



Town of Vienna

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Vienna, Virginia 22180
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TTY 7111

Meeting Minutes Board of Zoning Appeals

Wednesday, February 19, 2020

7:00 PM

COUNCIL CHAMBERS-VIENNA TOWN
HALL

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 February 19, 2020 beginning at 7:00 PM with George Creed presiding as Chair. The following members were present: Daniel Nash, Jonathan Rak, Robert Petersen, Robert Dowler, and Michael Gadell. William Daly was absent. Also attending and representing staff were Frank Simeck, CZA, Kelly O'Brien, Principal Planner, and Sharmaine Abaied, Board Clerk.

At the beginning of the meeting Mr. Creed asked the clerk to call roll and gave an opening statement reviewing the purview of the Board of Zoning Appeals.

Public Hearings

211 Center St N - Request for approval of a Variance

Request for approval of a variance from Section 18-33.F of the Vienna Town Code in order to construct a new single-family dwelling, in excess of the maximum permitted lot coverage, on the property located at 211 Center Street North, in the RS-10, Single- Family Detached Residential zone. Application filed by Mr. Joseph Patrick Bullis & Mrs. Pilar Bullis, owners.

Mr. Joseph Bullis of 211 Center St N. was sworn in to speak.

Mr. Bullis stated their current property has a variance that was approved in 1997 granting 27.4% and it is a non-conforming lot at 8,173 square feet. They would like to rebuild conforming to the same specs of the 27.4%. Mr. Bullis stated, when rebuilding, they bring the home into conformance with current setback regulations as the current home is not.

Mr. Creed asked if the home was in the building restriction line, Mr. Bullis stated it was not, but that the new building would be. Mr. Creed asked for the square footage and how it compares to the current square footage on the lot. Mr. Bullis asked Mr. Simeck for the square footage as he was only aware of the percentage. Mr. Simeck stated a normal RS-10 lot, at a minimum of 10,000 square feet can cover up to 2,500 square feet. The lot at 211 Center St N. was currently at 2,278 square feet and was proposed at 2,240 square feet (27.4% of the 8,173 lot size). Mr. Simeck went on to state that they would come into compliance with the side yard setback. The new home would be square to the lot allowing it to meet the side yard setbacks.

Mr. Rak inquired about the rationale behind the granting of the variance in 1997. Mr. Simeck stated they had determined that the 8,173 square foot lot was well under the normal 10,000 square foot requirement.

Mr. Creed asked for any other questions, there were no questions. Mr. Creed asked if anyone in the public would like to speak on the agenda item, no one wanted to speak on the agenda item. Mr. Creed then asked for a motion to close the public hearing. Mr. Gadell made a motion to close the public hearing and Mr. Nash seconded the motion.

Motion: Gadell

Second: Nash

Passed: 6-0

Absent: Daly

Regular Meeting

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 February 19, 2020, beginning at 7:00 PM with George Creed presiding as Chair. The following members were present: Jonathan Rak, Daniel Nash, Robert Petersen, Robert Dowler, Michael Gadell, and Bill Daly. Also attending and representing staff were Frank Simeck, CZA, and Sharmaine Abaied, Board Clerk.

206 Scott Circle SW - Fairfax County Circuit Court remand to BZA for clarification as to its findings and grounds for denial of variance.

Item No. 2

206 Scott Circle SW - Fairfax County Circuit Court remand to BZA for clarification as to its findings and grounds for denial of variance.

Mr. Creed stated on July 17, 2019 the variance was denied, it had gone to the Circuit Court, and the Circuit Court had sent it back to the BZA January 22, 2020. Mr. Creed stated the Board needed to take action on the remand of the BZA order to the Board by resubmitting their findings and submitting a new order to the judge. Mr. Creed read a portion of the January 22, 2020 writ from Judge Randy I Bellows:

The court cannot evaluate whether the BZA erred in its decision without clarification as to the rationale for its decision. The hearing transcript recounts the presentation by the petitioners and the BZA's denial of the petition. The BZA order dated July 19, 2019 (signed by Mr. Creed as Vice-Chairman) does not provide the court additional clarity on the issues. The order does summarize some of the arguments in favor of and against the variance, the order never states the findings of the BZA with respect to the asserted grounds for a variance, nor does it adopt or reject the arguments that are summarized in the order. In sum this court cannot determine whether the BZA erred in its decision without understanding the basis of the decision, therefore the court remands the matter back to the BZA for clarification and issues the following additional orders: clarification from the BZA of its findings and grounds for denial of the variance to be filed with the court on or before March 23, 2020 supplemental briefs to be filed by the Town of Vienna and petitioners on or before April 13, 2020. The matter will then be taken under advisement for the court to render a final decision. The court will only schedule further oral argument if the court deems it necessary.

Mr. Rak stated he was the maker of the motion in July that was lacking in clarity. He continued stating he made some edits to the motion to answers questions raised in the remand. Mr. Rak passed out to the Board and the public the document that was considered

by the court with edits for proposed changes for the Board to adopt.

Mr. Creed asked if there was anyone in the audience who participated in the original hearing. One member of the public raised their hand. Mr. Creed asked if she was Julia Kreyscope, and she stated she was.

Mr. Rak continued reviewing the order with track changes as follows:

BOARD OF ZONING APPEALS, TOWN OF VIENNA, VIRGINIA

Request for approval of a variance from Section 18-33.E of the Vienna Town Code in order to construct a new screened in porch encroaching in excess of the maximum permitted lot coverage the required rear yard setback and to allow an existing deck to remain in the required 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.

ORDER

THIS MATTER was considered by the Board of Zoning Appeals during a public hearing held on July 17, 2019 and reconsidered on February 19, 2020 for a variance from Section 18-33.E of the Vienna Town Code. Based upon testimony offered by the applicant, exhibits offered into evidence, comments offered by members of the public and other interested parties, the Board has determined the following findings of fact:

A. 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).

B. 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.

C. 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.

D. Based on the testimony of the applicant and the statement of justification demonstrating that the "long" deck and "short" deck were constructed independently with different floor elevations, the structures at the rear of the house comprise two separate decks.

Request for approval of a variance from Section 18-33.E of the Vienna Town Code in order

to construct a new screened in porch in excess of the maximum permitted lot coverage encroaching in the required 35 feet rear yard setback and to allow an existing deck to remain in the required 25 feet 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.

AND FROM THE FINDINGS OF FACT AS DETERMINED ABOVE, the Board of Zoning Appeals makes the following conclusions of law:

A motion was made to deny the request for a variance from § 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. The motion passed with a 5-1 vote.

The bases for denial of the variance are:

1. Enforcement of the rear yard setback would not unreasonably restrict the utilization of the property. The property owners can continue to have reasonable and enjoyable use of the property without the addition. The house has been occupied for sixty years without a screened porch. Although addition of a screened porch would be a convenience, the inability to add such a porch does not unreasonably restrict the utilization of the property. The presence of mosquitoes outdoors is common throughout Vienna and many homes do not have screened porches.
2. The applicant failed to demonstrate 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. The lot is nearly square in shape with the depth being only 17 feet less than the width. Even if the rear wall of the house were parallel to the rear property line, the proposed porch would still extend well into the setback.
3. The condition or situation of the property concerned is of a general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance. Many homeowners in Vienna wish to expand their homes with screened porches because of mosquitoes but are unable because setback requirements are greater for screened porches than for open decks. The zoning ordinance could be amended to reduce the setback requirements for screened porches.

No action was taken on the second request for variance to allow the second deck to remain because both decks are allowed to remain as nonconforming structures.

Arguments in favor of the motion to deny the variance request included: the property owners can continue have reasonable and enjoyable use of the property without the screened in addition; approval of the variance and non-conforming deck would be a significant encroachment into the rear-yard setback; difficulty finding that there were two separate decks (per applicants argument of two separate decks).

Arguments against the motion included: it appeared there were two separate decks based on the decking floorboards running parallel and perpendicular to the house.

IT IS, THEREFORE, ORDERED, this day of ____ that the application requesting approval of variance from §18-33.E of the Vienna Town Code in order 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, be denied .

George J. Creed
Board of Zoning Appeals, Vice-Chair

Town of Vienna

Mr. Creed asked Mr. Simeck if there were any permits pulled for the existing deck; Mr. Simeck stated no permits were pulled for the decks. Mr. Rak reminded the Board that the deck was constructed without approvals and in violation of the setback, but due to a period of at least 15 years having lapsed it was deemed a lawful non-conforming use.

Mr. Dowler stated Mr. Rak's revision of #1, the enforcement of rear yard setback, should include everything else that was added by the applicant to include: hardship or unreasonable use included setbacks, location of the house, corner lot restrictions. Mr. Dowler stated building a screened in porch as a remedy for a lot or an inconvenience of mosquitos would be an extreme measure for a solution to the problem and granting a variance would exceed a reasonable deviation.

Mr. Nash stated he felt they did not satisfy the burden of proof. He continued stating the he understood that mosquitos are a concern, but that the screened in porch would violate the code.

Mr. Rak continued stating the second paragraph, #2, addresses the hardship question. There had not been a showing of evidence that demonstrates a hardship. One issue raised was that the lot was shallow not permitting for a reasonable back yard due to the rear yard setback. The plat submitted appears that it is almost a square lot. The difference between the width and depth of the lot is only 17 feet making it close to square not providing evidence that the rear yard was too shallow. There was another statement that due to the house being slightly shifted, it imposed an additional hardship. Mr. Rak stated there was only a few feet difference in the two corners, and the proposed porch would still substantially encroach in the rear setback.

In the final paragraph, #3, Mr. Rak reviewed the five enumerated conditions (from the Town Code) and the evidence did not demonstrate that this circumstance was not of a general or recurring nature. This would indicate the 35 foot rear yard setback was somehow too restrictive and would then apply to all the similar lots in Town. The current deck would be allowed to stay and no need for a variance they are legal non-conforming uses.

Mr. Rak accepted the edits from Mr. Dowler for paragraph #1 and asked the Board if they had any additional comments.

Mr. Dowler asked for it to be called a Supplemental Order of Clarification.

Mr. Creed stated he wasn't sure there was a need for #3 requesting there be an amendment to the ordinance.

Mr. Rak stated he didn't need to add it, but if it was to be considered a hardship, then it would need to be a hardship shared by everyone in that zoning district.

Mr. Dowler stated the following should be added: Since the application for variance to allow the screened porch was denied, no action was taken on the second request for variance to allow the second deck to remain because the existing structures are allowed to remain as nonconforming structures. This would give reason as to why no action was taken.

Mr. Creed pointed out that Mr. Rak would sign the order as he is not the Vice-Chair

Mr. Dowler asked if there should be a motion to adopt the Supplemental Order of

Clarification. Mr. Rak stated they should.

Mr. Creed asked if everything was added to #1 per Mr. Dowler's edits. Mr. Dowler read #1 with the edits as follows:

Enforcement of the rear yard setback, the effects of corner lot restrictions, and the location of the house would not unreasonably restrict the utilization of the property. The property owners can continue to have reasonable and enjoyable use of the property without the addition. The house has been occupied for sixty years without a screened porch. Although addition of a screened porch would be a convenience, the inability to add such a porch does not unreasonably restrict the utilization of the property. The presence of mosquitoes outdoors is common throughout Vienna, and many homes do not have screened porches, further, to permit construction of a screened porch, as a variance, is an extraordinary deviation and not required by the zoning ordinance.

Mr. Creed mentioned that there was a screened in porch approved for mosquitos. Mr. Gadell stated it was approved for a drainage issue and not mosquitos.

Mr. Rak made a motion to adopt the order as amended, Mr. Nash seconded the motion.

Motion: Rak

Second: Nash

Passed: 6-0

Absent: Daly

Mr. Creed stated, for the record that he treaded lightly on this item as he was the only member at the time who voted against the motion.

Decision for request for approval of variance at 211 Center St N.

Item No. 1

Request for approval of a variance from Section 18-33.F of the Vienna Town Code in order to construct a new single-family dwelling, in excess of the maximum permitted lot coverage, on the property located at 211 Center Street North, in the RS-10, Single- Family Detached Residential zone. Application filed by Mr. Joseph Patrick Bullis & Mrs. Pilar Bullis, owners.

Mr. Petersen stated that if the lot was the usual 10,000 or more square feet for an RS-10 zone lot with a house maxing out to the 25% built portion of the lot would cover 2,500 square feet. The applicant is proposing a new structure on the lot at 2,239 square feet, 261 square feet less than 25% of a standard 10,000 square foot lot. Mr. Petersen felt that was a benefit as the lot coverage is intended to alleviate run off and other factors. The proposal for the new structure is a vast improvement over the existing structure as it does bring it into conformity with the front, rear, and side setback requirements.

Mr. Creed asked for a motion.

Mr. Petersen made a motion to approve the variance per the reasons he had just provided.

Mr. Dowler seconded the motion.

Mr. Petersen stated he had nothing else to add beyond his afore mentioned comments.

Mr. Dowler stated the proposal removes the violations of the side, front setbacks for a small percentage of increase in lot coverage was justified.

Mr. Rak added that he was compelled by the fact that the BZA in 1997 determined the size of the lot constituted a hardship due to the lot coverage, and felt the same should apply to the present.

Mr. Nash agreed with fellow Board members that the correction of the setbacks, the small percentage of lot coverage increase, and a new home was benefit to the town. It would correct a situation that could not be corrected with an older house.

Motion: Petersen

Second: Dowler

Passed: 6-0

Absent: Daly

Mr. Creed asked if there were any additions or corrections to the minutes. He then asked a question regarding minutes sent to the Board Clerk. He stated a set of minutes sent for review, were verbatim minutes. He asked for clarification as to the minutes on record. The clerk stated verbatim minutes are required for court cases, and the truncated minutes are on record. Mr. Creed asked if the verbatim minutes if the “umms, and ahhs” could be cleaned up. The clerk stated they could.

Mr. Creed asked if there was a motion to approve minutes. Mr. Dowler made a motion to approve the minutes. Mr. Gadell seconded the motion

Motion: Dowler

Second: Gadell

Passed: 6-0

Absent: Daly

Meeting Adjournment

Mr. Creed asked if there was a motion to adjourn. Mr. Dowler made a motion to adjourn. Mr. Nash seconded the motion

Motion: Dowler

Second: Nash

Passed: 6-0

Absent: Daly

The meeting was adjourned at 8:05.

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 a quorum, no less than a majority of membership (4), of the Board. The grant of a Conditional Use Permit or variance requires an affirmative vote of a quorum, no less than a majority of membership (4), of the Board. 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.