




STAFF REPORT COVER SHEET

July 17, 2019

Address:	206 Scott Circle, SW	Case Number:	BZA-03-19
Public Meeting Date:	7/17/2019	Applicant:	Julia Kreyskop
Board/Commission:	Board of Zoning Appeals	Owner:	Brian Buyniski & Julia Kreyskop
Existing Zoning:	RS-10	Existing Land Use:	Low Density Residential
Brief Summary of Request:	<p>Request for approval of a variance from Section 18-33.E of the Vienna Town Code to construct a rear screened porch over a portion of an existing unpermitted deck that encroaches into the rear-yard setback on the property located at 206 Scott Circle, SW; in the RS-10, Single-Family Detached Residential zone. Application filed by, Brian Buyniski & Julia Kreyskop owners.</p> 		
Site Improvements:	Homeowners wish to convert part of an existing unpermitted deck into a new-screened porch that encroaches into the rear 35-foot building restriction line (BRL).		
Size of Property:	10,897 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.		
Staff Recommendation: Deny			
Brief Analysis			
<p>PROPERTY HISTORY</p> <p>Built in 1959, this single-family property includes a two-story dwelling and attached carport with a concrete driveway and an open rear deck.</p> <p>COMPATIBILITY WITH THE ZONING ORDINANCE</p> <p>The proposed screened rear porch and remaining portion of the unpermitted rear deck do not comply with the Town's rear-yard setback requirement listed in Code section §18-33.E, which references section §18-15.E. The applicant is requesting a reduction to 24.2-feet from the proposed screened porch and a reduction to 17.6-feet from the existing rear deck to the closest rear property line.</p>			
Attachments:	BZA Application <input checked="" type="checkbox"/> Justification Statement <input checked="" type="checkbox"/> Submitted Plat <input checked="" type="checkbox"/> Architectural drawings <input checked="" type="checkbox"/> Pictures <input checked="" type="checkbox"/> Neighbor support letters <input checked="" type="checkbox"/>		

ITEM NO. 4:

Request for approval of a **variance** from Section 18-33.E of the Vienna Town Code to construct a rear screened porch over a portion of an existing unpermitted deck that encroaches into the rear-yard setback on the property located at 206 Scott Circle, SW; in the RS-10, Single-Family Detached Residential zone. Application filed by, Brian Buyniski & Julia Kreyskop owners.

Introductory Comments / Characteristics of the Existing Property:

This RS-10 zoned property is located on a cul-de-sac on the southwesterly side of Scott Circle, SW; located between Yeonas Drive, SW and Walker Street, SW; in Section 12 of the Vienna Woods subdivision. The subject tract is a nearly rectangular corner lot that ranges in width from 113.75 to 78.86 feet, from 96.01 to 72.00 feet in depth and encloses a total lot area of 10,897 square feet. Existing improvements include the two-story dwelling, attached carport, concrete driveway, wooden shed and an unpermitted wooden deck. The dwelling was constructed in 1959, which includes a second story addition built in 2010, attached car port with a concrete driveway, and an open rear deck and rear wooden shed; as shown on the House Location Plat prepared by B.W. Smith and Associates, Inc., dated April 30, 2019; revised May 8, 2019 (see attached plat).

Proposed Improvements:

The proposed screened porch will replace a portion of an existing open rear wooden deck with an enclosed 12.3' X 14' screened porch. According to the House Location Plat prepared by B.W. Smith and Associates, Inc., dated April 30, 2019; revised May 8, 2019, (see attached plat), the proposed screened porch will increase the lot coverage by 172.2 square feet, bringing the total lot coverage of the property to 1,918 square feet or 17.6% of the allowable 25% maximum.

The homeowner requests the variance based on claims that the existing house built in 1959 sits diagonally on a lot that is wider than it is deep. This configuration, according to the applicants, creates a hardship with respect to adding any living space to the rear of the house, and trying to add living space to either side would be extremely challenging due to existing utilities. In addition, the applicants claim that a high mosquito population also creates a hardship and that they are unable to use their back yard.

Vienna Town Code Sections:

Section §18-33. - Area requirements.

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

- E. *Rear yard.* Rear yards 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:

- E. *Rear yard.* The rear yard shall be a minimum of 35 feet in depth. Decks may encroach into a rear yard, provided that no deck may cause the reduction of any rear yard to less than 25 feet in depth.

Code of Virginia Sections:

§15.2-2307. Vested rights not impaired; nonconforming uses.

Section 15.2-2307.D Notwithstanding any local ordinance to the contrary, if (i) the local government has issued a building permit, the building or structure was thereafter constructed in accordance with the building permit, and upon completion of construction, the local government issued a certificate of occupancy or a use permit therefor, or (ii) the owner of the building or structure has paid taxes to the locality for such building or structure for a period of more than the previous 15 years, a zoning ordinance shall not provide that such building or structure is illegal and subject to removal solely due to such nonconformity. Such building or structure shall be nonconforming.

Town Code: ARTICLE 20. - NONCONFORMING BUILDINGS AND USES

Sec. 18-197. - Continuance of nonconforming buildings.

Any nonconforming building or structure may be continued only so long as such building or structure is maintained in the same structural condition as it was in at the time of the enactment of the ordinance from which this chapter is derived.

Sec. 18-198. - Enlargements, etc., of nonconforming buildings.

A nonconforming building or structure shall not be enlarged, extended, reconstructed or structurally altered in any manner unless such building or structure is made to conform to all the regulations of the zone in which located.

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 to construct a 12.3' X 14' rear-screened porch over an existing portion of the existing wooden deck that encroaches 10.8 feet into the rear building restriction line (BRL).
2. A review of the Town's records did not reveal an approved permit for the existing rear wooden deck.
3. The applicants are proposing to keep the remaining portion of existing unpermitted wooden deck that encroaches 7.4 feet into the rear building restriction line (BRL). The applicants justification states that the deck has been in existence since the 1980's and is considered a vested non-conformity according to Code of Virginia Section §15.2-2307.D (ii).
4. Code of Virginia section §15.2-2307.D (ii) states the owner of the building or structure has paid taxes to the locality for such building or structure for a period of more than the previous 15 years, a zoning ordinance shall not provide that such building or structure is illegal and subject to removal solely due to such nonconformity. Such building or structure shall be nonconforming.
5. Town Code Sec. §18-198. - Enlargements, etc., of nonconforming buildings. A nonconforming building or structure shall not be enlarged, extended, reconstructed or structurally altered in any manner unless such building or structure is made to conform to all the regulations of the zone in which located.
6. 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.

Required Board Approval:

A granting of the following variance will be necessary to permit the construction of a 12.3' X 14' rear-screened porch over an existing portion of the wooden deck that encroaches into the rear building restriction line (BRL). As referenced on the "House Location Plat" prepared by B.W. Smith and Associates, Inc., dated April 30, 2019; revised May 8, 2019 (see attached plat):

1. §18-33.E: Rear Yard: (by reference from §18-15.E): Subparagraph E of this Code provision specifies, "The rear yard shall be a minimum of 35 feet in depth. Decks may encroach into a rear yard, provided that no deck may cause the reduction of any rear yard to less than 25 feet in depth." The above-mentioned survey shows the proposed screened porch setback 24.2 feet from the closest property line and per code needs to be a minimum of 35 feet. The converted screened porch encroaches 10.8 feet into the building restriction line (BRL)

The Board shall also consider allowing the applicant to keep the remainder of the existing unpermitted rear deck that also encroaches into the rear (BRL).

2. §18-198: Enlargement, etc., of nonconforming buildings: A nonconforming building or structure shall not be enlarged, extended, reconstructed or structurally altered in any manner unless such building or structure is made to conform to all the regulations of the zone in which located. The above-mentioned survey shows the existing rear deck setback 17.6 feet from the closest rear property line. The existing wooden deck encroaches 7.4 feet into the building restriction line (BRL).

=====

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.