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BOARD OF ZONING APPEALS
Thursday
February 25, 2021

Pursuant to Virginia Code Virginia Code Section 2.2-3708.2, as amended. The Governor's Executive Orders, as amended, and in accordance with Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as amended. Chairman Kim has stated that the February 25, 2021 Board of Zoning Appeals public hearing will be by electronic means. The meeting was broadcast and recorded through Cisco WebEx and details for the meeting were made available to the public on Friday, February 19, 2020. In attendance were: Chairman Yung Kim, Vice Chair Clark Hedrick and Board Members: Cari Lyn Pierce and Jeffrey Sevila.

Others present during the meeting: Lauri Sigler, Deputy Town Attorney; David Stromberg, Zoning Administrator; Sharmane Baynard, Deputy Community Inspector, Erika Orellana, Clerk to the Board of Zoning Appeals and Donna Linton, Court Reporter.

STAFF ANNOUNCEMENTS

Erika Orellana, Clerk to Boards and Commissions, stated that the Board of Zoning Appeals public hearing held its first virtual meeting. The Clerk to the Boards and Commissions welcomed those listening and encouraged the public to provide comments for the record at BZA@herndon-va.gov.

Ms. Orellana stated, for the record, that:

- The Board of Zoning Appeals public hearing that evening was conducted electronically Virginia Code Virginia Code Section 2.2-3708.2, as amended. The Governor's Executive Orders, as amended, and in accordance with Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as amended.
- Proper notice of the electronic meeting was provided in accordance with Section 2.2-3708.2 of the Code of Virginia, along with information for viewing the meeting and submitting comments for the record;

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- The agenda and meeting materials are available on the town's website;
- Electronic meetings will begin with a roll call and determination of quorum; and
- All votes, including adjournment, was by roll call vote.

1. CALL TO ORDER

Roll Call

Chairman Kim called the public hearing by electronic means to order at 7:00p.m. and asked Ms. Orellana to call the roll for attendance. Four members were present, electronically, with Chairman Kim presiding.

DETERMINATION OF QUORUM

Chairman Kim stated, for the record, that there was a quorum present, virtually, that evening.

APPROVAL OF MINUTES

**2. Vote on January 28, 2021
Public Hearing Minutes**

On motion of Board Member Sevilla, seconded by Board Member Pierce, the minutes of the Thursday, January 28, 2021 public hearing were approved by a vote of 4-0. The vote was: Board Members Pierce, Sevilla, Vice Chair Hedrick and Chairman Kim voting "Aye."

3. COMMENTS FROM THE BOARD MEMBERS

There were no comments from the Board Members.

4. COMMENTS FROM THE STAFF

There were no comments from the staff.

PUBLIC HEARING

5. **BZA #21-01, 500 Fairfax Lane, to seek a variance from the requirements of Section 78-80.3(a), accessory structure standards in residential districts, and Section 78-30.2(g), R-10 dimensional standards, in order to allow an existing accessory structure to remain in a required side yard setback. A 10-foot side yard setback is required in the R-10 zoning**

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district. The applicant is requesting a reduction of the minimum side yard setback to 4 feet. The subject property is a 16,714 square-foot lot located at the terminus of Fairfax Lane and identified as 500 Fairfax Lane. The property is zoned R-10, single family residential. Fairfax County Tax Map Number: 0162-06-0034. Property Owner and Applicant: Robert L. Moran.

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearing had been duly advertised in the February 12, 2021 and February 19, 2021 issues.

Chairman Kim opened the public hearing and asked the clerk to give the oath to David Stromberg, Zoning Administrator. Mr. Stromberg was sworn in.

Chairman Kim recognized Mr. Stromberg to present the staff report and asked if there were any preliminary matters to be reviewed first. Mr. Stromberg stated that there were no preliminary matters and proceeded with his presentation.

Mr. Stromberg presented the staff report dated February 25, 2021, which is on file in the Department of Community Development.

The staff recommendation is to deny the variance application request in accordance with alternative 3 for the following reasons:

- The strict application of the ordinance would not unreasonably restrict the use of the property. The property is currently functioning as a viable single family residence.
- The shape of the lot is not unusual for cul-de-sac lots and the size of the lot exceeds the minimum area requirement by 6,714 square feet which allows for multiple accessory uses and structures customarily associated with a single family residence in areas that comply with the zoning ordinance.

Chairman Kim called on the Board Members individually for questions to Mr. Stromberg.

Board Member Pierce asked Mr. Stromberg for clarification on the meaning of “accessory structure” and asked if the structure can be considered a fence. Mr. Stromberg provided responses.

Chairman Kim recognized the applicants for their comments.

Chairman Kim asked the clerk to give the oath Robert L. Moran, applicant. Mr. Moran was sworn in.

Chairman Kim recognized the Mr. Moran, applicant for his comments.

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Mr. Moran, applicant provided his comments.

Chairman Kim asked the Board Members for questions to the applicant Mr. Moran.

Board member Sevila asked for clarification on the call with town staff about the structure. Vice Chair Hedrick asked for clarification of the height of the structure. Chairman Kim asked for clarification of applicant's approval with his homeowner's association. Applicant provided responses.

Chairman Kim recognized the public for comments on this item.

There were no comments by the public on this item.

Chairman Kim invited the applicants to provide rebuttal. Mr. Moran did not provide a rebuttal to the Board.

Chairman Kim invited the Zoning Administrator to provide rebuttal. Mr. Stromberg provided rebuttal. Mr. Stromberg provided clarification that the construction drawings were included in the BZA dispatch as exhibit #6 and the back yard pictures were exhibit #8. Mr. Stromberg reminded the Board that a draft resolution for approval with conditions was included as exhibit 2 and a draft resolution for denial was included as exhibit 3.

Chairman Kim closed the public hearing and moved to Board level for discussion. There was a brief discussion by the Board.

Board Member Pierce, moved to **approve** the variance with staff conditions, as provided in exhibit #2. The motion was seconded by Chairman Kim. The motion failed to pass on a vote of 2-2. The vote was: Board Member Pierce and Chairman Kim voting "Aye." Board Member Sevila and Vice Chair Hedrick voting "Nay."

TOWN OF HERNDON, VIRGINIA

RESOLUTION

BOARD OF ZONING APPEALS

FEBRUARY 25, 2021

BZA #21-01 – APPLICATION FOR A VARIANCE FROM THE REQUIREMENTS OF SECTION 78-80.3(A), ACCESSORY STRUCTURE STANDARDS IN RESIDENTIAL DISTRICTS, AND SECTION 78-30.2(G), R-10 DIMENSIONAL STANDARDS. Descriptive Summary: The applicant is seeking relief from the requirements of this section in order to allow an existing accessory structure to remain in a required side yard setback. A 10-foot side yard setback is required in the R-

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10 zoning district and the applicant is requesting a reduction of the minimum side yard setback to 4 feet. Accessory structures are required to be 10 feet from the principal structure and the applicant is requesting a reduction to 1 foot. The subject property is a 16,714 square-foot lot located at the terminus of Fairfax Lane and identified as 500 Fairfax Lane. The property is zoned R-10, single family residential. Tax Map Reference Number: 0162 06 0034. Property Owner: Robert L. Moran.

RECITALS

1. The applicant has submitted an application for a variance to Code Sections 78-80.3(a) 78-30.2(g) of the Zoning Ordinance, Herndon Town Code, to reduce the minimum side yard to 4 feet and reduce the minimum distance between an accessory structure and principal structure to 1 foot on Fairfax County Tax Map Reference: 0162 06 0034 to allow an existing accessory structure to remain in its current location.
2. The Town of Herndon Board of Zoning Appeals, based on the record in this case ***finds*** that:

The strict application of the ordinance would unreasonably restrict the utilization of the property

OR

Granting the variance would alleviate an undue hardship due to a physical condition relating to the property or improvements thereon;
and

3. The Board ***finds*** that all of the following apply:

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; and

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

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; and

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; and

The relief or remedy sought by the variance application is not available through a special exception process or the process for modification of a zoning ordinance at the time of the filing of the variance application; and

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The character of the zoning district in which the property is located will not be changed by the granting of the variance.

THEREFORE BE IT RESOLVED, by the Town of Herndon Board of Zoning Appeals that:

1. The Board ***grants*** the requested variance for the reasons and based on the findings set out above and identified in the staff report, hereby adopted.
2. The Board imposes the following conditions as recommended in the staff report upon the granting of this variance:
 1. The reduction in the side yard setback does not apply to the principal structure or any other accessory structures other than the garden bed structure.
 2. The garden bed structure shall not be expanded or located any nearer than four feet from the shared property line with 501 Fairfax Lane.
 3. The garden bed structure shall be removed or relocated to an area that complies with the zoning ordinance prior to the sale of the property from Robert L Moran to any other entity.
 4. If the garden bed structure is voluntarily relocated to another site on the lot that is compliant with the zoning ordinance it shall not be permitted to be returned to its current location and no other accessory structures shall be permitted in this location.
 5. If the garden bed structure is damaged beyond 50% of its value, or 600 dollars, it shall not be permitted to be reconstructed in its current location.

In favor: Chairman Yung Kim

Against: Jeffrey Sevila

Cari Lyn Pierce

Vice Chair Clark Hedrick

Attest: _____

Recording Secretary

Date: _____

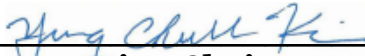
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Zoning Administrator David Stromberg and Deputy Town Attorney Lauri Sigler explained to the Board that if a motion to approve a variance fails to pass then the variance request is denied. Ms. Sigler further explained that pursuant to Robert's Rules of Order, only Board member Sevila or Vice Chair Hedrick could bring forward a motion to reconsider. No motion was made to reconsider the vote.

ADJOURNMENT

There being no further business, the meeting adjourned at 8:02 p.m.

On motion of Board Member Sevila, seconded by Board Member Pierce, the February 25, 2021 Board of Zoning Appeals public hearing was adjourned by a vote of 4-0. The vote was: Board Members Pierce, Sevila, Vice Chair Hedrick and Chairman Kim voting "Aye."



**Yung Kim, Chairman
Board of Zoning Appeals**



**Erika Orellana
Clerk of the Board of Zoning Appeals**

Minutes approved by the Board of Zoning Appeals: January 27, 2022