




STAFF REPORT COVER SHEET

October 16, 2019

Address:	124 Melody Lane, SW	Case Number:	BZA-02-19
Public Meeting Date:	10/16/2019	Applicant:	Nicholas Cumings agent of Walsh Colucci Lubeley & Walsh PC
Board/Commission:	Board of Zoning Appeals	Owner:	James Hathaway & Soleyah Groves
Existing Zoning:	RS-10	Existing Land Use:	Low Density Residential
Brief Summary of Request:	<p>Continued - request for an appeal of a zoning violation stating the subject property is not in compliance with Town Code §18-218 as it relates to building permit requirements, for the property located at 124 Melody Lane, SW, in the RS-10, single-family detached residential zone. Application filed by Nicholas Cumings agent of Walsh Colucci Lubeley & Walsh PC.</p> 		
Site Improvements:	Homeowners wish to keep an unpermitted rear screened porch and deck that exceeds the 25% maximum lot coverage and encroaches into the rear building restriction line (BRL).		
Size of Property:	11,948 Square Feet (Recorded Fairfax County Real-estate Tax Assessments) 12,193 Square Feet (Recent Boundary Survey by Walter L. Phillips Dated 04-12-2019)		
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 October 2, and October 9, 2019. Public notice placard on October 2, 2019.		
Brief Analysis			
<p>PROPERTY HISTORY</p> <p>Built in 2014, this single-family property includes a two-story dwelling, attached two-car garage with an asphalt driveway, and an open rear deck. The Certificate of Occupancy dated 9/29/2014 revealed a lot coverage of 24.9%. On 12/18/2017, the Town's zoning enforcement officer discovered an existing rear deck converted into a covered screened porch and a newly built open deck without an approved building permit. The unpermitted screened porch exceeds lot coverage and encroaches into the rear building restriction line (BRL).</p> <p>COMPATIBILITY WITH THE ZONING ORDINANCE</p> <p>The unpermitted rear screened porch and open deck does not comply with Town's building permit requirements per Town Code §18-218. The recently submitted "Boundary and Topographic Survey" provided by Walter L. Phillips dated 4/12/2019 does not calculate the lot coverage and setback information provided by a licensed professional and may exceed the Town's 25% maximum lot coverage allowed under Town Code Section §18-33.F and setback requirements listed in Code section §18-33.E which by references sections §18-15.E and §18-15.F.</p>			
Attachments:	BZA Application <input checked="" type="checkbox"/> Approved permit with House Location & Lot Coverage Exhibit prepared by Walter L. Phillips dated 6/04/2019 <input checked="" type="checkbox"/> Fairfax County permit <input checked="" type="checkbox"/> BZA meeting minutes 7/17/2019 <input checked="" type="checkbox"/>		

ITEM NO. 1:

Request for an **appeal of a zoning violation** that the subject property is not in compliance with Town Code §18-218 as it relates to building permit requirements, for the property located at 124 Melody Lane, SW, in the RS-10, single-family detached residential zone. Application filed by Nicholas Cumings agent of Walsh Colucci Lubeley & Walsh PC.

Introductory Comments / Characteristics of the Existing Property:

The subject property is a nearly-rectangular corner lot situated on the southeasterly corner intersection of Melody Lane, SW and Desale Street, SW; in the Block 1 Section 3 Vienna Woods subdivision. The RS-10 zoned parcel is 103.09 feet in width, 125.93 ± feet in depth and encloses a recorded area of 11,948 square feet. Existing improvements include the subject dwelling, covered front porch, asphalt driveway and a newly constructed unpermitted rear screened porch and deck.

A review of the Town's records revealed a Certificate of Occupancy dated September 29, 2014 for the newly built home and accompanying Final House Location Survey prepared by the licensed professional LDC, calculates this properties lot coverage currently at 24.9%. The open deck approved on September 17, 2014 has a separate lot coverage of 2.34 %, which is under the allowable 5% lot coverage allowed by Town Code for decks.

Proposed Improvements:

On 12/13/2017, the homeowner built a new deck and converted a previously approved 14' x 20' open deck into a screened porch without the benefit of an approved building permit. The unpermitted converted screened porch counts towards the 25% lot coverage and adds an additional 280 square feet to the original 24.9% lot coverage, bringing the total coverage to 27.25% or 2.25% over the allowable 25% lot coverage allow by Town Code. Note: this calculation is based on the old recorded land area of 11,948 square feet, and not the resurveyed "Boundary and Topographic Survey" land area of 12,193 square feet as shown on the attached Survey.

The applicants Engineer needs to demonstrate on the revised Boundary Survey that this additional 280 square footage meets the Towns 25% lot coverage using the revised land area value of 12,193 square feet. Additionally, the new Survey must demonstrate that these newly built structures meet the minimum rear-yard setback requirements of 35' and 25' respectively.

Relevant Code Sections:

Vienna Town Code:

ARTICLE 22. - ADMINISTRATION AND ENFORCEMENT

Section §18-218. – Building permit required.

No excavation shall be commenced, no wall, fence, structure, premises, or land used, no building or part thereof built, constructed, or altered, no building shall be moved, no sign shall be erected, repaired or repainted until application has been made and the proper permit obtained from the zoning administrator in accordance with the provisions of this chapter and said permit has been posted at the building site in plain view from the street.

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.
- 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.
- 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.

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

ARTICLE 23. - BOARD OF ZONING APPEALS

Section §18-232. – Appeals.

The board of appeals is authorized to hear and decide appeals from any order, requirement, decision or determination made by the zoning administrator or other administrative officer in the administration or enforcement of this chapter.

Section §18-239. – Procedure.

- A. Appeals. An appeal to the board may be taken by any person aggrieved or by any official of the Town affected by any decision of the zoning administrator. Such appeal shall be taken within 30 days after the decision appealed from by filing with the zoning administrator, and with the board, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

Code of Virginia:

Section §15.2-2311. Appeals to Board.

- A. An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the locality affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article, any ordinance adopted pursuant to this article, or any modification of zoning requirements pursuant to § 15.2-2286. Notwithstanding any charter provision to the contrary, any written notice of a zoning violation or a written order of the zoning administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with this section, and that the decision shall be final and unappealable if not appealed within 30 days. The zoning violation or written order shall include the applicable appeal fee and a reference to where additional information may be obtained regarding the filing of an appeal. The appeal period shall not commence until the statement is given and the zoning administrator's written order is sent by registered mail to, or posted at, the last known address or usual place of abode of the property owner or its registered agent, if any. There shall be a rebuttable presumption that the property owner's last known address is that shown on the current real estate tax assessment records, or the address of a registered agent that is shown in the records of the Clerk of the State Corporation Commission. The appeal shall be taken within 30 days after the decision appealed from by filing with the zoning administrator, and with the board, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. The fee for filing an appeal shall not exceed the costs of advertising the appeal for public hearing and reasonable costs. A decision by the board on an appeal taken pursuant to this section shall be binding upon the owner of the property which is the subject of such appeal only if the owner of such property has been provided notice of the zoning violation or written order of the zoning administrator in accordance with this section. The owner's actual notice of such notice of zoning violation or written order or active participation in the appeal hearing shall waive the owner's right to challenge the validity of the board's decision due to failure of the owner to receive the notice of zoning violation or written order. For jurisdictions that impose civil penalties for violations of the zoning ordinance, any such civil penalty shall not be assessed by a court having jurisdiction during the pendency of the 30-day appeal period.

- B. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the zoning administrator and for good cause shown.
- C. In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The 60-day limitation period shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct clerical errors.
- D. In any appeal taken pursuant to this section, if the board's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.

Findings of Facts:

- 1. After repeated attempts, the applicant has been unable to follow through with an approved building permit for a newly constructed open deck, and converted screened porch.
- 2. Fairfax County Real Estate Tax Assessments recorded land area is 11,948 square feet.
- 3. Resurveyed "Boundary and Topographic Survey" prepared by Walter L. Philips Inc. dated 4/12/2019 shows the land area as 12,193 square feet as shown on the attached Survey.
- 4. Fairfax County Code Compliance issued summons for unpermitted work with a court date set for June 6, 2019.
- 5. BZA continued that matter until the next scheduled BZA meeting of September 18, 2019 with the expectation that the work would be completed by September. The Board went on record stating September is a firm expected deadline.
- 6. An approved Fairfax County Building Permit #191900275 was issued on July 26, 2019 to modify existing screened porch and open deck to meet zoning setback and lot coverage requirements.
- 7. Granting a continuance until October 16, 2019 of the appeal of the zoning violation was necessary due to notification requirements that were not met for the intended September 18, 2019 BZA scheduled meeting date.

Required Board Approval:

Granting approval of the following appeal will be necessary to allow the applicant to keep an existing unpermitted rear deck and screened porch. The Board shall consider allowing the applicant to keep a newly built deck and the additional 280 square foot of lot coverage for the unpermitted 14' x 20' rear screened porch and expand footprint that encroaches into the rear building restriction line (BRL) without the benefit of an approved building permit.

1. §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.” According to the “Final House Location Survey” dated 9/29/2014 the existing house, covered front porch, asphalt driveway and adding the newly constructed unpermitted 280 square foot rear screened porch yields a total lot coverage of 3,256 square feet or 27.25% or 2.25% percent over lot coverage.
2. §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 existing rear deck setback 31.4 feet from the closest rear property line and with the converted screened porch encroaches into the building restriction line by 3.6 feet into the (BRL).