

Minutes

CHARLOTTEVILLE BOARD OF ZONING APPEALS
Thursday February 17, 2022
Virtual Meeting

Members Present: Gennie Keller, Matt Morril, Sakib Ahmed

Staff Present: Patrick Cory, Read Brodhead, Lachen Parks, Craig Fabio

I. CALL TO ORDER

The meeting was called to order at 4:02 PM.

There were introductions of the three members of the Board of Zoning Appeals. Staff did let members know that the applicant could ask for a deferral next month.

II. PUBLIC HEARINGS

518 Park Plaza

Staff Report, Read Brodhead –

STAFF REPORT OF THE CITY’S ZONING ADMINISTRATOR
 APPLICATION FOR VARIANCE
 BZA 22-02-001
 Hearing Date: February 17, 2022

LOCATION: 518 Park Plaza

TAX MAP & PARCEL: 330049000

APPLICANT: Mr. Nicholas Reppucci

PROPERTY

ZONING AND USE: R-1S, single family home

VARIANCE

REQUESTED: Owner requests relief from Section 34-1105(b)(5) of the Zoning Ordinance: Mr. Nicholas Rappucci, the property owner of 518 Park Plaza is requesting a variance to reduce the required rear yard setback from five (5) feet to one (1) foot. The Applicant wants to place a new accessory structure in the same footprint as a pre-existing shed dating from the 1920s. His back yard is terraced and the only flat area is that can accommodate a structure is very small that this is the only space a shed can be placed.

A. Step 1: Is this an actionable request for a Variance?

In considering this request for a variance, the BZA must follow a specific statutory procedure referenced within Virginia Code Sec. 15.2-2309 and City Code 34-136. The BZA may authorize a variance only from certain types of provisions of the City's zoning ordinance (see definition of "variance", Va. Code §15.2-2201¹). The only zoning ordinance provisions that can be varied are the following:

- A. Shape, size or area of a lot, or
- B. The size, height, area, bulk or location (e.g., setbacks) of a building or structure

Staff note: A variance for size or area of a lot is recognized as actionable condition under the this section of the Zoning Ordinance.

B. Step 2: If the application presents a matter that is within the definition of "variance", does evidence support the statutory findings the BZA must make prior to granting a variance?

A. Background

The applicant asks the BZA for a variance of the requirements of Sec. 34-1105(b)(5) of the Zoning Ordinance (copy attached). The effective date of this zoning ordinance section is September 15, 2003 ("Ordinance Effective Date").

The Subject Property is located in the North Downtown Neighborhood. The Property is 100 feet deep by 50 feet wide. Because the front of the property has a 37 % slope, the dwelling is constructed in the middle of the property and abuts the twenty five foot rear yard setback. The dwelling is 1493 square feet and contains three small bedrooms for the five people who reside in the dwelling. The Applicant is seeking a variance to encroach into the required rear yard setbacks with a new accessory structure. The structure will be 12 feet wide by 20 feet long and two stories tall. The purpose of the structure is to provide additional space for his three children to do homework, spend time with their friends and also provide storage space. The structure will contain a bathroom, but no kitchen.

The Applicant has already begun construction on this new structure that he seeking a variance for. Staff did not become aware of the construction of this accessory structure until it was already two stories tall and under roof; the way it exists presently. Through this variance process, the Applicant is attempting to correct a situation that could have been avoided and that he could have accomplished as a by-right use. Through a series of mis-steps in the process, we are now in this situation.

¹ Va. Code Sec. 15.2-2201 states that: "'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." [Emphasis added] *See also* City Code §34-1200.

The shed that was torn down had existed since the 1920 and was non-conforming because it was constructed within the five (5) foot setback as stated in section 34-1105(b)(5) of the Zoning Ordinance. Nonconforming single family residential dwellings and accessory structures are regulated by section 34-1147(c) of the Zoning Ordinance. That code section states that expansions to height are permitted only if the dwelling is being increased in height and the footprint of the dwelling does not expand further into the setback.

34-1147(c)(1)

Nonconforming single-family dwelling. The structure may be expanded as provided within this subsection. New or expanded residential accessory structures (such as storage sheds, garages, swimming pools, etc.) may be permitted. Expansion of the dwelling, and new or expanded accessory structures, shall meet all zoning ordinance requirements, including height, yard and setbacks, for the zoning district in which located; except that extension of an existing front porch that encroaches into a front yard required by this ordinance shall be permitted to the side yard(s), so long as such extension will not result in an increase in the front yard encroachment. A single-family detached dwelling that is nonconforming because it encroaches into any required yard(s) may be expanded as long as the expansion will not result in an increase in the yard encroachment(s). However, expansions in height to existing nonconforming single-family dwellings, which do not meet current setback requirements, shall be permitted only if: (i) the dwelling is only being increased in height, and (ii) the footprint of the dwelling will remain unchanged by the proposed expansion in height. Such expansion will not required to meet more restrictive setbacks enacted since the date the dwelling became nonconforming; however, all other zoning regulations for the district in which the dwelling is located shall apply.

The reason why this code section is relevant is that the Applicant could have renovated the existing shed and also increased the height. He could have also expanded the old shed as long as the expansion complied with the current setbacks and footprint maximums required for accessory structures. However, when the shed was torn down, all non-conformities were lost.

The Applicant hired a contractor to complete this project on his behalf. The Contractor was told that a building permit would not be required for an accessory structure that is less than 256 square feet. This is a correct statement. However, structures must comply with the setbacks and if they are more than one (1) story tall, a building permit IS required. The contract assumed that the new accessory structure could be placed in the same footprint as the existing shed, especially since all of the sheds in this block of North Downtown are constructed close to the alley within the five (5) foot setback. Staff recommends that this variance be approved for all the reasons mentioned above, because there are no objections from neighboring property owners and because tens of thousands of dollars have already been spent on the project.

B. Statutory Requirements:

With respect to variance requests, the burden of proof is on the applicant to prove that his request meets the standard for a “variance”, as defined in Va. Code §15.2-2201, and the criteria set forth in Va. Code §15.2-2309(2), *see* Va. Code 15.2-2309(2).

(1) Va. Code §15.2-2201 (definition of "Variance").

“A variance shall be granted if the evidence shows that... 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.”²

(2) Va. Code §15.2-2309(2) (the applicant must prove, by a preponderance of evidence, that his application meets the following standards):

a. The strict application of the terms of the ordinance would unreasonably restrict the utilization of the Property;

Staff note: The owner was acting in good faith on information that was received by his contractor when this project was commenced. The owner would have renovated the existing shed to comply with the zoning ordinance, under section 34-1147, if he had known all the regulations. The current design of the accessory structure would have been a by-right use.

and [in order to grant a variance, the BZA must determine that all factors (i)-(v) apply):

(i) 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;

Staff note: The only flat area to accommodate an accessory structure in in the rear half of the back yard. An accessory structure existed in this location for nearly 100 years.

(ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;

Staff note: As mentioned in the staff report, there are ten other accessory structures constructed within the setbacks on this block. The adjacent neighbor to the rear, located at 316 parkway Street, has noted in their letter of support that the accessory structure will provide a buffer because the two master bedrooms face each other.

(iii) 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;

Staff note: There are many accessory structures in the City that are non-conforming. That is why there are regulations to allow property owners to renovate and expand these non-conforming structures.

(iv) 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;

² Va. Code §15.2-2201; see also City Code §34-1200

[Staff note: No](#)

and

- (v) at the time of the filing of the variance application, the relief or remedy sought by the variance application is not otherwise available through a special use permit process or a zoning ordinance amendment.

[Staff note: No](#)

a) Per Va. Code §15.2-2309(2)(conditions to mitigate impact of variance):

Should the BZA determine that the applicant has met his burden of proof to establish the need for a variance, then, as part of granting the variance, the BZA 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 the BZA may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

Mr. Morrill – Is the structure that is currently under construction within the same footprint of the previous shed?

Mr. Brodhead – I had never seen the shed that was there. I was told that it was in the same location. You can tell from using GIS. I wasn't able to use Google Street View or anything to see the shed. It is so tucked back in the backyard due to the topography. It does show up on GIS.

Mr. Fabio – We do have photo of it.

Mr. Ahmed – I have a question regarding the applicant's right to have made these renovations. They had rebuilt or constructed above the shed. Can you clarify what that process would have looked like if the applicant had gone ahead and used their right of use to renovate the shed? How would that have been different from what they're currently doing?

Mr. Brodhead – That section of the zoning ordinance, in the non-conforming section, talks to non-conforming single-family structures and accessory structures on single-family lots. It essentially gives certain development rights for those structures that are non-conforming because they were either there predating the zoning ordinance or for structures built within the setback. If the applicant had called me, we would have gone through what their by right uses are for converting that structure into what he is trying to do. There are limitations. You can't tear it down. You can renovate. He would have been able to renovate what was there. It would have been an administrative process. It would have been done through email. If he asked for something on City Letterhead, I would have done that. He could have applied for a building permit and gone forward. We're seeing a lot of structures in Belmont, North Downtown, and Martha Jefferson being built right up to property lines. People are converting those into living space. They're changing a garage or going up and putting a second story on them. They can have a garage underneath with an apartment above. The applicant could make this a full dwelling unit if he wanted to. It would be within his right. It might be a little too small. It is not his intent. He would have the right to do that as well.

Mr. Ahmed – Typically on a non-conforming building, you have that right as long as the call is made prior to the renovation process?

Mr. Brodhead – That’s correct. It probably would have been a little more expensive to renovate. It’s a 100 year old building. To save the use of that building with a small backyard, I think he would have gone that route to accommodate it.

Mr. Ahmed – Is there any process outside of the BZA where he would have been able to demolish the structure instead of renovating it/demolish and build?

Mr. Brodhead – No. If he tore it down, he just has to comply with the setbacks. I don’t think he even has enough space to accommodate the 5 foot rear yard setback and the 12 foot wide structure. I am not 100% sure that there is 17 feet there. Their house is built to a patio. The patio is 8 to 10 feet wide. There are steps that go up to a second terrace level. That’s where the structure is located. It’s already done. It’s built. This is an economic hardship as well. He has already spent thousands of dollars. He would have been able to do it had he gone through the proper channels on the forefront. That’s why I support it. He would have had the right to do it.

Ms. Keller – For clarity, can you go over the process again? Had the structure not been removed, would the process have been to have an administrative approval from you followed by a building permit? Or the building permit would have triggered an administrative review by you?

Mr. Brodhead – Either way they want to do it. Most of the time people will first call me before they begin to plan and spend money on an architect and hire a contractor. It is usually that and then a building permit. Sometimes it is the opposite way. A building permit never came across my desk for this.

Ms. Keller – The addition of a second story would always trigger a building permit in an existing non-conforming structure. Had they had enough space to build a smaller structure, they would not have a required building permit for that?

Mr. Brodhead – That’s correct. If it was only one story and less than 250 square feet, they may have just built it and still not known about the setback. We do have that on our website. That’s a building code situation with the building code official having waived the requirement to have a building permit for a smaller structure because it took up a lot of time. There wasn’t enough staff time to review it. It used to be under 120 square feet didn’t need a building permit. They doubled that because of administrative time it took. The issue was that it was two stories and the neighbors saw it and complained.

Ms. Keller – What happened is understandable. I just wanted to have as much clarity as we could for the public. In the older parts of town, people are interested in using that space, particularly since the pandemic, and utilizing that space more fully.

Applicant Presentation

Rita Reppucci, Applicant – We were under the mistaken impression that we could remodel/build our shed. It is true that we were really in need during the pandemic. I was working from home. We don't really have private spaces. We need to create more space for our family. We have been living in this house since 2004 and my husband since 1999. We were here without kids at first. Our family is growing. We don't have any other options. We love our neighborhood.

Nick Reppucci, Applicant – Thank you for hearing us today. Our sincere apologies for not following the correct protocol. I am mortified that I put my family in an untenable situation. I would like to stress that we are using the same exact footprint. There was a subterranean cement foundation which the builder built off of. It is true that we took down the walls that were rotted. We have been calling it a shed. When I was first working on it, we called it a garage. We probably would have put old cars inside of it. It did have a cement foundation. In terms of the setbacks, the one family it is most directly effecting is the Sinkon family. The existing shed was in violation of their 5 foot or 10 foot setbacks. It was in no violation of any of the other abutting neighbors. We're only encroaching on one property line; not 2, 3, or 4 property lines. We have spoken to all of our close neighbors about this. Nobody objected. We don't know who brought it to the city's attention. I don't think it was any of our close neighbors. The one nice thing for our neighbors is we have windows on the backside and we were looking into their house. To see into another house, it creates a visual cliff that increases privacy for both families. It is a benefit to them. We have three children. It is a crowded space. We're hopeful that you can see to give us the variance. Once the city staff got involved, they were very professional with us with nice, open lines of communication. It makes it more upsetting that we made these mistakes on the front end.

Public Comments

Rob Sinkon – Rita and Nick have been fantastic neighbors. They spoke with us before the project started. We in favor and in agreement of their approach to building an extension for their family. We have no objections and support the variance.

Claudine Wispelwey – I am looking at the project. It doesn't bother us. Our kids play together. They are in desperate need of space. The Reppuccis needed the extra room. It is not an excessive project in any way, shape, or form. We aren't bothered by it at all. It matches the house. We're in full support of the project. It is a complete necessity.

Stephanie Bolton – We want to express our total support of the project. They are fabulous neighbors, conscientious residents, and our families have been close for years. They have been talking about wanting this extra space. We wholeheartedly encourage the project to happen. It is absolutely attractive and it looks great from the street.

Mary McKinley – The structure is attractive. It's nicely done. It is with the architecture of the rest of the house. I like that this neighborhood can allow families with small children to live here. This is the kind of adjustment that has to be made if North Downtown is going to have the kind of diversity that makes the neighborhood lively and a happy place to be. I like the fact that other neighbors can accommodate having their children grow up in our neighborhood. It makes it a better place. I knew about this project as it was developing. I had no idea that it would ever lead to this kind of conflict. I

hope that we will be able to resolve it. I will be happy to see construction completed. I support the Reppucci's request.

Richard Price – The shed is clearly visible from our house. It's completely consistent with the character of the neighborhood. I looked at their property when this came up. They clearly had limited options for expanding. It makes perfect sense to me.

Steve Bolton – We are in full support of the Reppucci's request. As neighbors and conscientious city residents, it was an inadvertent oversight that did not go through the proper process. They plan to utilize the additional space as an additional living area for their family and not infringe in a bad way. We fully support the request.

Michael Klepinger – I am a former land use planner. I have done some building and developing. I am totally in support of this. Mary's comments are most poignant for me. Families can still live in this neighborhood right downtown. I know that the Reppucci walk/bike to work. It is an important thing to save energy. We need to densify and keep people close to town. The Downtown Mall needs people like this. Living there is important for all of Charlottesville. I hope that you will approve this and give these people a little room to grow.

Board Discussion and Motion

Mr. Ahmed – Thanks to staff for putting together this comprehensive report. It really outlined everything. I agree with staff's request to approve the variance. We have a lack of affordable housing in the city. If people want to build and extend upon their property, they should have the right to do that. It seems pretty obvious that the Reppuccis have that right. They just had one misstep. It's our position to help make that right. I am 100% behind helping them and making that right. They have the right to do it. We should grant them that.

Mr. Morrill – I agree. The structure falls into the same footprint as the previous structure. It even has the same foundation. There seems to be significant support among neighbors for the proposal. It definitely matters. This is really a process question rather than a right of use question. I don't see any major reason not to move forward.

Ms. Keller – In reviewing this, I am going to remind everyone that we are a quasi-judicial body. We really are not charged with looking at affordability and livability. Generally, hardship is defined by the physical constraints of the site and not the economics or size of a family. I am not saying that because I have an objection to the process or to this project. I am saying this to remind everyone of our charge from the court and the city sitting on this board. We have other options available to us such as zoning text amendments and the zoning rewrite that's happening now that will address livability, affordability, density, and those sorts of issues. We need to go with the ordinance that we have now. Staff in their report stated that if the shed had not been demolished and that was really in error and misunderstanding on the part of the contractor, this could have been a by right use. The foundation of the original building still exists. That says to me that this is an actionable item. I would be very supportive of them being able to expand it to the second story since that right extends to all of the neighbors that still have one story existing garages or sheds in their backyards

Motion to Approve the Variance – Mr. Morrill – I move to grant a variance as requested in Application BZA 22-2-001, based on a finding that the applicant has established 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 meet the hardship factor (i)-(v) detailed in this staff report. Second by Mr. Ahmed. Motion passes 3-0.

III. ADJOURNMENT

Meeting was adjourned at 4:46 PM