

TOWN OF CLIFTON BOARD OF ZONING APPEALS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEEDING: HEARING ON APPEAL, DATED MAY 17, 2019

APPELLANT: KAREN A. HARRINGTON

APPELLEE: ZONING ADMINISTRATOR, TOWN OF CLIFTON, VIRGINIA

SUBJECT PROPERTY: 7151 Main Street (Tax Map #: 0754-02-0060) (the "Subject Property")

HEARING DATE: JULY 24, 2019, continued to August 9, 2019, each at 7:30 p.m.

HEARING LOCATION: 7135 Main Street, first floor, Clifton, Virginia

MEMBERS IN ATTENDANCE AT JULY 24 HEARING:

Brant Baber
Michael Anton
William Ridenour
Jeffrey Stein
Marilyn Stoney

MEMBERS IN ATTENDANCE AT AUGUST 9 HEARING:

Brant Baber
Michael Anton
William Ridenour
Jeffrey Stein
Marilyn Stoney

A hearing was scheduled on July 24, 2019 by the Town of Clifton Board of Zoning Appeals ("BZA") for the sole purpose of considering the appeal, dated May 17, 2019 by Karen A. Harrington relating to the Subject Property. After opening the hearing on July 24, the members of the BZA voted to continue it until August 9, 2019 at the request of the appellant to permit her to be in attendance.

FINDINGS OF FACT:

The BZA makes the following findings of fact with respect to this appeal:

1. Appellant is the owner and occupant of the Subject Property located in the Town of Clifton.
2. The Subject Property is zoned as part of the Residential District and the Historic Overlay District pursuant to the Town of Clifton's Zoning Ordinance (the "Zoning Ordinance").
3. The Subject Property was inspected on February 7, 2019, by Amanda Christman, Zoning Administrator for the Town of Clifton (the "Zoning Administrator"). This inspection revealed that an approximately 10' x 10' shed had been erected near the southwest property line of the Subject Property alongside abutting property owned by "Speziale" ("the shed in question"). Section 9-10 of the Zoning Ordinance requires

that a Use Permit be applied for and approved before any structure in the Town may be erected and/or used. The shed in question is such a structure.

4. Ms. Harrington did not seek the approval of the Town of Clifton before constructing or locating the shed in question. Ms. Harrington was notified by a letter from the Zoning Administrator dated February 18, 2019, that a Use Permit is required for the shed in question and that failure to secure the approval of a Use Permit may be a violation of the Zoning Ordinance and may result in enforcement proceedings and/or penalties.

5. On or about March 9, 2019, Ms. Harrington filed an application with the Town for a Use Permit for the addition of a 10' x 10' storage shed on the Subject Property. The shed in question was constructed by Ms. Harrington before she filed her Use Permit application. In conjunction with her Use Permit application, Ms. Harrington submitted a plat that shows the 10' x 10' shed in question hand drawn on the plat near the southwest property line of the Subject Property. The Town's Planning Commission considered Ms. Harrington's application for the shed in question on March 26, 2019. Ms. Harrington represented to the Planning Commission that the shed in question was already constructed and was located approximately two (2) feet from the side yard lot line, which does not comply with the 10-foot side yard setback required under the Zoning Ordinance for properties in the Residential District.

6. The Planning Commission found that the shed in question on the Subject Property was constructed without a Use Permit and that it was constructed in violation of the side yard setback requirements for the Residential District in which the Subject Property is located. The Planning Commission did not recommend approval of Ms. Harrington's Use Permit application by the Town Council. Instead, the Planning Commission recommended that the Town Council direct the Zoning Administrator to send Ms. Harrington a Notice of Violation. The Town Council did not approve Ms. Harrington's Use Permit application, and on April 12, 2019, the Zoning Administrator issued a Notice of Violation to Ms. Harrington regarding the shed in question on the Subject Property. The Notice of Violation was served on Ms. Harrington by posting on April 19, 2019.

7. The Notice of Violation issued to Ms. Harrington by the Zoning Administrator found that the shed in question on the Subject Property was in violation of the Zoning Ordinance in at least two ways: (A) it was constructed without the issuance of any Use Permit in violation of Section 9-10 of the Zoning Ordinance; and (B) it was constructed within the required 10-foot side yard setback in violation of Section 9-19 of the Town's Zoning Ordinance.

8. Ms. Harrington mailed an appeal of the April 12, 2019 Notice of Violation to the Town on May 18, 2019, which appeal was received by the Town on May 20, 2019. Ms. Harrington did not address the envelope to the BZA or the Zoning Administrator as required by the Virginia Code. Instead, it was addressed only to the "Town of Clifton." The BZA chooses not to raise the issues of timely and proper delivery of the appeal to it.

9. The BZA caused the requirements of Section 15.2-2204 of the Virginia Code to be complied with by (i) causing a Notice of Hearing to be published in the Fairfax/Clifton/Lorton Connection twice a week for two successive weeks before this hearing, the second of which was not less than five days before the July 24, 2019 hearing, and (ii) giving written notice of this hearing to all owners of properties both abutting and immediately across the street from the Subject Property. The BZA also has notified both appellant and appellee of this hearing by letter dated June 26, 2019. The BZA decided to continue the

hearing until August 9, 2019 and notified the public, the Town of Clifton Zoning Administrator and Mark Harrington, the representative of Ms. Harrington, of such continuation at its public hearing held on July 24, 2019.

10. In her appeal, Ms. Harrington did not challenge the Zoning Administrator's determination that the shed in question on the Subject Property was in violation of either § 9-10 or 9-19 of the Zoning Ordinance. Instead, Ms. Harrington's appeal asserts that (A) the construction of the shed in question was based on her "misunderstanding" that no Zoning Ordinance regulations apply to a 10' x 10' shed; (B) the location of the shed cannot be changed without negatively effecting the property value of her home; (C) there are only two places on her property where the shed in question on the Subject Property could meet what she calls the "standoff requirements," neither of which work for her; (D) where the shed in question is now located (in violation of the Zoning Ordinance) "is unobtrusive and makes sense;" (E) "I am not willing to give up my backyard;" and (F) the shed is necessary for her to store "holiday decorations."

11. Despite being issued the Notice of Violation dated April 12, 2019, Ms. Harrington has failed to remove the shed from the Subject Property or to make any attempt to bring it into compliance with the Zoning Ordinance.

12. At this hearing, the BZA considered the following:

- (i) testimony from the Zoning Administrator;
- (ii) the papers and correspondence in the Zoning Administrator's file and the Staff Report, dated July 26, 2019 regarding the shed in question on the Subject Property; and
- (iii) testimony and evidence submitted to the BZA by Ms. Harrington, her attorney and any other persons regarding the issues in this appeal.

CONCLUSIONS OF LAW:

Based on the record provided by Appellee, the appeal provided by the Appellant and testimony and other materials presented at this hearing, the BZA reaches the following conclusions of law:

1. The Notice of Violation satisfies the requirements of Section 15.2-2311(A) of the Virginia Code.
2. The BZA has complied with the requirements of Section 15.2-2204 of the Virginia Code with respect to this hearing.
3. Pursuant to Section 15.2-2309 1. of the Virginia Code, "[t]he decision on ... appeal shall be based on the board's judgment of whether the administrative officer was correct [in its determination, and the determination] of the administrative officer shall be presumed to be correct." Therefore, the Notice of Violation, dated April 12, 2019, from the Zoning Administrator is presumed to be correct unless Ms. Harrington is able "to rebut such presumption of correctness by a preponderance of the evidence." The BZA has no authority to rewrite the Zoning Ordinance or overturn the Zoning Administrator's determination except in compliance with the foregoing standards.
4. As to the assertion in 10(A) above, Ms. Harrington knew or should have known that the shed in question on the Subject Property was in violation of the Zoning Ordinance when she constructed it (i) without first seeking the approval of a Use Permit by the Town, and (ii) inside the 10-foot side yard setback within which structures are not allowed by the Zoning Ordinance. It is the

BZA's judgment that not understanding the law does not authorize someone to fail to comply with the law.

5. As to the assertions in 10(B)-(E) above, although understandable and rational, Ms. Harrington's assertions have no defensive value to her noncompliance with the terms of the Zoning Ordinance under either the Zoning Ordinance or the Virginia Code. To permit individual assertions of preference to outweigh generally applicable law would be to permit every resident of the Town of Clifton to refuse with impunity to comply with any ordinance that he or she doesn't wish to comply with for personal reasons.
6. As to the assertion in 10(F) above, that Ms. Harrington needs the shed in question in order to store holiday decorations, Ms. Harrington's appeal never explains why she cannot store her holiday decorations inside her home, inside any other lawful structure on the Subject Property, or off-site in the types of storage facilities that are now quite frequently used by persons who have more belongings than they have storage space on their residential properties. Even if these alternatives were not available to Ms. Harrington, the shed in question would still be in violation of the Zoning Ordinance.
7. Ms. Harrington's appeal does not provide any facts or viable arguments from which the BZA could reasonably conclude that she has overcome by a preponderance of the evidence the presumption of correctness of the Zoning Administrator's Notice of Violation, as required by the Virginia Code. Instead, Ms. Harrington contends that she should have the right to construct her shed anywhere on her property where it is convenient to her, regardless of whether she has secured a Use Permit and regardless of whether the shed is located within the side yard setback established by the Zoning Ordinance. The contentions made by Ms. Harrington in her appeal do not support any claim that the shed in question on the Subject Property is in compliance with the Zoning Ordinance or that the Zoning Ordinance does not apply to her property. Therefore, Ms. Harrington has failed to rebut the statutory presumption of correctness of the Zoning Administrator's determination by a preponderance of the evidence.

A copy of these findings shall be retained by the Secretary of the BZA in its official records and shall be public records.