

BOARD OF ZONING APPEALS
PUBLIC HEARING MINUTES

The regular meeting of the Board of Zoning Appeals was held on
Monday, June 13, 2022 at 7:00 p.m.
in City Council Chambers, City Hall, Alexandria, Virginia

The proceedings of the meeting were recorded; records of each case are on the web at www.alexandriava.gov/dockets and on file in the Department of Planning and Zoning.

Members Present: Lee Perna, Chair
 Tim Foley, Vice Chair
 Dawn Bauman
 Paul Liu
 Raj Patel

Absent Members: Quynn Nguyen, Secretary
 Jon Wacławski

Staff Present: Owen Albrecht, Department of Planning & Zoning
 Rachel Drescher, Department of Planning & Zoning
 Marlo Ford, Department of Planning & Zoning
 Tony LaColla, Department of Planning & Zoning

CALL TO ORDER

1. Mr. Perna called the June 13, 2022, Board of Zoning Appeals to order at 7:04 p.m.

ANNOUNCEMENTS

2. Mr. Perna welcomed new Board members Dawn Bauman and Raj Patel.

UNFINISHED BUSINESS

3. **BZA #2022-00006**

322 & 324 South Lee Street

Public Hearing and consideration of a request for Variance to access parking from the street rather than from an alley or interior court; zoned: RM/Townhouse. Applicant: Avonlea LLC, a Virginia limited liability company.

BOARD OF ZONING APPEALS ACTION, JUNE 13, 2022: On a motion by Mr. Foley, seconded by Mr. Patel, the Board of Zoning Appeals voted to defer the requested Variance to the September 12, 2022 hearing. The motion carried on a vote of 5-0.

Speakers: Duncan Blair, representing the applicant.

NEW BUSINESS

4. **BZA #2022-00011**

3501 Wilson Avenue

Public Hearing and consideration of a request for a Special Exception to construct an addition in the secondary front yard; zoned: RB/Townhouse. Applicants: Gabriel Fry & Mariah Taylor

BOARD OF ZONING APPEALS ACTION, JUNE 13, 2022: On a motion by Mr. Foley, seconded by Mr. Liu, the Board of Zoning Appeals voted to approve the requested special exception subject to all applicable codes, ordinances, staff recommendations and conditions. The motion carried on a vote of 5-0.

Reason:

The Board agreed with the staff analysis.

Speakers:

Gabriel Fry, applicant, presented the case.

Discussion:

Mr. Foley expressed some concern about the amount of relief requested, but believed the request meets the criteria.

5. **BZA #2022-00010**
1416 Janney's Lane

Public Hearing and consideration of a request for a Variance for an after the fact construction of an accessory structure in the required side yard; zoned: R-20/Single-Family. Applicants: Phil P. Garrett & Dawn M. Garrett

BOARD OF ZONING APPEALS ACTION, JUNE 13, 2022: A motion by Mr. Foley to deny the variance failed due to lack of a second. A motion by Mr. Patel to approve the variance failed due to lack of a second. On a motion by Ms. Bauman, seconded by Mr. Liu, the Board of Zoning Appeals voted to deny the requested Variance. The motion carried on a vote of 4-1. Mr. Patel, dissented.

Reason to Deny:

Messrs. Perna, Foley, Lui and Ms. Bauman agreed with the staff analysis.

Dissenting Reason:

Mr. Patel stated there was no community opposition and the cost to remove was a hardship.

Speakers:

Barrett Kime, representative for applicant, presented the case.

Christopher Cahill, representative for applicant, was available for questions.

Discussion:

Mr. Foley asked about the process to apply for a rezoning. Staff explained the request would be reviewed by Planning Commission and City Council for approval or denial.

Mr. Liu asked staff to clarify how this request is reoccurring in nature. Staff explained many properties are built out to their maximum floor area ratio.

Mr. Patel asked whether the applicant supplemented their building permit application with floor area ratio information. Staff stated the applicant did provide floor area information and floor plans, which showed the floor area exceeded the allowed amount. Mr. Patel asked the difference between a pergola and a pavilion. Staff explained a pergola that is 80% open is not considered a roofed structure and is not considered floor area. A pavilion has a full roof and meets the definition of floor area.

Mr. Foley asked whether they could cover the pergola with a sunshade. Staff explained any shading would need to be temporary.

Ms. Bauman asked if an umbrella covering would be acceptable. Staff confirmed an umbrella would not count toward floor area. Ms. Bauman asked for clarification on whether floor area is determined by the floor or roof. Staff confirmed floor area is all areas under a roof. Ms. Bauman asked for staff to explain the purpose of floor area ratio. Staff explained floor area is to limit bulk and density on a property.

Mr. Patel asked whether there was community opposition. There was none.

Mr. Perna asked about the building permit being rejected. Staff explained the building permit application never made it past the completeness review.

Mr. Foley asked the applicant why they proceeded with the construction of the pavilion without a permit. Mr. Cahill stated this was in the middle of Covid, and the pergola was in disrepair and it collapsed and thought the pavilion would not count against floor area. Mr. Foley asked staff to clarify whether pavilions were excluded from floor area. Staff confirmed only pavilions under 100 square feet are excluded.

Ms. Bauman asked whether pavilion was listed under floor area ratio. Staff stated it is not, however, pavilions would be considered an accessory structure.

Mr. Patel asked the applicant whether the pavilion could be seen from the street. Mr. Cahill stated it cannot be seen from the street. Mr. Patel asked the cost to tear the structure down. Mr. Cahill stated it would cost \$45,000 to tear down and reconstruct as a pergola.

Mr. Foley stated staff has explained the Board of Zoning Appeals does not have the authority to approve this request, and has concerns of the precedence approving a floor area variance would create.

Mr. Patel explained there is no opposition and the pavilion cannot be seen from the road, and there is a cost of \$45,000 to remove. Mr. Patel said he sympathizes with the applicant with the circumstances of the past few years and the lengthy application process.

Mr. Liu commented he is looking at the intent of floor area ratio and finds the strict application causes undue hardship for the applicants.

Ms. Bauman asked staff to read the accessory structure definition. Ms. Bauman asked Mr. Cahill the useful life of the pavilion versus the useful life of a pergola. Mr. Cahill stated the pergola was built poorly, and the pavilion was built to stand as long as the house will stand.

Mr. Foley reiterated his concerns regarding the ramifications of approving this variance, and the Board needs to be careful about considering because all property owners are in the exact same position where they have limited floor area. It does not meet the criteria of not being reoccurring.

Mr. Liu asked staff what the intent of the exemptions to the floor area. Staff explained these were features of the dwelling that were determined should not count against floor area. Mr. Liu asked why a pergola is excluded. Staff explained the pergola does not have a roof if it is 80% open and, by definition, floor area is all areas under a roof. Mr. Liu asked Mr. Cahill if there were any other structures that could be constructed. Mr. Cahill said they could construct a mechanical structure that opens into a pergola.

Mr. Foley asked staff about the regulation regarding impermeable area on the lot. Staff explained the zoning ordinance also regulates open space, however, the zone of the subject property does not have an open space requirement. Mr. Foley reminded the Board that as far as staff was aware a floor area variance has not been approved.

Mr. Patel asked staff whether their approval would create precedence or whether it was limited to the facts of this case. Staff explained it would create a precedence that other applicants could refer to and ask for something similar in nature.

Mr. Foley commented that if the Board approved this, and someone else came forward asking for a floor area exemption, it would be unfair to deny, and it would create a precedence. Mr. Foley reminded the Board of a similar case that recently came before the BZA that the Board denied, and that request was modest and in a historic district.

Mr. Perna reminded Board members that all the criteria must be met. The hardship cannot be self-created, other remedies must not be available, and the variance cannot change the zone classification.

Mr. Foley asked whether they could make the pavilion a carport. Staff explained if the carport was only used to store motor vehicles and there was no other garage on the property, then they could use it as a carport and it would not count toward floor area.

Mr. Patel asked Mr. Kime whether there were any similar cases he came across on this issue. Mr. Kime stated there were not.

Ms. Bauman asked staff whether they have seen pavilions excluded in any other cases. Staff explain only when the pavilion was less than 100 square feet. Anything over 100 square feet must be counted as floor area ratio.

MINUTES

6. Consideration of the minutes from the May 9, 2022, Board of Zoning Appeals Hearing.

Mr. Perna proposed to amend the minutes for docket item 5 to read "On a motion by Mr. Foley, seconded by Ms. Nguyen, the Board of Zoning Appeals Approved the amendment to the Rules of Procedures, as submitted. The motion carried on a vote of 5-0."

BOARD OF ZONING APPEALS ACTION, JUNE 13, 2022: On a motion by Mr. Foley, seconded by Mr. Patel, the Board of Zoning Appeals approved the minutes as amended. The motion carried on a vote of 4-0 with Ms. Bauman abstaining.

ADDITIONAL BUSINESS

ADJOURNMENT

7. The Board of Zoning Appeals meeting was adjourned at 8:22 p.m.