



HERNDON BOARD OF ZONING APPEALS
Regular Meeting Minutes
Thursday, July 25, 2024

1. Call to Order

Chair Pierce called the July 25, 2024, Board of Zoning Appeals meeting to order at 7:00 PM in the Herndon Council Chambers Building, 765 Lynn Street, Herndon, Virginia. In attendance were: Chair Carilyn Pierce; Vice Chair Stevan Porter; and Board Members Stephanie Frye and Stephen Mundt. Board Member Yung Kim was absent.

Staff present during the meeting: Lauri Sigler, Deputy Town Attorney; David Stromberg, Zoning Administrator; and Aaron Zoellick, Clerk of Boards and Commissions.

Chair Pierce determined there was a quorum of four members present, with Board Member Yung Kim absent.

2. Approval of Minutes

a. January 25, 2024, Board of Zoning Appeals Regular Meeting

Board Member Mundt motioned to approve the January 25, 2024, Board of Zoning Appeals regular meeting minutes.

Motion seconded by Vice Chair Porter.

The question was called on the motion, which was approved by a 4-0 roll call vote.

Board Members Frye, Mundt, Vice Chair Porter, and Chair Pierce voted "Aye." Board Member Kim was absent.

3. Comments

a. Comments from the Staff Members

No comments were offered.

b. Comments from the Board Members

Board Member Mundt inquired about moving the review of some applications to the Board of Zoning Appeals. Mr. Stromberg stated that the topic would be covered in the discussion item portion of the agenda.

c. Comments from Citizens

No comments were offered.

4. Public Hearing

a. BOARD OF ZONING APPEALS, BZA #24-002, 351 Hillwood Court, to seek three variances from Section 78-30.2(g), R-10 Dimensional Standards, and Section 78-21(f), Features Allowed Within Required Setbacks and Yards.

Certificates of Publication from the Editor of the Fairfax County Times Newspapers were filed, showing that notices of the following public hearing item were duly advertised in the July 5, and July 12, 2024, issues.

Chair Pierce opened the public hearing and called on the Clerk to administer the oath for the Zoning Administrator. Mr. Zoellick administered the oath to Mr. Stromberg.

Mr. Stromberg presented the staff report and staff presentation dated July 25, 2024, which are on file with the Department of Community Development. Mr. Stromberg stated that this application was for three variances to replace an existing garage and living area with a larger garage and an upper-level accessory dwelling unit. Staff recommends denial of the three variance requests for failure to meet all six criteria of Section 78-155.4(d)(1). If the variances are approved, staff recommends including the condition in the staff report regarding substantial compliance with the submitted architectural drawings.

There was discussion among the board members and staff on this item, including: (1) clarification about a right of way on the property, (2) clarification that there was nothing currently built in the easement, (3) clarification about the concrete patio that is in the setback, and (4) clarification about the possibility to modify the proposal.

Chair Pierce recognized the applicant to provide comment.

Mr. Zoellick administered the oath to the applicant, Nicholas Drymalski.

The applicant delivered a presentation dated July 25, 2024, which is on file with the Department of Community Development.

The applicant requested that Mr. Stromberg comment on why the applicant could

not build 5 feet into the rear setback.

Mr. Stromberg stated that a provision in the zoning ordinance allows an encroachment into a rear yard setback no greater than 1/3 of the rear facade. In this case, the encroachment would be wider than the maximum allowed.

There was discussion among the board members, staff, and applicant on this item, including: (1) the impacts of reducing the square footage into each setback, (2) whether the applicant discussion options with an architect, (3) options to alter the plan so that it is compliant and the applicant gets what they want out of the project, (4) whether it would be possible to condition the variance with a non-lifetime, (5) clarification about the side setback, and (6) challenges of developing on the property.

In response to Board Member Mundt, Mr. Stromberg stated that the applicant was unaware that a rear yard variance was needed until after the other two variance requests were submitted.

In response to Vice Chair Porter, Mr. Stromberg stated that the recommended condition would tie the variance to the architectural plans.

In response to Chair Pierce, the applicant stated that they are willing to get rid of the proposed deck.

Chair Pierce recognized members of the public for comment.

No comments were offered.

Chair Pierce closed the public hearing and moved to the board level for discussion.

Board members discussed the item, including: (1) belief that the deck is a clear denial, (2) belief that there is enough justification for a one-foot side setback, (3) other possible options for the rear setback, (4) whether the stairs can be located in front of the structure, and (5) consideration of whether the current application meet the criteria.

In response to Board Member Mundt, Mr. Stromberg stated that in this instance the applicant would be restricted from moving the stairs forward.

Vice Chair Porter made a motion to grant variances one and two with the conditions as proposed.

Ms. Sigler recommended that the condition except the deck from the substantial conformance requirement.

Vice Chair Porter accepted the recommendation from Ms. Sigler.

In response to Ms. Sigler, Board Member Mundt asked if the stairs would still be

allowed. Mr. Stromberg stated that the stairs would be allowed to encroach as long as they are at least five feet from the property line.

The motion was seconded by Board Member Frye.

The question was called on the motion, which was approved by a 4-0 roll call vote.

Board Members Frye, Mundt, Vice Chair Porter, and Chair Pierce voted "Aye."
Board Member Kim was absent.

Vice Chair Porter made a motion to deny variance three.

The motion was seconded by Board Member Mundt.

The question was called on the motion, which was approved by a 4-0 roll call vote.

Board Members Frye, Mundt, Vice Chair Porter, and Chair Pierce voted "Aye."
Board Member Kim was absent.

5. New Business

- a. Discussion item regarding whether a member of the BZA can also be appointed as a member to the Planning Commission and whether the BZA can consider and decide Special Exceptions, instead of the Town Council after consideration by the Planning Commission.**

Chair Pierce recognized Ms. Sigler to lead the discussion.

Ms. Sigler delivered the staff report dated July 25, 2024, which is on file with the Department of Community Development. Ms. Sigler stated that in response to the first question, "Can a member of the BZA also be appointed to the Planning Commission?", specific to Herndon, the answer is no. Ms. Sigler stated that in response to the second question, "Whether the BZA can consider and decide Special Exceptions?", the answer is yes, however, in the Town of Herndon that authority is currently given to the Planning Commission and the Town Council.

There was discussion among the board members and staff on the item, including: (1) merits of a BZA member being on the Planning Commission, (2) special exceptions impact on the Town Council's workload, (3) risk of opening the town charter, (4) reaching out to the town council to see if there is traction for BZA review of special exceptions, (5) the jurisdiction of the BZA, (6) the difference between a variance and special exception, and (7) whether restaurants received a special exception during covid.

In response to Chair Pierce, Ms. Sigler stated that the BZA can hear variances, appeals of zoning administrator decisions, and, if the ordinance permits, special exceptions. Mr. Stromberg stated the applicants at this meeting submitted an application for a variance. Appeals are usually from a violation issued by an inspector.

In response to Chair Pierce, Mr. Stromberg stated that variances are typically

looking at specific provisions for dimensional requirements. Special exceptions are legislative. Ms. Sigler directed board members to the staff memo that describes special exceptions. Mr. Stromberg provided recent examples. In response to Board Member Mundt, Mr. Stromberg stated that everything during covid was essentially under temporary emergency rules. The ordinance was recently updated to allow for a streetery.

Vice Chair Porter left the dais at 8:09 p.m.

Vice Chair Porter returned to the dais at 8:11 p.m.

Chair Pierce stated that there seems to be no objection to bringing the issue of special exceptions to the Town Council.

6. Adjournment

There being no futher business, and without objection, the July 25, 2024, Board of Zoning Appeals regular meeting was adjourned at 8:14 p.m.

A handwritten signature in black ink that reads "Aaron Zoellick". The signature is fluid and cursive, with the first name "Aaron" and the last name "Zoellick" clearly distinguishable.

Aaron Zoellick
Clerk of Boards and Commissions

Minutes approved by the Board of Zoning Appeals: August 22, 2024