

This meeting may be viewed in its entirety by accessing the video of the same date online via the Town's website at www.frontroyalva.com.

The Board of Zoning Appeals regular meeting of the Town of Front Royal, Virginia was held on December 20, 2022, at 7 pm.

CALL TO ORDER:

Chairman McCarthy called the Board of Zoning Appeals, December 20, 2022, meeting to order at 7:00 pm. She asked Ms. Potter for a roll call.

ROLL CALL – DETERMINATION OF QUORUM

Present: Amanda McCarthy, Chairman
Michael Williams, Vice Chairman
Cody Taylor
Christine Erin

Absent: Andi Robinson

Staff: Lauren Kopishke, Director of Planning & Zoning/Zoning Administrator
John Ware, Deputy Zoning Administrator
George Sonnett, Town Attorney
Connie L Potter, Executive Assistant / Clerk for the Board of Zoning Appeals

APPROVAL OF MINUTES

- November 15, 2022 Meeting

Vice Chairman Williams: There was one spot you had quoted Mr. Ware as saying that the lots in question were currently non-conforming but if the variance was granted it would still be conforming.

Ms. Potter: I have corrected that. The Chairman brought that to my attention. There was also another correction that I listed you as the Chairman vs. Vice Chairman.

Vice Chairman Williams: That has been corrected in the minutes?

Ms. Potter: Yes sir.

Vice Chairman Williams moved, seconded by Ms. Erin to approve the meeting minutes.

Chairman McCarthy: Any discussion? All vote in favor say aye, all those opposed.

VOTE: Yes – Erin, Williams, McCarthy, Taylor
No – N/A
Absent – Robinson
Abstain – N/A

VOICE VOTE

Chairman Amanda McCarthy: Motion carries.

PUBLIC HEARING

- **Variance Application 2200398** submitted by Property Connection LLC for multiple variances from the zoning regulations of Town Code Chapter 175. The purpose of the variances is to subdivide a single parcel, upon which two existing detached single-family dwellings are located into two parcels. Each dwelling will be located on its own individual lot. The property is zoned C-1 (Community Business District) and is identified as Tax Map #20A4-4-3 with the two dwellings located thereon addressed as 225 East 7th Street and 631 Kibler Street, Front Royal, VA.

The following variances are requested from the requirements of the Zoning Ordinance C-1 Zoning District, Chapter 175-38:

- i. The proposed lot upon which the dwelling identified as 225 E 7th Street will be granted a 3,460 square foot variance from the minimum 7,500 square foot lot area requirement of Town Code Chapter 175-40.A.2.
- ii. A 15.5-foot variance from the minimum 90-foot lot width for corner lots required by Town Code Chapter 175-40.D.2.
- iii. Said dwelling be granted a 0.3-foot variance from the minimum 15-foot corner lot side yard setback requirement of Town Code Chapter 175-42.A.4.
- iv. Said dwelling be granted a 6.2-foot variance from the minimum 15-foot rear yard setback requirement of Town Code Chapter 175-42.A.3.
- v. Said dwelling be granted a 5.5-foot variance from the minimum 15-foot front porch to the front property line requirements of Town Code Chapter 175-3.
- vi. Said dwelling be granted a 13.2-foot variance from the minimum 15-foot rear porch to the rear property line requirement of Town Code Chapter 175-3.

Chairman Amanda McCarthy: We are here to continue with a previous discussed matter. The public hearing has been closed but it is a continuation for discussion for the variance application 2200398. I will go ahead and ask staff to review this application please.

John Ware: The application is for variance application # 2200398 submitted by Property Connection LLC for multiple variances from the zoning regulations of Town Code Chapter 175. We had the previous meeting in October which was continued into November which was to the Planning Commission early part of November with recommendations and the meeting on November 15th was continued too tonight. Part of the discussion on the Planning Commission recommendation in their November meeting, if you look at your package they did submit a recommendation from a Planning Commission comment stated: From a planning standpoint if one or more variances were to be granted the Planning Commission observes that the creation of

a property line of equal distance between the two existing structures would clarify a fundamental principle of land use.

(Showing PowerPoint)

One November 15th the applicant submitted an adjusted plat with supporting documentation. Part of your, on the variances if we look at the screen with the new. The current property runs approximately there through the edge of the building on this lot and their proposing to move the property line up between the two existing structures which is the bold dark line on your plat. So, with the creation of the recommendation from the Planning Commission the new plat has the property line between the house at 225 East 7th Street and the house on Kibler Street. Its 5' 3" off of each structure. With the boundary line adjustment lot 4, which is the Kibler Street address, that structure and lot would be conforming and the lot on east 7th street 225 would still remain nonconforming with a nonconforming structure. Any questions?

Vice Chairman Michael Williams: So instead of, unless I misunderstood, so instead of two nonconforming lots you would only have one.

John Ware: Correct.

Vice Chairman Michael Williams: Or instead of three you would only have two.

John Ware: You have a vacant lot, parcel 5 to the south of that. So that is the third lot, so you have two, lot 3 and lot 4 currently are nonconforming lots with a nonconforming structure on lot 3, a portion of a structure on lot 4A and a portion of the structure is on lot 4. So those two lots, 3 and 4 are nonconforming lots with nonconforming structures. Adjusting the property line equal distance between the two structures would make lot 4 conforming with the conforming structure but lot 3 would remain nonconforming with a nonconforming structure.

Vice Chairman Michael Williams: Thank you.

John Ware: Any other questions? Also, within your packets that was submitted by the applicant was some material I hope that you reviewed in the meantime since the last meeting with additional information and the plats they submitted that we have there for you to review.

Chairman Amanda McCarthy: I do believe the last time they were here we asked them to check in with the sewer company. Did we have any results from that?

John Ware: From the Public Works standpoint, yes we did, I want to bring to your attention, in part of your package, for the variance to be granted Town Code 175-139.B.1 authorizes the Board of Zoning Appeals with the ability to issue variances as stipulated below:

1. When a property owner can show that his property was acquired in good faith and where, by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the chapter, or where, by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately

adjacent thereto, the strict application of the terms of the chapter would effectively prohibit or unreasonably restrict the use of the property.

So, determination for the variance is on the lot. We did look into the water and sewer question. 134-38.D. "Separate buildings shall be provided with separate water meters at the property line. The connection of more than one building to the same meter shall not be allowed except by special permission." That's from Town Council. If you have that information you can read that too. But the variances are for the lot.

Vice Chairman Michael Williams: I could be wrong, please correct me if I am. Is that even relevant to what we're supposed to be deciding.

Chairman Amanda McCarthy: We had asked her previously to provide it as a possible hardship, but this proves that its not a hardship. So, it does help us in determining our decision.

Vice Chairman Michael Williams: I don't know that I agree. Isn't the determination of the hardship based upon the survey identifying that it was two different lots instead of one and nothing to do with the water. The water is a separate issue and really has nothing to do with what we're trying to decide I think.

Cody Taylor: We asked because she claimed a hardship stating that it would be impossible to utilize both properties correctly without separating the water and sewer service.

Chairman Amanda McCarthy: You can only do that if the properties are separate. This here states that they have separate meters.

Code Taylor: Also, under 134.A.B "Permits for the use of water will not be granted to a block of stores, shops, tenements or rooms occupied by different parties or families using water through the same meter unless the application shall be made by the landlord or agent of such premises and all rents and bills for water are to be charged and collected from him or his agent." So, it can be done as long as their renting the properties. It can't be done if they want to sell the properties separately. But if they were to own them and rent them out then the common landlord could. That's why this is kind of important but it's determining the hardship. How much of a hardship is it really.

John Ware: The variance is for the lot that's under your consideration.

Vice Chairman Michael Williams: Correct.

Code Taylor: But in order for us to grant it it must be a hardship legally by State Code, not the Town Code. But state code supersedes town code. So, there must be a hardship shown by preponderance of evidence by the applicant.

Vice Chairman Michael Williams: I'm a little frustrated that and disappointed that our Town Attorney is not here tonight. Our Town Attorney is here, what's going on man. I don't know what our Town Attorney's rule is with respect to these proceedings, so I apologize for not knowing that if it is not his role.

Town Attorney, George Sonnett: I believe it's in the minutes that you just approved.

Lauren Kopishke: George's role here, his role here is to support staff members. The BZA would need to have separate legal counsel.

Vice Chairman Michael Williams: Can we open the floor to the applicant.

John Ware: Do you have any more questions.

Amanda McCarthy: Do you guys have any more questions.

Lauren Kopishke: Do you have questions for the applicant.

Vice Chairman Michael Williams: I'd like to give the applicant a chance to speak which I think they want to do. They have a right to do that right now don't they?

Andrew Hill: Good Evening members of the Board. My name is Andrew Hill. I'm an attorney here on behalf of the applicant. Emily Minick, the manager for the applicant is also here as well. I believe you all have in your packet and those of you who were here last time a letter that I had drafted together with some supporting documentation in support of the applicant's position here. I understand the Board has considered this matter at length already. For those of you who were not present at the last meeting as you can see from the screen up there this matter really concerns the three (3) lots that are located at the corner of East 7th Street and Kibler Street. Those are lots 3, 4, and 5 of the C.D. Binns Subdivision which was created and approved by the Town Planning Commission on June 3, 1947. As you can see and as Town staff has already identified there are two (2) houses currently situated so that basically the two (2) lots that are issue are the two (2) northern ones. The southern most lot which is shown there but is not highlighted and bold is not an issue here. That is a vacant lot to which no change is being requested. So really the northern two (2) which are lots 3 and 4 are the important ones for these considerations. Thank you.

So, we have here obviously the plat from Mr. Brogan which was prepared in September of this year shows the current location of the line which is that dotted line from the bottom with the lot line to be vacated in parenthesis off to the left. So, that dotted line is the current location of the line between lots 3 and 4. I think everyone understands why we're here. The agenda actually is somewhat inaccurate because it states that this is a request by the property owner to subdivide a single parcel upon which two (2) dwellings are located into two (2) parcels. The agenda also references that this only has one (1) tax map number. In reality there have been these three (3) parcels lots 3, 4 and 5 here for about 75 years since 1947 when these were approved. Each of them also has its own tax map number. If the variance is granted by this Board there would continue to be three (3) lots just with lots 3 and 4 being adjusted to each contain one (1) dwelling instead of the current situation where lots 3 essentially contains 1-1/2 dwellings and lot 3 contains the other half of the second dwelling. In reviewing the discussion that the Board had at the last meeting looks like there was discussion that this could be a self-created hardship on the part of my client which would in essence defeat its application. Our contention is that this is not a self-created hardship. My client purchased these lots earlier this year. Did not create the boundary lines in this location. Again, those had been that way since 1947. I don't know how many owners ago, but a lot. So, while my client was unaware of the precise location of the

boundary line between these two (2) properties it did not create the situation simply by not having a survey done prior to its purchase of these lots. I would contend that the lack of a survey does not make it a self-created hardship in that regard. That hardship again had already existed for decades before my client entered the picture including under the prior owner and several prior owners before that. The problem really has existed since the second house, the one that straddles the property line numbered as 631 Kibler Street was built straddling that property line. So, for those reasons I would argue that I don't think it can reasonably be construed to be a self-inflicted hardship under these circumstances. On the contrary my client is pursuing this attempt in good faith to take a situation that is already problematic and already nonconforming through no fault of my client and make it better. The lots, as Town staff has already noted, the lots are already nonconforming and one of them, lot 3 would continue to be so if the Board approves my client's request. But lot 4 would be brought into compliance in terms of essentially not having the property line run right through the middle of the house. So, my client is attempting to make these lots as nonconforming as possible by giving the two (2) dwellings their own lots which as the Planning Commission noted would satisfy a fundamental principle of land use. Unlike with a lot of other variance requests that may come before you, we're not requesting a new nonconforming use, only a change to an existing nonconforming use to make them less nonconforming. The letter that I had sent, and my client had provided at the last meeting highlighted three (3) very similar variances granted by the BZA just in the past three (3) years since 2019. Those three cases were as follows:

1. In case number 1672-2019, originally there were three (3) houses on two (2) lots and the lot line for those two (2) lots originally went right through the middle of each house and the Board at that time approved a re-subdivision so that each house had its own lot and all the lot lines ended up facing the right direction.
2. In case number 2235-2020, there originally were two (2) houses on one (1) lot and the Board approved a re-subdivision so that each house had its own lot.
3. In case number 2403-2020, the Board approved a request for each set of industrial buildings to have its own lot when they all had been on one lot previously.

All three (3) of those recent examples resulted in variances, especially the side setback distances from the current ordinance. What was not attached with my letter previously, which I do have copies of in case you would like to review them are the plats for those approved variances if the Board has any interest in reviewing those. From a legal perspective we contend that the Town Code gives this Board the power to grant variances quote "when owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship, provided that the spirit of the chapter shall be observed, and substantial justice done". That's in section 175-139.B. of the Town Code. Both the Town Code and as echoed in state law specifically 15.2-2309.2 of the Code of Virginia outline a series of five (5) factors which have all or shown the variance shall, the state law actually uses the word "shall" be granted. So, number 1.

1. The property must have been acquired in good faith and the hardship must not have been created by the applicant for the reasons articulated previously we contend that is the case here.

2. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area, which again we contend is also the case here. If the Board approves this change there will be no change in the use of these lots only of the location of the boundary. We are not seeking a rezoning of any kind; these properties will remain residential.
3. The condition is not of a general nature. That is the case here again because the problem is specific to this particular property and not to the surrounding areas. As the staff report notes there are topographic constraints present here that are not shared by neighboring properties.
4. The granting of the variance will not result in a use that is otherwise prohibited. Which again is true. The use as I mentioned before, the use of these properties will not change, will remain residential.
5. Finally, that there is no availability of a special exception process or a special use permit which is also true here.

So, we believe that all these requirements in the Town Code and the Code of Virginia are met. The current situation as my client articulated the last time represents an undue hardship for my client. The proposed new line as Town staff noted would be equal distance between the two (2) dwellings which the Planning Commission noted as a positive factor in voting in favor of the approval.

Simply put my client contends that each house needs its own lot and address which will lead to an increase value for them and frankly increase tax revenue for the Town. Its difficult for my client to rent the houses under the present arrangement because in doing so they can't just simply rent one lot to each renter. It's a lot more complicated than that because the property lines are not clear and don't match up with the locations of these houses. As Town staff has already noted and is evident from the agenda materials that you have, the Planning Commission recommended approval upon my client making a change to the plat which was done promptly. To our knowledge nobody has come forward to oppose this variance and we respectfully request that it be approved. My client is also here to speak and to answer any specific questions you would have.

Emily Minick: Good evening, as defined in the Town Code of Front Royal a single-family dwelling is defined as a single-family dwelling unit other than a mobile home or manufactured home designed occupancy by one family and not located on the same lot as another dwelling unit. Prior to purchasing the property, the LLC was aware there were two houses on one lot. However, it was not until after the purchase and a survey was conducted that it was discovered that the lot line separating lot 3 and lot 4 actually ran through the single-family dwelling that faces Kibler Street. In 2011 there was a survey done on the property for a boundary line adjustment on the lots, but the structures were not placed on the survey. It was just a survey of the land. There is no other survey recorded for these properties available besides the plat in 2011. There was no improvement survey prior to the LLC survey. The BZA has the authority to hear and decide appeals, authorize upon appeal in specific cases such variance from the terms of the chapter as will not be contrary to public interest. But the State Code does not define what the

word hardship means in the ordinance. It is up to the Board to examine each applicant's application for a variance request. The LLC is requesting a variance to move the property line between lots 3 and 4. The lot line as it is right now unreasonably restricts the use of the property on Kibler Street. The use of these two properties is single-family dwellings. These dwellings are entirely separate and contain no shared living space. This hardship of restricting the use of said dwelling is not shared generally by other properties in the same zoning district. These two properties as it stands right now with a boundary line going through the house on Kibler Street unreasonably restricts the two properties as it was intended. These two houses should be legally separated on their own separate lots with their own separate legal address. A single-family house needs its own legal address. Currently there is one address for these properties and that address is 225 E. 7th Street. This address incorporates both dwellings. The Town of Front Royal Finance has utilities bills addressed this way and they get their information from the tax office. The tax office has one tax lot for the property that includes both properties. The Commissioner of Revenue has both properties under the same address. The post office has one address for these properties. There is one mailbox. The GIS system does have the house on lot 3 and lot 4 as 631 Kibler Street when you search it but when you click on that actual house the legal address pops up, 225 E. 7th Street because at one point someone had called 911 and they need a physical address which is why this was probably updated. But because the GIS lists this house physically as 631 Kibler Street does not in any update or change what the address of this property legally is, which is 225 E. 7th Street. There is precedent that this Board consider and examine applications for variances under the code. The Board is tasked with examining each applicant and assessing whether a strict application of the chapter would produce undue hardship. And also, regarding the water and sewer if I could direct you to Town Code 134-38 Section D, "separate buildings shall be provided with separate water meters at the property line. The connection on more than one building to the same meter shall not be allowed except by special permission shall include additional buildings, landscaping, irrigation, decorative fountains, fish pools, swimming pools, other multiple living quarters. In granting such permission, Town Manager shall ensure that number 4. The new connection is terminated should the property or building supporting the extra connection be conveyed or leased". Now that being said, yes special permission can be granted for additional water sewer line to go to the house on Kibler Street separating it from the house on 7th. However, the water sewer meter would have to go on the lot line therefore restricting the use of parcel 4 which is buildable. This unreasonably restricts the utilization of not only the two properties sharing the lot line but also the vacant lots located on Kibler Street. I'm happy to answer any questions.

Chairman Amanda McCarthy: Does anybody have any questions?

Cody Taylor: In the beginning you said that before you had the survey you knew the house, both buildings were on the same lot, but you didn't know that the line ran through the middle one. When you knew that both houses were on the same lot what was your initial intention of using that building when you assumed it was all on one lot.

Emily Minnick: I'm sorry, can you repeat that?

Cody Taylor: You thought the first two buildings, the buildings that are there, you thought they were on one lot. What was your initial intent in using those buildings when you thought they were all on one lot.

Emily Minnick: When the application here is for a boundary line adjustment and I'm just here to answer questions about the application as it stands.

Cody Taylor: OK, I guess what I'm getting at is if you thought they were both on the same lot initially and you intended immediately to get the lot line adjusted to divide the two properties then you always knew you were going to need a variance right from the get-go.

Emily Minnick: No, when we found out the line went through the property on Kibler Street that's when the application was submitted to move the line through the two properties.

Chairman Amanda McCarthy: Knowing that they were on one property you were ok with buying it that way.

Cody Taylor: Yes, and you had a use for it, a reasonable use for it knowing that both of them were on one lot.

Emily Minnick: The lot line going through the house as it is unreasonably restricting the use of the house on Kibler Street and that's what the application is about.

Chairman Amanda McCarthy: That's how you said you knew it was when you bought it.

Emily Minnick: But the application is to move the lot line through the house because it goes through the house on Kibler Street. It's not application for a subdivision to divide.

Vice Chairman Michael Williams: Series of questions. When you purchased the lot in September.

Emily Minnick: June.

Vice Chairman Michael Williams: When you purchased the lot in June, did you know that one house and a half was on one lot.

Emily Minnick: No.

Michael Williams: OK, when did that come to your attention?

Emily Minnick: When the survey was conducted.

Vice Chairman Michael Williams: Which was in September.

Emily Minnick: I think August actually.

Vice Chairman Michael Williams: OK.

Christine Erin: You didn't get a survey when you purchased the home.

Emily Minnick: Correct.

Christine Erin: Is there a reason why.

Emily Minnick: There's no particular reason.

Vice Chairman Michael Williams: So, it came to you. I'm going to back up here just to make sure I'm on the right page here. When you purchased the property in June you did not know that a house and a half was on lot 1 and that half a house was on lot 2.

Emily Minnick: Correct.

Vice Chairman Michael Williams: You realized that after the survey was done in August or September and that is why you're stating that there is a hardship not allowing you to do what your LLC wishes to do with the property.

Emily Minnick: Correct.

Vice Chairman Michael Williams: Correct.

Chairman Amanda McCarthy: Any further discussion? Does anybody have a motion?

Vice Chairman Michael Williams: Madam Chairman ***I move that the variance be granted based upon hardship. We can debate whether it was self-induced or not. I choose to believe there is an option for a gray area and I move that we grant the variance.***

Chairman Amanda McCarthy: Is there a second? There is not a second, so the motion has died. Is there a new motion?

Connie Potter: Hold on one second.

Lauren Kopishke: Can they make a new motion?

Town Attorney George Sonnett: Sure.

Lauren Kopishke: OK. Somebody else can make a motion.

Chairman Amanda McCarthy: Can I make a motion?

Lauren Kopishke: Yes, you can make a motion.

Cody Taylor: You don't need to. We're hear to say yes. If we can't say yes then its automatically no. That's the code. That's what we didn't realize last time. But the motion to say yes is not approved therefore there's not enough votes for a yes.

Chairman Amanda McCarthy: So, that's it.

Lauren Kopishke: If you can't make a motion to say yes at this point the application is denied.

Chairman Amanda McCarthy: So, we cannot make a motion to say yes so therefore the application is denied. Any further discussion for that? All those in favor.

Lauren Kopishke: There's no vote. You don't need to do that, there is no vote.

OTHER

Chairman Amanda McCarthy: Is there any other form of business this evening that needs to be discussed.

Lauren Kopishke: Would this body like to have a meeting in February to just go over meeting procedures and look at by-laws?

BZA Members: Yes.

Christine Erin: That was like a second and a third (laughing).

Connie Potter: Did you say February?

Lauren Kopishke: Yes.

Cody Taylor: That might be one where it would be very important to stress that everyone come. I know Andi is sick.

Connie Potter: Every meeting is important. Did you all get the email I sent out with the meeting dates today?

Vice Chairman Michael Williams: Yes Ma'am, thank you!

Lauren Kopishke: At this point there are no applications for January so February. Staff will reach out towards the middle of January to determine who can be available and then will prepare, basically an outline and I will get somebody here that can kind of take you through the steps of parliamentary procedure. I think its good for everybody to have a refresher.

ADJOURNMENT

Chairman Amanda McCarthy: Is there a motion to adjourn?

Vice Chairman Michael Williams: Madam Chairman, ***I move that we adjourn, seconded by Christine Erin.***

Chairman Amanda McCarthy: All in favor say aye.

VOTE: Yes – McCarthy, Williams, Taylor, Erin
 No – N/A
 Absent – Robinson
 Abstain – N/A

VOICE VOTE

The meeting adjourned at 7:35 p.m.

Approved by the Board of Zoning Appeals
Date: 2/21/2023