

BOARD OF ZONING APPEALS
PUBLIC HEARING
July 17, 2019

The Board of Zoning Appeals (BZA) held one advertised public hearing in the Council Room of the Vienna Town Hall, located at 127 Center Street, South, Vienna, Virginia, on July 17, 2019, beginning at 8:00 PM with Robert Dowler presiding as Chair. The following members were present: Jonathan Rak, Robert Petersen, George Creed, Michael Gadell, and Bill Daly. Also attending and representing staff were Frank Simeck, CZA, Certified Zoning Administrator, and Sharmaine Abaied, Board Clerk.

The clerk called roll with all members being present

Chairman Dowler And are...ah...Brian Buyniski or...ah... Julia Kreyskop here?
Okay...

Ms. Kreyskop My apologies, I was in the bathroom...

Chairman Dowler Sure. Will you state your name please?

Ms. Kreyskop Julia Kreyskop.

Chairman Dowler You're both going to testify?

Ms. Kreyskop Ah...I'm going to testify on our behalf...

Chairman Dowler ...He's going to keep quiet?

Ms. Kreyskop Yeah...He's well trained [Laughter]

Chairman Dowler [Laughter] Alright...do you swear or affirm that the testimony that you are about to give is true and accurate under the penalties for perjury?

Ms. Kreyskop I do.

Chairman Dowler Okay. Tell us about...ah... why you want a variance...your... your lot variance.

Ms. Kreyskop Absolutely. Um... as we mentioned my name is Julia Kreyskop and this is my husband Brian Buyniski, we've been residence of the Town since 2010, and our intent is to stay here for the foreseeable future. Um...I work in Tysons my husband takes the Metro to work and so this is just absolutely ideal for both of our commutes and we'd like to be here. Ah...we purchased our house in 2010 and...ah...right now we'd like to expand the livable area of our house and as a result we are asking for a variance from the rear setback requirements...ah... in order to do that. And, should you grant us that variance we will also need your approval to be able to keep a deck in its existing nonconforming setback. Ah... the details of our application are in our justification statement that I'm just going to take this opportunity to provide a summary of that. Um...as I mentioned, we purchased our house in 2010 we're located at 206 Scott Circle, SW. The house is a two story house, no basement...ah... 2124 Sq. ft. and...um... certainly, by the standards of today's homes it's a pretty modest house. And so we'd like to

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be able to expand the living area so that we could...ah...enjoy it with our family and our friends. But we can't do that without a variance. Ah...thus to fit the characteristics with respect to our property and our home that combined with the setback requirements created unreasonable restriction on our ability to expand the living area of the house and create a hardship as well. Ah... those characteristics are as follows...ah... for one thing, unlike most lots in Vienna, we are actually wider than we are deep. And on top of that our house sits diagonally on the lot which means that the various points of the house are actually closer to the setback lines than they otherwise would be. On top of that we are on a corner lot, which means that for one side of our house the setback requirement is actually more than double from what it would be if it were an interior lot, also making it difficult to expand to that side. So for three sides of our house we wouldn't really be able to make any usable additions without a variance. There is one side of the house where we would be able to make an addition without a variance; that's the side of the house facing our side neighbor, unfortunately that is the side of the house where it is the most impracticable to do anything. The reason for that is it is the side of the house with the carport and the utility room which means that all of the utilities that serve our home run through that side of the property. In order to make any additions there we would have to relocate...um...underground gas lines, all electric lines, cable lines, phone lines, all the meters, the air conditioner would have to be moved to the other side of the house, we'd have to completely reconfigure the interior of the house because that's where we have the furnace, the ducting, and the hot water heater and all the other various...um... other systems, and if we have to move the exterior items out, we have to reconfigure the interior as well, so it really doesn't make any sense to do anything on that side of the house because at that point we're not just making an addition, we're making wholesale changes inside and out. We didn't create any of these conditions; we purchased the house in good faith. All of the neighbors that are impacted...um... by us building the screened porch have no problem with us building the screened porch and they all support the project and the variance and we have their statements of support in our application. As I mentioned previously...um... if you grant us the variance we are also asking for your approval to be able to keep a portion of our deck in its existing footprint. That footprint is nonconforming. Ah... the deck was constructed in the 1980's, long before we purchased it. Apparently it was constructed without a permit. We didn't know that it was constructed without a permit and we didn't even know that it was nonconforming until we started this whole variance process. Now...um... I'm sure you've all looked at the exhibits that we included with our application, it shows a depiction of that deck. The deck is comprised essentially of two parts. One is the longer part of the deck and the other one is a port...part of the deck to the right of that longer part. We purpose putting the screened porch in place of that shorter side part of the deck and keeping the longer part of the deck. Um... that longer part of the deck encroaches into the rear deck setback by about seven...seven point four feet I think. Um...it is. Now I do understand that...ah... the Town code requires that with nonconforming structures, they have to be made conforming if they are quote "enlarged, extended, reconstructed or structurally altered". We do not intend to do any of those things with the longer part of the deck. Demolishing the side part of the deck doesn't require us to do anything with the long part of the deck. It stands by itself, it doesn't have to be shored up...

Mr. Petersen

May I interrupt?

Ms. Kreyskop

Yes

Mr. Petersen

Are you asserting that you have two decks, or are...is this a single structure?

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Ms. Kreyskop We believe it was actually constructed, the two parts were constructed separately. Um... that's based on the design of the two parts, and when you look at it there's some differences in the design. We also have a neighbor who has lived in her house in our cul-de-sac since it was constructed in 1959 and her recollection is also that it was constructed in two parts. So to answer your question, there were both constructed in the 1980's and we don't know who owned the house at that point and we don't have any connection with them, so we can't really ask. But we do believe it was constructed separately, which is actually why getting rid of one side of it doesn't require doing anything to the other side of it to make it structurally sound, or anything like that. The only neighbors who can see that deck are the neighbors at the rear...ah...they have no issues with the deck remaining in its nonconforming footprint...ah...again their statements of support...ah...states that as well. So...um...that puts an end to my story, and we're happy to answer any questions and address any of your concerns.

Chairman Dowler Any questions? Okay, I'm very troubled by the unpermitted deck. They're not small structures, by any means and it's very, I'll say, very hard to overlook their existence. Now I know you're not...ah... responsible for any of that, but... ah... I...I...I...I'm bothered by that, and...ah...cause you [laugh], that's all...

Mr. Gadell My question, when...um... I understand that the...um...the decks were built in the 80's but you purchased the house in 2010, was nothing done when you originally purchased the house pointing out that these decks were nonconforming?

Ms. Kreyskop Yeah, we had no idea...ah...the survey that was done at that time it didn't even show how far from the rear...ah...property line the deck was. Um... frankly, even if it had shown it I wouldn't have really known that it was nonconforming because we weren't looking at the code to try to figure out what was or was not conforming, but we had no idea.

Mr. Rak Question for Mr. Simeck, was the zoning ordinance in the 80's, would it have...um... restricted these decks had they come through...ah... a permit process or was it a different version that didn't have the same setback requirements?

Mr. Simeck It was the same setback.

Mr. Rak ...same setback...

Mr. Simeck ...they would have had to meet at least the 25-foot rear setback.

Chairman Dowler Do I understand that if they existed for this long of a time they really are exempted from... from... re...ah... reconfiguring them to fit the code?

Mr. Simeck That's correct. It's a legal nonconformity until you touch it, then it needs to conform.

Chairman Dowler And...ah... in touching it by putting a...ah...deck or a porch would...

Mr. Simeck ...is altering it

Chairman Dowler Yeah, it would be, yeah...

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Ms. Kreyskop And, if... if I may...um... and our position is that we are touching the right side of it, we're demolishing it in order to construct the screen porch, but we're not actually touching that longer piece of the deck.

Chairman Dowler Yeah that's [laughter] yeah [laughter] I'll accept that it's two but ...ah...[laughter] Any questions, okay....

Mr. Petersen I'd like to give the...um...like to give them the opportunity, if you wish, to strengthen your assertion, your argument that your, that these, are two separate structures. Having looked at the property...um...gone through the written submission...ah...I see a single...ah... I see the deck as a single structure with significant...um...encroachment on the setback requirement which is not an issue unless you build the...ah... build the screen porch. But I'll give you another opportunity, if you wish, to strengthen your argument that we should consider this two separate structures, there. And I have to tell you I, from what you said, what I saw, and what I've read I see a single structure.

Ms. Kreyskop And... and I respect that view. I certainly understand it...um...that is why we're asking for your approval to be able to keep it, we're not saying that we get to keep it as a right...um...we are, we're asking for your approval to do it, and the rationale for that is because we're not, in fact that part of the deck is... it stands structurally independently by itself. And when I say we're not touching it, I'm not making that up we're not touching it. We're... we're just demolishing the right side of it. And that square, that rectangle, rather, we are not touching...we're not doing anything to it.

Chairman Dowler You don't need our approval to keep the deck. So the only thing we have is whether you get to build the porch.

Ms. Kreyskop But my understanding from Mr. Simeck is that... that was my initial...um... that that was what I thought we first had to do, but when I met with Mr. Simeck for the pre application...um... for the variance process, we were told that we had to add the request to keep it, to keep that deck if we were going to be able to build the porch.

Mr. Petersen Mr. Chairman, my... my understanding is if we were to approve construction of the screened porch we would have to approve a, what is presently a, nonconforming deck which significantly encroaches into the setback.

Chairman Dowler If it's one deck. If it's two decks, then they get to keep the non-porch related....

Unidentified Speaker It's what was sent for permit, is the question if it was nonconforming [inaudible].

Ms. Kreyskop If I may also I...I do appreciate that it encroaches by seven and a half feet, the overall size itself of the deck is within the size of the deck requirements for the Town. I believe it's 5% of the property, Mr. Simeck can correct me if I'm wrong, of all parts of the deck as they currently stand are within that limitation...um... so the deck itself is not too big, it's just where it's located. Now one of the reasons we don't want to shorten it...um...is it's not just that we don't want to shorten it, we also have a decorative wall around it with plantings and trees...ah... they provide privacy for us, they provide privacy for our neighbors who support keeping it in place partially for that reason, so if we had

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to shorten this deck we would have to get rid of that wall, we would have to get rid of all the trees and all the plantings...um...

Chairman Dowler Why? Why can't that...ah... let's say you shorten the deck, why do you have to change the landscaping?

Ms. Kreyskop Because, and I don't know if you have the photos...in front of you, in the exhibits...

Chairman Dowler ...Yeah, I saw the photos...

Ms. Kreyskop Um... they, the property slopes down a little bit as we get towards the rear yard and so the soil, I'm hoping I can describe this in a way that makes sense, the soil behind the decorative wall abutts the deck as it currently stands...and if that goes away by seven and a half feet you just have open space. We would have to fill that in either with a lot of dirt, to make up for, you know, that empty space or otherwise get rid of it, I hope that that makes sense, the way I described it.

Chairman Dowler ...um...okay. Anything further? Okay nothing further. Alright. Close the hearing. [Gavel]

Ms. Kreyskop Thank you

------(Regular Meeting – deliberations)-----

Chairman Dowler Alright, any opposed? Okay. Um... final request for approval of a variance from Section 18-33E 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 property located at 206 Scott Circle, SW; in the RS-10, single family detached residential zone.

Mr. Creed Mr. Chairman I'd like to...ah... move that we approve this variance to construct this rear screened porch over an existing unpermitted deck, that encroaches into the rear setback of the property located at 206 Scott Circle, SW and I'd like to add there that we...um... make the ...um...the larger of the two decks...ah...permitted in a... a... um... um...I may need some help with this... ah ...Mr. Simeck, that we make this...ah... conforming; that we allow the larger deck to be conforming.

Mr. Simeck Yeah, that'd be if you approve the deck, I mean, the screened in porch, you'd have to then...um...um... ask if whether they need to remove the remaining deck or be able to keep it.

Unidentified Speaker Um...um...I'm saying keep it and make it...ah...is it conforming? Would that be the proper word?

Mr. Simeck The BZA variance would be conform if you grant the variance.

[Inaudible]

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Chairman Dowler Is there a second? Going once, going twice, is there a second?
No second. Anybody have another motion? [Long pause] [Laughter]

Mr. Rak Mr. Chairman, al... although I...I...I'm sympathetic to the applicants, this application seems very similar to numerous ones that we've seen for...ah... construction of screened porches and we've all, we've consistently denied those, and I just think for consistency of... of our... of our...um...application of the ordinance...um...I would move...um... that we deny the variance.

Chairman Dowler Alright ah...

Mr. Petersen Mr. Chairman, I have a concern over that. Um... we have never been consistent in...in...in these particular lots [laughter] that where you have corner lots, where the houses are... are ...are... are kinda kati katiwompus to the front there's no real front, no rear... rear set on there, and we've often been very permissive of allowing these because of the size of the backyards, and where the homes sit on these lots. And I have real heartburn over calling this consistent, because it's not and, na... and hasn't been in the number of years since I have been sitting on this Board now since 2009.

Chairman Dowler Alright, um...

Mr. Petersen ...in in supporting this motion...ah...I would just note that...um... the property owners can continue to...um... have reasonable and enjoyable use of the property without the screened in addition and...ah...were we to approve the variance request and approve...ah...the nonconforming deck it would be a significant encroachment into the...um...restricted area...um... of the rear setback. And for that reason I second it and strongly approve the...ah... motion to deny the variance request.

Mr. Daly Ah...and I would like to add [interruption garbled] I agree with Mr. Petersen and in looking at the photos and the overall...ah... package I have difficulty finding that it's two separate decks, and that's what we would need to find in order to allow it to stand...ah...of right, I guess you could say. Since it is one deck and since it is being touched and altered I think that a seven-foot encroachment, as Mr. Petersen says, is very significant.

Chairman Dowler Okay...

Mr. Daly ...I hate the fact that neighbors all around would actually prefer it to be left alone but our hands are tied on that we have to apply what we have to apply and that's not for us to change...ah... the code, and so I don't think that we have the legal basis to allow the seven-foot encroachment notwithstanding the fact that we may think that it looks fine to... to be left alone, and in fact may even look better than what may end up being there if they add a screened porch.

Chairman Dowler Okay.

Mr. Gadell So Mr. Chairman, to be... to be clear on this, that if we denied this motion they simply keep this deck as is because it's grandfathered in, is that correct?

Chairman Dowler Because there is yeah... they ...ah...yup... Okay...um...all in favor of the motion signify by...

Mr. Creed One more comment, I'm looking at the photographs here...um... on exhibit B and visually to me you've got two separate decks there. Ah... you've one that...ah... the...ah... the planking is going perpendicular to the house and the other is...ah...ah...going...ah...parallel to the house.

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The parallel to the house is one that is the...ah... short deck and...ah...there's... there's different sets of rails on it and I just don't see architecturally speaking, I see two separate entities right there, in my view. Others may see something different but I'm going to vote on it based on my view.

Chairman Dowler

[Chuckles] Okay, um...

Mr. Rak ...on the issue of consistency I...I definitely defer to Mr. Creed since he's he has the tenure on the commission, I was just thinking of, I guess, one application we had ...ah...a month or two ago that seemed very similar and...ah... I think my the...the reason I...I...I...move to...to...ah...deny it really is just an inability to see hardship. That's...that's kinda where it comes down to for me.

Chairman Dowler

Alright, ...ah...all in favor of the ah motion signify by saying aye.

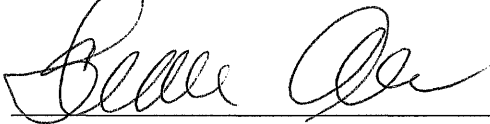
Aye (Rak, Petersen, Dowler, Gadell, Daly)

Chairman Dowler

All opposed ah...

Nay (Creed)

I, Sharmaine Abaied, hereby certify that the foregoing is a true and accurate transcript of the hearing before the Board of Zoning Appeals on July 17, 2019.



Sharmaine Abaied

Clerk to the Town of Vienna Board of Zoning Appeals

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