

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on Wednesday, March 15, 2023. The following Board Members were present: Chairman John F. Ribble III (arrived at 9:18 a.m.); Vice Chairman James R. Hart; Thomas W. Smith III; Rebecca Ballo; Daniel Aminoff; and Karen L. Day (arrived at 9:18 a.m.). Donte Tanner was absent from the meeting.

Vice Chairman Hart called the meeting to order at 9:02 a.m. He asked if there were any Board Matters to bring before the Board. He discussed the policies and procedures for the conduct of public hearings at the Board of Zoning Appeals. Vice Chairman Hart called for the first scheduled case.

~ ~ ~ March 15, 2023, Scheduled case of:

Farzaneh Hajiaghabozorgi and Nini Daycare LLC, SP-2022-BR-00177

Vice Chairman Hart noted that application SP-2022-BR-00177 had been indefinitely deferred.

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~ ~ ~ March 15, 2023, Scheduled case of:

Edward J. Hanlon (Trustee for Hanlon Family Trust), SP-2022-PR-00200 to permit a reduction of setback requirement to permit an addition 12.6 ft. from the rear lot line. Located at 2904 Oakton Ridge Cir., Oakton, 22124 on approx. 27,740 sq. ft. of land zoned R-1 (Cluster). Providence District. Tax Map 37-3 ((17)) 54A.

The participants in the hearing were as follows:

- Brent Krasner, Chief, Special Permit and Variance Branch
- Philip Isaiah, Staff Coordinator
- Edward J. Hanlon, Applicant

Chairman Ribble and Ms. Day arrived at 9:18 a.m.

After the hearing where testimony was presented by Mr. Isaiah, Mr. Krasner, and Mr. Hanlon, with no testimony from the public, Mr. Aminoff moved to approve SP-2022-PR-00200 for the reasons stated in the Resolution. Ms. Ballo seconded the motion, which carried by a vote of 5-0. Mr. Smith was not present for the vote and Mr. Tanner was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

Edward J. Hanlon (Trustee for Hanlon Family Trust), SP-2022-PR-00200 to permit a reduction of setback requirement to permit an addition 12.6 ft. from the rear lot line. Located at 2904 Oakton Ridge Cir., Oakton, 22124 on approx. 27,740 sq. ft. of land zoned R-1 (Cluster). Providence District. Tax Map 37-3 ((17)) 54A. Mr. Aminoff moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 15, 2023; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1 (Cluster).
3. The area of the lot is 27,740 square feet.

4. The Board adopts the rationale in the staff report.
5. The conditions on the site, given the odd shaped lot and the location of the house, do not allow the covered porch that they propose to install to fit within the normal setbacks.
6. The applicant has read, understands, and concurs with the proposed development conditions as modified at the meeting.

WHEREAS, the Board has made the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the standards for the Reduction of Setback Requirements as contained in Sect. 5100.2.D(11)(e) of the Zoning Ordinance, the Board has determined that:

1. The application meets all the submission requirements set forth in Sect. 8101.3
2. A. The resulting gross floor area of the addition to the existing principal structure is not greater than 150 percent of the total gross floor area of the principal structure that existed at the time of the first expansion request. If a portion of the single-family detached dwelling is to be removed, no more than 50 percent of the gross floor area of the existing dwelling at the time of the first yard reduction will be removed;

B. The resulting gross floor area of the existing accessory structure and any addition to it is clearly subordinate in purpose, scale, use and intent to the principal structure on the site.
3. The proposed scale of the development is harmonious with the existing on-site and surrounding off-site development, and the development preserves existing vegetation and significant trees, as determined by the Director, in a manner that is characteristic of surrounding off-site development.
4. The proposal does not adversely impact the use or enjoyment of any adjacent property through the creation of issues related to noise, light, air, safety, erosion, and stormwater runoff.
5. The proposed reduction represents the minimum amount of reduction necessary to accommodate the proposed structure on the lot.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. These conditions must be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Development.
2. This special permit is approved for the location of the sunroom addition as shown on the special permit plat, entitled "*Special Permit Survey, Lot 54-A, Section Two, Oakton Mill Estates,*" prepared by Cardinal Civil Resources, dated February 17, 2022, as submitted with this application and is not transferable to other land.
3. Pursuant to Par. 6 of Sect. 5100.2.D(11)(e) of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (4,284 square feet existing + 6,426 square feet (150%) = 10,710 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single-family dwelling for the purpose of this paragraph will be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements will be permitted without an amendment to this special permit.
4. The addition must be generally consistent with the architectural elevations as shown on Attachment 1 to these conditions.
5. The applicants must store construction materials and equipment for the proposed addition outside

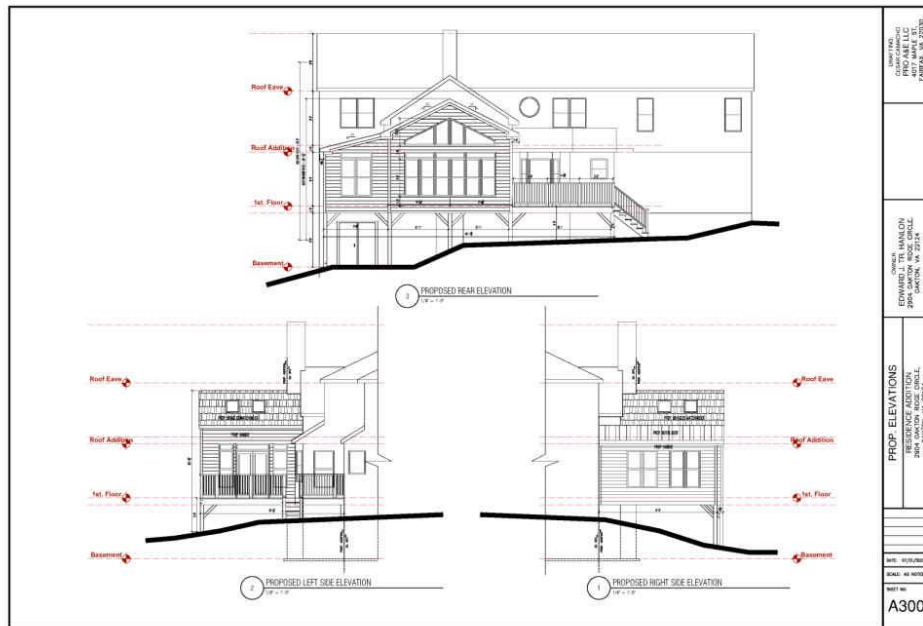
the driplines of the existing trees and construction access to the rear yard must be from the south side of the property.

6. The applicant is responsible for identifying and complying with the terms of all legally binding easements, covenants, conditions, liens, judgments, encroachments, or other encumbrances to title affecting the subject property, shown or not shown, on the approved special permit plat, as may be determined by a court of competent jurisdiction. Approval of this application does not abrogate, vacate, interfere with, or invalidate such claims.
7. Pursuant to Sect. 8100.4.D(6) of the Zoning Ordinance, this special permit will automatically expire, without notice, 30 months after the date of approval unless construction has commenced on the addition and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

This approval, contingent upon the above-noted conditions, does not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Ms. Ballo seconded the motion, which carried by a vote of 5-0. Mr. Smith was not present for the vote, and Mr. Tanner was absent from the meeting.

APPENDIX 1



SP 2022-PR-00200
ATTACHMENT 1

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Chairman Ribble assumed the chair.

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~ ~ ~ March 15, 2023, Scheduled case of:

Paul Michael, TR, Christina A. Michael, SP-2021-BR-00090 to permit a reduction of setback requirements to permit an addition 10.2 ft. from the east side lot line. Located at 11610 Leehigh Dr., Fairfax, 22030 on approx. 22,082 sq. ft. of land zoned R-1. Braddock District. Tax Map 56-4 ((2)) 31. (Deferred from 12/7/2022)

The participants in the hearing were as follows:

- Brent Krasner, Chief, Special Permit and Variance Branch
- Kevin McMahan, Staff Coordinator
- Paul Michael, Applicant

After the hearing where testimony was presented by Mr. McMahan, Mr. Krasner, and Mr. Michael , with no testimony from the public, Mr. Hart moved to deny SP-2021-BR-00090 for the reasons stated in the Resolution. Ms. Day seconded the motion, which carried by a vote of 5-0. Mr. Smith was not present for the vote and Mr. Tanner was absent from the meeting.

Mr. Hart moved to waive the one year waiting period for resubmission of an application. Chairman Ribble seconded the motion, which carried by a vote of 5-0. Mr. Smith was not present for the vote and Mr. Tanner was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

Paul Michael, TR, Christina A. Michael, SP-2021-BR-00090 to permit a reduction of setback requirements to permit an addition 10.2 ft. from the east side lot line. Located at 11610 Leehigh Dr., Fairfax, 22030 on approx. 22,082 sq. ft. of land zoned R-1. Braddock District. Tax Map 56-4 ((2)) 31. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 15, 2023; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 22,082 square feet.
4. There is a staff recommendation of denial, and the Board adopts the rationale in the staff report.
5. Although some relief may be warranted on this lot, and specifically, relief to accommodate construction of an attached and incorporated ALU, there may be other ways to do that which are consistent with the Zoning Ordinance.
6. The BZA must determine, which is mandatory, that the proposed reduction represents the minimum amount of reduction necessary to accommodate the proposed structure on the lot, and it then gives factors to be considered. Considering the layout of the existing structure, the availability of alternate locations for the addition, and orientation of the structures on the lot, the ALU is more compelling than the garage spaces 4 and 5 on a lot of this size and in a neighborhood of this character. There is probably a way to do the ALU that does not require it to be as wide as this, with so many stairs, that

is 42 feet long, and this close to the line. In any event, the Board has had a dialog with the applicant and his preference is that the Board vote on this today. We cannot support this for the reasons that the staff has identified.

7. The two-story addition is unmitigated and is a straight line 42 feet wide within a minimum yard.

WHEREAS, the Board has made the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the standards as set forth in Sec. 4102.1.F(2) and the additional standards for this for the Reduction of Setback Requirements as contained in Sect. 5100.2.D(11)(e) of the Zoning Ordinance, the Board has determined that:

1. The application fails to meets all the submission requirements set forth in Sect. 8101.3
2. The proposed scale of the development is not harmonious with the existing on-site and surrounding off-site development.
3. The proposed reduction does not represent the minimum amount of reduction necessary to accommodate the proposed structure on the lot for the reasons stated.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Ms. Day seconded the motion, which carried by a vote of 5-0. Mr. Smith was not present for the vote, and Mr. Tanner was absent from the meeting.

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~ ~ ~ March 15, 2023, Scheduled case of:

Jean Jiyoung Kim and Hyung Joon Kim, SP-2022-SU-00170 to permit a reduction in setback requirements to permit an addition 14.2 ft. from the rear lot line. Located at 3709 Broadrun Dr., Fairfax, 22033 on approx. 8,642 sq. ft. of land zoned PDH-3 and WS. Sully District. Tax Map 45-2 ((11)) 246.

The participants in the hearing were as follows:

- Brent Krasner, Chief, Special Permit and Variance Branch
- Kevin McMahan, Staff Coordinator
- Jean Jiyoung Kim, Applicant

After the hearing where testimony was presented by Mr. McMahan, Mr. Krasner, and Ms. Kim, with no testimony from the public, Ms. Day moved to approve SP-2022-SU-00170 for the reasons stated in the Resolution. Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Tanner was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

Jean Jiyoung Kim and Hyung Joon Kim, SP-2022-SU-00170 to permit a reduction in setback requirements to permit an addition 14.2 ft. from the rear lot line. Located at 3709 Broadrun Dr., Fairfax, 22033 on approx. 8,642 sq. ft. of land zoned PDH-3 and WS. Sully District. Tax Map 45-2 ((11)) 246. Ms. Day moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 15, 2023; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is PDH-3 and WS.
3. The area of the lot is 8,642 square feet.
4. This application with the proposed development conditions satisfies the requirements that are set forth for approval of a setback reduction.
5. The abutting lots are undeveloped home owner association owned parcels.
6. This is an oddly shaped lot.
7. This request is replacing an existing open porch.
8. There is a requirement in the development conditions that the RPA exception be obtained prior to any permits being issued.
9. The applicant has read, understands, and concurs with the proposed development conditions.

WHEREAS, the Board has made the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the standards for the Reduction of Setback Requirements as contained in Sect. 5100.2.D(11)(e) of the Zoning Ordinance, the Board has determined that:

1. The application meets all the submission requirements set forth in Sect. 8101.3
2. A. The resulting gross floor area of the addition to the existing principal structure is not greater than 150 percent of the total gross floor area of the principal structure that existed at the time of the first expansion request. If a portion of the single-family detached dwelling is to be removed, no more than 50 percent of the gross floor area of the existing dwelling at the time of the first yard reduction will be removed;

B. The resulting gross floor area of the existing accessory structure and any addition to it is clearly subordinate in purpose, scale, use and intent to the principal structure on the site.
3. The proposed scale of the development is harmonious with the existing on-site and surrounding off-site development, and the development preserves existing vegetation and significant trees, as determined by the Director, in a manner that is characteristic of surrounding off-site development.
4. The proposal does not adversely impact the use or enjoyment of any adjacent property through the creation of issues related to noise, light, air, safety, erosion, and stormwater runoff.
5. The proposed reduction represents the minimum amount of reduction necessary to accommodate the proposed structure on the lot.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. These conditions must be recorded by the applicants among the land records of Fairfax County for this lot prior to the issuance of a building permit. A copy of the recorded conditions must be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location of the proposed enclosed porch addition as shown on the plat, entitled "Special Permit Plat, Lot 246, Section 6, Century Oak," prepared by Patrick A. Eckert, Land Surveyor, dated August 2, 2021 and last revised on January 17, 2023, as submitted with this application and is not transferable to other land.
3. Pursuant to Par. 6 of Sect. 5100.2.D (11) (e) of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to

150 percent of the gross floor area of the dwelling that existed at the time of first expansion (4,420 square feet existing + 6,630 square feet (150% = 11,050 square feet permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Subsequent additions that meet minimum setback requirements will be permitted without an amendment to this special permit.

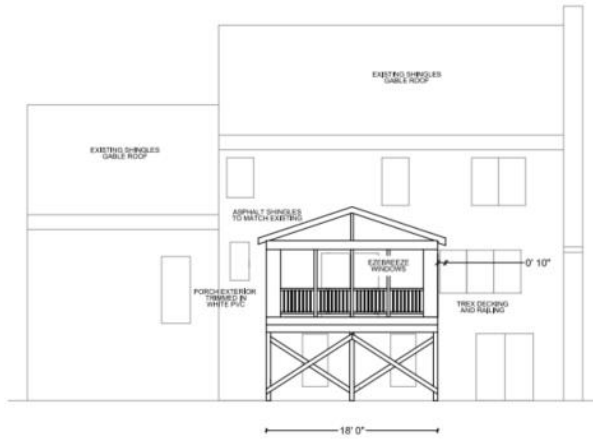
4. The addition must be generally consistent with the design as depicted in the architectural elevations as shown in Attachment 1 to these conditions.
5. The applicants must obtain approval of an RPA Exception prior to the issuance of a building permit for the enclosed porch addition and the open deck.
6. The applicants must store construction materials and equipment for the proposed addition outside the driplines of the existing trees and construction access to the rear yard must be from the south side of the property.
7. The applicants are responsible for identifying and complying with the terms of all legally binding easements, covenants, conditions, liens, judgments, encroachments or other encumbrances to title affecting the subject property, shown or not shown, on the approved special permit/variance plat as may be determined by a court of competent jurisdiction. Approval of this application does not abrogate, vacate, interfere with, or invalidate such claims.
8. Pursuant to Article 8100.4.D (6) of the Zoning Ordinance, this special permit automatically expires, without notice, 30 months after the date of approval unless construction of the enclosed porch addition has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

This approval, contingent upon the above-noted conditions, shall not relieve the applicants from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Tanner was absent from the meeting.



REAR ELEVATION



KIM RESIDENCE			
3709 BROADRUN DR FAIRFAX, VA			
SUNDECK MEDICS, LLC			
PROJECT #	DATE	SCALE	Z-02
	8/30/22	1/8" = 1'-0"	

SP 2022-SU-00170

ATTACHMENT 1
APPENDIX 1 (Page 3 of 5)



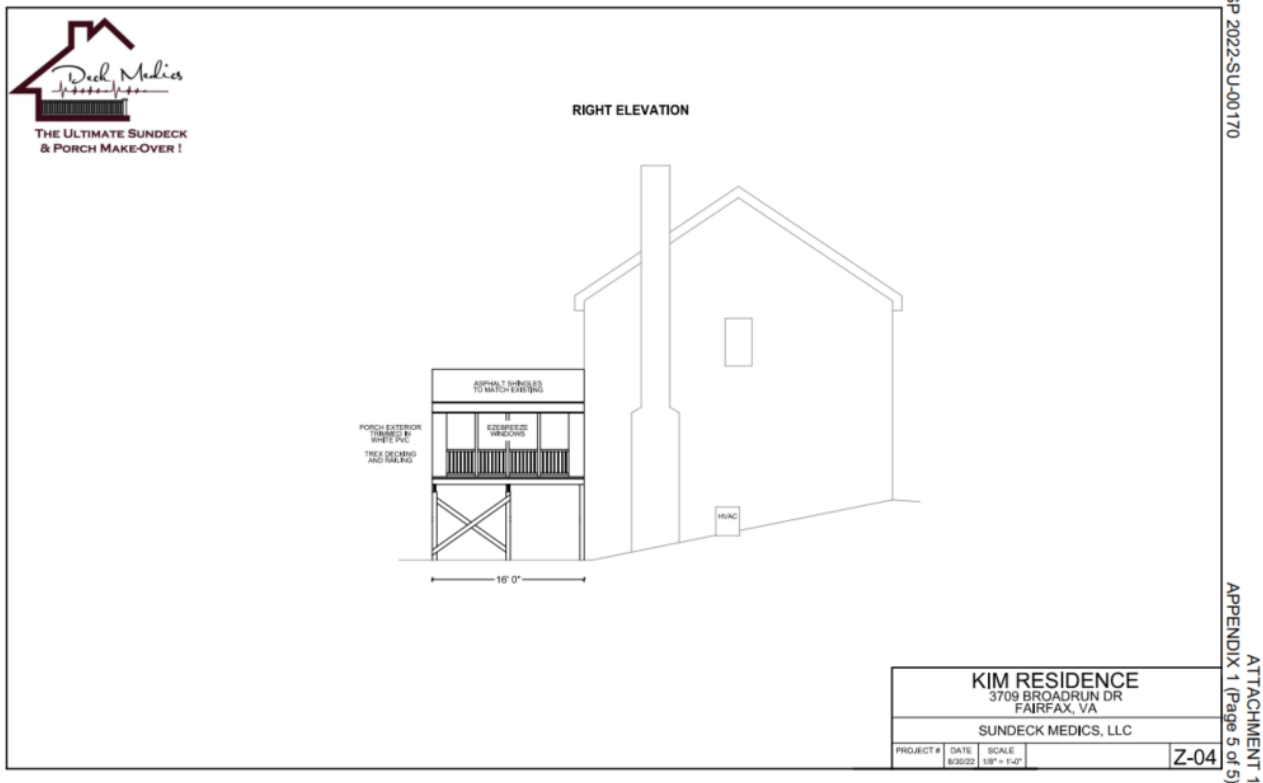
LEFT ELEVATION



KIM RESIDENCE			
3709 BROADRUN DR FAIRFAX, VA			
SUNDECK MEDICS, LLC			
PROJECT #	DATE	SCALE	Z-03
	8/30/22	1/8" = 1'-0"	

SP 2022-SU-00170

ATTACHMENT 1
APPENDIX 1 (Page 4 of 5)



SP 2022-SU-00170

ATTACHMENT 1
APPENDIX 1 (Page 5 of 5)

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~ ~ ~ March 15, 2023, Scheduled case of:

Hong Chen and Kevin Hu, VC-2022-DR-00014 to permit construction of an uncovered stoop and stairs 23.7 ft. from the front lot line adjacent to Valley Avenue. Located at 1701 Valley Ave., McLean, 22101 on approx. 15,230 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-3 ((9)) (5) 3A.

The participants in the hearing were as follows:

- Brent Krasner, Chief, Special Permit and Variance Branch
- Brandon McCadden, Staff Coordinator
- Hong Chen, Applicant
- June Dong, Applicants' Architect

After the hearing where testimony was presented by Mr. McCadden, Mr. Krasner, Ms. Chen, and Ms. Dong, with no testimony from the public, Mr. Smith moved to deny VC-2022-DR-00014 for the reasons stated in the Resolution. Ms. Ballo seconded the motion, which carried by a vote of 6-0. Mr. Tanner was absent from the meeting.

Mr. Hart moved to waive the one year waiting period for resubmission of an application. Ms. Ballo seconded the motion, which carried by a vote of 5-0. Mr. Tanner was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

Hong Chen and Kevin Hu, VC-2022-DR-00014 to permit construction of an uncovered stoop and stairs 23.7 ft. from the front lot line adjacent to Valley Avenue. Located at 1701 Valley Ave., McLean, 22101 on

approx. 15,230 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-3 ((9)) (5) 3A. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 15, 2023; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 15,230 square feet.
4. There has been some testimony to support the variance. It is a triangular shaped corner lot. It slopes from the back to the front. It faces the house across the street's backyard. There has been testimony about access for the older family members who will be living in the home that was raised in support of the variance.
5. There is a staff recommendation for denial, much of which references the fact that the hardship was self-created. This is a lot that was created in 1910 and subdivided in 1953. House built in 1955, and then in 2021, the applicant purchased the property, and a new house was built.
6. There is a building permit that was submitted that shows an entranceway at grade. The applicant has testified that the reason for that was because they had intended to come back for a variance after talking with county staff.
7. This is not a special permit where the Board has certain discretion that can be used. There is very limited discretion for variances. The Board has to follow the provisions for a variance in the Zoning Ordinance and the state law requirements. There is a fair amount of case law as well. The Board must find that the application meets the requirements in the variance provisions of the Ordinance. The Board cannot reach that conclusion in this case.
8. The applicants did a nice job presenting everything, and the Board is sympathetic to the situation. They have cited some circumstances with other houses, however, each case is different. In fact, this is R-1 property, but it adjoins R-2 and R-3 properties. We do not know the circumstances on the other lots, nor would it technically be germane, because if someone made a mistake on another lot, that would be an enforcement issue on those lots.
9. The Board must look at this specific case, these circumstances, on this lot. The circumstances are not that unusual. There could have been a smaller house to fit in this footprint. It is a 15,000 square foot lot. While it does adjoin two streets and is a triangular shape, it could still reasonably fit a house. It does not meet the requirement that the applicant did not create any hardship for which relief is sought.
10. The applicant has other options. There are other access points to the house that can be utilized, but if they want to utilize the front door so the older parents do not have to take the elevator down to greet people, then they can still fit in within a 10 foot width, a 5 foot infringement to come out from the front porch down to the drive way, and then perhaps make some adjustments to the grade. It is not up to the Board to re-design. There may be other options. All the Board is authorized to do it is look at the Ordinance and determine if the application meets the provision or not.
11. The staff report identified each of the different provisions. The property was acquired in good faith, but in this case, the applicant did create the hardship for which relief is sought. The Board cannot reach another conclusion on that.

THAT the variance request fails to meet at least one of the required justifications: 1) that the strict application of the terms of the Ordinance would unreasonably restrict the utilization of the property OR 2) that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon, OR that 3) the granting of the variance would alleviate a hardship by granting a reasonable modification to property or improvements requested by a person with a disability,

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Ms. Ballo seconded the motion, which carried by a vote of 6-0. Mr. Tanner was absent from the meeting.

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Vice Chairman Hart moved that the Board recess and enter into Closed Session for consultation with legal counsel and/or briefings by staff members and consultants regarding by-laws and alternate members pursuant to Virginia Code Ann. Sec. 2.2-3711 (A) (7) (LNMB Supp. 2002). Mr. Smith seconded the motion, which carried by a vote of 6-0. Mr. Tanner was absent from the meeting.

The meeting recessed at 11:29 a.m. and reconvened at 11:57 a.m.

Vice Chairman Hart then moved that the Board of Zoning Appeals certify that, to the best of its knowledge, only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Closed Session were heard, discussed, or considered by the Board during the Closed Session. He noted that Ms. Ballo was there for the vote to go into closed session but had to leave before the Board went into closed session. Ms. Day seconded the motion, which carried by a vote of 5-0. Ms. Ballo was not present for the vote. Mr. Tanner was absent from the meeting.

Vice Chairman moved that the Board of Zoning Appeals authorize Mr. Crim to work on the items discussed in Closed Session. Mr. Aminoff seconded the motion, which carried by a vote of 5-0. Ms. Ballo was not present for the vote. Mr. Tanner was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 12:00 p.m.

Minutes by: Mary Padrutt

Approved on: September 20, 2023