

Town of Clifton, Virginia
P.O. Box 309
Clifton, VA 20124

September 24, 2019

BY ELECTRONIC MAIL

TO: Town of Clifton Board of Zoning Appeals
12704 Chapel Road
Clifton, Virginia 20124

FROM: Town of Clifton Town Council
P.O. Box 309
Clifton, Virginia 20124

RE: 7151 Main Street Harrington Variance Application

Dear Chair and Members of the Board of Zoning Appeals:

The Clifton Town Council has reviewed the Application for Variance submitted on behalf of Karen Harrington. This letter contains the Town Council's response and comments regarding the Variance Application. **The Town Council objects to the granting of the variance** and requests that this letter be placed in the official record of the matter.

The Variance Application ("application") requests a reduction of the Town Zoning Ordinance required side yard setback to approve the unlawful placement of a shed approximately 0.15 feet from the adjoining property. The property owner claims that she will be deprived of the reasonable use of her property without the granting of a variance.

I. Subject Property

The property is located at 7151 Main Street and is comprised of approximately 8,384 square feet ("Property"). The parcel is zoned Residential and is subject to the Historical Overlay District. The required side yard setback is 10 feet from adjoining property lines. The property contains a 4 bedroom 2.5 bath two story single family detached residential dwelling of 3,187 square feet above-ground and a 168 square foot accessory structure located on the south side of the property. The property owner installed an additional 100 square foot shed on the property without a permit ("2019 Shed").

II. Notice of Violation and Status

The Town Zoning Administrator issued a Notice of Violation (“NOV”) for the property on April 12, 2019, which was served on the property owner by April 19, 2019. The property owner appealed the NOV to the Clifton Board of Zoning Appeals (“BZA”). At an August 9, 2019 BZA hearing, the owner’s representative requested a continuance and an opportunity to file a variance application. The BZA denied the continuance request, affirmed the Zoning Administrator’s determination and dismissed the appeal. The property owner’s representative filed a variance application dated August 8, 2019. The BZA has scheduled a September 25, 2019 public hearing on the application.

III. Statutory Definition of Variance

Code of Virginia of 1950, as amended §15.2-2201 defines a variance as “...a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance.”

The applicant bears the burden of proof by a preponderance of the evidence that the request meets the foregoing standard and the criteria set forth in Code of Virginia of 1950, as amended, § 15.2-2309 (2).

IV. Statutory Standard of Review and the Harrington Variance Application

In reviewing a variance application, the Virginia Code § 15.2-2309 (2) requires the BZA to make specific findings of fact to support the requested variance. The Harrington Variance Application does not meet these standards, which are set forth and addressed, in turn, below:

1. The strict application of the terms of the ordinance would unreasonably restrict the utilization of the property.

The application does not meet this standard because the owner can continue to use the Property as a residence. The Property includes a large four-bedroom home. In addition, additional storage space is available in the existing 168 square foot shed on the Property. The owner’s utilization of the Property for these purposes is not restricted by the absence of a second, additional shed. There are other options available to provide storage for

household items and holiday decorations, including readily-available rental of off-site storage.

2. 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.

There are no physical conditions on the Property that create a hardship or prevent the owner from storing household items. There are other spaces on the Property to store household items and other spaces on the Property in which the subject 2019 Shed could be located without violating the Property setback requirements.

3. The variance would alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability.

This provision is not applicable because no disability has been claimed.

4. 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.

Accessory features, such as patios, porches and gardens on the Property and in areas where the subject 2019 Shed could be located are within the control of the owner and the owner could modify these features to provide the additional storage if the owner so prefers.

5. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.

The requested variance creates a substantial detriment to the adjacent property owner. Attached to this letter as "Exhibit 1" is an email from the adjoining property owner (the Speziales) setting forth their objection to the 2019 Shed, which blocks their family room window. See attached photograph, "Exhibit 2". The 2019 Shed is also detrimental to nearby properties because it is directly visible on a contributing structure in the Historical Overlay District.

6. The condition or situation of the property concerned 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.

The parcel size and configurations of the Property are conditions shared by 59% of similarly zoned and situated properties in the Town. The conditions are general and recurring for the majority of properties in Town where residential accessory structures are permitted by the Zoning Ordinance. Other property owners have solved the shared condition by storing items within their dwellings or securing off-site storage. The granting of a variance for the installation of the 2019 Shed would create a precedent allowing the many similarly situated property owners in Town to construct accessory structures without regard to Zoning Ordinance requirements.

7. 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.

While the granting of the variance would not result in a use not otherwise permitted, the installation of the 2019 Shed in the owner's preferred location would severely increase the non-conforming characteristics of the Property.

8. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § [15.2-2309](#) or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § [15.2-2286](#) at the time of the filing of the variance application.

The variance request involves a generally recurring characteristic that could be addressed through an amendment to the Zoning Ordinance, if the governing body determined such a change to be appropriate.

V. Virginia Case Law Decisions Regarding Variances

The Virginia Supreme Court has issued numerous decisions in variance cases. The Court has consistently ruled that no unreasonable restriction on the use of land exists where alternative designs or locations that meet zoning requirements are available. Likewise, the Court has concluded that a property owner's mere preference in the location or design of a structure does not establish a hardship that would be grounds for a variance.

1. Martin v. City of Alexandria

In Martin v. City of Alexandria, 286 Va. 61, 743 S.E. 2d 139 (2013), the Virginia Supreme Court applied the statutory and Alexandria City Charter required findings of fact for a variance. Despite City Staff ultimate support for the dwelling design, the Virginia Supreme Court ruled that the requirement supporting the variance had not been met. Alternative dwelling designs could conform to the

zoning ordinance requirements so the owners were not deprived of the practicable use of their property.

The Harrington property contains a 2.5 story single-family dwelling with 3,187 square feet above-ground and a substantial 168 square foot shed. The plat submitted with the variance application reveals alternative locations for the placement of an additional shed that would conform to the Zoning Ordinance requirements. Without the variance, the Property owner will still be able to use and enjoy her property for residential uses. Based on the Martin case ruling above, the denial of the variance will not deprive Ms. Harrington of the practicable use of her property.

2. Packer v. Hornsby

Neighboring property owners challenged the granting of a variance reducing the Virginia Beach oceanfront setback for a home addition in the case of Packer v. Hornsby, 221 Va. 117, 267 S.E. 2d 140 (1980). The Virginia Supreme Court found that the non-conforming home addition desired by the owners was merely one of personal preference to expand their oceanfront view. The Court reversed the granting of the variance because there was no evidence of hardship if the zoning ordinance's oceanfront setbacks were applied; the owners could site the addition to conform to the zoning ordinance setbacks. The Court concluded that variances granted in the absence of a hardship could be an infringement on the governing body's legislative prerogative.

Similarly, the Harrington property has an existing house and shed. The enforcement of the Zoning Ordinance setbacks does not change or negatively impact the residential use of the property. The variance application ignores alternative sites for the shed that would conform to the Zoning Ordinance. The applicant's specific location for the shed appears to be one of personal preference and convenience, given the open spaces shown on the plat and photographs. Granting a variance for an additional shed to accommodate a personal preference as opposed to a demonstrable hardship, creates piecemeal zoning that is prohibited by the Virginia statutes.

3. Hendrix v. Board of Zoning Appeals

Hendrix v. Board of Zoning Appeals, 222 Va. 57, 278 S.E. 2d 814 (1981), challenged the granting of a variance for off-street parking requirements that applied to properties if a change in use was contemplated. The Virginia Beach property owners intended to convert an existing restaurant to a multi-use entertainment facility. Testimony before the board of zoning appeals established that the parking hardship described by the applicants was shared by almost all the properties on the street and that the parking challenge was general and recurring

for each of the properties being developed. The Court reiterated its conclusion in the Packer case that the power to resolve recurring zoning problems shared generally by properties in the same zoning district is vested in the legislative arm of the governing body.

While the Town of Clifton Zoning Ordinance prescribes a 5-acre minimum lot size in the Residential District, a review of the properties in Town shows that only four (4) lots out of the more than 100 residentially-zoned properties in Town meet the 5 acre minimum lot size. Seventeen (17) lots in Town are smaller than the Harrington property. The parcel size and lot configuration described in the Harrington variance application are characteristics that are shared by most of the residential properties in the Town of Clifton. The Town Council's legislative authority is the appropriate process to resolve these general and recurring conditions throughout Town. Virginia statutory and case law prohibits the use of variances to alleviate such generally shared conditions.

VI. Conclusion

For the foregoing reasons, the Clifton Town Council objects to the variance because the facts presented do not support the granting of a variance. The absence of the 2019 Shed does not unreasonably restrict Ms. Harrington's residential use of her property nor does the lack of the variance create a hardship under the statutory standard of review.

Respectfully submitted,



William R. Hollaway
Mayor, Town of Clifton

cc: Zoning Administrator, Town of Clifton
Maureen Gilmore, Town Attorney, Town of Clifton



Amanda Christman <cliftonclerkva@gmail.com>

Fwd: Clarification

William Hollaway <whollaway77@gmail.com>
To: Gilmore Maureen <mkgilmore.net@gmail.com>
Cc: Christman Amanda <cliftonclerkva@gmail.com>

Fri, Aug 30, 2019 at 4:50 PM

Maureen,

I received the clarification below from Gina Speziale, the owner of the home directly adjacent to Ms. Harrington's shed.

Bill

William R. Hollaway

Begin forwarded message:

From: Gina Speziale <gspeziale1001@gmail.com>
Date: August 30, 2019 at 3:45:25 PM EDT
To: "whollaway77@gmail.com" <whollaway77@gmail.com>
Subject: Clarification

Mr Speziale and I wish to clarify our viewpoint regarding the placement of Ms. Harrington's shed.

Ms Harrington asked me in a text message for my support on the shed location and I clearly told her I do not support the placement of the shed. I had no intention to get involved in this process but was asked for this clarifying statement.

We do not like the location of the shed as it sits directly outside of my family room window obstructing our view outdoors.

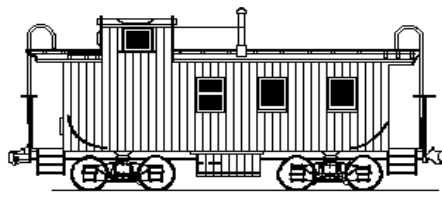
Gina & Sal Speziale
7153 Main Street

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~gina

Exhibit 2





Town of Clifton, Virginia
P.O. Box 309
Clifton, Virginia 20124

Memo

To: Board of Zoning Appeals

From: Zoning Administrator

RE: 7151 Main Street Variance Application 2019

September 24, 2019

As the Zoning Administrator for the Town of Clifton, I hereby submit the following facts with respect to zoning in Clifton and respectfully request that they be included in the official record, to wit:

1. According to the Fairfax County online tax map, there are 17 lots smaller than the subject parcel that are zoned either Residential, Commercial or Industrial, all of which may be used for residential purposes. Specifically:
 - a. Twelve (12) of the smaller lots are zoned Residential. The Town of Clifton's Zoning Ordinance Section 9-19.a allows single-family dwellings, churches, parsonages, community buildings, parks, home businesses, private garages, accessory buildings and Boarding or maintaining of horses on a lot of no less than two (2) acres.
 - b. Four (4) of the smaller lots are zoned Commercial. Clifton's Zoning Ordinance Section 9-21.a allows all uses permitted in the Residential District, in addition to: offices, retail or wholesale trades and services, and by special use permit: hotels, restaurants, bed and breakfast inn, and apartments, including duplexes, townhouses, and other multi-family or attached dwellings.
 - c. One (1) of the smaller lots is zoned Industrial. Clifton's Zoning Ordinance Section 9-22.a 2 allows all uses permitted in the Residential and Commercial Districts in addition to manufacturing and assembly, with significant restrictions as enumerated in the Code.
2. All residentially zoned lots in the Town are permitted to have sheds or accessory structures so long as the structures comply with the Zoning Ordinance provisions, including the required setbacks. See Zoning Ordinance Section 9-19 a 4, which states that:

"In a Residential District no building shall be erected, enlarged, or used, and no land shall be used, except for one or more of the following purposes: Private garages and accessory buildings."

3. The current minimum lot size in the Residential District is five (5) acres, as promulgated in the Town's Zoning Ordinance Section 9-19 b 1.
 - a. There are 4 lots wholly within the Town that are 5 acres or larger, namely:
 - i. Lot 14-7.9857 acres; 12800 Richards Lane (Clamons)
 - ii. Lot 8-5.3165 acres; 7139 Main Street (CBA)
 - iii. Lot 7A-5.355 acres; Newman Road (NOVA Conservation Trust)
 - iv. Lot 2-5 acres; 12820 Clifton Creek Dr.
 - b. A review of the Fairfax County Tax Map shows that there are approximately one hundred fifty (150) lots located either fully or partially within the Town.
 - c. The majority of lots within the Town are less than one acre.
4. Prior to the installation of the shed on the Subject Property, that is the parcel under consideration for a variance, there already existed a shed on the Subject Property near the rear property line. The original shed remains on the Subject Property and the Fairfax County tax records list the size of the shed as 168 square feet.

CLIFTON PROPERTIES SMALLER THAN 7151 MAIN STREET:

LOT 4	7221 DELL AVENUE	5040 SF	RESIDENTIAL
LOT 5	7223 DELL AVE	6100 SF	RESIDENTIAL
LOT 9	7135 MAIN ST	4000 SF	INDUSTRIAL
LOT 28	12704 CHAPEL	7923 SF	COMMERCIAL
LOT 29	7149 MAIN ST	5300 SF	COMMERCIAL
LOT 31	7140 MAIN ST	6580 SF	COMMERCIAL
LOT 33	7148 MAIN ST	2117 SF	COMMERCIAL
LOT 49	12751 CHAPEL RD	5177 SF	RESIDENTIAL
LOT 55	7160 MAIN ST	8100 SF	RESIDENTIAL
LOT 58	12743 CHAPEL ST	7385 SF	RESIDENTIAL
LOT 65	7157 PENDLETON	7647 SF	RESIDENTIAL CORNER LOT
LOT 66C	7155 PENDLETON	6949 SF	RESIDENTIAL

LOT 75 12638 SCHOOL ST	6750 SF	RESIDENTIAL CORNER LOT
LOT 76 12637 CHAPEL	6750 SF	RESIDENTIAL CORNER LOT
LOT77 12635 CHAPEL	7500 SF	RESIDENTIAL CORNER LOT
LOT 92 12725 CHESTNUT	5448 SF	RESIDENTIAL
LOT 105 7219 DELL AVE	4515 SF	RESIDENTIAL