

**BOARD OF ZONING APPEALS
TOWN OF FRONT ROYAL, VIRGINIA**

November 20, 2018

**Regular Meeting
Town Hall Building**

Present: Wayne Sealock, Chairman
John Hensley
Ronald Flores

Absent: Tamar Yager
David Gedney, Vice Chairman

Staff: Jeremy F. Camp, Director of Planning & Zoning
Connie L. Potter, Sr. Administrative Assistant

CALL TO ORDER

The November 20, 2018 meeting of the Front Royal Board of Zoning Appeals was called to order by Chairman Sealock at 7:12 PM.

PUBLIC HEARING

Ms. Potter read the following:

FRBZA1032-2018, a Variance Application, submitted by Robert M. and Mercedita D. Biggs, for a variance to the minimum required front yard setback for the purpose of allowing an existing unenclosed porch to be enclosed. The application also includes an appeal of interpretation of the required setbacks.

Chairman Sealock. We'll go through the appeal first. Connie will you read Appeal #1 First.

Ms. Potter:

Appeal #1

An argument related to the interpretation of 175-132 pertaining to the question of "what is a front yard".

Staff comment: This argument would be reasonable for an appeal application, if an administrative action had been taken, such as denial of a permit. No such action has been taken, and the applicant has submitted a variance application. Regardless, the fact that the house is orientated to the side yard may be considered as a unique circumstance of the Applicant's property that supports the applicants request for a variance. In regard to what is the front yard, the Town Code defines a front yard as "(a) yard extending across the full width of the lot and lying between the adjacent street right-

of-way line and the building setback line. A front yard, for zoning law purposes, is not defined by the orientation of the building façade.

Mr. Camp. Collectively I think the thing to do is make a decision on the appeal first and then if necessary, make a decision on the variance. Staff contends the appeals are not factual in terms of legal argument in this particular first case. The code clearly defines what a front yard is regardless of what the applicant feels is the front yard based on the orientation of the house. I did point that out. That could be justification to go towards consideration of a variance to grant some exception, but I think the code is very clear on that. I think probably a discussion, a consensus or you can take a vote on each one of these items and work your way to the variance.

Chairman Sealock. I think the code is very clear. I know where their house is, and I've been by it hundreds of times. The way the code reads, actually the way his house sits on the lot instead of sitting east to west it sits north to south. The road runs east to west so the front yard in my opinion would be what's facing the roadway according to the code. I know its kind of unique the way their house sits in there.

Mr. Camp. Probably the clearest thing to do would be make a motion, in this case, to affirm the decision of the Zoning Administrative. Vote on that so we have a clear record and then we work our way through each one just like that to get to the variance.

Chairman Sealock. Is there a motion for the #1 appeal?

Mr. Flores motioned to affirm the decision of Mr. Camp, seconded by Mr. Hensley.

**VOTE: Yes – Sealock, Hensley, Flores
Absent – Gedney, Yager**

Chairman Sealock. Appeal #1 is in favor of the Zoning Administrator.

Appeal #2

An argument related to Town Code 175-30(A), that pertains to expansions and other types of alterations to nonconforming uses, buildings and structures. In short, the applicant contends that the proposed enclosure is not an expansion and therefore would be allowed to be enclosed.

Staff comment: This is also an argument for an appeal application. For discussion purposes, the Town Code should perhaps include language such as "alteration" along with expansion for clarification purposes. Regardless, enclosing the structure would indeed be an expansion of the existing enclosed portion of the house. Furthermore, the Town Code must conform with the authorizing legal statute found under Virginia Code § 15.2-2307.C. which states that "(a) zoning ordinance may provide that land, buildings, and structures and the uses thereof which do not conform to the zoning prescribed for the district in which they are situated may be continued only so long as the then existing or a more restricted use continues and such use is not discontinued for more than

two years, and so long as the buildings or structures are maintained in their then structural condition; and that the uses of such buildings or structures shall conform to such regulations whenever, with respect to the building or structure, the square footage of a building or structure is enlarged, or the building or structure is structurally altered as provided in the Uniform Statewide Building Code. Therefore, in accordance with the Virginia Code, which supersedes Town Code, a “grandfathered” building only remains “grandfathered” if it is maintained in its original condition and is not altered. Any such alteration, expansion or other type of change would require it to comply with current regulations.

Chairman Sealock. I still concur with what the Zoning Officer had to say.

Mr. Hensley. Are they changing the structural load by adding the porch?

Chairman Sealock. The porch is already there. All they want to do is close it in.

Mr. Hensley. So, the structural load that holds the roof isn’t being altered?

Chairman Sealock. No.

Mr. Hensley. With no structural change I don’t see an issue with that appeal.

Mr. Hensley motioned to accept, seconded by Mr. Flores

**VOTE: Yes – Flores, Sealock, Hensley
Absent – Yager, Gedney**

Appeal #3

An argument that the enclosure is similar to a “near-identical” porch located at 122 W First Street that was “recently approved and constructed”, that appears to imply that the Applicant has not been treated equally.

Staff Note: A permit was issued in 2009 for adding a 2nd story room over a front porch at 122 W First Street. No additional information is provided on the basis for the approval, but the porch is setback further than the Applicant’s porch and it visually appears that it complies with the provision under Town Code 175-32 that allows an alternative front setback that equals or is greater than the average of the setbacks of structures immediately adjoining it. The Applicant’s property does not qualify for this alternative setback of the Town Code because his structure is closer to the street than the structures immediately adjoining the Applicant’s property.

Mr. Camp. I think its very clear we are not treating anybody any differently. The circumstances were just different, and the applicant’s structure is actually the closest structure to the street. The laws apply differently because he doesn’t qualify for that particular exception that allows for an average of the two houses on either side of him to override the Town Code requirement. Since he is the closest, if you took an average, it would not help him any. He would still be in violation. It’s very clear the grounds for this appeal are unwarranted. The code is straight forward on that.

Mr. Flores motioned to agree with the Town, seconded by Mr. Hensley.

VOTE: Yes – Hensley, Flores, Sealock
Absent – Gedney, Tamer

#4 Variance

An argument that the house is unique because the front façade faces east, unlike most properties in the Town.

Staff Note: This is a consideration for a unique circumstance related to the property, which is a prerequisite to establish an undue hardship for a variance.

Mr. Biggs: In your package of information that we received back toward the end of last week, I read through that. I don't know how long it took Mr. Camp and his staff to prepare this, but it took me about ten times longer to read it through the 5-6 days I had to study it. I'm still not sure about what I read in a lot of the paragraphs. But I believe I would like to submit a prepared statement with regard to the fact that as mentioned on page 5 of your package which said "This application includes remarks from the applicant that are both appeals to the interpretation of the Town Code and consideration for a variance."

I'm not sure where that was interpreted. I thought I was making an appeal for variances. I may have had difficulty understanding verbiage that was in my package that I received. Upon reading everything that was stated in the staff's report regarding our request to have our porch enclosed into a sunroom, but it's probably an all-purpose room or an off-seasons room maybe. It's on the north side of the house and you don't get a great deal of sun from the north side in most seasons, but at the same time we thought having enough window space there, it would be a very enjoyable part of our facility, of our building, of our residence which has been for many years allowed to languish and has now become almost an eyesore in the entire community. With that in mind, I have read through the Zoning Administrator's comments and I guess it would be called his arguments with regard to the appeals.

At that juncture I would like to state here a preparation that I have made for justification of a variance. At this time, after being dually informed by the zoning office staff as to the various definitions and interpretations of the applicable ordinance, for example such terms as "unenclosed porch" vs. "enclosed", grandfathering, front yard, alternative front setback, expansion of the house, the residence and so forth, it's become very evident to me that any arguments made by us to the fact that our intentions should be legally conforming thus suggesting the administrative officer was not correct in his decisions. That would not be in our best interests and surely would be probably disqualified as valid appeals on our behalf. Therefore, at this time in the session, we do not deem it worthwhile to pursue any further discussion advocating appealing the codes, the interpretation of the administrator as referenced within the presentation of the zoning staff.

However, that being said, we do wish to beg the privilege of having the Board continue this hearing a bit longer for the purpose of considering the possibility that the issuance of a variance might be appropriate for our individual situation. In accordance, that I picked up from somewhere in the

presentation here, the specifications of Town Code 175-138B. This particular code as I understand it, authorizes that several stipulations may be evaluated as factors for approval of our requested outcome. Among these factors are that a strict application of the terms of the ordinance would unreasonably restrict our utilization of the property or at least that portion of the property we are dealing with as far as the porch is concerned.

Secondly, that the property owner, us, my wife and myself. We contend that the structure was acquired in good faith and because of its unique positioning facing to the east, as are about 3, 4 to 5 of the residences up on West Frist Street, they face to the east toward the downtown area and not towards the street at its north. This poses an unusual circumstance which it has been discovered in the last several months of our planning for this improvement, that it unreasonably restricts the improvement of a part of that property. Although this difficulty is not apparently shared by any other properties in the same vicinity of our residence. We also say that the variance will not be contrary to the public interest. Likewise, we say that the authorization of such a variance will in no way be detrimental to our adjacent neighbors, some of who are here with us today. We think it will be an improvement to the whole neighborhood. It has lain fallow for many years and is almost a safety hazard. It has been allowed to deteriorate somewhat, for which we are very embarrassed. The authorization of such a variance, if you should be so kind as to award it to us, is in no way going to be a detriment to our neighbors. The character of West First Street, that district and its surroundings will not be changed adversely or otherwise. We feel that our situation, our conditions or our usage of this room will not be cause for any subsequent coding amendments to be adopted for additional or future requests either from us or any neighbors in that general vicinity. We feel that the Board in justifying a variance may certainly impose conditions on us for the proposed structure, the porch enclosure. They will be made in the public interest I'm sure. We assume that, we the property owners and we verify that we are the property owners will obtain and comply with all requirements issued through whatever necessary permits might be accorded to us. We also verify that there was no hardship created by us on purpose, the applicants, to substantiate our request and our appearance before you tonight. And finally, the relief provided by a variance will not cause nor create an illegal use of the property or necessitate a change in the zoning classification of 132 West First Street. Thank you very much. I will certainly entertain questions about what I just finished saying and what our conclusion was after reading the many pages that Mr. Camp had provided for us.

Chairman Sealock. I had one question Mr. Biggs. Let me find the paper here. Your sidewalk goes out to First Street, right? Your sidewalk goes out to First Street from the porch?

Mr. Biggs. Yes.

Chairman Sealock. There is steps there?

Mr. Biggs. Yes, 3 steps lead to the porch.

Mr. Hensley. And those are going to be changed with the improvements?

Mr. Biggs. We haven't got that far yet. As far as the design of what our consultant has given us, I believe we had the option to continue the sidewalk area, put a door in that particular side, the north side of the enclosure.

Chairman Sealock. Like you have in the picture here?

Mr. Biggs. Yes.

Mr. Hensley. It looks like it's going to turn.

Mr. Sealock. Instead of coming out to First Street, are you going to put the steps on the side to go down to the driveway.

Mr. Biggs. My wife would prefer that. She's pushed for that, but we haven't really come to that decision. Or the possibility of perhaps putting a door on the other which is facing the Castle residence upstream on West First Street.

Mrs. Biggs. That was an idea that I had because we have a driveway that is on the upper side as well. So, it would kind of make sense to come up from the car to steps into the porch.

Mr. Biggs. With that being said, the driveway was a creation from a former century, and it was a driveway made for a little car, which I once had there, which was a 66 mustang and it fit there perfectly. Any SUVs that might happen to be trying to park in that area have a little tougher time with it. Of course, you are not allowed to park in the street. We are in kind of a quandary even if we had approval for the construction of the all year, all season room. Where would we come in, in our elderly age, whether it would be up the front steps or trying to find some way to get a car in the upper part of the driveway and come in.

Mrs. Biggs. It would be much easier sense our knees are beginning to fail to come up a couple of steps to come into the porch with groceries. Right now, we pull into the front of the house, we call it the front, and then we have probably a set of 8 stone steps and then we have a set of I believe 5 brick steps.

Chairman Sealock. Thank you. Anyone else want to speak before we close the public hearing.

Mr. Camp, Chairmen Sealock, Mr. Hensley discussed amongst themselves that it would make more sense to move the steps from the front to the side, however that is up to the applicant.

Ann Daniels. If it were my house, it would certainly be the selling point for me. Its much safer to come up a few steps than that tower that goes to their front door. I've been with Mercedita many times helping her lug things up those steps and certainly I think it would enhance the appearance of the property as well as providing for their safety in their home.

Chairman Sealock closed the public hearing.

Mr. Hensley. Are you adding HVAC or any type of heating/cooling to the room?

Mr. Biggs. Yes, that's in the making.

Mrs. Biggs. Our son is an engineer in Atlanta, and he has suggested something like a Mitsubishi (a split unit). We have central air and heating in the house which we could also probably pull out, extend the duct work. Our son said this would probably be much easier and the units are small.

Mr. Biggs. I'm favoring anything that runs a little bit on the cheaper side. I can't imagine I'm sitting arguing, trying to persuade people to let me spend an additional twenty thousand dollars to build a room on the house. As everything was said during my report we're trying to make it as appealing to the neighborhood and a simple little unit such as the one he's talking about and our son has recommended and that we have seen in many other places that will account for the heating and air conditioning.

Mr. Hensley. As far as the undue hardship, I can see the biggest argument being the aging in place of the house and being able to, in the future even place a ramp or some alternative walkway would be difficult. If you turned it towards the existing driveway, that would be the best bet. I can see that being the biggest argument, the accessibility of the home. I don't see it changing much. It looks like the façade will stay the same.

Chairman Sealock. Everything will stay the same but just closing in the porch itself and maybe turning the sidewalk to the driveway.

Mr. Hensley. That's what I would do if I were you because it gives you more options down the road to put a ramp or something in if you ever had to.

Mr. Hensley motioned to accept the variance, allow them to enclose the porch because of the undue hardship on them if we didn't allow it, seconded by Mr. Flores.

**VOTE: Yes – Hensley, Flores, Sealock
Absent – Gedney, Yager**

OTHER:

There were no additional comments.

ADJOURNMENT:

Mr. Hensley moved, seconded by Chairman Sealock to adjourn the meeting.

**VOTE: Yes – Sealock, Hensley, Flores
Absent – Yager, Gedney**

The meeting adjourned at 7:42 PM
Connie L. Potter
Sr. Administrative Assistant