



TOWN OF WARRENTON

Community Development Department

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STAFF REPORT

December 6, 2022

Property Owner(s) / Applicant:	Kent Capital Ventures, LLC
Application #	BZA #2022-2
Location:	Intersection of Alexandria Pike and Moorhead Drive
PIN:	6984-55-1596-000
Acreage:	0.1114 (4,855 Square Feet)
Zoning	Residential R-10
Comprehensive Plan Designation:	Medium-Density Residential
Land Use:	Vacant
Request:	The Applicant is seeking approval of a Variance from Zoning Ordinance Articles 2-18 and 3-4.2.4 to allow a reduction of setback requirements for a single-family detached dwelling to be built on the property.
Recommendation:	Staff recommends the Board of Zoning Appeals (BZA) approve BZA #2022-2 per the pattern motion for approval dated November 15, 2022.

REQUEST

The Applicant requests a variance from Articles 2-18 and 3-4.1.4 of the Zoning Ordinance to reduce front/rear setback requirements for a 1,538-square-foot home to be built on the property. The proposed location of the house currently meets the required 10' side setback per the Zoning Ordinance. However, the lot area is less than the 10,000 square feet minimum required and will have difficulty meeting the front/rear setback requirement. The front setback variance is requested to allow the proposed front porch stairs to encroach within the required 25' setback. The front porch is proposed to meet the setback requirement per Article 2-18.7 of the Zoning Ordinance.

"2-18.7 Front porches may project into any required front yard by not more than six feet into the required yard setback, not more than three feet into required side yard setback and into not more than ten feet into the required rear yard setback."

The rear setback variance is requested to allow the home, deck, and rear staircase to encroach within the required 20' rear setback. The house and deck are approximately 5.8' from the property line, well outside the required setback. Upon discussion with staff, the Applicant has

moved the rear staircase towards the side property line to align with the proposed 5.8' rear setback. Relocating the stairs eliminates the Applicant's request for a 2.5' setback from the rear property line for the deck stairs (see plats submitted November 2nd and 10th for a comparison of the proposed stair location). The relocated staircase meets the permissible setback encroachment noted under Article 2-18.4 of the Zoning Ordinance.

"2-18.4 An outside stairway, unenclosed above and below its steps, may extend four (4) feet into any required side or rear setback, but not nearer to any side lot line than a distance of six (6) feet."

The Applicant states the request is to build a home they will reside in after completion. The Applicant says the Zoning Ordinance is too restrictive in that it unreasonably restricts the utilization of the property because of the lot's size.

BACKGROUND

The subject property was subdivided on July 2, 1956, under Fauquier County jurisdiction, and then boundary line adjusted into the Town in 1960, making the lot legally non-conforming to the Town's Zoning Ordinance. According to Fauquier County Real Estate records, the Applicant acquired the lot in March of 2022. Adjacent uses are single-family detached dwellings and a senior living facility.

The property is zoned Residential (R-10) and has remained R-10 since at least 1976 (prior zoning maps are unavailable). The lot is 0.1114 acres (approximately 4,855 square feet), which does not meet the district's minimum required lot size of 10,000 square feet. This property is therefore considered a legal non-conforming lot, which may be used by right when setbacks are met per Article 11-4.5.1 of the Zoning Ordinance. This variance is requested as the Applicant does not feel they can meet the setback requirements for the R-10 Zoning District. The home is proposed to meet front and side yard setbacks, except for the front porch stairs, but is unable to meet the rear yard setback.

"11-4.5 Non-Conforming Lots

11-4.5.1 Use. Any lot of record at the time of the adoption of this Ordinance which is less in area or width than the minimum required by this Ordinance may be used when the requirements regarding setbacks, side, and rear yards are met."

ANALYSIS

The Town staff has reviewed the requested variance against the Virginia State Code and the Town of Warrenton Zoning Ordinance to determine if the request meets the criteria required to grant the variance. Below are the variance criteria with the staff's opinion on how the application meets each criterion. The BZA will need to determine if the application has sufficient provided proof that the request meets the standards for a variance as defined by Virginia State Code. Virginia State Code and the Zoning Ordinance define a variance as:

"Variance – In the application of a zoning ordinance, 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. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning."

In granting a variance, the BZA may impose such conditions regarding a proposed structure's location, character, and other features or use as it may deem necessary in the public interest. The BZA may require a guarantee or bond to ensure compliance with the imposed conditions. The property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinances. Per the Virginia State Code,

"Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the Ordinance would:

1. Unreasonably restrict utilization of the property, or

The use of the property is severely impacted due to the size of the lot. The lot is less than half the required size (10,000 sq. ft.). Any proposed use would likely have challenges meeting the setback requirements for the R-10 District.

OR

2. that granting 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, or

There are significant topographical challenges at the front of the lot along Alexandria Pike. The lot has a gradual declining slope towards the intersection of Alexandria Pike and Moorhead Drive. A variance would allow the property owner to utilize the flatter portion of the lot for the single-family home, a by-right permitted use in the R-10 Zoning District.

OR

3. 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."

The application's justification does not include a request for the variance to alleviate hardship for a person with a disability.

In addition to the three points above, no variance shall be authorized by the BZA unless it is determined that the request meets all five of the following criteria:

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.

The property was purchased in good faith by the owners in 2022. The hardship would not be considered as created by the Applicant, due to the age of the subdivision of the property.

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 proposed single-family dwelling will be located across the street from existing detached single-family homes and in front of an existing assisted living facility. The impact on neighbors would be limited.

6. *The condition or situation of the property is not of so general or recurring of a nature as to be adopted as an amendment to the Ordinance.*

This property is unique as new subdivisions must meet the minimum lot size of 10,000 square feet in the Residential R-10 Zoning District. This property was subdivided in 1956 while still within Fauquier County's jurisdiction, making the lot legally non-conforming to lot size for the district. Legal non-conforming lots may be developed without a variance if the permitted use can meet setbacks. However, the lot depth for this property is such that any structure would need to be approximately 19' deep or less, providing a limited buildable area. The topography along the front of the lot also creates a unique challenge for building on the property.

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.*

Single-family dwellings are a by-right permitted use in the district and would not affect the current Zoning designation for the property.

8. *The relief or remedy sought by the variance application is not available through a special use permit process that is authorized in the Ordinance or the process for modification to the Zoning Ordinance at the time of the filing of the variance application.*

A Special Use Permit cannot provide relief from the setback requirements, nor are any waivers available for homes unable to meet setback requirements.

STAFF RECOMMENDATION

To grant a variance, the BZA must find that the application meets one of the first three criteria listed above regarding unreasonable utilization, alleviating a hardship, or accommodating a person with a disability. In addition, the variance must meet all five of the remaining criteria noted above regarding good faith acquisition, no substantial detriment, not generally recurring, does not allow an unpermitted use, and is not available by other means.

Staff feels that the variance application should be granted due to the property's legal non-conforming status and topographical challenges. The lot size limits the use of the property, and current setback requirements will be challenging to meet. Staff recommends approving the request with the rear staircase relocated to the side of the rear deck to reduce the variance request as shown on the plat submitted November 10, 2022.

ATTACHMENTS

- A. Proposed Conditions of Approval / Proposed Motion for Denial
- B. Maps
- C. Variance Application Materials
- D. 1956 Recorded Deed of Subdivision