a 30 percent expansion into the setback. There has been discussion regarding the validity of using the street line to measure the setback but that is the Code and what they must take into consideration when reviewing her application. In regards to maintaining the aesthetics of the neighborhood, in terms of the two houses on either side of the property in question, the aesthetics were already infringed upon by the construction of the second-story addition and it would be further changed by a front porch. He also does not agree with her argument that lacking a front porch of her desired dimensions deprives her of the use of her front yard. The alternative, which she describes as an ornamental porch, does add value to the house. She has also cited her children and getting to know her neighbors as additional arguments and he is struggling to see a valid hardship in any of it.

Chairman Chumley said he is in favor of granting the variance. The house looks unfinished and it is not in the best interest of the neighborhood to leave it that way. He also agrees that the sightline of the street would be improved with the front porch addition.

Mr. Haight asked Mr. Hembree if it is true that the house is approximately the same distance as the others on the street from the street and Mr. Hembree said yes. Mr. Haight said the problem then is not with the distance between the house and street but the house and the street line and Mr. Hembree said yes. Mr. Hembree explained there is a slight curve that runs along Ware Street SW which affects the placement of the street line. Houses on Ware Street SW a few blocks in either direction are three or four feet farther back at most. Mr. Haight said houses on her block are similarly situated and Mr. Hembree agreed that was a fair statement.

Chairman Chumley asked how the other houses were able to put on a front porch and Mr. Hembree said they are a couple of feet farther back than the Geisslers.

Ms. Geissler said they are not similarly situated and that is why others could put on a porch and Mr. Hembree countered that similarly situated means similar but not exactly the same. Ms. Geissler said they are only asking for two feet.

Ms. Geissler wished to address Mr. Petersen's statement that she needed to prove a clearly demonstrable hardship. Her reading of Code section 18-233 A (1) does not say that. It says "Where by reason of exceptional narrowness, shallowness, size or shape of a specific property at the time of the effective date of the ordinance from which this chapter is derived..." If the Board does not find that they have proved a clearly demonstrable hardship, although she thinks she has, then the shallowness of the lot, along with the fact that her house was built before the Town Code, is grounds for a variance.

Mr. Dowler said as it is now; she can build a five-foot-wide porch. Ms. Geissler said that would leave them with less than four feet of usable space. She does have a hardship. The house was built before the Town Code, it is placed shallow on the lot and they were defrauded by contractors. They would have torn the house down and built anew if they had known they could not build a porch. They wanted a ten-foot porch but they are submitting for the least amount of usable space. Their hardship is that even though they are the exact same distance from the street as everyone else, they can't build a porch because they are closer to the street line.

Mr. Creed asked why this didn't come up when they submitted a building permit application for the addition and Mr. Hembree said they submitted an application in May of 2010 but it was for a second-

floor addition only. Mr. Geissler said the porch was not included in the original plans. They got a quote for the porch and planned to wait and save up the money.

Mr. Haight asked Mr. Hembree if streets generally follow the street line and Mr. Hembree said yes. Mr. Haight asked Mr. Hembree how hard it would be to change the street line and Mr. Hembree said that would be considered vacating part of the street and that it was unlikely to happen.

Chairman Chumley asked if there were any additional questions or comments and as there were none he closed the item.

**BOARD OF ZONING APPEALS
REGULAR MEETING
MINUTES
July 17, 2013**

The Board of Zoning Appeals (BZA) met in regular session to review one (1) advertised public hearing in the Council Room of the Vienna Town Hall located at 127 Center Street, South, Vienna, Virginia, on July 17, 2013, beginning at 8:00 PM with Donald Chumley presiding as Chair. The following members were present: Marshall Potter, Gregory Haight, Robert Dowler, Robert Petersen, George Creed and William Harrison. Also attending and representing staff were Gregory M. Hembree, AICP, Director of Planning & Zoning and Emily Goodman, Board Clerk.

Item No. 1:

Request for approval of a variance from Sections 18-33C and 18-208 of the Vienna Town Code to construct a front porch beyond the front yard setback line on nonconforming property located at 919 Ware Street SW and in the RS-10, Single-Family Detached Residential zone. Filed by R. Jonas and Darcey K. Geissler, owners.

Mr. Haight made a motion to approve the request for a variance from Sections 18-33C and 18-208 of the Vienna Town Code to construct a front porch beyond the front yard setback line on nonconforming property located at 919 Ware Street SW and in the RS-10, Single-Family Detached Residential zone.

Mr. Haight supported his motion by saying the hardship is the way the house was placed on the lot. The street line in front of their house is different from their neighbors. Also, their neighbors support the variance.

Chairman Chumley seconded the motion. He believes it is in the best interest of the community and Vienna. Building up on an original home is the third option the Town has been looking for, as opposed to keeping the original house or simply knocking it down. He can't see telling these people that there isn't a hardship when they have spent well over \$100,000.00.

Mr. Creed asked Mr. Hembree how many building permits were issued last year for new homes versus second-floor additions and Mr. Hembree said there were approximately 400 building permits issued with about 150 being for new homes and 20-25 for "pop the top" second floor additions. There were recently two variance applications heard from property owners who needed a variance to put on a second-floor addition. He does agree with Chairman Chumley that "tear-downs" are much more common.

Mr. Creed asked if it was true that the 30-foot street line on Ware Street SW was established after the subdivision was built and Mr. Hembree said no, it was platted that way.

Mr. Petersen said he remains unconvinced that a waiver of the Code is warranted in this case. Slightly more than 30 percent of the proposed porch would encroach on the setback. Arguments were made that the porch would not look right if they are unable to build it of the size they want or that they are unable to use their yard without it but he is not convinced. A smaller but still usable porch would add value to the house, not reduce value and he believes they have use of their front property either way. He is unable to support Mr. Haight's motion.

Mr. Dowler agreed with Mr. Petersen. He does not see the hardship. They are asking for a substantial variance. The problems the owners had with the builder do not affect the physical characteristics of the lot and they can still build a 5-foot porch by right.

Mr. Harrison said he is not going to vote in favor of the variance either. However, what bothers him in this case and some others cases is that the house was built before the Town Code was written. Obviously, not everyone can move the entire house. He feels sympathy towards people with this problem. On the other hand, the lot is very usable and he does not think there is a convincing case that it is dangerous to have a stoop versus a porch.

Mr. Potter questioned if perhaps the variance request should be postponed to give the applicant time to go over her application again with Mr. Hembree. Mr. Hembree said it was up to the applicant but he knows they thought out their application very substantially and waited several months before submitting. Mr. Hembree added that, based on conversations he's had with the property owners, he knows this is what they feel they need.

Chairman Chumley said if the Board doesn't grant this variance he thinks they will see major changes on Ware Street SW. The house next door is owned by a builder and if that builder knows there are problems with the setback than they will most likely demolish the house. He feels strongly it's in the best interest of the community to encourage people to build onto existing houses.

Ms. Geissler wanted to add that their current walkway would not change. Also, the house would actually be taking up less of the front yard and appear farther away from the street than it does now with the current landscaping. Again, it is not the distance from the street, it is the distance from the street line and they are only asking for two feet. Two feet in variance does not make a big difference when looking at the street but it will make a big difference to them when every time she looks at the house she will be reminded that they lost \$250,000.00 and still didn't get the house they paid for.

Mr. Potter asked Ms. Geissler if perhaps she would like to request a continuance to reevaluate the depth and length of the porch. Ms. Geissler said they are already asking for the bare minimum of usable space and the street line is not going to change. Chairman Chumley said perhaps she could work out a compromise with Mr. Hembree and this would save her from having to pay the application fee again. Ms. Geissler said a seven foot porch was their compromise.

Mr. Harrison said the case boils down to how the Board wants to define an unreasonable restriction. He does not feel they have an undue hardship and has heard others say the same. However, he is troubled over what constitutes an unreasonable as opposed to a reasonable restriction.

Mr. Dowler said if you read the statute it talks about exceptional narrowness, shallowness or size and shape of the lot. These are not mild terms they are supposed to enforce. Front yard setbacks are

particularly important because they can be seen from the street. He may be more lenient in defining a hardship in terms of a back or side setback but for him, front setbacks are more firm. Ms. Geissler said they would be the same distance from the actual street as their neighbors with a ten foot porch. The only difference is the street line which no one can see. Mr. Dowler said the street line is on the plat and that is what they have to go by. Ms. Geissler said if their concern is how the house looks; the house looks more out of place now than it would with a porch.

Mr. Hembree interrupted to say he is concerned that the public meeting has been closed and now they are entering into an additional public meeting. Also, if they do vote, he would like them to do it by poll.

Chairman Chumley asked Ms. Geissler if she would like the Board to vote tonight or if she would like to request a continuance and Ms. Geissler decided to continue the issue.

Mr. Haight withdrew his motion and Chairman Chumley withdrew his second.

Mr. Potter made a motion to continue the item.

Motion:	Potter
Second:	Haight
Approved:	7-0

Approval of the Minutes

Mr. Petersen made a motion to approve the minutes of the June 19, 2013 meeting with one minor correction.

Mr. Creed abstained from voting as he was not present at the meeting.

Motion:	Petersen
Second:	Harrison
Approved:	6-0-1 (Creed abstained)

Chairman Chumley said maybe the Board can get the Town Attorney, Steve Briglia, to give his opinion on tonight's item and the definition of hardship.

Mr. Hembree said they could certainly request a work session with Mr. Briglia but he is fairly certain he will tell them they need to follow the language of the Virginia State Code. It's up to the Board members to decide what they feel is a substantial hardship or what they feel is a substantial request for a variation from the Code. There is a balance test the Board needs to consider regarding whether the requested variance has a hardship that backs it up and allows the Board to make the findings listed in Code Section 18-233 (B). He is not an attorney but has worked with the Board for a long time and that is what he would say to them. Essentially, it is a determination that is up to the Board to make. He will tell Ms. Geissler this as well but unless she has a significant change to her request, he still sees the vote being the same as it is tonight.

Chairman Chumley said he hopes the Town Council will review both sides of discussion from tonight. He would be interested to know their comments.

Mr. Haight said the Town Council could change the Code to say if the street line is more than a certain percentage away from the street than the street is what counts.

Chairman Chumley agreed that if the Town Council sees an issue then it is up to them to change the Town Code.

Mr. Petersen wished to note that the Board operates on Virginia State Code Section 15.2. One of the major responsibilities of the Board is to hear requests for a waiver from the Code. He feels that a lot of the discussion tonight went into areas that are not germane to the responsibilities of the Board. Shaping the future of Vienna is part of what the Planners are responsible for. As a semi-judicial board, they have very specific responsibilities and he thinks the discussion tonight exceeded and made inappropriate and unclear what their responsibilities are and how they should be applied. If, as a Board, they are concerned about the future shape of Vienna, they should get in contact with the Council and the Planners of the Town. He thinks tonight went far beyond what they are supposed to be doing under their appointment to the Board.

Chairman Chumley said there is a good chance Mr. Petersen is right and he makes very cogent arguments for his case. However, one of the things he has seen over the years is occasionally the Town Council will change the Code when they see conflicts that come up in the course of their meetings. He is hoping that if they read the minutes, they may take a moment to think about what they'd like the outcome to be. He does not mean to disrespect the Board or its members in any way.

Mr. Haight said he does think it's appropriate for the Board to bring certain issues before the Town Council. This is a situation that is caused because legally, where you measure from, doesn't meet with the intent which was to keep the house a certain distance from the street.

Mr. Creed said the builders from the 1950s and 1960s did not foresee these problems with the building line.

Mr. Potter said this is a tough case, although the fraud issue has nothing to do with it. The question of "McMansions" and alternative building is a valid point. The nature of the Town is being changed so that only people of astronomical incomes can afford to live here.

Mr. Dowler said it is not the Board's job to define a hardship differently when applied to a "McMansion" versus an older house. It's the job of either the Town Council or the Planning Commission to determine if there needs to be a change in policy.

Chairman Chumley asked how the Board could get the Town Council or Planning Commission to look at something and Mr. Dowler said it's not their job to do that. They are only supposed to enforce the policy that already exists.

Mr. Potter said the Town is being plagued by construction and "McMansions".

Mr. Harrison said he believes the discussion they have had tonight, which is on the record, is sufficient to let the Town Council know how they feel.

Mr. Creed said the newer "McMansions" go for around \$1,200,000.00 - \$1,800,000.00. Affordable housing is very near and dear to his heart. However, even the older homes go for around \$500,000.00 - \$600,000.00 which is still not affordable for most first-time buyers.

Mr. Potter said the "McMansions" build up the tax rates for everyone.

Mr. Harrison made a motion to adjourn the meeting.

Motion:	Harrison
Second:	Haight
Approved:	7-0

The meeting was adjourned at 9:23 PM.

Respectfully submitted,

Emily L. Goodman,
Clerk of the Board of Zoning Appeals

Council Work Session

October 21, 2013, 8:00 p.m.

Present: Mayor M. Jane Seeman
Councilmember Laurie Genevro Cole
Councilmember Laurie A. DiRocco
Councilmember Edythe Frankel Kelleher
Councilmember Michael J. Polychrones
Councilmember Carey J. Sienicki
Councilmember Howard J. Springsteen

Also present: Mercury T. Payton, Town Manager
Kirstyn Barr, Public Information Officer
Steve Briglia, Town Attorney
Greg Hembree, Director of Planning and Zoning
Dennis Johnson, Director of Public Works
Cathy Salgado, Director of Parks and Recreation
Karen Spence, Director of Finance
Carol S. Waters, Deputy Town Clerk

(1) Transportation Safety Commission Subcommittee Structure

The Mayor, Council Members, Chairman of the Transportation Safety Commission (TSC) Ed Somers, and Steve Briglia exchanged ideas. The group came up with the following guidelines for the Bicycle Advisory Committee (BAC) and the Pedestrian Advisory Committee (BAC):

- These specialized committees will function for a period of two years, to provide recommendations to Council and the TSC for improving the pedestrian and bicycle network in the Town of Vienna.
- Members will be appointed by the Town Council for two year terms.
- The BAC and the PAC will each have seven members, all of whom will reside within the Town of Vienna.
- One of the seven members on each committee will be a TSC member to serve as chair-person, run the meetings and report back to the TSC. There will be one alternate TSC member assigned to act as chairperson in their absence.
- Each committee will be assigned a Town of Vienna staff member.
- BAC and PAC will meet every other month, on the same night, one meeting after the other.

Recommendation: Town Council will develop a mission statement for the BAC and the PAC. The TSC will appoint chairpersons and alternates. The Public Information Officer will advertise for members by way of a public notice in the Town Newsletter.

(2) BZA Chairman's Request for Consideration of a Reduced Front-Yard Setback for Porches

Mr. Greg Hembree provided background information on this proposed change, cited all relevant code sections, and reviewed some history of front-yard setback line variance applications for porches. Board of Zoning Appeals (BZA) Chairman Donald Chumley and BZA Commissioner William Harrison also offered brief commentary.

Council Members took turns weighing in with their evaluations and assessments of the many negative consequences that would result from reducing the minimum front-yard setback. The Council agreed to leave the minimum front-yard setback line as it is.

Recommendation: No further action is required by Council or staff. The zoning regulations remain unchanged.

(3) 2014 Legislative Agenda

The Town Attorney, Mayor and Council Members discussed all of the items that were suggested to propose to the Governor and General Assembly of the Commonwealth of Virginia. (See lists attached.) The top legislative priorities for the coming year were decided upon, and Mr. Briglia said that he would clean up the list and forward it to Council Members to look over.

Senator Chap Petersen and Delegate Mark Keam will attend the Town Council Work Session on November 11, 2013 to discuss the Legislative Agenda details. The Council will conduct a public hearing on the Legislative Agenda at the Regular Council Meeting of November 18, 2013.

Recommendation: Town Attorney will revise the list of 2014 legislative priorities as discussed and forward it to Mayor and Council for final review.

The Town Council Work Session of October 21, 2013 adjourned at 9:56 p.m.

Mayor M. Jane Seeman

Signed / Dated: _____

Attest: _____
Deputy Town Clerk