

Minutes

CHARLOTTESVILLE BOARD OF ZONING APPEALS
May 18, 2023
City Space

Members Present: Hosea Mitchell, Genevieve Keller, Sakib Ahmed

Staff Present: Patrick Cory, Read Brodhead

I. CALL TO ORDER

The Meeting was called to order at 4:00 PM

II. PUBLIC HEARINGS

BZA 23-03-001:

Owner requests relief from Section 34-353(a) of the Zoning Ordinance: The Applicant, Mrs. Larissa Caballero of 507 8th Street NE., has applied for an amendment to the variance that was granted to her in July 2022. The variance issued in July reduced the required rear yard setback from twenty-five (25) feet to eighteen (18) feet to accommodate a small addition. After receiving architectural plans, the Applicant has determined that additional space will be needed to accommodate the addition. As a result, the applicant is seeking to reduce the rear yard setback an additional five (5) feet to Thirteen (13) feet.

Staff Report

Read Brodhead, Zoning Administrator –

LOCATION: 1506 Rialto Street

TAX MAP & PARCEL: 590357000

APPLICANT: Bill & Margaret Fritz

ZONING AND USE: R-1S, single family residential, small lot

VARIANCE

REQUESTED: Owner requests relief from Section 34-353(a) of the Zoning Ordinance: The requested variance will reduce the required side yard setback from five (5) feet to zero (0) feet. The existing side awning is located within the required setback. The Applicants would like to replace the non-conforming awning because it is in disrepair.

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: The variance requested meets the criteria in subsection B. The home was constructed on the further North side of the property, limiting future additions to the home.

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. 34-353(a)** 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 zoned R-1S and contains a single family home. The required setbacks in this zoning district are 25 feet in the front, 5 feet on the sides and 25 feet in the rear. The awning over the side entryway into the home currently encroaches into the required side yard setback. No portion of a structure, including decks and porches are permitted to encroach into the required five (5) foot setback in the R1S zoning district.

The existing non-conforming awning/columns extend up to the side property line. The concrete patio is crumbling and the metal awning and supports are deteriorating. The Applicant has submitted photos in the submittal that highlight these issues. Because this awning is legally non-conforming, the Property owner is limited to the amount of repairs that can be performed on the structure. Section 34-1146 (c) of the Zoning Ordinance states that a nonconforming structure may be repaired provided such repair constitutes only routine maintenance. The condition of the awning is beyond repair. Through the variance process, the applicants would like to reduce the setback to zero (0) feet, to accommodate a new awning within the same footprint to provide the home with sheltered access on the side of the property.

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) 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;

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

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.

(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 encroachment existed when the Applicants purchased the home.

(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: Correct

(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: the variance process exists for unique circumstances such as this one.

(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;

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.

Applicant Presentation

Bill Fritz, Applicant – The house was built in the 1960s. We have been there for about 24 years. It is also important to note that the side setback not to another residential lot. It is actually to an alley. It wouldn't encroach on that alley nor would it interfere with its use. It has never been used. It can't be used due to the terrain. It can't connect through. Physically, there is no way. We would like to replace the awning so we can have a wraparound. We are planning on continuing to live there.

III. PUBLIC COMMENTS

No Public Comments

IV. BOARD DISCUSSION AND MOTION

Mr. Ahmed – Given the facts of the case, it does appear that it existed prior. It is not encroaching on the alley space. It does not impede its use in anyway. They have made good faith efforts to repair it but it is in disrepair. I feel comfortable granting the variance.

Ms. Keller – I concur.

Motion – Mr. Mitchell – This application meets the hardship test. The hardship factors are outlined in the staff report. Therefore, I move we grant the variance as requested in application BZA 23-05-001. Second by Mr. Ahmed. Motion passes 3-0.

V. REVIEW OF MARCH, 2023 MINUTES

Motion to Approve Minutes – Motion passes 3-0.

The Board of Zoning Appeals will be meeting in June, 2023.

VI. ADJOURNMENT

The Meeting was adjourned at 4:24 PM.