

Board of Zoning Appeals Meeting

At a regular meeting of the Board of Zoning Appeals of Warren County held in the Warren County Government Center on September 7th, 2023, at 7:00 PM.

Present: Gary Kushner, Chairman, South River District; M.W. Robinson, Vice-Chairman, North River District; Robert Myers, Member, Happy Creek District; Ron Weckenman, Member, Shenandoah District; John Pennell, Member, Fork District; Chase Lenz, Zoning Administrator; Matt Wendling, Planning Director.

Absent: Allison Mutter, Clerk to the Board of Zoning Appeals.

Call to Order:

At 7:00 PM, Mr. Kushner called the meeting to order and invited everyone in attendance to join in the Pledge of Allegiance.

Adoption of Agenda:

Mr. Kushner requested a motion to add the August 3rd minutes to the agenda as Item III.A. after the public hearing.

Motion to Amend Agenda:

Mr. Myers moved to adopt the agenda as amended, which was seconded by Mr. Robinson and approved by the following vote:

Ayes: Kushner, Robinson, Myers, Weckenman, Pennell.

BZA2023-09-01 – Vasila Ladygine: A request for a variance to Warren County Code §180-22H(3) to allow for a side yard setback of two and four tenths feet (2.4') for a principal structure in lieu of the required minimum side yard setback of fifteen feet (15') for a principal structure in the Residential-One (R-1) zoning district. A twelve and six tenths foot (12.6') variance to the required minimum side yard setback is sought.

Mr. Lenz presented the following during his staff report:

PROPERTY HISTORY

The subject 0.7232-acre property, lot 2A of section 1 of the Junewood Estates subdivision, is the resulting parcel from a consolidation of original lot 2 (0.3702 acres) and original lot 3 (0.353 acres) approved and recorded in 2021. The single-family dwelling on the property was constructed in 2021 by the previous owner, Servants Hands Construction, Inc. Ms. Vasila Ladygine purchased the property on December 27, 2021. The property owner was issued a Notice of Violation on October 6, 2022 for construction of an unpermitted addition to the dwelling within the required side yard setback. The addition includes an attached covered patio, a deck, and an above-ground pool. The owner has since applied for the required permits and a zoning variance to allow for a two and four tenths foot (2.4') side yard setback for the dwelling addition in lieu of the required minimum setback of fifteen-feet (15') for a principal structure in the R-1 zoning district. The subject property is a through lot, which is non-conforming to the minimum lot size and minimum lot width, with an undeveloped right-of-way along the rear property boundary and a portion of the property along the frontage with Sunset Village Road nearest the river is located in the Special Flood Hazard Area (SFHA).

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STAFF SUMMARY & RECOMMENDATION

Attached you will find the zoning variance application with statement of justification, site plan, and plans for the addition to the dwelling, and a location map.

The application for a zoning variance was originally discussed with the property owner in December of 2022. This application is in response to a Notice of Violation issued by Planning staff for constructing an unpermitted addition to the dwelling within the required side yard setback in violation of Code §180-22H(3). Upon discussing a potential zoning variance application with the owner, Planning staff communicated she should explore all potential options for resolving the violation, including a boundary line adjustment of the common boundary between lots 2A and 4A. Holding all zoning violation proceedings until a boundary line adjustment or variance application were submitted, Planning staff worked with the property owner to grant additional time for her to approach the neighboring property owner to discuss a potential boundary line adjustment. Upon confirming the neighbor was not interested in pursuing the boundary line adjustment, the property owner submitted the application for a variance.

Upon review of the submitted documents, it is evident the applicant is requesting a variance to the side yard setback requirement of fifteen feet (15') for a principal structure in the R-1 zoning district. The furthest-reaching supporting structure to the unpermitted addition to the dwelling is two and four tenths feet (2.4') from the property boundary shared by lots 2A and 4A and a twelve and six tenths foot (12.6') variance to the required minimum side yard setback is required for the building permit to receive zoning approval. The addition also includes a roof projection that extends the roof of the building to the property line. Code §180-12B(6)(d) prohibits projections from being within ten (10) feet of the property line. The applicant has agreed to modify the roof to eliminate the roof projection if the variance to the side yard setback is approved.

The minimum side yard setback requirement of fifteen feet (15') in the R-1 zoning district was adopted by the Warren County Board of Supervisors as part of the original R-1 zoning district regulations of the Zoning Ordinance of Warren County, Virginia, made effective on August 19, 1992. A fifteen-foot side yard setback for principal buildings is required in the Agricultural, Residential-One, Residential-Two, Rural Residential, Village Residential, Suburban Residential, Commercial, and Industrial zoning districts. As such, the fifteen-foot setback is the standard side yard setback for all properties located in the Warren County jurisdiction. Maintaining setback requirements is vital to public safety and promotes harmonious development within the community. The statement of intent for the R-1 zoning district under Code §180-22A states, "...This district is intended for family living in safe and suitable surroundings in areas where low-density residential development may be situated without degrading the environment..."

*Per Warren County Code §180-62B, **for a zoning variance to be granted, the Board of Zoning Appeals must find the following:***

- 1. Strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or 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 the property meets the following conditions:*

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- a. *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.*
- b. *The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.*
- c. *The condition or situation of the property 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.*
- d. *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.*

Per Code §180-62C, the burden of proof shall be on the applicant to prove by a preponderance of the evidence that the application meets the required standards for a variance as defined in Code §180-62B. In granting a variance, the BZA may impose such conditions regarding the location, character and other features of the structure as it may deem necessary in the public interest.

Mr. Lenz stated that this public hearing has been properly advertised, adjacent property owners notified, and the applicant is here.

Mr. Kushner asked if the Board had any questions?

Mr. Robinson replied that there were no questions at this time and Mr. Myers replied not now.

Mr. Kushner asked if the variance request is just for the side yard setback and if there was nothing that needed to be included regarding the ten-foot (10') overhang issue?

Mr. Lenz stated that he had discussed the issue with the applicant and the applicant had agreed to remove the roof projection and that it would be enforced separately if the removal were not to happen.

Mr. Kushner opened the public hearing and asked the applicant to address the board if she chose, but stated that it was not necessary as they have her application.

The applicant, Vasila Ladygine, was sworn in.

Ms. Ladygine stated she is the guardian of two disabled adults, her brother and her mother and she had purchased two lots in order to build a house where she can take care of them. She had a few meetings and the builder and the realtor to specify where the house was to be built. When the foundation was laid, it was laid in the setback, as the builder stated that was the only place that it could go. She also stated that the contractor

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told her the patio did not require a permit and that she faced many challenges with the roof.

Ms. Ladygine introduced her mother, described her daily medical challenges, and offered the medical records of her mother and brother.

Mr. Kushner stated he did not think it would be necessary to see those files.

Ms. Ladygine stated the case was clear in the files and would appreciate approval.

Catherine Parrish 696 Sunset Village Road.

Mrs. Parrish was sworn in and she stated that, though they have no objections to their neighbors, they have concerns about who might live there next and what it would do the property value over time. She is concerned that while the house is not an AirBnB, it could become one and that it being on their fence line is not ideal. She does not want to prevent someone from using their home, but also wants their home to be protected by the rules the county has.

David Parrish 696 Sunset Village Road.

Mr. Parrish was sworn in and stated that he echoes what his wife stated. His main concern is the impact on property value.

Mr. Kushner stated that there are no other names on the sign-up sheet and asked anyone else who wished to speak to come forward.

Creel O'Neil 692 Sunset Village Road.

Mr. O'Neil was sworn in and stated that he is the neighbor on the other side and stated he does not share the same concerns as the neighbors, but he understands their concerns considering they are more directly affected by the structure.

Mr. Kushner asked if there was anyone else who would like to speak?

No one came forward.

Mr. Kushner asked if the applicant would like to address any of the other comments that were made. He stated that the applicant was still under oath and that the board had the response to the letter that was sent in by the Parrishes.

Ms. Ladygine stated that she responded to the questions and wanted to make sure that the board had a chance to read it.

Mr. Kushner stated the board has had the opportunity to look at it. He then asked if there were questions to the applicant from the board?

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No one responded.

Mr. Kushner closed the public hearing then requested comments from the board.

Mr. Robinson asked Mr. Lenz what is and is not permitted to be built in the floodplain?

Mr. Lenz stated that there may be a small portion of the pool that would be built in the floodplain.

Mr. Robinson asked what could potentially be put in that floodplain and what the rules regarding such buildings?

Mr. Lenz stated that a shed, for example, would have to meet the district regulations and supplementary regulations for an accessory building in the R-1 district and any floodplain ordinance requirements such as flood vents and proper anchoring of the structure.

Mr. Robinson asked if the structure could be moved to the other side of the house even though it is in a flood zone?

Mr. Lenz stated that it could be, but there is a well in the front yard and the septic system takes up a large portion of the left and rear side of the property.

Mr. Robinson asked if the flood zone would prevent anything being built on its own?

Mr. Lenz stated that is correct. The building would just have additional requirements.

Mr. Myers asked if it would have to be an accessory structure rather than being attached to the house?

Mr. Lenz stated that any addition to the house would need to meet the floodplain requirements and would invite the mandatory purchase requirement of flood insurance for the dwelling if there is a federally backed loan like a mortgage. He stated that the front yard is limited by the setback and, with through lots, planning staff would work with the owner to determine which yard is the front yard for accessory building requirements but that the building would still need to be fifty feet (50') from the right of way.

Mr. Myers asked if the structure had to be attached to the house or would any amount of detachment make it an independent structure?

Mr. Lenz stated that any structure located within four feet (4') of the principal structure carries the same setback requirements of that structure.

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Mr. Weckenman asked the applicant if she discussed permit requirements with the builder?

Ms. Ladygine stated the builders did not mention permits to her.

Mr. Weckenman asked if it was the same builder that built the house?

Ms. Ladygine stated it was a different builder.

Mr. Myers asked if the builder applied for a permit?

Ms. Ladygine stated not many builders would do work on the house due to the location.

Mr. Weckenman asked if the applicant had to do electrical work and if she had gotten permits?

Ms. Ladygine stated she could not get a permit for the roof.

Mr. Weckenman asked if there was electricity going into that portion of the house?

Ms. Ladygine stated there was electricity in the original building.

Mr. Weckenman asked if the applicant never got any permits for the original building?

Ms. Ladygine stated the original house was built with outlets outdoors.

Mr. Kushner asked staff if there were any permits applied for the construction of the addition?

Mr. Lenz stated the original violation was for an unpermitted addition and the house itself was permitted by the original builder. He clarified that the house's electric was handled under the permits when the house was originally built. He stated that initially there were no permits on the building addition but there are now applications on hold pending the Board's decision.

Mr. Kushner asked if that answered Mr. Weckenman's question?

Mr. Weckenman stated yes and he had no other questions.

Mr. Pennell asked Mr. Lenz if he had looked at the original building permit for the house and where the house was located on the site plan?

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Mr. Lenz stated that the original permit was approved by his predecessor and that he approved the foundation location survey, which met the setback requirements.

Mr. Pennell stated he was not addressing the setback and asked if the location of the house on the site was on the original building permit.

Mr. Lenz stated that was correct.

Mr. Pennell asked if that is where the house is located?

Mr. Lenz stated yes, but the addition was not reflected on the original permit.

Mr. Kushner asked if it was relevant to the issue at hand?

Mr. Lenz stated it is relevant to the property but he did not know if it was relevant to the variance request.

Mr. Kushner stated that the location and the permitting that occurred before, since there are people already in it, that there clearly an occupancy permit that has been issued and that it is occupied. He asked if there is anything to do with the house, then it does not affect the variance considerations that are being made?

Mr. Lenz stated that was correct and the request was only to reduce the side yard setback.

Mr. Pennell stated that the applicant stated the house was going to be built elsewhere on the lot and asked where the original building permit stated the house was going to be?

Mr. Lenz stated that the foundation location survey reflects where the house is located.

Mr. Kushner commended the applicant stating not many people make such sacrifices for family and asked what other options had been considered, other than what had already been constructed?

Ms. Ladygine stated that there were no other options.

Mr. Kushner asked who came up with the design for the structure that is now in place?

Ms. Ladygine stated there was no design and the patio was put in place as a way to exit the house and spend time outside.

Mr. Kushner stated that a contractor was hired to build that structure.

Ms. Ladygine agreed.

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Mr. Kushner stated that there was probably a formal design made.

Ms. Ladygine stated that she told her contractor that she needed something safe from the rain and was told the contractor could build a patio.

Mr. Kushner asked if the contractor produced design options for the applicant to choose from or did she state what she needed and told the contractor to make the decision for her?

Ms. Ladygine stated she told the contractor to make the decision for her.

Mr. Kushner asked if there were any other questions for staff or the applicant?

Mr. Myers asked if the applicant trusted the builder to know the codes, regulations, and the setbacks?

Ms. Ladygine agreed.

Mr. Kushner asked if there were any other questions for the applicant, there was no response, and he closed the public hearing.

Mr. Kushner asked for further comments from board members.

Mr. Pennell stated he had no further comments.

Mr. Myers stated that it is a tough choice and considerations must be made for accommodation for family, but also that by approving it could encourage others to apply for a similar variance.

Mr. Weckenman asked to make a motion.

Mr. Kushner stated that he had a couple of comments himself. He stated he fully reviewed the application, personally visited the site, and reviewed the comments from the owners of neighboring properties, and considered the applicant's response to the neighbor's letter. He stated on the on-site visit that someone with mobility issues already has access to the outdoors from the main residence. There is a side door, onto the first-floor deck, that is covered by an extended roof. Also, the area outside the double garage doors, under the first-floor deck is a covered, outdoor area as well. Neither of these areas offer a large space but is accessible and covered. Those areas constitute an existing use. He stated that he is not convinced an unreasonable hardship exists and that the structure already constructed constitutes a detriment to an adjacent property. He stated he is unable to support the variance request.

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Mr. Kushner asked if there were any other comments by board members, there was no response, and he stated that he would entertain a motion.

Mr. Weckenman made the following motion:

Finding that the evidence shows that the variance request meets the standards required under Warren County Code §180-62B, I move that the Board of Zoning Appeals approve the variance request of the applicant to allow a variance to Warren County Code §180-22H to allow for a side yard setback of a two and four tenths feet (2.4') for a principal structure in lieu of the required minimum side yard setback of fifteen-feet (15') for a principal structure in a Residential One zoning district because the current ordinance now in place would be a hardship for the homeowner to move two wheelchair bound relatives who now live at the residence. And if the homeowner agrees to resolve the neighbor issues, regarding the pool lights, the pool noise, and landscaping and to conduct a new survey to ensure accurate property line.

Mr. Kushner acknowledged the motion made and asked for a second. When none was made, he asked if there was a second for the motion? When none was provided again, Mr. Kushner asked for guidance proceeding with the motion that did not receive a second.

Mr. Lenz stated without a second the motion fails and the chair requests an alternative motion.

Mr. Kushner called for an alternative motion.

Mr. Robinson made the following motion:

Finding that the evidence does not meet the variance request meet the required standards of Warren County Code §180-62B, I move that the Board of Zoning Appeals deny the variance request of the applicant.

Mr. Pennell seconded the motion.

Mr. Kushner asked for a roll call: Mr. Weckenman, aye; Mr. Myers, aye; Mr. Kushner, aye; Mr. Robinson, aye; Mr. Pennell, aye.

Mr. Kushner clarified with five aye votes and zero nay votes, the motion carries, and the variance request is denied.

Adoption of Regular Meeting Minutes of August 3rd, 2023:

Mr. Kushner asked if there were any comments from the board on the minutes?

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Mr. Robinson stated that he abstained from the vote, which was listed at the bottom of page one.

Mr. Kushner asked if there were any other changes to the minutes?

Mr. Kushner stated that on page one, third paragraph from the bottom, it reads "would like the minutes to reflect one of those options all the way through for consistency and confusion" and that it should say "consistency and to avoid confusion." He then stated that on page six, in the second paragraph, it reads "Mr. Kushner asked if the Board members have any comments. Hearing none, Mr. Kushner asked to retain a motion on this variance application" and that it should be "entertain a motion."

Mr. Kushner stated that if there are no other changes to the August 3rd minutes, he will entertain a motion to accept the minutes as modified.

Mr. Robinson moved to accept the regular meeting minutes of August 3rd, 2023 as modified. The motion was seconded by Mr. Myers and approved by the following vote:

Ayes: Kushner, Robinson, Myers, Weckenman, and Pennell.

Open Discussion:

Mr. Kushner asked if there were any comments from the board, hearing none, he asked the staff for comments.

Mr. Lenz stated that a new office manager has been hired and that there would be an election of officers to start the next meeting.

Mr. Kushner stated to the applicant that she would be contacted by the County Planning office about her options for moving forward.

Adjournment:

Mr. Myers moved to adjourn the meeting, which was seconded by Mr. Weckenman and approved by the following vote at 7:36 PM:

Ayes: Kushner, Robinson, Myers, Weckenman, and Pennell

Vote: 5-0



Warren County Board of Zoning Appeals Chairman