



Town of Vienna

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Vienna, Virginia 22180
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Meeting Minutes - Final Board of Zoning Appeals

Wednesday, April 17, 2019

8:00 PM

COUNCIL CHAMBERS-VIENNA TOWN
HALL

1. Roll Call:

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 November 13, 2018, beginning at 8:00 PM with Robert Dowler presiding as Chair. The following members were present: Mike Gadell, Robert Petersen, Gregory Haight, Jonathan Rak, and George Creed, Absent: Bill Daly. Also attending and representing staff were Frank Simeck, CZA, Senior Zoning Inspector and Sharmaine Abaid, Board Clerk.

2. Election of Officers

Mr. Gadell began the meeting by moving to item two on the agenda to proceed with the election of the Chair and Vice Chair for the BZA for 2019. Mr. Gadell asked for nominations for Chair and Vice Chair.

Mr. Creed nominated Mr. Dowler as Chair, and Mr. Petersen seconded the motion.

Motion: Creed
Second: Petersen
Passed: 6-0
Absent: Daly

Mr. Creed nominated Mr. Haight as Vice Chair and Mr. Dowler seconded the motion

Motion: Creed
Second: Dowler
Passed: 6-0
Absent: Daly

Mr. Dowler opened the public hearing for the BZA meeting and explained the purview of the BZA.

3. Public Hearings:

[BZA-19009](#)

608 Kearney Ct SW - Variance - Lot Coverage

Request for approval of a variance from Section 18-24.F of the Vienna Town Code in order to construct a new screened in porch, in excess of the maximum permitted lot coverage on the property located at 608 Kearney Ct, SW; in the RS-12.5, Single-Family Detached Residential zone. Application filed by Peter & Jill Christensen, owners.

Mr. Peter Christensen was sworn in to speak on behalf of the application.

Mr. Christensen began by thanking the Board and introducing himself and his wife Jill Christensen. They are looking for a variance to construct a screen porch in the current footprint of their deck. He stated they have lived there for seven years and intend to be there for a long time. They live there with their daughter Charlotte who is 4 ½. Mr. Christensen stated the screened porch they would like to have built would be 12x16 feet, 192 square feet, and adheres to all the setback requirements. There is a proposed open deck that would sit to the side of the porch that would be 11x14 feet, 154 square feet. The open deck was included for the purpose of using a grill. The deck would be at 1.5% lot coverage, adhering to the allowable 5% coverage; sections nine and ten of the packet have the detail drawings of the porch and the deck. When the home was purchased in 2012 the lot coverage was already 93 square feet over the 25% lot coverage restriction putting it at 25.88%. The house has the same structure it had when it was built. Recently the carport was converted into a garage, which was permitted, approved, and inspected through the town and county with no change in lot coverage. The 192 square feet that would be added for the screened porch would bring the total lot coverage to 27.73% and is shown on the survey in section nine of the packet. Mr. Christensen noted from the staff report that the lot is 10,556 square feet although the house is in RS-12.5 putting the lot about 2,000 square feet below the required lot size. The current lot coverage is 2,732 square feet, which on a 12,500 square foot lot would put the property at 21.86% and with the proposed additions would put it up to 23.39%. Mr. Christensen stated he understood there are requirements that need to be met for the variance to be granted. He stated the property was acquired in good faith and they did not create the hardships that he would detail. The property would remain the same with no desire to change the use or classification. They have submitted signed letters of support from the neighbors who abut their property, which can be found in section eight of the packet. Mr. Christensen stated they had also provided evidence of similar structures on their street with the same lot size as theirs showing there would be no change to the look in the neighborhood and that information can be found in section seven of the packet. Mr. Christensen stated they had two hardships. The previous summer he had been diagnosed with a wasp allergy when a sting had resulted in dizziness, nausea, and swelling. The doctor prescribed Allegra, Zantac, and an Epi-Pen with instructions to use the Epi-Pen and call 9-1-1 if stung again. In the packet there is a signed letter stating it can be life threatening and to be cautious of time spent outside. He continued by stating he is a 3rd generation with a wasp allergy as well as his mother in law having a wasp allergy and they are not aware yet if their daughter carries the allergy. They found two small wasp nests in their carport, had them removed professionally, and have it checked periodically. There was an additional large nest found on a maple tree on the edge of their property which has been removed along with the tree. There is a picture of an additional nest, included in the packet, located on Yeonas Drive just behind their house. Mr. Christensen stated he knew it wasn't unique to the property itself except for the life threatening consequences and the increased wasp activity is a change that they had not dealt with the entire time living there. Mr. Christensen stated the medical records were included in the packet. He continued by stating the next hardship was shared with their neighbors regarding the storm drain on their lot. The grading issues on their property and the surrounding properties, the water does not flow properly to the drain. The ponding occurs with minor to moderate rainfall. The house at 606 (Kearney Ct SW) has such significant ponding during the winter it freezes. The ponding creates a breeding ground for mosquitos, and the pictures of the ponding can be found in section four of the packet. Mr. Christensen stated he understood that the area has had more than normal rain over the past year, but that the pictures submitted in the packet were taken in December and January during a mild winter rain. The owners of the house with the storm drain had a soil survey done that indicated there were grading issues with their property and the surrounding properties leading to standing water. Additional information as well as a copy of the report can be found in the packet. The original home owners reggraded the backyard and installed a retaining wall that runs almost the entire width of the property.

They had also put in a French drain, and the downspouts connect to corrugated pipe that runs underground dumping behind the retaining wall. A porch would not negatively impact how the water is managed. Mr. Christensen said that despite all the mitigation efforts they still have the ponding. They have tried to mitigate the mosquito issue with spraying, and mulch which has proven ineffective. Mr. Christensen stated that although mosquitos are not unique to the property, the improper draining of the water is the concern. He closed by stating they love living in the town and would like to enjoy the property as much as they can, but they don't feel like right now they can.

Mr. Creed spoke to Mr. Simeck about the Christensen's non-conforming property in the 12.5 zoning area with just a little over 10,000 square feet. He then asked Mr. Simeck to explain. Mr. Simeck stated that when Pickett Estates was subdivided it was zoned RS-12.5 and should have been carved out as 12,500 square foot properties or more. He continued stating it was not uncommon that a handful of properties would not meet that requirement in a subdivision. Mr. Creed then asked if in the motion, that evening, would they need to do an administrative change to make it conforming to that size lot. Mr. Simeck stated the Board cannot change a subdivision or parcels. Mr. Creed stated it would be in efforts to make the parcel conforming. Mr. Simeck stated the Board may need to concentrate towards the fact that all properties in town need to meet the 25% lot coverage, regardless of the zone. Mr. Creed stated he understood, but wanted to know if there was anything administratively that needed to be done to make a conforming lot. Mr. Simeck stated the Board did not have the power to do that.

Mr. Rak asked Mr. Simeck, for clarification, if the current house exceeds the maximum lot coverage and the applicants want to take the deck, excluded from lot coverage, and enclose it as a porch which would be considered as lot coverage. Mr. Simeck said yes. Mr. Rak asked what the purpose of lot coverage accomplishes. Mr. Simeck stated it is set out to have more green space and separation of property. Although different zones have different setbacks, they all have the same lot coverage requirement of 25%. Mr. Rak asked if it was based on the size of the lot and Mr. Simeck stated it was just the size of the lot. Mr. Rak stated he was sympathetic to the medical concerns of the applicant, but that he struggled to see how the application fits within the requirements of a variance as a hardship doesn't seem to be related to the lot and the criteria of a hardship due to a physical condition relating to the property or improvements thereon. He continued stating he didn't see how it was distinguishable from other lots that have the same maximum lot coverage percentage. Mr. Simeck stated he agreed. He continued explaining that variances go through a pre-application process and as of late there have been many people who want screened in porches and most often it is due to mosquitos in which he states to the applicant that it is not a hardship. Mr. Simeck stated he cannot tell an applicant to not come before the Board, but they need to bring a strong case which is what he told the Christensen's.

Mr. Christensen stated that from their perspective it is a property hardship. If the reasoning for lot coverage restriction is due to spacing between houses, now there is a deck in that space and they would only close in what's there. Due to the medical issues they cannot use what's there, but if it were a porch it could be used in a different way. He stated he understood that no one wants to deal with mosquitos, but there is significant ponding on the left that does not flow through their yard to the storm drain on the right.

Mr. Creed asked Mr. Simeck if there a town responsibility to maintain the sewer easement. Mr. Simeck stated, if there was an issues with the storm structure itself the town would repair it. The town will not regrade a person's property. If a homeowner has areas in their lot that have sunk out or settled, common sense would be to fill them in and

get sheet flow to the inlet. Mr. Christensen stated the previous owners spent a significant amount of money to put in the retaining wall, and French drain due to their concern of water on the property ten years ago. Mr. Creed if water was ponding at the opening of the storm drain. Mr. Christensen stated it was not clogged, but it doesn't flow seamlessly from the surrounding properties that run through theirs and to the drain. Mr. Creed stated he was checking to see if the town needed to do maintenance at the opening if it was ponding and if it does then they would need to contact the town.

Mr. Creed asked if they asked to cut back the dimensions of the proposed porch, would that be an issue. Mr. Christensen asked if he meant make the porch 12x14 rather than 12x16, and Mr. Creed said yes. Mr. Creed asked if cutting it back would bring it into the 25%, and Mr. Christensen stated he didn't believe so as the house was built it was already over the 25%. Mr. Simeck stated that when the homes were built they were right at 25% lot coverage. He continued by explaining that if the driveways were taken in they could meet the lot coverage for the property and that it would just meet it, but it would be tight. Mr. Creed asked if the lot had been the minimum size for the 12.5 zoning area would the porch then fit within the 25%. Mr. Simeck stated that it would fit, but the zoning code states it needs to meet the minimum of the lot size not the zone. If a subdivision were done today the lot would have to meet the 12,500 square feet.

Mr. Dowler stated the house, garage, and driveway are currently over the 25% by a small amount. The current deck is within the 5% that is allowable. Mr. Christensen stated that was correct. Mr. Dowler asked if the proposed porch was built would they tear down the current deck and rebuild or just put a roof over the current deck. The builder believed he would need to tear it down based on how the deck had been built, but they had not gotten into all the details as of yet. Mr. Dowler stated the deck had been built without a permit and if they were aware of that. Mr. Christensen stated they were not aware as it was there when they built the house.

Mr. Dowler asked if there were other questions or if Mrs. Christensen would like to speak.

Mrs. Jill Christensen was sworn in to speak.

Mrs. Christensen stated the reason it is a property hardship is that they are limited in what they can do to address the issue based on the surrounding properties. They have done what they can to mitigate the issue on their property, but cannot do anything to the surrounding properties which is the reasoning behind stating a property hardship. Mr. Rak asked how the surrounding properties limited their property. Mrs. Christensen stated they could not regrade the property next door (606 Kearney Ct SW) which has the ponding issue. Mr. Rak stated he understood what she was saying. Mr. Christensen responded to Mr. Creed's earlier comment about the lot size and zoning district. He said there were houses on the street that conformed to the minimum lot size requirements and due to that if their property was wider then they would be further away from the ponding. Mr. Rak stated he was sympathetic to the drainage problems, but that there was not a nexus to the drainage problems and the relief they are requesting. The lot coverage requirement they are requesting does not really affect the drainage as they are two different issues. Mr. Christensen stated he understood that perspective and that it may not be a direct connection as far as figuring out the drainage, but it affects how they can use the property.

Mr. Petersen stated he was sympathetic in terms of wanting to utilize their property more than they seem to be able to at the present time. He continued stating from what he has

heard and read he did not see how their property was unique in the setting with a problem described with adjoining properties. Mr. Petersen stated he felt something had been introduced that was erroneous and may lead the Board astray; the buildings on some of the properties in your neighborhood that conform, i.e. the lot sizes are larger than your lot size. That really has nothing to do with conforming. Mr. Christensen stated he understood, but if they had 12,500 square feet then they wouldn't have brought it up. Mr. Petersen stated he was open to hearing more arguments on their behalf, but so far he did not hear or read anything that would enable him to find a justification within the parameters to determine a unique situation for your particular parcel. Mrs. Christensen stated that she felt one thing that made it unique was its proximity to the storm drain easement and the soil survey stating there was an issue. She continued stating their property was unique because they did try to address and mitigate, but it was unsuccessful which is why they were seeking the variance.

Mr. Dowler stated the ponding problem concerns all of their neighbors and asked if they had any discussions as a group to solve the ponding issue. Mrs. Christensen stated that when she spoke with the neighbor at 606 Kearny Ct to ask to sign the letter of support she stated the owner indicated she was going to reach out to the town regarding grading issues. They have not had a formal neighborhood get together, but there have been some discussions. Mr. Dowler stated that one criterion is that your problem is not shared by others in the neighborhood and it seems there is a common problem with the neighbors. Mr. Christensen stated what is not shared is that they have talked about it, but have not done anything about it. He continued saying the property may have looked worse without the retaining wall and that the neighbor's property was graded differently than theirs.

Mr. Simeck added the neighbor at 610 Kearney Ct SW that came before the Board for a variance has the storm drain. The town's water quality engineer, Christine Horner, went out and inspected the storm sewer drainage structure and stated there was no issue. She had also sent an email stating her results of the inspection. It is not uncommon for yards in and around an inlet to settle out and put in retaining walls and things that can impede the flow. Mr. Christensen stated they weren't talking about an obstruction to the drain; it's an issue of the water getting to the drain. Mrs. Christensen said the unique situation that they don't share with others is that they have multiple things at play that come together to make a unique situation. She continued by reiterating all the issues.

Mr. Dowler asked if there were no more comments, was there a motion to close the public hearing.

Mr. Gadell made a motion to close the public hearing

Mr. Creed seconded the motion

Motion: Gadell

Second: Creed

Passed: 6-0

Absent: Daly

4. Regular Business:

The Board of Zoning Appeals (BZA) met in regular session to review one advertised public hearing in the Council Room of the Vienna Town Hall, located at 127 Center Street, South, Vienna, Virginia, on November 13, 2018, beginning at 8:00 PM with Robert Dowler presiding as Chair. The following members were present: Mike Gadell, Robert Petersen, Gregory Haight, Jonathan Rak, and George Creed, Absent: Bill Daly. Also attending and representing staff were Frank Simeck, CZA, Senior Zoning Inspector and Sharmaine

Abaied, Board Clerk.

The Board will reach a decision on the above listed agenda items at the conclusion of the scheduled public hearing.

Mr. Dowler stated he was not persuaded that a variance was necessary for the problem that they have. The problem with the land is the water and maybe the grading. If a porch is built in excess of the lot coverage they would still have the basic problem. Mr. Dowler stated he agreed with his colleagues and that the solution is not appropriate for what the problem is. Plus, the neighbors have similar problems rendering their lot not unique to the neighborhood. He concluded stating he could not vote in favor.

Mr. Gadell stated if the deck was not approved, could add an amendment that would allow for the .88% for the current overage of lot coverage. Mr. Dowler stated they could make an additional motion.

Mr. Petersen asked if there was a need for a formal vote. Mr. Dowler stated yes.

Motion: Creed
Second: Haight
Denied: 3-3
Nay: Rak, Petersen, Dowler
Absent: Daly

Mr. Dowler asked if there was a motion to accept the current lot coverage over by .88%.

Mr. Rak made the motion to approve the overage; he then asked Mr. Simeck if there was a separate category for decks. Mr. Simeck stated that decks had a separate 5% lot coverage.

Mr. Gadell seconded the motion. He then added that it was a housekeeping motion to allow the existing situation to exist.

Mr. Dowler asked if there would be any discussion.

Motion: Rak
Second: Gadell
Approved 6-0
Absent: Daly

Election of Officers: the Board will elect from its membership a Chair and Vice Chair to serve for 2019.

Approval of the Minutes

Mr. Dowler stated to the Board that they had minutes to approve from November 13, 2018

Mr. Petersen made a motion to approve the minutes and noted that he gave the clerk a typographical correction.

Mr. Gadell seconded the motion.

Motion: Petersen
Second: Gadell
Passed: 5-0

Abstain: Rak

Absent: Daly

Mr. Creed stated he did not remember what happened in November. He then stated he wanted the minutes to be sent to the Board within the next few days after the meeting so they could make notes on them if they needed. The Board clerk stated they had worked on acquiring transcribing services as the job of a board clerk is vast and not just minutes. Since they have acquired transcribing services the clerk will be able to send out the minutes and have them back within ten business days and they will be certified verbatim minutes. Mr. Dowler asked the difference between verbatim minutes and a transcript. The clerk stated that the umms, ahhh's, etc. will be in the minutes and currently the minutes have been truncated. Discussion continued regarding the new format for minutes. Mr. Simeck did add that verbatim minutes are a priority due to any item going to the circuit court they would require verbatim minutes.

Mr. Petersen expressed his thanks to Mr. Gadell for very ably chairing the Board over the past year.

Mr. Gadell thanked Mr. Petersen and the Board and welcomed the newest member of the Board, Mr. Jonathan Rak.

5. Meeting Adjournment:

Mr. Dowler made a motion to adjourn the meeting.

Mr. Haight seconded the motion.

Motion: Dowler

Second: Haight

Passed: 6-0

Absent: Daly

Adjournment

The meeting was adjourned at 8:59.

Respectfully submitted,
Sharmaine Abaied
Board Clerk

THE TOWN OF VIENNA IS COMMITTED TO FULL COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT STANDARDS. TRANSLATION SERVICES, ASSISTANCE OR ACCOMMODATION REQUESTS FROM PERSONS WITH DISABILITIES ARE TO BE REQUESTED NOT LESS THAN 3 WORKING DAYS BEFORE THE DAY OF THE EVENT. PLEASE CALL (703) 255-6341, OR 711 VIRGINIA RELAY SERVICE FOR THE HEARING IMPAIRED.

About the Board of Zoning Appeals

The Board of Zoning Appeals is a quasi-judicial board comprised of seven members – all of whom are residents of the Town of Vienna, VA. The Board serves as an arm of the Fairfax County Circuit Court, as all members are appointed to the Board by the Court after receipt of recommendation from the Vienna Mayor and Town Council.

The Board is empowered by the Code of Virginia to:

1. Hear and decide appeals from any order, requirement, decision or determination of the Zoning Administrator.
2. Grant variances from the Zoning Ordinance – as defined in Section 15.2201 of the Code of Virginia – as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions will unreasonably restrict the utilization of the property to a degree that is not shared generally by other properties within the same zone or district, and its authorization will not be of substantial detriment to adjacent properties or change the character of the neighborhood
3. Hear and decide applications for interpretation of the Zoning District Map when there is any uncertainty as to the location of the boundary line.
4. Grant Conditional Use Permits in accordance with the provisions of Section 18-209 – 216 of the Vienna Town Code.

The Board of Zoning Appeals does not have the power to change the Zoning Ordinance or the rezone property. Those powers rest with the Mayor and Town Council. Please be advised, the Board decides each application on its own merit – there are no precedents.

The Board will first consider each application during the Public Hearing portion of the meeting. As part of the Virginia Court System, the Board of Zoning Appeals takes sworn testimony and each participant will be sworn in prior to offering comments.

The second portion of the meeting – the Regular Meeting – will convene after the Public Hearing has been closed. The Board will reach a decision on each item. The grant of any appeal from a decision by the Town's Zoning Administrator requires an affirmative vote of the majority of the entire membership of the Board. The grant of a Conditional Use Permit or variance requires an affirmative vote of the majority of those present and voting. If you are unable to stay for the last portion of the meeting, you may learn the Board's decision by contacting staff.

If any party is not satisfied with the decision of the Board, an appeal may be filed with the Circuit Court of Fairfax County within 30 days after the issuance of the Board's decision on the matter.