

Minutes

**CHARLOTTESVILLE BOARD OF ZONING APPEALS**  
**October 19, 2022**  
**Hybrid Meeting-City Space**

**Members Present:** Genevieve Keller, Cecilia Mills, Hosea Mitchell Sakib Ahmed

**Staff Present:** Patrick Cory, Read Brodhead

**I. CALL TO ORDER**

The Meeting was called to order at 4:00 PM the Chairwoman

**II. PUBLIC HEARINGS**

**BZA 22-10-002:**

Owner requests relief from Section 34-353(a) of the Zoning Ordinance: The Applicant has requested a variance to reduce the corner-side setback from seventeen (17) feet to ten (10) feet to accommodate a new addition. The existing home has large front and corner-side setbacks that reduce the allowable area where new habitable space may be added to the property.

**Staff Report**

**Read Brodhead, Zoning Administrator –**

**LOCATION:** 2715 Jefferson Park Avenue

**TAX MAP & PARCEL:** 200051000

**APPLICANT:** Joy & Brad Miller

**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 Applicant has requested a variance to reduce the corner-side yard setback from seventeen (17) feet to ten (10) feet. If the variance is granted, the Applicant's will enclose the existing porch and extend it to create additional living space on the front part of the home.

**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 §15.2-2201<sup>1</sup>). 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: Although this parcel is .23 acres, it is located on a corner lot, which requires a twenty-foot side yard setback on the JPA side of the property.**

**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 on the corner of Jefferson Park Avenue and Azalea Drive. When a home is located on the corner of two streets, the frontage is determined by taking the shorter side of the property. In this case, Azalea Drive is considered the front and the setback is calculated by taking the average of the existing homes 500 feet down Azalea. The homes on the first block Azalea Dr are about 40 +/- feet from the property line, which eliminates any room for expansion on this side of the Property.

The frontage on Jefferson Park Avenue is considered the corner-side of the property and has a required setback of 20 feet. The home currently encroaches into this yard by 3 feet making the existing footprint of the structure legally non-conforming. The other setbacks for the property are 5 feet for the internal side setback and 25 feet for the rear setback.

While this property is 10,670 square feet, the Applicants do not have the ability to construct any addition within the front and corner-side setbacks. These two setbacks account for over 5,000 square feet of this parcel. By contrast, the other three homes at this intersection have much smaller setbacks because the homes are located much closer to the property lines. A larger view of the properties throughout the neighborhood show that about half the homes on corner lots comply with the 20-foot setback. If the variance is granted, the corner setback will be reduced to 10 feet and will make the structure conforming. The existing front porch will be enclosed and extended. This new space will become a living area, kitchen or mudroom. These shared living spaces in the home are located along the JPA and Azalea sides of the structure and the bedrooms are located in the rear of the house.

**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;

**Staff note:** The strict application of the ordinance would not restrict the utilization of the property. There is a single family home on the parcel now and there is space in the rear to add on to it. However, the intention of my staff report is to show how the twenty (20) foot corner setback is more detrimental to the utilization of this property than it is to comparable properties within this neighborhood.

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:** Correct statement

(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:** This side of the Property faces 3 single family homes. Within this block of JPA, all the homes are set closer than 25 feet from the road. All adjacent property owners provided their signature endorsing the variance request.

(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:** all single family homes located on a corner parcels with the City of Charlottesville are required to have a 20 foot corner side setback. Many homes encroach into this setback, especially homes that were constructed prior to 1991, when this setback was enacted.

(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

(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:** Correct

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. Ahmed** – The current setback requirements is 20 feet. Their property encroaches within the setback. Is that already a variance that is existing?

**Mr. Brodhead** – No. Their house probably predates zoning. It was from the 1940s. It could have been annexed.

**Mr. Ahmed** – The petition today is not to make the entirety of the existing encroachment a conforming or would that make it conforming if we allow them to build?

**Mr. Brodhead** – It would make this side of the property conforming. When you look at average the setbacks down Azalea, they are right at the average. I didn't take measurement. I would think that the home would be conforming if you did pass this variance request.

**Ms. Keller** – If this variance is to be granted, it would make the existing porch footprint conforming. Would the granting of the variance allow construction beyond that footprint close to JPA?

**Mr. Brodhead** – Looking at what they are proposing to do in their plans, it looked like they needed an additional seven feet off their house. The variance that was advertised was that they would keep a ten foot setback. They would still be required to have ten feet between the right of way and the new wall of the home.

**Ms. Keller** – Even if it was to stay a porch, it could be enlarged. Or it could be enclosed and it could extend further along JPA.

**Mr. Brodhead** – That's correct. If it stayed a porch, they would have the right to extend the porch today without a variance. That's not what they want to do. They want to enclose it.

### **Applicant Presentation**

**Brad Miller, Applicant** – We're working with John Voight, the architect. That's how we got to this point. We have had many grand dreams of extending our house to accommodate for the growing children. John got us connected with Mr. Brodhead and got us to this point. John wanted us to confirm with you from the statement that on the porch side, the measurements would work.

**Joy Miller, Applicant** – The point of clarification is would it be conforming with the ten foot setback if we enclosed that.

**Mr. Brodhead** – It should be. It shows that you're 17.2 feet from the street. That's the edge of the back porch.

**Mr. Miller** – That's what he wanted to clarify for us. We asked him to come. He couldn't make it today

**Mr. Brodhead** – Looking at the construction plans that were provided. It appeared from these schematics and using a scale that the ten foot setback would be sufficient. It should be noted that there is a section in the code that allows a single-family home to encroach into that 20 foot setback to accommodate a certain width of a house. It wouldn't apply to them. Their house is already wider. It is in there for smaller lots with new construction. The 20 foot setback can be very difficult to achieve and provide a sufficient sized home. It doesn't apply in this matter. The house is already 30 feet wide

**Mr. Miller** – The original plan was to add off of the living room space and create more living space, which is our overall goal with two kids and COVID. We currently use a back bedroom as room for them to be able to have their space. As they mature, we know they are not going to want to play in the same room all the time. We're just trying to create more living space in our house. We thought the easiest spot would be on the Azalea side if we built a larger living room off of there. We would accommodate what we need from getting more living space. That's at the front of the house even though we are at JPA address. Azalea is the shorter side. When we went to John that was off the table. We really don't have any way of doing anything over there because it's the shorter side of our house and we don't have any space to build. John came up with the idea of extending the porch. It should be within reason of everything. He said to look a little deeper and make sure that is allowed. We found that we were encroaching now on what would be a setback. That's how we got here today. We would like to have more living space. The bedrooms are in the back. Eventually, both children will be sleeping in their bedrooms in the back. The front of the house is the most appropriate way of expanding our house to create more living space.

### **Public Comment**

**Erin Garcia** – Comment was read into the record by staff. Comment was an endorsement.

Thank you so much for meeting with them and giving them hope in their project. I love how they're trying to make their lot work with their growing family.

### **Board Discussion and Motion**

**Motion – Mr. Mitchell - I move to grant a variance as requested in Application BZA 22-10-002, 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 4-0.**

There was a review of a previous case that was in front of the Board of Zoning Appeals several months ago.

### **III. REVIEW OF FEBRUARY MINUTES**

**Mr. Ahmed to approve February 17, 2022 BZA Meeting Minutes – Second by Ms. Keller – Motion passes 2-0 with 2 abstentions.**

### **IV. ADJOURNMENT**

The Meeting was adjourned at 4:21 PM