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**REGULAR MEETING OF THE
BOARD OF ZONING APPEALS**
City Council Chambers
300 Park Avenue
Falls Church, Virginia 22046
June 17, 2010

1. **CALL TO ORDER:**

Chair Murphy called the meeting to order at 7:30 p.m.

2. **ROLL CALL:**

Members Present: Mr. John Murphy
 Mr. Howard Stoodley
 Mr. Kent Taylor
 Mr. Darcy Williamson
 (*Mr. Justin Castillo arrived at 8:00 pm*)

City Staff Present: Mr. John Boyle, Zoning Administrator
 Ms. Karin Battle, Recording Secretary,
 Department of Development Services

MOTION: Mr. Stoodley moved and Mr. Williamson seconded, to set aside Agenda Items 3, 4 and 5 until after Item 7 New Business. Upon voice vote, the motion passed unanimously.

6. **PETITIONS:** None.

7. **NEW BUSINESS:**

Chair Murphy called for Variance Application V1502-10, noting that four members of the Board were present. He explained that the granting of a variance requires three affirmative votes, and a fifth member was expected shortly. The applicants were given the option of waiting until the full Board was present, or proceeding at this point.

MOTION: Mr. Williamson moved and Mr. Stoodley seconded, to move on to Agenda Item 7 D. Discussion of revision to the Rules of Procedure, then to the Minutes. Upon voice vote, the motion passed unanimously.

Proposed Revisions to the BZA Rules of Procedure:

Zoning Administrator John Boyle explained that the proposed revisions were upon what the Board had recently discussed, for clarification. One revision was based on the recommendation of the General Manager of Development Services regarding certain discussions and the other was updating the terminology to reflect digital recorders as opposed to tapes and videotapes. Copies had been provided to the Board with the proposed changes in red.

Chair Murphy requested the previous language in Item 14 and Mr. Boyle read it aloud.

MOTION: Mr. Stoodley moved and Mr. Williamson seconded, to approve the revisions to the BZA Rules of Procedure as presented in the Board packages.

56 **ROLL CALL VOTE:**

57
58 Mr. Murphy: Yes
59 Mr. Stoodley: Yes
60 Mr. Taylor: Yes
61 Mr. Williamson: Yes
62 (Mr. Castillo had not yet arrived)
63

64 Affirmed 4-0.

65
66 **3. MINUTES AND RESOLUTIONS:**

67
68 Chair Murphy received various corrections to the Draft May 13, 2010 Minutes from
69 the Board.

70
71 **MOTION:** Mr. Stoodley moved, and Mr. Taylor seconded, to approve the Minutes of May
72 13, 2010 as amended. Upon voice vote, the motion passed unanimously.
73

74 **5. OLD BUSINESS:**

75
76 Chair Murphy reported on the status of the Code re-write: the Zoning Ordinance
77 Advisory Committee (ZOAC) will be meeting weekly starting at the end of June and
78 throughout July, to wrap up various outstanding issues. The plan is to put a new
79 zoning code out before the public for comment. On some of the thornier options, the
80 ZOAC hopes to provide several options for the public to consider, and is seeking
81 feedback before the rewrite goes before the City Council. The ZOAC hopes to release
82 the public review draft in the early fall, with official action after the holiday
83 season, in January, to avoid the dreaded August - September time period. The major
84 outstanding issues include what to do with substandard properties and how to
85 appropriately address some of the commercial development options.
86

87 **7. NEW BUSINESS:**

88
89 The Board returned to consideration of:

90
91 **A. Variance Application V1502-10** (MUNIS #20100349) for a front yard setback of 24.8
92 feet instead of thirty (30) feet to allow for a second floor addition on
93 premises known as **119 North Fairfax Street**, RPC #53-116-038, zoned R-1A Low
94 Density Residential by Thomas and Elizabeth Langan, property owners.
95

96 Chair Murphy pointed out that there were still four out of five Board members
97 present, but the applicant indicated that she wished to move forward. Ms. Elizabeth
98 Langan and architect Thomas French were sworn in.
99

100 Zoning Administrator John Boyle introduced the variance application, indicating
101 that this was a classic situation seen in Falls Church: a variance to the front
102 yard setback to allow for a second story addition. This is a typical situation,
103 where the house conforms to a side yard setback but the front yard setback has
104 changed out from under them. Mr. Boyle commented that this was formerly known as
105 the famous 38(10)c section of Code, which may be unique to Falls Church. In this
106 case, the applicants were proposing that the new structure not encroach any further
107 than the existing structure already is; they are planning to go straight up with
108 this residential use.

109
110 Design architect Thomas French spoke, explaining that the Langans were long-time
111 City residents who had purchased the property with the specific intent to improve

112 it, continue living in Falls Church, and accommodate their growing family. The
113 Langans had consulted with Mr. French at the time of purchase, regarding this and
114 several other properties in the City, eventually deciding on this one.
115
116 Mr. French indicated that he and the property owners had consulted with the Zoning
117 Administrator and that his design does encroach on the setback.
118
119 At this point, Mr. French explained, the intent was to encroach slightly less on
120 the front setback through a "cage style design." There would be a steeply sloping
121 roof down, with the intent being to diminish massing and presence on the
122 streetscape, and to honor the existing scale on the street. The house is two or
123 three doors away from Route 7/Broad Street, where there are large scale buildings
124 and it is nearly urban. The Falls Church Presbyterian Church is a couple doors
125 away, and the closest neighbor is a bungalow which sits considerably higher,
126 topographically. Mr. French felt that the scale of the proposed project is entirely
127 appropriate to the block and was requesting "just a bit of forbearance" [from the
128 Board] so that the Langans could pursue their project. Otherwise, they would be
129 giving up a considerable amount of square footage that would make the program for
130 the second floor of the house considerably less desirable.
131
132 Chair Murphy called for any questions for the applicant or staff.
133
134 Mr. Williamson observed that the front setback is 24.8 feet from the where it is:
135 the applicant would build higher and backward from the line, not encroaching on the
136 setback any further.
137
138 Mr. French responded that in fact the plan is to step back the front wall, which
139 aesthetically will appear as a dormer. However, it is a dormer that will go nearly
140 the full width of the building, set in at both sides. This design is to honor that
141 little roofline, that setback which is an additional 60 inches from the front wall:
142 it will read as a shed dormer from the street.
143
144 Mr. Williamson stated and Mr. French confirmed that this is really a variance to a
145 30 foot front setback, with the house remaining exactly where it is.
146
147 Chair Murphy confirmed that the Langans are the sole owners of this property. He
148 stated that one of the requirements of 48-172(3) is that this be a non-conforming
149 structure, and he asked in what year this structure was built.
150
151 Mr. French estimated that around 1945, World War II time or a little after. Mr.
152 Murphy asked if the structure was built in 1948, and Mr. French responded that this
153 sounded pretty accurate. Mr. Murphy then asked Mr. Boyle what the front setbacks
154 were under the Zoning Ordinance at that time.
155
156 Mr. French inserted that most of the neighbors are encroaching as well.
157
158 Mr. Boyle reviewed the 1944 Zoning Code, Section 3 for R-1A, single family
159 residences: the front yard required under paragraph D was 25 feet.
160
161 Chair Murphy stated that this property was then a legally nonconforming structure,
162 and he asked if this was a substandard lot for R-1A. Mr. Boyle said yes, under
163 current Code, it was substandard for width and square footage.
164
165 Mr. Murphy then asked the applicants to confirm that they are not intending to
166 extend into the side yards at all, that they would remain exactly as they currently
167 exist at 15 and 16 feet. Mr. French said yes.

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168
169 Mr. Murphy then asked if there were any "peculiar circumstances" relating to this
170 property, such as configuration of the lot, interior circulation, existing
171 utilities serving the structure, existing driveway, topographic features or similar
172 existing conditions. He said that the Board needs to find that there are peculiar
173 circumstances: his review of the information indicates an existing driveway and it
174 is peculiar that wires come in from both sides of the lot in front of the house.
175

176 Mr. French responded that it could be considered as peculiar that the back of the
177 streetscape is already pushed this far forward, that is something that cannot
178 easily be changed. Structurally and aesthetically, it is not very desirable.
179

180 Chair Murphy opened and then closed this item to the public when no one stepped
181 forward; there were no additional comments or rebuttal from the applicant or
182 questions from the Board.
183

184 **MOTION:**

185 Mr. Stoodley moved that the Variance Application V1502-10 be approved under 48-
186 172(3) as a nonconforming structure and the addition would be not increase the non-
187 conformance. Mr. Taylor seconded.
188

189 Chair Murphy asked if the motioner and the seconded would be amenable to an
190 addition, to include a statement that the BZA finds that the existing utilities
191 serving the structure, existing driveway, patio, rear stairs and the stone
192 retaining wall create peculiar circumstances. Both indicated agreement and the
193 motion was amended.
194

195 **ROLL CALL VOTE:**

196 Mr. Murphy: Yes
197 Mr. Stoodley: Yes
198 Mr. Taylor: Yes
199 Mr. Williamson: Yes
200

201 *(Mr. Castillo had not yet arrived)*
202

203 Chair Murphy stated that the Variance had been granted and informed the applicant
204 that when there is approval to expand an existing nonconforming structure, the
205 Virginia Supreme Court had previously found that the expansion approval disappears
206 when the nonconforming structure is demolished.
207

208 Board Member Justin Castillo arrived at 8:00 pm, and Chair Murphy called for the
209 next items on the Agenda:
210

211 **B. Variance Application V1503-10** (MUNIS #20100298) for a front yard setback of 20
212 feet instead of thirty (30) feet along the Oak Haven Drive frontage, on premises
213 known as **601 Oak Haven Drive**, by William C. Fauver, property owner.
214

215 **C. Variance Application V1504-10** (MUNIS #20100298) for a front yard setback of 18
216 feet instead of thirty (30) feet along the Great Falls Street frontage, on premises
217 known as **601 Oak Haven Drive**, by William C. Fauver, property owner.
218

219 Chair Murphy polled the Board regarding addressing these two applications together:
220 the remaining four Board members agreed to do so. The applicant William Fauver and
221 his attorney Paul O'Grady were sworn in.
222

223 Zoning Administrator John Boyle introduced the item, stating that the concept and

224 the issue were the same along both streets regarding two front setbacks. He
225 observed that the Board had previously heard a considerable presentation from the
226 property owner, who had now provided additional new information based on the
227 previous discussion. Mr. Boyle reserved staff comment for insertion as needed
228 during the applicant's presentation: he said that he believed the applicant had
229 addressed the concerns which the Board previously raised.

230
231 At this point, applicant Mr. William Fauver presented two new exhibits to the
232 Board, the first a list of signatures on a circulated petition and an accompanying
233 map locating those property owners. He stated that he had only spoken to people who
234 had a "clear stake" in his variance application, who would essentially be "signing
235 up to live next to a construction site."

236
237 In the second new exhibit, Mr. Fauver addressed an error in his formal application
238 with a handout labeled Figure A02a [replaced A-02]. The applicant stated that the
239 angle initially shown as 27 degrees is actually 25.54 degrees, resulting in an even
240 more significant hardship. He asked to proceed on a colloquy basis rather than
241 giving a presentation, as he wished to address any concerns of the Board.

242
243 Attorney Mr. O'Grady stated that when he was asked to look at the issues involved,
244 he naturally went to the case law to see what would be instructive to the Board. He
245 found a case in 2001 from Fairfax County, decided by Judge Stith. A petitioner had
246 come to the Board of Zoning Appeals, asking for a variance because he was on a
247 corner lot and the setbacks would require a smaller house than would be suitable in
248 the neighborhood: the existing house had come down. The irony, Mr. O'Grady
249 explained, was that the Board had granted the variance, yet the neighbors opposed
250 the variance and took the Board to the Circuit Court. The attorney who prevailed
251 in that case was John Foster, now our City Attorney. Mr. O'Grady had spoken with
252 Mr. Foster about the similarities between that case and the case the Board now had
253 before it.

254
255 Mr. O'Grady read an overview of the 2001 case, which said that an undue hardship
256 existed, so a variance from the 30 foot setback requirement was sought. The
257 property was located on the corner of two residential streets, was exceptionally
258 narrow, exceptionally shallow and had no 90 degree corners. Other facts which
259 supported the undue hardship, according to the Court, including that the owners
260 sought to construct an up to 34 foot wide house. A typical house in the
261 neighborhood was 40 feet wide. A house any narrower than 34 foot would have been
262 too narrow to accommodate appropriate interior rooms. Further, a house any smaller
263 or narrower than the proposed 34 foot wide house would not be economically viable
264 in a real estate market. The Court said that while an economic hardship is not by
265 itself sufficient to grant a variance, it can be one of the considerations when the
266 Board is reviewing an entire package. The house in that case could not be shifted
267 back on the property because it would infringe on the side yard setback, and that
268 would require a variance. It couldn't be rotated on the property, because that too
269 would require a variance.

270
271 Mr. O'Grady said that this was as similar a kind of case as the Board could have.
272 In Judge Stith's opinion, there were specific issues that might be considered. He
273 said that if one could show that the strict application of the Code presents an
274 unreasonable dimension situation, that's enough to show a hardship. You don't need
275 to show another hardship if you show that the restrictions resulting with the Code
276 literally applied, unreasonably restrict the use of the land. Mr. O'Grady stated
277 that the reasonable use here [in Mr. Fauver's case] is to build a house in an R-1A
278 Zone. If you buy the land, knowing you would need a variance, that is not a case of
279 not purchasing in good faith, otherwise you couldn't develop anything on any

280 nonconforming lot. Mr. O'Grady thought that *Brown vs. Fairfax Board of Zoning*
281 *Appeals* case would be a very similar case.
282
283 Mr. Fauver interjected a comment, regarding the notion that a person can buy a
284 property even knowing that it may require a variance. He related the circumstances
285 of purchasing the property after renting it. At that time, he asked an attorney who
286 told him he could build within the existing setbacks. Mr. Fauver went to the
287 library, but did no further investigation when he purchased the house because he
288 had no intentions of tearing down and building a new house. Rather, Mr. Fauver
289 heavied up the electrical, put on a new roof, put on new siding. The applicant
290 described his house as "lightly constructed," mostly pine with brick veneer. It was
291 "not built to last," and it is an unattractive house by the standards of the
292 neighborhood: children don't come to the house for Halloween.
293
294 One observation Mr. Fauver had about the *Brown* case, was the language "a house
295 built on subject property would be too narrow to accommodate interior room sizes,
296 would be unusual looking and would be inconsistent or not compatible with other
297 houses in the neighborhood." That struck Mr. Fauver as a parallel he had argued in
298 his letter to the Board, -- in his public interest arguments with some overlap with
299 regard to hardship. Also, while the Code envelope in *Brown* was too small, it was
300 still a rectangle. So with discussion of a house being too small to accommodate
301 interior rooms, if Mr. Fauver built that house in his Code envelope, it would only
302 be 34 feet for the first foot. In this sense, he maintained that he has a greater
303 hardship than *Brown*.
304
305 Mr. Fauver advised the Board that the *Brown* case was decided unanimously by the
306 BZA, 6-0. The extensive review in the Circuit Court exists because many people
307 vociferously objected. They "blew a lot of money on lawyers. . . out of spite." Mr.
308 Fauver argued that these circumstances are very different with his house: for
309 whatever reason [in the *Brown* case], the people in that neighborhood considered
310 that variance a threat to them. Yet the variance was granted unanimously, with a
311 pure property rights footing. The case before the Board this evening is a very
312 different situation, and Mr. Fauver believes that the arguments are pretty sound.
313
314 Chair Murphy called for additional questions for staff or applicant.
315
316 Mr. Taylor asked for clarification on the setbacks, and Mr. Fauver responded that
317 they are 25 feet on the front and 15 feet on the side. For reasons explained in his
318 letter it is very difficult for any house on Mr. Fauver's "peninsula to actually
319 occupy the frontage" because "everybody's frontage is at an angle to the side lot."
320 The practice is what he is seeking to follow: to line up on the side lot as "the
321 best available source of streetscape continuity." This is why Mr. Fauver says he
322 focused so much attention in his proposal to "tying in" his property to the 603
323 [Oak Haven] property. He explained that his house is oriented toward the side but
324 is "inexplicably far from" the side property line: the house in the middle of the
325 property.
326
327 Zoning Administrator Mr. Boyle stated that this appears to be a property which was
328 purposefully created, because there is a history of a subdivision from the Planning
329 Commission. The records are not good from that period, however, it is obvious that
330 this parcel was subdivided off by a governmental act. He said that we can assume
331 that they took into consideration what they were creating not creating a parcel
332 that was too small to build upon. This may have been to the extent they were
333 looking at house plans. When the subdivision was done in 1944 or so, they
334 considered the building envelope. They would have wanted to be sure that they were
335 not slicing off a piece of ground that would be rendered unusable.

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336
337 Mr. Boyle explained that staff feels that this was a parcel designed to exist in
338 the 1944 Code. A feature [of the Code] at that time (besides the difference in
339 front yard setbacks) was that there was an option for corner lots, to essentially
340 choose which would be a front and which would be a side. He said that we have many
341 parcels in town where we couldn't understand: why are they perfectly situated for a
342 side yard on our corner today? Time and time again, we see 15 feet setbacks on our
343 corner lots. It couldn't have been an accident. Mr. Boyle said that when a copy of
344 the 1944 Code was located, there was an option to choose a front yard setback to
345 align with ones neighbors and the other was treated as a side yard for setback.
346

347 Fast forward to the Code change, Mr. Boyle continued: that side yard is now hit
348 with a front yard setback and this rendered many houses nonconforming. To
349 summarize: clearly [Mr. Fauver's] lot was developed and subdivided with the 1944
350 Code in mind. The Code subsequently changed but this parcel did not have the
351 friendly rectangular shape seen with most of our corner parcels. So we have here
352 two front yards applied to a severely triangularly shaped parcel: the effect of
353 those setbacks is particularly severe on this lot.
354

355 Two other quick points were made by Mr. Boyle: the applicant's burden is to make a
356 case for hardship, but staff was interested in how many lots we have like this in
357 the City. This is probably the most severe in terms of triangular shaped lots.
358 Where we see other triangular shaped lots, they are usually interior lots and the
359 question is -- where do we apply rear yard setbacks? Regarding the lot up on the
360 end of Park Street, for example, Mr. Boyle's predecessor decided to measure a rear
361 yard setback from a single point and draw an arc from that point. Everything else
362 was a front or a side. In this case tonight with two fronts and the triangular
363 shape, you get a severe overlapping of these front yards. The other example which
364 looks most like this, actually has a rear yard example and not two fronts, so it
365 does not technically apply.
366

367 The last point made by Mr. Boyle was that this is an excellent example where the
368 Board can ponder its new role. The burden of "approaching confiscation" is not to
369 be considered any longer and there haven't been any good examples of what that now
370 means. What does the absence of "approaching confiscation" mean? What constitutes
371 a hardship? Is this a hardship unusual to this property or does it exist
372 everywhere? Although it is the applicant's burden to make the case, staff clearly
373 feels this is an unusually shaped yard. It was not created haphazardly; a
374 subdivision was involved at the time. The Code has changed out from under it. What
375 does the Board feel is its new authority? Mr. Boyle expressed a wish for 20 of
376 these [cases] so that we could get a sense of what does that standard means now, as
377 opposed to the former Code. Previously, staff could pretty fairly let folks know
378 what their chances were for a variance. We had a good sense of what was a
379 reasonable request and what was not. Under the new guidance, it is very difficult
380 and staff would enjoy seeing the Board try to define it a little more clearly: what
381 is the new guidance under the Supreme Court's dropping of that phrase?
382

383 Mr. Fauver asserted that were it not for the General Assembly's action in the last
384 year, he wouldn't have hired an attorney. He said that in his letter, he shied
385 away from the hardship question. He did not want to propose his own theory: he said
386 there is a path which the General Assembly created to a hardship finding and that
387 is not covered by any of the limiting cases. In Mr. Fauver's opinion, it is a very
388 literal path, that the Board's powers have expanded greatly, that it has the power
389 to grant a variance simply on presentation of a clearly demonstrable hardship which
390 could be alleviated by the variance. It's a minimal standard and apparently
391 intentionally so. Mr. Fauver stated that one has to assume that those passing the

392 legislation had a reasonable basis.

393

394 Mr. O'Grady added that Judge Stith, in his opinion, cited two of the Supreme Court
395 cases that precede *Cochran* even: the *Petrella* case and the *Fala* case. Judge Stith
396 said that these cases say proof of an unreasonable restriction on the use of his
397 land standing alone can establish an undue hardship: that unreasonable restriction
398 is caused by the setback requirements with two front streets -- that by itself
399 creates a hardship.

400

401 Mr. Taylor asked if an architect had prepared the applicant's materials and Mr.
402 Fauver said that they were examples that he had located by searching through
403 hundreds of designs.

404

405 Mr. Taylor then asked if there were any designs entertained that would fit between
406 the 25 foot setbacks. Mr. Fauver said that his background was as a guest lecturer
407 at the University of Maryland in landscape design drafting. He said that he was
408 "very rusty," but had been "working around the clock for months trying out every
409 different permutation." He concluded that it was not the most efficient use of
410 space.

411

412 Mr. O'Grady interjected that he thought the answer was yes and it didn't work.

413

414 Mr. Fauver expounded that once the Board's powers are triggered, Board members
415 would be able to look at the best solution rather than "guarding the last inch." In
416 this case, 20 was in Mr. Fauver's view, "clearly superior in terms of the ability
417 to integrate any structure." He said that these are not arbitrary numbers: he
418 worked with them to try to determine what was needed for a house to be sited
419 properly. If one were to "ride the setbacks," again it would result in "clearly
420 undesirable development." Mr. Fauver mentioned the diagram with the example of a
421 varied front which he had submitted. If one said, "22 is too little" and pulled
422 back to 23, losing that effect for gaining a foot, Mr. Fauver ventured that "you
423 would be losing something substantial in terms of the Code's intent."

424

425 In answer to [Mr. Taylor's] question, Mr. Fauver said that 25 "is not real
426 workable" and would at the very least "necessitate infringing on the neighbor's
427 setback." He would consider that undeserved, as they are supportive of the request
428 and he would not ask for a variance to cut into their side lot.

429

430 Mr. Williamson stated that there is no firm plan for the applicant to build, and
431 Mr. Fauver affirmed that that was correct. Mr. Williamson pointed out that this is
432 a plan to create a variance for the future and he asked what would happen after the
433 fact

434

435 Mr. Fauver responded that as he had said in his letter regarding the "example
436 house," he could not proffer this structure. But this structure had the features
437 this envelope essentially demands: the driveway on the property line, some sort of
438 L shape. If this variance is granted, Mr. Fauver said, he would begin seeking a
439 partnership. There are some people doing nice work in the City and armed with a
440 variance, he could then talk to a bank.

441

442 Mr. O'Grady added that the variance would be so many feet and the envelope would be
443 defined by the variance.

444

445 Mr. Williamson asked the applicant if he were trying to create a better value for a
446 potential buyer, -- a bank or third party.

447

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448 Mr. Fauver explained that he thought the Board could find a clearly demonstrable
449 hardship. Under various cases, he felt that financial circumstances are a proper
450 part of the overall hardship and he could proffer that yes, there would be
451 substantial loss. Also, a tree could fall on his house or it could burn down, and
452 he would lose all existing use. He would have "this tiny little triangle" which is
453 actually unusable, and that was not just hypothetical. It is an old house
454 surrounded by giant trees and Mr. Fauver prefers not to think of the Code as
455 "something ghoulish hovering, waiting for something bad to happen."

456
457 BZA member Howard Stoodley stated that he considered the applicant's package
458 outstanding. However, he expressed concern that the applicant had no specific
459 project and said that the last time the Board met, it was pointed out that there
460 was no project, no house plan to look at. It is difficult to create a variance for
461 something which doesn't exist, and this was Mr. Stoodley's concern. He asked when
462 Mr. Fauver bought the property and Mr. Fauver responded, "1997."

463
464 Mr. Stoodley said that what's happened since 1997, is that the Board turned down [a
465 variance application for] this kind of lot on Park. Although hardship is no longer
466 the criteria, Mr. Stoodley did have a problem ruling on a variance where there is
467 no plan.

468
469 Mr. Fauver said that the Park property had a "particular uphill climb" relative to
470 gaining favorability with the BZA. Representation had been made to the Planning
471 Commission that a house could be built without a variance and next thing you know,
472 they are asking for a variance.

473
474 Mr. Stoodley said that he was sympathetic to the applicant's problem but he didn't
475 know if the Board had specific authority to grant a variance in this case.

476
477 Mr. Fauver said that in terms of the specific question, his recollection of the
478 previous Board meeting was that he needed to submit "a sufficiently viable plan of
479 development" not a specific set of plans. He pointed out that with a commercial
480 applicant, seldom would the Board have somebody come in with 10 feet of blueprints
481 under their arms and perhaps Mr. Boyle could speak to this.

482
483 Mr. Boyle agreed that with a commercial applicant, there usually is considerable
484 discussion of the concept.

485
486 Mr. O'Grady said a building envelope would be there, it's a matter of "cart before
487 the horse." One would go to Walter Phillips and ask them to build a house, ask what
488 could be built. Here, the applicant thought that providing a building envelope
489 would sufficiently address the Board's concern.

490
491 Mr. Fauver said that now he was in site plan, and that simply drawing a building
492 envelope would not constitute a plan of development in his mind. The intersection
493 of the building envelope with the example house he was proposing was a plan of
494 development. He asked the Board to consider what was known about the house: it is
495 covered by all applicable R-1A Code. It is limited to 2000 feet of lot coverage.
496 Mr. Fauver said that is a lot smaller than standard R1A lots getting built out. A
497 driveway will face Oak Haven Drive: right away when you look at the envelope, you
498 know exactly where the driveway will be. Mr. Fauver said that we know it has to be
499 oriented to the side property line, that the setback at the side property line is
500 designed to be a specific distance, so that the face of the house will align with
501 the face of the garage of the 603 property. (That was an objective the applicant
502 had.)
503

504 Mr. Fauver explained that he was trying to think of every concern the Board might
505 have relative to zoning, as opposed to other concerns that an Architectural Review
506 Board might have. He observed that the arborist might comment on trees, but the
507 applicant didn't feel it was necessary to present the BZA with what kind of
508 shingles he would use or what would happen with the flow inside the house.
509

510 Given the Board's immense powers of limitation, Mr. Fauver wondered, was there
511 some sort of specificity lacking in a matter relevant to zoning, something he had
512 overlooked? He said he had put a lot of effort into this and he believed that this
513 approach essentially protected the neighborhood. "Bad development" is not possible
514 within the rules he was proposing: there is "a cap on how horrible one can be." One
515 of the [proposed] conditions forbids any element of a structure from running
516 parallel to either setback; Mr. Fauver referred to this as his "belts and
517 suspenders provision." He said that he didn't know how he could be more specific in
518 terms that would matter to the Board. He said that the BZA wants to know about
519 traffic flow, location, general impact on the neighborhood, scale of the property.
520 It didn't want to know about the number of bathrooms.
521

522 The applicant said he was "more than open to whatever would allay the Board's
523 concerns." In the example plan that he had presented, it was a great fit for the
524 property, but he would not spend \$1500 on a [more detailed] set of plans. Normally
525 an architect would get involved for this or that, perhaps move a chimney to the
526 side. Mr. Fauver hoped all four examples provided would strike the Board as
527 appropriate: the applicant was trying to "match" on Oak Haven, and believed that
528 was the most impactful part of the development -- how the neighbors are affected.
529

530 Zoning Administrator John Boyle shared an interesting point which had come to mind.
531 If this subdivision were being considered today, with today's Code, the Planning
532 Commission probably would not approve it. Yes, there is a building envelope left
533 over, but would they authorize a subdivision with such a parcel, containing such a
534 restrictive building envelope? Mr. Boyle thought they would say no. He observed
535 that the Board was struggling with "where is the plan?" and that question actually
536 speaks to the uniqueness of the problem here. With the folks that appeared before
537 the Board earlier [this evening], it was very simple: they were going straight up
538 with no change in the footprint. That is seen all the time. But how often has the
539 Board had a request for a variance for new construction: not often. Why? Because
540 generally, on a nice rectangular lot, some accommodation can be made for a
541 nonconforming or substandard situation. We can reduce a setback administratively,
542 or the rear yard can be measured from a single point. There is usually something
543 that can be done to put a footprint in there.
544

545 Mr. Boyle said that with this [application], the fact that there isn't already a
546 building plan, speaks to the unusual harshness of the application of the setbacks.
547 Perhaps that could not even proceed without knowing what the setbacks are. If the
548 Board accepts that the subdivision wouldn't occur today, we are left with the
549 structure that is there now. If that is ever destroyed, that is what can be built,
550 -- is that what we want? So the fact that there is no building permit in front of
551 the Board, that is not unusual in this case because of the unusualness of the lot
552 itself.
553

554 Mr. Stoodley expressed concern that upon the advice of the City Attorney, the Board
555 had decided it couldn't go ahead and hear this case: as he understood that advice,
556 it was because the applicant had no plan.
557

558 Mr. Fauver said he recalled the discussion and Mr. Stoodley said it depends upon
559 the definition of "plan." Mr. Fauver responded that the City Attorney's complaint

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560 was that there was *literally* no plan of development, he didn't say the plan
561 attached to this variance [request] was insufficient. The applicant had proffered
562 no use, he had just said that he wanted the variance. He said that he took
563 everything to heart, everyone's observations as guidance including Mr. Boyle's
564 observations about the level of conceptual work that typically occurs "in the
565 zoning world" because there are significant design costs and because one needs a
566 little something to get financing. He said he didn't know if the Board discusses
567 amongst itself or each member holds his own counsel, as to whether a very narrow
568 conceptual plan for a house is in the Board's mind a plan for development, as
569 opposed to having a roll of architectural plans.
570

571 Chair Murphy said that there would be a time after public hearing, there is a point
572 at which the Board would have discussion on this, to determine what members'
573 positions were on a variety of things. He said there are four things required under
574 State Code for a Board of Zoning Appeals to be able to grant a variance. One, the
575 situation is not of such a recurring nature that a change to the regulations would
576 be more appropriate. Mr. Murphy's personal opinion was that this was not the case
577 here: a general regulation change is not going to address the issues of such a
578 property. Two, a variance will not be a substantial detriment to adjacent
579 properties and the character of the district will not be changed by granting the
580 variance. Mr. Murphy said that is going to be up to the Board to determine, -- for
581 breaking up distances, which way it is going to face, where the driveway will be,
582 what the potential size will be. It'll be up to this Board to determine whether
583 there is "substantial detriment" to adjacent property owners. Mr. Murphy said that
584 the last time the applicant was before the Board, there was no information provided
585 for the Board to even make a determination as to whether it would be detrimental.
586

587 Mr. Murphy continued, saying that the hardship is not generally shared and that,
588 based on this lot, he did not have a whole lot of a problem there. He said that the
589 strict application of the Zoning Code would create an undue hardship relating to
590 the property, and that "undue hardship" is no longer "approaching confiscation." He
591 had a couple of questions to clarify up front.
592

593 Chair Murphy asked if a lot of this size were a rectangle, what was that in terms
594 of square feet. Mr. Fauver responded that if this were a rectangle, it would be
595 over 3400 square feet. Mr. Murphy asked 25% and clarified with Mr. Fauver that he
596 was asking about lot coverage. Mr. Fauver said lot coverage would be 2586,
597 something like that - or 28something, mentioning "the concept of justice." Mr.
598 Murphy said he was asking in terms of potential lot coverage, what could be done
599 with the lot as it stands.
600

601 Mr. Murphy's next question was, what is the area of the building envelope that is
602 allowed with the 30 foot setbacks. Mr. Fauver said it was on the sheet provided
603 this evening, 1336 SF. Mr. Murphy asked, the sheet handed to the Board, Figure A-
604 02a? Mr. Fauver stated that of the 1336 SF, 800 was really usable, "approaching a
605 miracle."
606

607 Mr. Murphy asked if what was allowed in the current building envelope, was
608 substantially less than the current allowable lot coverage of 25%. Mr. Fauver
609 agreed and said that the current envelope comprises 11.68% of lot coverage.
610

611 Mr. Murphy asked if a "reasonable house" could be built within this lot, within the
612 building envelope that is there. He acknowledged that this is a tough question, and
613 commented that there are now numerous houses in the City running 22 to 24 feet wide
614 and 40 feet deep, 50 feet deep, 60 feet deep. He said he was trying to get an idea
615 of what could be reasonably built on this property.

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616
617 Mr. Fauver responded that the "monster house" in *Brown v. Fairfax County*, -- the
618 house to be avoided, would not fit in this Code envelope. He said that nothing fits
619 in this Code envelope except a small efficiency apartment floor plan. However, even
620 that would not contain the heating plant, the air conditioning plant, the water
621 heating, -- these are all things that need to be part of a house.
622
623 Mr. Murphy said he was asking because the drawings were not scaled and it was very
624 hard to work with the drawings provided.
625
626 Mr. Fauver apologized, saying he could have printed them at 30 scale but he wanted
627 the Board to be able to read the numbers, so he blew them up. He said that there
628 was some material in his letters about various sizes of envelopes and those
629 representations were generous. However, to knock one foot off the depth of the
630 three rectangles discussed, -- he was too generous on the depth by half. He said
631 that what he was doing was a very sound way of looking at "what is normal?"
632 Architects prepare plans for people to buy, for simple structures. Mr. Fauver felt
633 that the demand for smaller structures should be higher. He stated that there is
634 "nothing available that would fit in this Code envelope," out of collections of
635 "tens of thousands of contemporary American house plans" that are geared toward the
636 low end. The strips of variance he is seeking are not that large but they cross
637 certain thresholds of expected rectangular behavior. Mr. Fauver said that in
638 architecture, there are certain lines that people don't go below because the rooms
639 themselves have to be a certain size. He played with this and the drawings became
640 "more like a fractal diagram."
641
642 Mr. Murphy inserted that at this point, he was fairly comfortable that the response
643 was that nothing could be built within that envelope. He had one additional
644 question for Zoning Administrator John Boyle: what specifically were the setback
645 requirements on this lot when it was created in, according to the figures provided,
646 1949?
647
648 Mr. Boyle responded that we can only infer from the Code active at that time, that
649 it was 25 feet for front yard, the interior was still 15 feet. He reiterated that
650 we don't have records back to that time, as to whether any variances were granted
651 or any conditions set by the Planning Commission: we have [only] the '44 Code.
652
653 Mr. Murphy re-stated that if this lot were subject to the Code in 1944, without any
654 variances or any other adjustments, it would have had a 25 foot setback on Oak
655 Haven and a 25 foot setback on Great Falls Street.
656
657 Mr. Boyle said that one of those would be 25, but there was the option in the Code
658 for averaging the front yards at that time, based on a neighboring structure. So if
659 one is not 25, that may be the explanation, but it is very speculative. Without
660 [additional] records, what we do know is that the subdivision occurred. He was
661 aware that the numbers don't identically line up, but there was that additional
662 provision of averaging and selecting one of the fronts as a side, throwing the math
663 into speculation. He asserted that the house wasn't built by accident and the
664 subdivision didn't occur by accident.
665
666 Chair Murphy said he was fairly confident from the evidence before the Board, that
667 the subdivision did not occur by accident, but how far he could go beyond that,
668 remained to be seen. He then opened the hearing to the public.
669
670 Mr. Philip Bandy of 603 Oak Haven Drive, who had previously been sworn in,
671 approached and stated that he lived in the first house to the right of the

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672 applicant's. He expressed his support of Mr. Fauver's request for a variance,
673 explaining that theirs was a very nice neighborhood. He said most of the homes were
674 either new or older but are going to be rebuilt. For instance, the other house next
675 to him had just sold, and there will be another new house under construction. A new
676 house is being built at the end of the cul-de-sac. Mr. Bandy asserted that all of
677 the homes across the street from Chris Fauver are newer or nicer. The applicant's
678 [home] is the one that "kind of sticks out," but that, according to Mr. Bandy, is
679 an understatement: he described the house as dilapidated and in need of an upgrade.
680
681 Mr. Bandy offered that his father was an architect and he had discussed this
682 [situation] with him. His father said that one could design anything but the
683 question was, is it going to be livable and is anyone going to want to buy it? He
684 didn't think so. Mr. Bandy asked the Board to grant the variance, for whatever fits
685 in the footprint, saying that what is there now is not obtrusive. He stated that if
686 one tries to squeeze something into the envelope, if you could find someone to do
687 it, it would not be aesthetically appealing to the neighborhood. All of the
688 neighbors he had spoken to supported this request.
689
690 Mr. Bandy said that it seemed to him that the Board had a choice here to grant a
691 variance to build something nice and new in the neighborhood, which would help the
692 City overall. Or the Board could deny it, in which case Mr. Bandy did not see
693 anything getting built. He was of the opinion that the structure there now would be
694 rented out and fall into more disrepair, becoming more of an eyesore. Or if one
695 could find someone to build, they may put something there which would totally be
696 inappropriate and stick out. Mr. Bandy wanted the Board to know that the neighbor
697 right next door supports a variance, even if it means that something new or bigger
698 will be built.
699
700 Chair Murphy thanked Philip Bandy and noted that no additional members of the
701 public had come forth; he then closed this item to the public. He offered the
702 applicant an opportunity for any rebuttal.
703
704 Mr. Fauver said that he did have some pride in ownership. However, he could only
705 support Mr. Bandy's characterization of the house and added that it is the "haunted
706 house of the block."
707
708 Chair Murphy said that as he opened this item for discussion by the Board, he
709 wanted to make sure that the record clearly indicated that Figure A02a was
710 presented to the Board and replaced Figure A02. Secondly, what he termed "Exhibit
711 1" was a petition from the surrounding properties bearing 12 signatories on the
712 petition from property owners in the general area, on Dorchester, Great Falls and
713 Oak Haven. Mr. Murphy passed these items to the Zoning Administrator to have them
714 included in the record.
715
716 The matter was then opened for discussion by the Board.
717
718 Mr. Williamson wondered if when a house is sold, does the existing variance go with
719 it to the new owners? Mr. Boyle responded yes and Mr. O'Grady added that this would
720 include the conditions imposed upon it.
721
722 Mr. Fauver inserted that he was seeking to "create reliability" being mindful of
723 Chair Murphy's "runaway variance" comment. He said that he had included some items
724 in his application which were "kind of borderline."
725
726 Chair Murphy explained that the discussion was limited to the Board at that point.
727

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728 Chair Murphy stated that Mr. Stoodley had raised an issue which the Board needed to
729 discuss to some extent. He said he would characterize it as "not an official plan
730 of development" but asked if there were at least enough here for the Board to
731 determine that the granting of a variance would not be a substantial detriment to
732 adjacent properties. He said that there were a number of potential proffers
733 provided, and the first was that the residence shall not exceed 2000 SF of lot
734 coverage. The second was, the residence shall be primarily based on right angles.
735 It shall be generally oriented toward the side property line...and shall abut the
736 side yard setback. The back line shall have no exterior wall spans of more than 8
737 continuous feet that run on or parallel, etc, this was on pages 6 and 7. Where the
738 driveway will be. Chair Murphy asked if this was (A) enough for this Board to
739 consider whether or not, based on these requirements, there will be a substantial
740 detriment to adjacent properties. His concern last time was that there was nothing
741 to evaluate. He said there is something to evaluate here and the Board was going
742 to have to determine if it were enough to determine if granting a variance would be
743 a substantial detriment and to the character.
744

745 Mr. Murphy expressed concern that if this threshold were met, what were the
746 requirements when this lot was created? Had the Zoning Code created a hardship by
747 going from 25 to 30 feet for front yards? Maybe, maybe not. Mr. Murphy said that
748 the Board had heard testimony and evidence about the size of the building lot, but
749 very little about what the conditions were when the property was created. He said
750 he was somewhat concerned about a privilege rather than a hardship: if this lot was
751 subdivided in 1949, under the rules that existed then for setbacks, is this
752 variance requesting more than would have been allowed when the lot was created? At
753 that point, he found it hard to consider it a hardship: he would consider it a
754 privilege. To go beyond those, he thought was pushing what is appropriate for a
755 variance.
756

757 Mr. Murphy said that he had asked Mr. Boyle what the conditions were "on the
758 ground," and Mr. Murphy said the Board had no evidence presented at all. He said
759 there were a lot of hypotheticals: "it could have been handled this way, it could
760 have been handled that way." Mr. Murphy said that the burden of proof is not on the
761 Board, it is on the property owner to show what the conditions were. So if a
762 variance were to be granted, Mr. Murphy was concerned that the Board not go beyond
763 a hardship into a privilege.
764

765 Chair Murphy continued, stating that the Board had heard about cases from 2001, but
766 he opined that the Board had to take those cases with a grain of salt because
767 Cochran changed that substantially and essentially overruled those on what a
768 hardship was. The rule was about approaching confiscation and always has been, Mr.
769 Murphy said. However, the Code had changed since then and the words "approaching
770 confiscation" had been removed. Mr. Murphy said that this Board has not determined
771 what an undue hardship is, *without* the words "approaching confiscation." It was
772 previously much easier: if something could be built, it was not approaching
773 confiscation. So he said that he had many questions and would be interested to hear
774 the Board's opinions, particularly on the issue of whether there were enough
775 conditions or proffers here to make the determination of whether there was a
776 substantial detriment to the adjacent properties.
777

778 Mr. Murphy called for a discussion of hardship in this particular case, asking to
779 what extent, if a variance was going to be granted, the Board would be sticking
780 with a hardship based on a change in the Zoning Code, not a privilege, which was
781 never allowed to being with, when the lot was created. He said that unfortunately,
782 he would need answers to these questions before he could move forward to vote for a
783 variance. He would need to know that the Board was in agreement about some of these

784 concepts, and whether the Board would be able to find that these were substantial
785 enough conditions and the granting of a variance would be alleviating a hardship,
786 not granting a privilege.

787
788 Mr. Taylor stated that he thought the Board needed to address Mr. Stoodley's
789 concern first.

790
791 Mr. Williamson said that there were two related points in question: this is not a
792 theoretical variance but rather a variance on a structure to be made later. And
793 this goes to the question of, is there a burden on the neighbors? He said that it
794 was difficult to answer that question unless one knows what is going to be built.
795 He said he didn't know how to answer absent a set of plans.

796
797 Mr. Castillo stated that those are overall very legitimate questions and he agreed.
798

799 Mr. Taylor asked how the Board could decide to hear this without a formal plan.
800

801 Mr. Murphy responded that it was hard to say, but he thought that the Board could
802 decide to some extent, what threshold was necessary, what plan. In the earlier case
803 this evening, there was a plan and there was an existing structure, the applicants
804 were putting a second story on it. That was significant enough for this Board to
805 make a determination that it wasn't detrimental. Granted, the standard is much
806 different, with peculiar circumstances and other things but Mr. Murphy was trying
807 to put this case into perspective: the Board didn't have rolls of plans or permits
808 in front of it for [the earlier case]. But that is a second story on an existing
809 house, and he felt that it is not as hard to find that is not disruptive.

810
811 Mr. Murphy continued that to some extent, he was uncomfortable even with the
812 requirements that were offered by Mr. Fauver. He stated that the Board had the
813 authority to append conditions to a variance that must be applied when acting on
814 the variance. The Board had language which described something of concern last
815 time: a 60 foot long wall, 35 feet high, 12 feet from the street, which could have
816 been built. If no variance is granted, as currently stands, the length of the
817 triangle could still be a solid wall, absent these conditions. Once these
818 conditions were in, it has to be broken up every eight feet, etc. That's one of the
819 questions. Mr. Murphy stated that zoning does not legislate design. He wondered if
820 those were enough for this Board to make a finding that it would not be of
821 substantial detriment to adjacent properties. Each Board member has to consider
822 this as it moves forward. Mr. Murphy did not know if he knew at this point, if he
823 had to vote on that question or that question alone.

824
825 Mr. Murphy stated that the matter was before the Board and being heard. So to some
826 extent, some information was enough to hear this case. With no information, the
827 Board had clearly voted not to hear it because it didn't have the authority. Now
828 that the Board had some information, the question was, based on the information the
829 Board had, can the Board make the determination that granting a variance would not
830 be a substantial detriment to the surrounding properties.

831
832 Mr. Castillo returned to the threshold question of what was in force in 1949,
833 stating that this seemed to him to be the foundation of what the Board could decide
834 to do. He wondered how the Board could address that core factual information.

835
836 Mr. Murphy responded that this was why he asked staff what was allowable under the
837 Code at the time that this lot was created. He said that the Board had heard a
838 number of hypotheticals, and that the only evidence the Board had been presented
839 with, was that in the absence of a variance, and in the absence of any building

840 permits, in the absence of any other evidence, it would have been 25 feet on Great
841 Falls Street and on Oak Haven Drive. Mr. Murphy said that began in his mind to
842 allow these two questions to coalesce. If it were 1951 and this lot had 25 foot
843 setbacks on Oak Haven and Great Falls, the Board of Zoning Appeals wouldn't be here
844 and whatever could be built within that building envelope. It would not be a
845 question. This was 25 and 25, you would build what you could build.

846
847 Chair Murphy said that the Board could potentially tie a change in the Zoning Code
848 back to that without getting terribly hung up on "the substantial detriment" if the
849 Board looked at this, as -- did the change from 25 feet to 30 feet cause an undue
850 hardship for this particular lot? Then the Board would be back down to, what was
851 the building envelope? Let's assume this property had never been developed, the
852 building envelope is small. Is that an undue hardship? The Board might be able to
853 go back and say that the increase from 25 to 30 feet created a new hardship.

854
855 Mr. Murphy continued, saying that he did not wish to make any statements regarding
856 the current house, but that what he was trying to look at was the building envelope
857 that would have been allowed and the building envelope that would be allowed, and
858 to look at the whether the change in the Zoning Code in 1959 created an undue
859 hardship. His personal feeling was that this lot was created with the knowledge
860 that it was an odd shape. Absent anything else, Mr. Murphy said that the Board had
861 a plat signed off by the mayor and the planning commissioners, Figure 1, the plat
862 approval of the subdivision on June 3rd of 1949. This was approved and it was
863 shaped as it is today. Mr. Murphy observed that it was created with full knowledge
864 of what could be done on it at that time, according to the requirements of the
865 Zoning Code. So maybe the Board could get past the substantial detriment to the
866 neighborhood and surrounding properties just by going back to what would have been
867 allowable with the 25 foot setback.

868
869 Mr. Taylor observed that none of the variations or examples showed the 25 feet.

870
871 Mr. Murphy commented that the extent of the variance granted is up to the
872 discretion of the Board. He said that he was not sure if this was a reasonable line
873 of action under the law, but that he was trying to determine what was allowed, what
874 changed with the change in the Zoning Code, if that change created an undue
875 hardship, and to what extent does this Board have the authority to relieve that
876 hardship.

877
878 Mr. Williamson stated that it is a hardship if somebody wants to build something;
879 it's not a hardship if somebody wants to sell something, -- that is how he
880 understood it.

881
882 Chair Murphy responded that this brought the Board back to the question of whether
883 there was enough here to act on.

884
885 Mr. Castillo said that he thought going back to the Code's provision on variances
886 gave the Board a couple of avenues for granting a variance. There is exceptional
887 narrowness, shallowness or shape of the property; the time or the effective date of
888 the ordinance; by reason of exceptional topographic conditions or other
889 extraordinary exceptional situations where the strict application . . . would
890 unreasonably restrict the use of the property. Mr. Castillo said that the second
891 clause did not necessary tie back to what was in effect at the time.

892
893 Mr. Williamson wondered if the setbacks were 25 feet or if the property was
894 subdivided with knowledge, could it not be inferred that there is no hardship.

895

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896
897 Mr. Castillo responded that's why the second clause simply inquires into the
898 present situation. It simply says, whatever the situation, the strict application
899 restrict use, --maybe that's a separate basis.

900
901 Mr. Stoodley offered that he had another issue to raise. He said that his biggest
902 concern was that the applicant bought the property with the existing house, the
903 existing setbacks -- he knew what he was doing. Now he had come to the Board after
904 being in the house for 13 years. Obviously the house was built according to
905 whatever Code was in place at the time. Mr. Stoodley didn't think the impact on
906 neighborhood is an issue, one gentleman had testified. Mr. Stoodley was concerned
907 that there have been many lots that have come before the Board over the years, and
908 the Board has always said, if the hardship existed at the time the person purchased
909 the property - and that was situation we had at the corner of Park - you cannot
910 change it because you bought the property and now want to expand the property.

911
912 Chair Murphy countered that he saw somewhat of a difference. If a property is
913 purchased, he said, knowing that it's going to require a variance in order to build
914 a structure, as in the case Mr. O'Grady referenced earlier, the Courts have
915 determined that is not a self-inflicted hardship. Buying property at a reduced
916 price because it's going to require a variance is a business decision, it's not
917 self-inflicted. Self-inflicted, in Mr. Murphy's mind, generally occurs when someone
918 takes an action which may violate a Zoning provision, or takes an action to
919 subdivide a lot, and then comes before the Board to seek relief from their own
920 unlawful or unwise act. His point with looking at this lot, was that when it was
921 created in 1949 and looking at what was allowed when it was created: it was created
922 with a bundle of development rights. Those rights transferred from owner to owner
923 until the Zoning Code changed. The Zoning Code did change, and it may have changed
924 in such a way as to create an undue hardship.

925
926 Mr. Murphy said that he did not want to poll the Board at this point, but with 30
927 foot setbacks and a very oddly shaped, very small building envelope less than half
928 what would be allowed on a lot, the Board might approach a hardship finding. Were
929 the Board to do so, how far could this Board go to alleviate that hardship? Could
930 this Board go beyond the conditions that existed when the lot was created and grant
931 something in excess of what was allowed when the lot was created? The only
932 testimony heard tonight was that the lot lines along Oak Haven and Great Falls
933 would have been 25 feet. Mr. Murphy said that was what was in the Code according to
934 Mr. Boyle. The Board had a variance before it, asking for 20 and 18 feet: that's
935 where Mr. Murphy was getting stuck on the privilege part of this. If the Board is
936 able to find that a hardship occurred, how far does it go to relieve that hardship
937 without granting a privilege, without going beyond what it would have been allowed
938 to do when it was subdivided in 194?

939
940 Mr. Castillo said that this is where the lack of a plan causes a problem, because
941 the natural tendency is to ask for the broadest possible relief, without giving the
942 Board the opportunity to fashion something which would get the applicant where he
943 needs to be.

944
945 Mr. Taylor commented that he thought it was reasonable to allow the 25 feet but to
946 go beyond that, the Board would need to consider details.

947
948 Mr. Murphy said he was not concerned about creating a precedent. The granting of a
949 variance is an individual act, and each individual act is based on the facts
950 presented. Just because a variance was granted for Lot 1 does not mean a variance
951 will be granted for Lot 2 under a different set of facts. Mr. Murphy said that he

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952 is not necessarily concerned about the precedent issue, certainly whatever decision
953 is made is about this property only. In fact, granting a variance essentially
954 creates a new zoning district for this property in his opinion: this property will
955 forever have those requirements.

956
957 Mr. Taylor added that if someone asks for a variance, often the first thing they
958 bring to the Board is information about adjacent properties and that is considered.
959 Mr. Murphy responded that if he were on the Board at the point, if these were of a
960 reoccurring nature, that in fact changes the Code and the way to address it is to
961 change the Code, not to grant a variance.

962
963 Mr. Taylor stated that in this particular case, the 30 feet causes a hardship, so
964 therefore 25 feet . . .

965
966 Chair Murphy inserted that he thought that the Board had to find undue hardship,
967 since the whole idea of a variance is that essentially there is a conforming lot.
968 This lot has the footage, it has the coverage as has been described more than
969 11,250 SF, it has more than 75 feet of frontage on Oak Haven and Great Falls: it is
970 a conforming lot. The only change would have been the requirements applying to that
971 lot and that is where Mr. Murphy was "somewhat stuck," because the only evidence
972 that was presented, that "wasn't based on what-ifs or maybes," was 25 foot
973 setbacks.

974
975 Mr. Williamson noted that the thinking would go: somebody previously determined
976 that this lot was created and this house was built with 25 feet, the determination
977 had been made. The thinking would then go: 30 feet, given the unusual nature and
978 dimensions of the lot . . .

979
980 Mr. Taylor said it is inferred at 25 feet, and assuming if it would be subdivided
981 today, this would not be allowed.

982
983 Chair Murphy stated that he was not willing to make any inference about what would
984 happen if this came before the Planning Commission today, whose role it is to
985 approve subdivisions, not the Zoning Administrator's, he thought that came out
986 recently. He wanted to stay away from today, but would agree that yes, this lot was
987 created in 1949; there were requirements that existed in 1949 when the lot was
988 created; Mr. Boyle told us that in the absence of any other concrete information,
989 it would have had 25 feet along Oak Haven and Great Falls Street. Therefore this
990 lot was created, and we have the signatures. Mr. Murphy said that it was safe to
991 assume that in the absence of other information, it was created in accordance with
992 the Code at that time. Someone made the determination that yes, this is a weird
993 shape, but you can build a house on it.

994
995 Chair Murphy asked, what had changed? As far as the Code goes, the front yards were
996 changed to 30 feet. Was that change from 25 to 30 feet enough to render this
997 property such that it couldn't be built on in a reasonable fashion? That might be a
998 sufficient finding of hardship. Then when the Board gets to the issue of
999 substantial detriment to adjacent properties, that's where the Board was having
1000 some trouble with the plans. But if the Board puts it back to what was allowed, and
1001 frankly there were no 8 foot this, facing that direction or anything else, --there
1002 was just a building envelope that an owner could do anything within, as long as he
1003 had his 25 foot setbacks. With that as an argument, if that's an argument, he could
1004 have built anything within there and the Board would have had no say in whether it
1005 was detrimental to adjacent properties or to the character of the district or
1006 anything else because that was what was allowed to begin with. So to some extent,
1007 Mr. Murphy believed, the Board might be able to get around even the absence of a

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1008 specific plan, because all the Board would be doing is alleviating a hardship
1009 created by a change in the Zoning Code.

1010
1011 Mr. Murphy said that he was not sure, he was looking at this, trying to go through
1012 what the Board was allowed to do, what it is authorized to do. He again expressed
1013 concerns about granting a privilege as opposed to alleviating a hardship. Based on
1014 the evidence that had been presented, the request for 18 and 20 feet was, in his
1015 mind, a privilege. It was never allowed on this lot when this lot was created and
1016 this lot was created with certain restrictions; he didn't think the Board had the
1017 authority to expand because the Zoning Code change never changed that.

1018
1019 Chair Murphy continued on to say that often times there is a variance situation
1020 because a lot was created before there was a Zoning Code. When Zoning was first
1021 applied, that unreasonably restricted ones ability to do something. A lot of cases
1022 have addressed new things such as the Chesapeake Bay Act, overlapping with current
1023 requirements and effectively making a lot unbuildable; even under *Cochran*, that was
1024 determined an undue hardship approaching confiscation. Mr. Murphy said that the
1025 Board could step back off "approaching confiscation" because he thought it is very
1026 clear, something is buildable on this lot. Is it the highest economic use, the best
1027 economic use? Absolutely not. Is it an economic use? Yes. So it would not have
1028 passed the "approaching confiscation," but that is not longer there. The Board
1029 cannot make this decision based on equity, it cannot make the decision based on
1030 what it feels is right: the Board has to make this determination that the change in
1031 the Zoning Code as applied unreasonably restricts the use of this lot for a house,
1032 the use that is intended.

1033
1034 Mr. Stoodley said that the problem with Mr. Murphy's analysis was that the
1035 applicant is not asking for the Board to correct the changes between the Code of
1036 1944 and the Code of 1959, he is asking for an exception to the current Code. An
1037 existing house is there, so it's not an ability to build something: he bought the
1038 property. The point is that if, (and Mr. Stoodley said he didn't know for sure) 25
1039 feet was allowed and we created a 30 foot setback, then the applicant probably had
1040 a hardship. However, he is not asking for that, he is asking for something much
1041 less than that.

1042
1043 Mr. Murphy agreed that this was also his concern, with hardship versus a privilege.

1044
1045 Mr. Taylor brought that up earlier, regarding restrictions. Mr. Williamson said
1046 that somebody brought up an earlier case, where the Board was not studying detailed
1047 blueprints. It was referencing an existing footprint and that would be somewhat
1048 consistent.

1049
1050 Mr. Taylor said that there was a rationale on the table; Mr. Castillo asked what
1051 the articulated hardship was, commenting that the hardship is the ability to build.

1052
1053 Chair Murphy said that what he had heard was, could a single family house be built
1054 on this lot. The applicant said in essence, no, a house cannot be built. Mr. Bandy
1055 mentioned that a relative of his was an architect and agreed to some extent that
1056 there would be problems with the size that could be put there. Mr. Murphy thought
1057 Mr. O'Grady said that the building envelope wouldn't allow a house to be built. So
1058 Mr. Murphy was not looking at as a financial hardship at all. He said there is
1059 assessed value information in the package, but the Board had heard no testimony
1060 about what it may be, what it could be, what it would increase to, -- not tonight
1061 with regard to these two variances before the Board. The hardship that Mr. Murphy
1062 heard was the current front yard setbacks preclude the construction of a single
1063 family house within the allowable building envelope. That type of a hardship seemed

1064 to make sense to him as a hardship. It was not that the applicant was losing this
1065 much or that much money, it's not that he could get this much more money or if. It
1066 is a question of whether the Board could find a hardship existed because of the
1067 unique shape of this property, or the requirements of the Zoning Code regarding
1068 setbacks, that an economically viable structure could be built, reasonably.

1069
1070 Mr. Williamson said that it is the ability to build.

1071
1072 Chair Murphy asked if that applied to this property, and opined that that was the
1073 question to answer. He said that in granting a variance, the Board could attach
1074 such conditions as to the condition, character or other features of the proposed
1075 building, structure or use as it may deem advisable for the inferences or purposes
1076 of furtherance of this chapter . . . this provision shall not be construed to
1077 restrict or change the use of land. Mr. Murphy said the Board is not looking to
1078 change the use of land here, this is single family residential and certainly
1079 granting a variance would not change that. So under the authority granted to the
1080 Board in 48-172(6), would granting something less than what was requested be a
1081 reasonable condition regarding the use that's in the interest and furtherance of
1082 the purposes of this Chapter?

1083
1084 Mr. Murphy stated that he was concerned as Mr. Stoodley had said, about not being
1085 asked to relieve a hardship, but being asked to change the Zoning Code. He said he
1086 didn't know what the Board's position was on correcting that as it goes through. He
1087 said they could ask the applicant if he would like to respond to any of this
1088 discussion and might be willing to allow the applicant to do so, if that was the
1089 will of the Board.

1090
1091 Mr. Williamson stated that if you read these draft [Resolutions], the language
1092 concludes that the structure is nonconforming.

1093
1094 Chair Murphy said that he was not comfortable with the Draft Resolutions before the
1095 Board for a number of reasons: he believed that based on the evidence before the
1096 Board this evening, any finding that this is a legally nonconforming structure
1097 would be arbitrary and capricious. He said there has been no evidence presented at
1098 all that this is a legally nonconforming structure. So he did not want to address
1099 the existing drafts. He said he was trying to work through this, the hard part, to
1100 decide if the Board had the authority to grant a variance in this case. Depending
1101 on how the Board looks at it, how it is defined, the Board may or may not. The
1102 second issue for Mr. Murphy was, if the Board gets to that point of being
1103 comfortable with it, or a majority of three gets to that point, the question became
1104 how much could the Board do. Mr. Murphy didn't think the discussion had moved off
1105 these questions very far.

1106
1107 Chair Murphy continued on to say that he was somewhat comfortable with an approach
1108 that looked at the change from 25 to 30 feet. If the Board found that this is a
1109 hardship, some of the other issues would go away because what was allowed before
1110 obviously was not out of character or of substantial detriment to the neighborhood.
1111 The Board could find that going back to what it was before the change couldn't do
1112 any more harm than if the law had never changed. Mr. Murphy said he personally
1113 could probably "get by" the substantial detriment to adjacent properties and the
1114 character of the district as long as he was not allowing something that was by
1115 right to begin with. If it was by right to begin with, he could not very well argue
1116 that it would be a substantial detriment to adjacent properties.

1117
1118 Mr. Castillo asked how that approach was different, and Chair Murphy said that the
1119 Board had evidence presented as to when the subdivision was made and what the Code

1120 was in existence at that time, which set requirements for that property. A legally
1121 nonconforming structure determination would be made if in fact the Zoning Code
1122 changed and that rendered the structure non-conforming. Mr. Murphy explained that
1123 he didn't want to get into whether this was a legally nonconforming structure, as
1124 no evidence had been presented one way or other. What had been presented was a
1125 subdivision plat signed off on June 3rd, 1949, and he said that Mr. Boyle provided
1126 the Board with the requirements for front yard setbacks when this lot was created.
1127 That was evidence clearly in the record.

1128
1129 Zoning Administrator John Boyle pointed out that Mr. Murphy had mentioned half of
1130 his interpretation of the 1944 Code. A key piece to keep in mind is that there was
1131 the option to halve the distance for corner lots, and that is the only way this
1132 structure appears to have been built.

1133
1134 Mr. Murphy said, -- at no time less than 50 feet, Mr. Boyle agreed, and Mr. Murphy
1135 reiterated that he did not want to go into "non-conforming" structures at all.

1136
1137 Mr. Boyle stated that they are not simply trampling 25 foot, there was a provision
1138 in the 1944 Code to have an average to halve or average based on the neighboring
1139 structures and that was why he had said that is was too hypothetical to determine.
1140 The house was built and it appears to follow the methodology of choosing a front
1141 yard, the other one is the side yard, half the distance of the neighboring
1142 property's front. That appears to be what occurred here, in Mr. Boyle's opinion. So
1143 it is not just that the 25 foot was in effect and they greatly exceeded it: there
1144 was another methodology, we just don't know enough about how this occurred back
1145 then.

1146
1147 Mr. Murphy said that he wanted to point out that there are some options provided,
1148 but those options include that no such side yard shall be less than 15 feet in
1149 width.

1150
1151 Mr. Boyle said he would speak to the current Code, adding that if the Zoning
1152 Administrator from 1944 were available, he could explain how this occurred. But it
1153 is very speculative to say that 25 was the only measure by which a house could be
1154 set in 1944. Mr. Boyle said that we don't know what else happened here. A
1155 subdivision occurred, this process was not random and we have a house that was
1156 built which appears to take a shot at averaging front yards - or selecting a front
1157 yard and the other is a side yard. It's too speculative to say purely that 25 was
1158 it: how would this house have happened then?

1159
1160 Chair Murphy said that what Mr. Boyle was telling the Board was that there was no
1161 way to determine what was allowable on this property in 1949 when it was
1162 subdivided.

1163
1164 Mr. Boyle responded that with an example property, you could say, here's what your
1165 setbacks are. In this particular case, we don't know if a variance was granted, if
1166 they were permitted

1167
1168 Mr. Murphy said he didn't want to know what we don't know, because the burden of
1169 proof is on the applicant, not on the Board in proving something is non-conforming
1170 and he didn't want to go there. However, he said that what he did want to know and
1171 thought he had just heard, was that there was no way to determine what would have
1172 been allowed, how the setbacks would have been calculated on this lot, based on the
1173 Code in existence in 1944.

1174
1175 Mr. Boyle said that we don't have all of the discussion that resulted in this lot.

1176
1177 Mr. Murphy said that this then created a whole new problem for him, but he no
1178 longer could determine what was appropriate relief of hardship in the absence of a
1179 specific project.
1180
1181 Mr. Taylor said that he understood Mr. Murphy's reluctance, but in any event the
1182 Board could still set 25 feet. Mr. Murphy said that unfortunately what Mr. Boyle
1183 had told the Board was that it could have been 25 feet, it could have been 15 feet,
1184 it could have been almost anything; it could have been anything in between there.
1185
1186 Mr. Boyle asserted that it was unreasonable to hold this gentleman's application to
1187 a conversation no one was privy to: we can't recreate the conditions under which
1188 this house was built. We know it is there. He said that he is not an expert in the
1189 '44 Code nor was he present at that Planning Commission meeting or the process that
1190 approved that building permit. But we are giving great weight to things that we
1191 can't know the detail to.
1192
1193 Mr. Murphy retorted that this Board is required by law to grant relief as opposed
1194 to special privilege. Unfortunately what the Board cannot get to, is what was
1195 relief. What relief as opposed to special privilege, this Board may have been
1196 comfortable with . . . In the absence of a specific plan, if there was something
1197 that the Code was clear on. Mr. Murphy repeated that this lot was created in 1949
1198 and followed the Code in existence at that time, and the Code was clear. In the
1199 absence of a specific plan per se, it was fairly reasonable to say that this is
1200 what would have been allowed before the Code change, therefore anything that
1201 occurred could not have been a substantial detriment to surrounding properties or
1202 to the character of the district because in fact it was by right. Mr. Murphy said
1203 that as soon as we get to, there's no way to determine, the 25 feet, which was what
1204 Mr. Boyle provided before. He said that when he asked directly, was it 25 feet on
1205 either side, now that had become "maybe."
1206
1207 Mr. Boyle said that he disagreed: it was "maybe" then as well. He said he had
1208 pointed out that there was a mechanism in the Code to arrive at something less than
1209 25 feet for a front yard setback, and there were at least two specific ways to do
1210 it. However, Mr. Boyle stated, we are not applying the 1944 Code here. And we are
1211 not discussing the process by which this house may have been built: that's too
1212 speculative. The house is there, the applicant is here and is making a case as to
1213 whether a hardship exists and is it unique to this property. He would like to be
1214 able to discuss the 1944 Code and building permits, but we don't have building
1215 permits from three years ago.
1216
1217 Mr. Williamson offered that the Board was looking for some specificity, either on a
1218 plan or on what was originally granted. One or the other. That's what makes it
1219 difficult. He said that he understood the difficulty Mr. Boyle was describing, but
1220 we don't have specificity either way.
1221
1222 Chair Murphy said there had been a lot of discussion and he would be more than
1223 happy to allow the applicant to speak again in response.
1224
1225 Mr. Fauver acknowledged the Board's concern about what is fair, what is a hardship
1226 versus a special privilege. He thought Mr. Boyle was probably right, there's a lot
1227 things about this property that can't be determined, how it was handled. We do know
1228 that this house faces the corner lot. It was somehow making use of a front yard of
1229 120 feet, it was gaining some utility in the Code from its freakish shape: we're
1230 giving you something, here are your setbacks, face the corner. As you know the
1231 houses are no longer allowed to face the corner, but back then you could. There was

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1232 some sort of frontage to be gained, so he didn't think it was a three-frontage
1233 property.

1234
1235 Mr. Fauver continued on to say that he wanted to offer as a potential notion
1236 regarding privilege. He asked the Board to look at the plat of subdivision, to
1237 consider how that triangle came to be divided into those two lots. He thought it
1238 would be arbitrary to assume that somebody wanted to slight the 603 lot. The 601
1239 lot received by far most of the area. He believes that what was being divided
1240 equally was utility, that they said here's this shape -- how do we divide this
1241 shape so that both sides have equal utility? For Mr. Fauver, that would be the lot
1242 coverage of 1912. The 2000 was not picked out of a hat: 603 is a substandard lot,
1243 very narrow like his, and he felt it could handle an extra 87 square feet
1244 somewhere. He said that 603 is 76-something and there was an expectation that both
1245 properties would have a rectangular house, and they were more or less comfortable.
1246 Something existed in Code that allowed that to happen. That's why that line was
1247 drawn that way, and probably with the assistance of the City. There was probably
1248 back and forth and someone said, 601 needs more. That was Mr. Fauver's thinking,
1249 that the two lots were designed to have comparable utility. Although we don't know
1250 what the setbacks are, we can analyze what is the utility today, given the
1251 peculiarity of the lot and given the Code. He said that this is a situation that is
1252 not special privilege but what was essentially meant to be.

1253
1254 Chair Murphy stated that from his perspective, a common perspective of the Board,
1255 utility was certainly not an issue. It is probably undisputed based on the
1256 requirements of the Code of 1944, that any new lot created in the R-1A district had
1257 to be 11,250 square feet. So to create this lot, it didn't necessarily have
1258 anything to do with variance or equalizing utility or anything else, it had to be
1259 11,250 square feet. He said that if he would move it a foot back because of the odd
1260 shape, his guess was that it would drop below that level. This lot, no speculation
1261 about variance or balancing utility, this lot was created to meet the Code
1262 requirement in existence at the time. That is straightforward and he didn't think
1263 anyone would disagree with that, if one read the '44 Code or the '59 Code, that had
1264 remained consistent over time.

1265
1266 Chair Murphy explained that he was still, unfortunately, further away from being
1267 comfortable. He said that if he couldn't know what was required by right on this
1268 property, under the Code before it changed in 1959, he had no way of evaluating
1269 what was in fact by right. And in the absence of a specific plan, he had no way of
1270 knowing whether he was granting more or less, whether he was alleviating a hardship
1271 or granting a privilege. He said he misunderstood Mr. Boyle's original testimony:
1272 he was trying to get to a point where alleviating a hardship due to a change in the
1273 Zoning Code, would drop back to a by-right use, would not be an issue. He said he
1274 thought it was pretty clear, as he had said before, that this was not broadly an
1275 issue. This is pretty unique. A general change in regulation is not going to
1276 address this.

1277
1278 Mr. Murphy said that he was trying to find a way to say well, this would have been
1279 allowed by right therefore if it was allowed by right there's no way it should be a
1280 problem with creating a problem with adjacent properties. However, how much could
1281 be granted before getting to a privilege. At this point, Mr. Boyle's testimony was
1282 clear to him, that there is really no way to determine what was by right. Now back
1283 to, is there enough specificity that the Board can make a determination that this
1284 will not be detrimental to the surrounding properties. He didn't know.

1285
1286 Mr. O'Grady asked if the Board was looking at what might be built by right, the
1287 house that was there.

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1288
1289 Mr. Murphy said no, he was not looking at the existing structure at all. What he
1290 was looking at, is what was by right because whatever was allowed by right, by
1291 definition, could not be detrimental to the surrounding adjacent properties,
1292 because it was allowed by right. Therefore the specificity of whatever plans were
1293 there, are no necessarily an issue because it would have been by right. Anything
1294 could be by right.
1295
1296 Mr. Taylor asked if with the additional input, wouldn't 25 feet be the minimum by
1297 right.
1298
1299 Mr. O'Grady and Mr. Fauver asked if they could offer more and Mr. Murphy said that
1300 at this point there was still discussion taking place among the Board members. He
1301 wished to check one thing with Rules of Procedure regarding the length of the
1302 meeting.
1303
1304 Mr. Boyle clarified that regular meeting "shall be adjourned at 11:00 pm" and the
1305 Board may extend or continue.
1306
1307 Mr. Stoodley said that he thought there was precedence for this, the Board had in
1308 the past granted variances based on the unusual topography or shape of a lot.
1309 There's no question that this lot is very, very unusually shaped. The issue Mr.
1310 Stoodley had raised, which seemed to have been discussed, was that if it is not a
1311 self-inflicted hardship, then he thought the Board had authority to grant a
1312 variance based on the geographic shape of the lot. He was not sure of the new Code
1313 reference number.
1314
1315 Mr. Stoodley said if the Board bought that argument, the next issue is, how much
1316 variance could the Board grant. He said he'd have trouble granting an 18 foot in a
1317 30 foot, only because the lot can be built on, whether it could be built on
1318 profitably. There was no plan to look at, so the hardship is the unusual shape of
1319 the lot, and obviously we know that it can be built because there is a house in
1320 existence here.
1321
1322 Mr. Boyle asked if the Board could consider conditioning approval based submission
1323 of a plan that conforms . . .
1324
1325 Mr. Stoodley that if the Board could agree that there is a hardship based on the
1326 shape of the lot, then the next issue is how much variance they could grant without
1327 going into privilege.
1328
1329 Mr. Murphy said he was very comfortable that the move to 30 feet from 25 created a
1330 hardship because of the shape of this lot -- from whatever it was to 30. He said he
1331 was not uncomfortable at all with finding of a hardship. Where he was uncomfortable
1332 was how to alleviate that hardship without going too far, without granting a
1333 privilege. He was trying to fashion an argument based on his apparently erroneous
1334 understanding of the Zoning Administrator's testimony, that he could support.
1335
1336 Mr. Taylor returned to a point earlier in the discussion about being more specific
1337 and Mr. Stoodley suggested discussing what the applicant can live with, if he could
1338 live with 25. Mr. Murphy said that he wasn't sure it was a question of what the
1339 applicant could live with, and Mr. Stoodley responded that the Board had done this
1340 many times, Mr. Murphy said he could live with 25 because that is supported by Code
1341 -- not more than the smallest amount that would have been by right.
1342
1343 Mr. Castillo said, let's say would grant a variance along those lines and the

1344 purchaser of this property then wished to build and the variance was not quite what
1345 the new owner now needs. Mr. Murphy said they would have to come back for a new
1346 variance.

1347
1348 Mr. Williamson stated that they would have a more specific plan. Mr. Murphy said
1349 the Board we would have to consider that, and was that any worse than what existed.
1350 Those are the rights that transferred as it went forward.

1351
1352 Mr. Castillo asked if the subsequent variance request would need to reach a higher
1353 hurdle and Mr. Murphy said, it depends, who knows, the law could change, any number
1354 of things could change.

1355
1356 Chair Murphy said he was open to asking if that would be acceptable to the Board, a
1357 matter of what the Board can and can't do. He said he was comfortable granting a
1358 variance of 25 feet on each side, which would put this back to where it was as a
1359 minimum at the time of the 1944 Code when the lot was created. Anything that would
1360 have been allowed by right, and it is reasonable to say that could not be a
1361 substantial detriment to the surrounding properties. He thought that the 30 feet
1362 did create a hardship when the Zoning Code changed, he could personally find a
1363 hardship there. He asked [the applicant], 25 feet?

1364
1365 Mt. Fauver asked if anyone had reason to believe that this property ever had 50
1366 feet of setbacks along the two streets facing the sides, he didn't think there was
1367 any evidence to this. He said Mr. Boyle was describing different treatment of
1368 corner lots and surely this lot is handicapped as it is, would have availed itself.

1369
1370 Mr. Murphy said he didn't think the applicant had really responded to the question,
1371 which was 25 feet.

1372
1373 Mr. O'Grady said he was not certain; he and the applicant did not think that [25
1374 feet] was viable. It appeared to him that the Board seemed to have two quandaries:
1375 one, the need for a development plan to see exactly what was before the Board, and
1376 two, what specifically could have been built on that property at that time, which
1377 may have been greater than 25 and 25. He asked if it would be appropriate to
1378 continue this hearing and have an opportunity to better respond to those questions.

1379
1380 Mr. Murphy asked if Mr. O'Grady were asking for a continuance to provide additional
1381 information, such as what the by-right setbacks were when it was subdivided in
1382 1949.

1383
1384 Mr. O'Grady responded, that and to give the Board a more concrete proposal that
1385 might address the concerns.

1386
1387 Mr. Stoodley began to offer a motion to continue for a month, to be able to review
1388 some kind of solid plan and to get more information about the setbacks in 1949.

1389
1390 Mr. Fauver asked if the Board would give more specific guidance as to the plan it
1391 desired to review, and to know in what way his proposed plan was lacking.

1392
1393 Mr. Murphy said this was part of the problem, explaining that if sufficient
1394 evidence were presented as to what could be allowed on this property, and therefore
1395 what was by right until the Zoning Code changed. The level of specificity that is
1396 necessary to make a determination is somewhat different than if the Board is being
1397 forced to look at the current Zoning Code and the absence of a baseline.

1398
1399 Mr. Fauver asked if that could be "alleviated in the other direction," could he

1400 find somebody to build the example house he had included.
1401
1402 Mr. Murphy said a number of thing you could do over the next month, he did not want
1403 to give the applicant any direct guidance, stating that [the applicant] had had the
1404 benefit of listening to the discussion of the Board and hearing the questions and
1405 the concerns, particularly of the Chair.
1406
1407 Mr. Fauver asked if the Board would accept the proffer of that particular house as
1408 rendering the other questions insubstantial and would approve the variance. He
1409 stated his belief that this would be a better result than 25 and 25 and an
1410 architectural monstrosity.
1411
1412 Mr. Murphy said it very well could, but that by right is by right. He commented
1413 that he had heard tension among the Board members regarding what level of
1414 specificity is needed, based on what level of relief was being sought and how that
1415 all balances out.
1416
1417 Mr. Fauver said he was trying to get a sense of how the Board would feel and Mr.
1418 Murphy said he didn't think the Board was going to respond.
1419
1420 Mr. Castillo commented that the applicant could "attack on two fronts" and Mr.
1421 Murphy added that it was up to Mr. Fauver as to what he thought was the best.
1422
1423 **MOTION:** Mr. Stoodley moved, and Mr. Castillo seconded, to continue Agenda Items
1424 V1503-10 and V1504-10 to the next BZA meeting of July 15, at the request of the
1425 applicant.
1426
1427 **ROLL CALL VOTE:**
1428 Mr. Murphy: Yes.
1429 Mr. Stoodley: Yes.
1430 Mr. Castillo: Yes.
1431 Mr. Taylor: Yes.
1432 Mr. Williamson: Yes.
1433
1434 Chair Murphy announced that this Agenda item was continued to the next regularly
1435 scheduled BZA meeting, July 15; he added that since a public hearing has been held,
1436 no additional advertising is necessary.
1437
1438 Mr. Boyle clarified that an advertisement of the Board meeting would be published,
1439 but another round of notices would not be mailed out to adjacent property owners.
1440
1441 Mr. Murphy said, whatever is the proper way to do it.
1442
1443 **8. ADJOURNMENT:**
1444
1445 Mr. Stoodley moved to adjourn and Mr. Taylor seconded. Upon voice vote, the motion
1446 passed unanimously.
1447
1448 The meeting adjourned at 10:37 pm.
1449
1450
1451
1452
1453
1454
1455 Respectfully Submitted,

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1456
1457 Karin U. Battle
1458 Recording Secretary
1459
1460
1461 The City of Falls Church is committed to the letter and spirit of the Americans
1462 with Disabilities Act. This document will be made available in an alternate format
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