

STAFF REPORT OF THE CITY'S ZONING ADMINISTRATOR
APPLICATION FOR VARIANCE
BZA 23-03-001
Hearing Date: March 16, 2023

LOCATION: **507 8th Street NE**

TAX MAP & PARCEL: **530137000**

APPLICANT: **Larissa Caballero**

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 was granted a variance on August 19, 2022 so reduce the required rear yard setback from twenty-five (25) feet to eighteen (18) to renovate an existing porch into habitable space. A previous property owner constructed the porch without a building permit. The approval of the variance brought this structure into compliance.

After meeting with an architect to determine the feasibility of the property, the Applicant would like to amend the previously approved variance and request an additional five (5) foot reduction of the rear yard setback. As a result, the rear yard setback would be reduced from eighteen (18) feet to thirteen (13) feet.

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

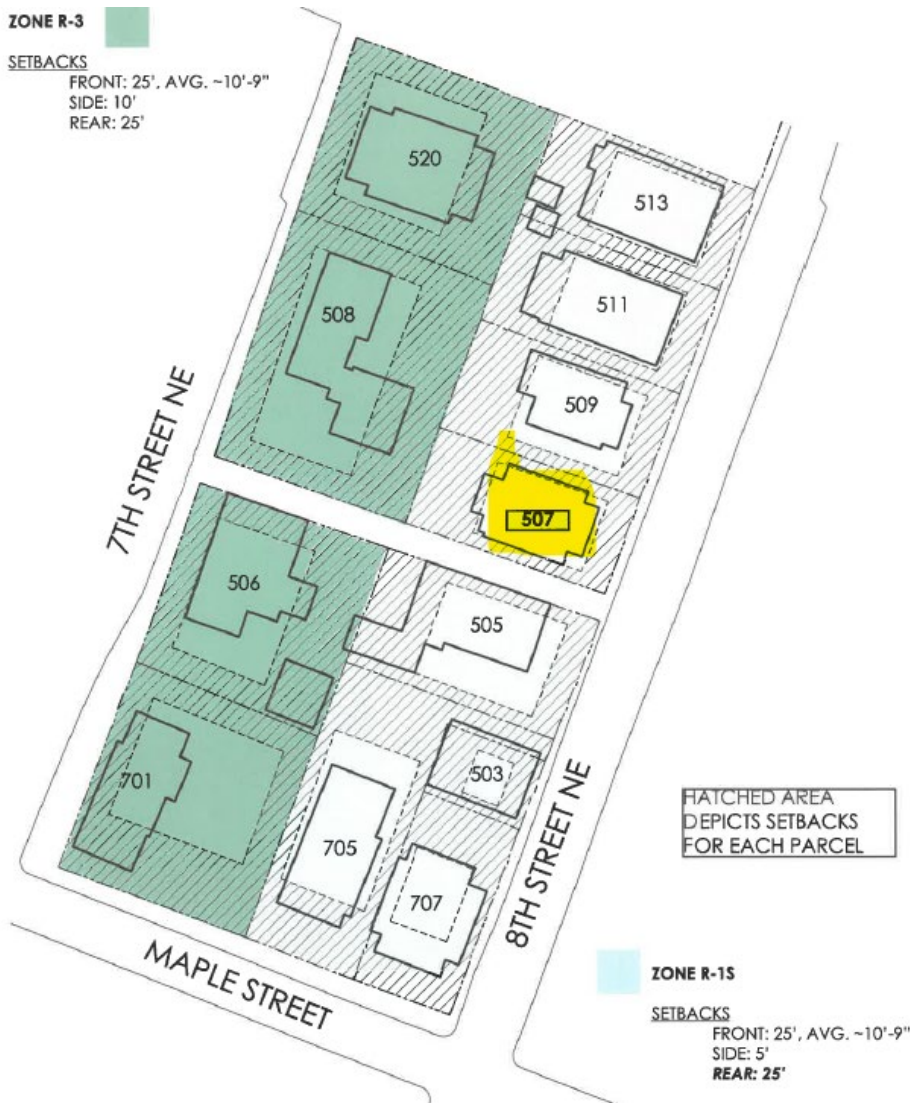
Staff note: The variance requested meets the criteria in subsection B. Therefore the Applicant has the right to proceed with his variance request.

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?

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.

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 conditions of the Subject Property have not changed in the 7 months since the previous variance was approved to reduce the required rear yard setback by seven (7) feet. To reiterate the information that was already provided to this Board, this parcel is very small. Measuring just 2,614 square feet. For context, newly created parcels within the R-1S zoning district must be a minimum size of 6,000 square feet. The existing structure touches all required setback lines; therefore it cannot expand any direction other than going vertical.

The image (above) that was provided by the Applicant illustrates that almost every home on that block encroaches into the required rear yard setback. In fact, even with the already approved variance of seven (7) feet, In fact, the home encroaches no further into the rear yard setback and any other home on

that block. If the requested variance were approved, the resulting allowable footprint would resemble the existing footprint of 511 8th Street NE.

The goal of this addition is to expand the Applicant's home to a family of five (5) can comfortably make this their forever home. Since the August 19, 2022 variance, the Applicant has worked more closely with an architect and have realized that the previously requested seven (7) foot reduction was not large enough to accommodate their project. The additional five (5) foot reduction will allow the Applicant to put on a proper addition to the home and create bedrooms that meet the building code for size standards. New construction tends to be more inexpensive than renovating a property and adding a smaller addition.

Reducing the required setback of twenty-five feet by half is a big reduction, but when comparing this home to other properties within close proximity, it is one of the smallest at 1296 square feet. Even with an approved variance, the potential size is limited by the other setbacks obligations. There simply isn't any other place for an addition to go.

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;

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;

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

Staff note: The applicant has provides letters of endorsement of this variance from all neighboring property owners on this block.

- (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: No. Not all R-1S parcels are this small.

- (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.

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.

C. Suggested Motion(s)

1. If you previously determined that the application presented a proper request for a matter within the definition of a variance, then possible motions include:
 - a. Denial: *“I move to deny Application BZA 23-3-001, because I find that the standards and criteria set forth within Va. Code 15.2-2309(2) are not satisfied.*
 - b. Approval: *“I move to grant a variance as requested in Application BZA 23-3-001, 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.*
 - i. If you wish to add conditions to an approval motion, you would also add, at the end of the above-suggested motion: *“And I further move to grant this motion subject to the following conditions: _____ [insert list of conditions].*