

Submitted: September 14, 2023

Approved: September 20, 2023

**MINUTES OF THE ROCKVILLE BOARD OF APPEALS
MEETING NO. 5-2023
Wednesday, May 17, 2023**

The City of Rockville Board of Appeals convened
virtually via WebEx and in person at City Hall at 7:00 p.m.
Wednesday, May 17, 2023

PRESENT

Alan Frankle, Chair
Roy Deitchman
Jimmy Hauer

Absent: Nicholas Kutchak, Alternate

Staff: Jim Wasilak, Chief of Zoning
Nick Dumais, Senior Assistant City Attorney
Christopher Davis, Senior Planner
Nelson Ortiz, Principal Planner

Chair Frankle convened the hybrid meeting at 7:00 p.m. and began with Board introductions. He noted that the meeting is hybrid, and that the Board has adopted rules for the conduct of online meetings.

I. REVIEW AND ACTION

A. Variance Application VAR2023-00110, Racquelle Stokes: for a zoning variance from the maximum lot coverage requirement of 1,500 square feet in the Lincoln Park Conservation District to construct a new single-family dwelling at 808 North Stonestreet Avenue in the R-60 Zone.

Mr. Wasilak confirmed that the applicant has requested a postponement of the Board's consideration of the application. Chair Frankle asked if the applicant had requested a time for when the application would be heard, and Mr. Wasilak responded that he expected the applicant to resubmit in time for the next meeting.

Mr. Hauer moved, seconded by Mr. Deitchman, to continue the public hearing for Variance Application VAR 2023-00110. The motion passed by a vote of 3-0.

B. Variance Application VAR2023-00111, Karrie Stapleton and Gregory Stapleton: for zoning variances from the required side yard setback requirements and the maximum allowed setback encroachments to permit construction of a two-story building addition and an attached stairwell at 1716 Lorre Drive in the R-75 Zone.

Mr. Wasilak swore in Principal Planner Christopher Davis, who affirmed that he would testify truthfully. Mr. Davis presented the staff recommendation, which is for denial of the requested variance. He noted that the home is a split-level design, with an existing staircase and retaining wall structure along the southern side elevation of the property. The applicant proposes two additions to the home which are not subject to the variance request, which is for a third addition on the south elevation of the property as well as reconstruction of the stairs and retaining well. The application proposes three setbacks as indicated, and Mr. Davis clarified that the requested setback variance of 5 feet noted in the staff report is actually 3 feet.

Staff recommended denial of the application, as there were no unique conditions of the property that rendered it different from other nearby properties, and that the variance was related to actions taken by the applicant. Staff also found that there were viable alternatives to the proposal that would be compliant with the Zoning Ordinance, and further that approval of the variance would be inconsistent with the Zoning Ordinance. He noted that the stairs and retaining wall could be reconstructed if not connected to the proposed addition.

Mr. Deitchman asked if the second variance was now for three feet rather than five feet. In response to Mr. Hauer's question, Mr. Davis clarified that the stairs and retaining wall could be reconstructed in their current location without the granting of a variance.

Chair Frankle asked if there was any setback resulting if the variance is granted, and Mr. Davis responded that only a very small setback would remain. Chair Frankle asked if staff had asked the applicant if it had been suggested that a different location be found for the bathroom addition, and Mr. Davis stated that he had.

Mr. Wasilak swore in the applicant Karrie Stapleton, who affirmed that she would testify truthfully. She noted that the existing setback from the corner of the house would be 6-9 inches. Gregory Stapleton affirmed that he would testify truthfully. He answered that the resulting setback between the stairs and the property line would be twenty inches. Chair Frankle asked if a emergency equipment could get by in that area, and Mr. Stapleton noted that the adjacent property is completely vacant. He also asked if a fence existed along the southern property line, and Ms. Stapleton responded that there was. She clarified that there is a change in elevation at the stair location.

Ms. Stapleton appreciated the work that has been done on the application. She added several clarifications: the encroaching space is about 40 square feet and is currently unused and the location of the air conditioning units. She added that they have several movement challenged friends and family that visit their home regularly. The two ideas presented by staff were not workable from a design perspective.

Chair Frankle asked if the steps could be eliminated to retain access to the back yard, and Ms. Stapleton answered that the retaining wall was necessary and is more

aesthetically pleasing and functional with the steps. Ms. Stapleton noted that there is an optional plan for a long ramp around the other side of the house.

Ms. Stapleton stated that the variance met the purpose of the Zoning Ordinance by virtue of complying with the variance process in the code. She was confused as to why the variance was not consistent with the purpose of the code as stated in the staff report, as their position was that the variance met all of the purposes. She reviewed the options that had been considered as a result of staff feedback, and those alternatives were not viable, particularly with accessibility concerns.

Chair Frankle read an email from Shaun Ryan to the applicants, outlining the staff's concerns with the application. He asked the applicants why the variance is the requested because of peculiar conditions of the property. Ms. Stapleton responded that the home placement requires the request of the variance and Mr. Stapleton added that the existing home is less than one foot from the setback line.

Chair Frankle reminded the applicants that the peculiarity finding is critical to the variance application. Ms. Stapleton noted that many variances have been granted in the neighborhood. Chair Frankle asked if the bathroom could be placed behind the house and Ms. Stapleton stated that would require a variance from the required distance to a pool.

Mr. Wasilak swore in Myra Hoch, Ms. Stapleton's mother, who affirmed that she would testify truthfully. She noted that she had mobility and balance issues that affects how she can visit the home.

Mr. Deitchman asked if there were some way to reconfigure the steps that would lessen the variance, and Ms. Stapleton responded that they would need a variance for steps that were too narrow. Mr. Deitchman asked if there was a minimum width of steps, to which Mr. Davis responded that the encroaching steps are limited to eight feet in width.

Ken Hurdle, builder for the applicants, was sworn in by Mr. Wasilak. Chair Frankle asked if there was another location for the bathroom. He responded that the architect looked at several locations, and none of them made sense, as it would have impacts on the ramp and the function of the house. He noted that he was experienced with zoning and variances, and that he found the variance relief requested to be small.

Mr. Deitchman asked for clarification that the existing steps would be reconstructed where they are currently, and Ms. Stapleton responded that they would be.

Chair Frankle asked if the applicant's presentation changes staff's mind, and Mr. Davis answered that the primary challenge in the analysis was that this property was not unique compared to other properties, which is crucial to the variance finding.

Mr. Wasilak stated that there was no one online that wished to address the Board in favor or in opposition to the application. The Chair asked if any member of the Board wished to hear additional testimony from staff or the applicant and closed the hearing as there were no additional questions or testimony.

Mr. Deitchman thought that the small setback remaining was concerning but noted that the steps were built subject to similar requirements when the house was built. Mr. Hauer agreed that there was not any unique condition with the property.

Chair Frankle agreed that the setback variance requested is minimal, but that he agrees with staff that the number one factor is the lack of a peculiar aspect to the property.

Mr. Hauer moved, seconded by Mr. Deitchman, to deny Variance Application VAR2023-00111, based on the recommended findings in the staff report. The motion passed by a vote of 2-1, with Mr. Deitchman opposed.

C. Variance Application VAR2023-00112, Alexander and Maria Doyle: for a zoning variance from the required rear yard setback requirements to permit construction of a building addition at 1251 Derbyshire Road in the R-90 Zone.

Mr. Wasilak swore in Principal Planner Nelson Ortiz, who stated that he would testify truthfully. Mr. Ortiz presented the staff report and recommendation, which is for approval subject to conditions as the application meets the required findings. The new addition resembles an accessory apartment, which requires special exception approval. The property is unusually shaped, and an addition is not possible anywhere else on the site.

Mr. Deitchman asked if the addition would require changes if it became an accessory apartment, and Mr. Ortiz replied that sleeping areas, kitchen and a bathroom is required. Chair Frankle asked if there were any previous variances or special exceptions on this property, and Mr. Ortiz replied that there were not.

Mr. Wasilak swore in Alex and Marie Doyle, applicants, who agreed to testify truthfully. Mr. Doyle provided background that their son would occupy the addition.

Mr. Wasilak stated that anyone online who wished to speak could unmute themselves at that time, and no one did. Chair Frankle closed the hearing.

Mr. Hauer asked if the existing building was located within the rear setback area, and Mr. Ortiz replied that when the house was built in 1965, the Zoning Ordinance allowed for an average rear setback, which does not exist in the code currently.

Mr. Hauer moved, seconded by Mr. Deitchman, to approve Variance Application VAR2023-00112, based on the findings and conditions recommended in the staff

report. The motion passed by a vote of 3-0.

D. Special Exception Application SPX2023-00403, The Vestry of Prince George's Parish in Montgomery County MD on Behalf of Christ Episcopal School ("Christ Episcopal"): for a major modification to an approved Special Exception for a Private Educational Institution and to request a 30% parking reduction for the property located at 107 – 119 ½ South Washington Street in the R-90 and partly within the South Washington Street Historic District Zone.

Mr. Ortiz presented the staff report and recommendation, which is for approval subject to conditions and based on the required findings. The application is related to a recent site plan approval for the property owned by the church at 22 West Jefferson Street. This application approves a reconfiguration of the private school as well as a parking reduction.

Mr. Deitchman asked about the parking requirements for the church and school in 2004 as well as currently. Mr. Ortiz noted the parking requirements have changed since the original approval. Chair Frankel asked if some of the parking spaces are provided off-site, and Mr. Ortiz responded that 26 spaces are on the 22 West Jefferson Street. Staff recommends that the existing off-site parking agreement be amended.

Soo Lee-Cho, representing the applicant, was sworn in by Mr. Wasilak and affirmed that she would testify truthfully. She thanked staff for the thorough report and clarified the amount of students proposed. She further explained that the parking analysis showed that the peak usage of the parking for the school and the church occurred at different times, which supports the provision of a parking reduction.

Emily Pearce, representing the church as former senior warden, commented that the partnership with the developer of 22 West Jefferson has been extraordinary. She stated that the school had two small busses but that the traffic flow has been working very well without busing the students.

Mr. Deitchman asked if the off-site parking spaces will be signed that the spaces are for the church. Ms. Lee-Cho responded that signage would be included and that there would be disclosures to the purchasers.

Chair Frankle noted that there was no one present in the chamber to address the Board, and Mr. Wasilak stated that there was no one online to speak. The Chair closed the public hearing.

Mr. Deitchman and Mr. Hauer expressed support for the application.

Mr. Hauer moved, seconded by Mr. Deitchman, to approve Special Exception Application SPX2023-00403, based on the findings and conditions recommended in the staff report. The motion passed by a vote of 3-0.

II. COMMISSION ITEMS

A. MINUTES – None.

B. OLD BUSINESS – None.

C. NEW BUSINESS – None.

D. ADJOURN

There being no further business to come before the Board of Appeals, Chair Frankle moved, seconded by Mr. Hauer, that the meeting be adjourned at 9:12 p.m. The motion was approved 3-0.