

City of Alexandria, Virginia

MEMORANDUM

DATE: AUGUST 29, 2019

TO: GLORIA SITTON, CITY CLERK
OFFICE OF THE CITY CLERK AND CLERK OF COUNCIL

FROM: LAURENCE ALTENBURG, CHAIR
BOARD OF ZONING APPEALS 

CC: KARL W. MORITZ, DIRECTOR
DEPARTMENT OF PLANNING & ZONING

SUBJECT: FY 2019 BOARD OF ZONING APPEALS ANNUAL REPORT

I am pleased to present this Annual Report for the Board of Zoning Appeals (BZA) for Fiscal Year 2019, as required by City Code section 2-4-7(i)(1). An attendance form is also attached. BZA members who missed hearings had excused absences.

The BZA is appointed by City Council and performs duties as specified under Section 15 of the State Code and Chapter 9 of the City Charter and Article 11 of the City's Zoning Ordinance. The BZA is charged with hearing and deciding Variances, Special Exceptions, and Appeals of Determinations by the Director of the Department of Planning & Zoning.

Summary of Board Activities for Fiscal Year 2019, July 2018 – June 2019

| FY 2019 | | | FY 2018 | |
|------------------------------|-----------|--|------------------------------|-----------|
| Variance Cases | 7 | | Variance Cases | 7 |
| Special Exception Cases | 6 | | Special Exception Cases | 13 |
| Appeals and Finding of Facts | 1 | | Appeals and Finding of Facts | 0 |
| Total Cases | 14 | | Total Cases | 20 |

FY 2018 provided for comparison

The BZA considered a total of 14 applications for Variances, Special Exceptions, and one Appeals and Finding of Facts in Fiscal Year 2019. It approved twelve cases, denied one Variance case, and affirmed the Director of Planning & Zoning's determination on the Appeal and Finding of Facts application. The total number of cases decided by the BZA decreased by 30 percent from FY 2018 to FY 2019. From FY 2018 to FY 2019, the BZA heard fewer Special Exception cases. While Special Exception cases have decreased, Variance cases have remained constant.

The following case studies from FY 2019 illustrate various complex issues that the BZA addressed

Case Study: BZA #2018-00020 – 803 Prince Street

The applicant proposed to convert an existing commercial building to a residential dwelling on a corner lot located at 803 Prince Street. The existing building provided non-complying side yards. The business/professional office use of the building was also non-complying as the RM/Townhome Zone does not permit commercial uses. Although the applicant did not propose any expansion of the existing building, the proposed residential use of the building would have been required to comply with both the RM/Townhome Zone's lot requirements and open space regulations. The proposed residence, a semi-detached, two-family dwelling, would have complied with all zoning requirements except the side yard. The applicant requested a Variance of five feet from the RM/Townhome Zone's side yard requirement to allow for the dwelling to provide a 0-foot side yard.

The subject property's configuration was unique in two ways. First, most other semi-detached two-family residential dwellings on corner lots in the RM Zone provide a complying side yard on the non-attached side of the dwelling. The subject property did not. Second, the non-complying commercial use of the property in a zone specifically intended for residential uses was particularly uncommon.

The BZA found that strict application of the Zoning Ordinance would have unreasonably restricted the utilization of the property as a residence by requiring the partial demolition of the existing historic building in order to provide the required side yard. This demolition would also have required BAR approval. Strict application would have allowed for continued commercial utilization of the property; however, the purpose of the RM Zone is to provide and maintain land areas for medium density residential neighborhoods. Non-residential uses like child-care, churches and schools are permitted in the RM Zone but not commercial uses. While the non-complying commercial use could have continued at the property, it would be more out of compliance with the RM Zone regulations in terms of side setbacks and permitted uses than the proposed residential use would have been. Strict application of the Zoning Ordinance would have unreasonably restricted utilization of the property as a residence, a permitted use in the RM Zone.

Case Study: BZA #2019-00001 – 509 North Henry Street

The applicant requested multiple Variances in order to construct a new two-story dwelling unit with a stair penthouse on the non-complying lot. The applicants request a series of Variances in order to locate the proposed dwelling on the lot, which include: reducing the lot area to 2,605 square feet from the minimum lot size requirement of 5,000 square feet; reducing the lot frontage to 22.00 feet from the minimum lot frontage of 50.00 feet; and reducing north and south side yards to 2.80 feet and 0.80 feet from the 8.53 feet required based on a setback ratio of 1:3 feet in height, reducing the front yard setback to 4.60 feet from the minimum 20.00 setback required in the CSL/Commercial Service Low Zone. The reasoning for the applicant's justification was that the strict

application of the CSL/Commercial Service Low Zone residential requirements “would make it impossible to return the property to a residential use” and “enforcement of the 8-foot side yard setbacks would result in a structure no wider than 6 feet – unusable for residential (or any other) purpose. Following deliberation by the BZA, the body voted to deny the requested variances based on (1) self-imposed hardship by the owner (2) a commonly shared issue by neighboring properties, and (3) detrimental to neighboring properties.

Membership and Attendance

At its October 11, 2018, public hearing, the BZA voted to approve amendments to the BZA’s Rules of Procedure to change the regular meeting day and time to the second Monday of the month at 7:00 p.m. This change became effective on December 10, 2018.

At its February 11, 2019, public hearing, the BZA re-appointed Laurence Altenburg as Chair, Mark Yoo as Vice Chair, and Lee Perna as Board Secretary. In March 2019, the City Council appointed Erich Chan to the BZA to replace Jonathan Buono. Also, in March 2019, Walter Marlowe’s term expired. Currently, there is a vacancy on the BZA. All absences were excused by the Chair. The BZA held seven meetings in Fiscal Year 2019. November, March and April hearings were canceled due to lack of cases. The January hearing was canceled due to inclement weather.

Recommendations

The BZA has seen an increase in variance cases over the past several years based on the discrepancy in setback requirements between commercial and residential use within the same zone in Old Town Alexandria. The issue has arisen because commercial buildings in Old Town are being converted back to their original residential use. BZA case #2019-00001 is an example where a variance was required for setbacks for residential construction while commercial construction required no setback. The BZA recommends reducing or eliminating the discrepancies between commercial and residential use in the same zones in Old Town.

