

1 REGULAR MEETING OF THE BOARD OF ZONING APPEALS
2 City Council Chambers
3 300 Park Avenue
4 Falls Church, Virginia 22046
5 Thursday, October 15, 2009
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8 1. CALL TO ORDER:

9 Vice Chair Murphy called the meeting to order at 7:38 p.m.

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11 2. ROLL CALL:

12 Members Present: Mr. Castillo
13 Mr. Murphy
14 Mr. Williamson

15
16 Members Absent: Mr. Stoodley
17 Mr. Taylor

18
19 VICE CHAIR MURPHY: We have three present so we do have a quorum. We have
20 our agenda in front of us.

21 Do I have a motion to follow the agenda or make a change at this point?

22 MR. CASTILLO: Mr. Chair, I would make a motion to
23 reorder the agenda so that New Business is placed third on the agenda following the
24 roll call. All other items on the agenda will occur subsequently after that as it
25 would here.

26 MR. WILLIAMSON: I second that.

27 VICE CHAIR MURPHY: All in favor?

28 (A chorus of "ayes".)

29 VICE CHAIR MURPHY: Okay. So we'll amend the agenda to move agenda item 7,
30 New Business, to third on the agenda and move Minutes, Resolutions Old Business
31 down.
32

33 7. NEW BUSINESS:

34
35 With that we have New Business. We have two variances tonight. We have
36 V1496-09, an application for a variance to Chapter 38-16(E)(3)(a) as recodified of
37 the Code of the City of Falls Church to allow the front yard setback of 24.5 feet
38 instead of 30 feet and an eastern side yard setback of 10.5 feet instead of 13 feet
39 for the purpose of constructing a second story addition on the premises known as
40 515 South Spring Street, lot 22, Section 3, RPC 52-602-022 of the Falls Church real
41 property identification map zoned R-1A, low density residential, by Rolando
42 Henriquez, property owners Juan Pablo and Maria Henriquez.

43 The second issue is V1497-09, an application for variance to Chapter 38-
44 28(B)(5)(d) as recodified recently of the Code of the City of Falls Church to allow
45 an unenclosed porch to project 12 and a half feet into the existing front yard
46 instead of 8 feet on the premises known as 515 South Spring Street, lot 22, Section
47 3, RPC number 52-602-022 of the Falls Church real property identification map zoned
48 R1 A.

49 We have these two issues before us tonight and they are somewhat related. I
50 would propose to the Board that we take these issues together for presentation and
51 discussion purposes but that we vote on them individually.

52 Are there any problems with that from the Board?

53 MR. CASTILLO: No.

54 MR. WILLIAMSON: No.

55 VICE CHAIR MURPHY: Our order of procedure on these items will be to read
56 the issue, which I've done. We'll have a staff report, applicant's presentation,

57 any public comments, and an applicant's response.
58 Before we get started, because we only have three members of the Board here
59 this evening, it will require a unanimous vote to approve these variances. It
60 always requires a majority of the Board, 3 out of 5, but because there is only
61 three of us here, that requires three votes to approve these variances.
62 So I would give you the option of continuing this until we have a larger
63 Board or moving forward. The choice is yours.
64 APPLICANT: Continue it to what date?
65 MR. BOYLE: November 12.
66 APPLICANT: November 12.
67 VICE CHAIR MURPHY: Unless a special meeting is called.
68 MR. BOYLE: Correct.
69 VICE CHAIR MURPHY: We'd have to talk to the chair on that, although I guess
70 as the chair tonight, I could in theory call a special meeting during our meeting
71 tonight.
72 MR. BOYLE: The next scheduled date would be November 12th though.
73 APPLICANT: It's going to be three people at that time also?
74 VICE CHAIR MURPHY: It's hard to tell. We have two that are sick this
75 evening which is why they're not here. It's hard to say. It's been awhile since
76 we've had a full Board present and our alternate, we currently have no one in the
77 alternate position. So normally we have a sixth member who can participate, if
78 necessary.
79 But recently I think we've had three, four, and three, for the last three
80 meetings.
81 APPLICANT: Let's do it today.
82 VICE CHAIR MURPHY: Okay. Then as we move forward, couple of things.
83 Anyone who's going to speak tonight, I'll need you to sign in when you come up to
84 the table. And before we get started, I'll also need to swear in any one who's
85 going to speak tonight.
86 So if you do plan on speaking tonight in favor or opposed to this, if you
87 can please stand and raise your right hand. Applicant as well.
88 (Witnesses sworn.)
89 VICE CHAIR MURPHY: So we'll start off then with a staff report.
90 MR. BOYLE: Mr. Chairman, this involves an addition to a residential
91 property in the R-1A zoning district in the City of Falls Church. The issue is
92 that, and I think you can see on the plat that was provided in your pack, the issue
93 is that the house currently sits within the setbacks that are provided by Code
94 today. Both the front yard setback and looking at the house from the street, the
95 left hand side and side yard setback.
96 The proposed addition would be a second story that would occupy a portion of
97 the front yard and the side yard and then in addition construction of an open
98 porch, roof and posts, into the front yard. So we have new residential space into
99 a front yard and side yard and then the Code provides for only an 8 foot projection
100 of an open porch into a yard which is inadequate given the location of the current
101 house.
102 In addition to the issues of the application itself, for the record I want
103 to point out that we became aware today of the recodification of the Code, so this
104 will be the first meeting where we'll refer to the new Code section numbers. The
105 text of the Code itself has not changed but the references that we'll need moving
106 forward for the record have changed.
107 Essentially Chapter 38 is now Chapter 48 and then the subsections have all
108 been renumbered. This has been advertised using the previous code numbers but the
109 provisions of the Code still apply. So we'll be insuring that there is some
110 clarity as to which Code section we're referring to tonight because all those that
111 follow on will wonder what Code section we're referring to if we're not accurate.
112 So staff will be taking it upon themselves to make sure the right references get into

113 the record.
114 The Board has before it a summary of the existing or the previous Code and
115 the new Code numbers for these matters tonight. Both the front yard, side yard,
116 and then if you chose, the former 38-10(c) option, that the Board sometimes uses in
117 these cases.
118 With that, I think I'll defer to the applicant's presentation and questions
119 from the Board.
120 VICE CHAIR MURPHY: I do have one question for Mr. Boyle to make sure I
121 understand the plat and the proposed drawings that were provided to us.
122 It looks like the existing first floor is going to be extended back about 11
123 and a half feet, is that correct?
124 APPLICANT: Yeah.
125 MR. BOYLE: I believe it's going straight up.
126 APPLICANT: We're not doing anything to the side. We're just going up.
127 Except for the porch.
128 MR. BOYLE: The porch is extending forward. There is going to be a full
129 second story addition.
130 Is there a crawl space up there now?
131 APPLICANT: Uh-huh, a crawl space.
132 VICE CHAIR MURPHY: The residential space addition that is being put on this
133 is strictly a second story addition on the existing first story of the house?
134 MR. BOYLE: Yes.
135 APPLICANT: I wouldn't say addition. There is already three bedrooms
136 upstairs. We're just making the walls straight so the rooms will be square.
137 MR. BOYLE: Yeah. With the addition of new, usable living space and head
138 room up there, because it's already in the setback, it can't be altered without a
139 variance.
140 VICE CHAIR MURPHY: Okay. Thank you. We'll move on the applicant's
141 presentation.
142 APPLICANT: Well, basically what I was going to say, I put it on the letter.
143 I don't know if you read it.
144 VICE CHAIR MURPHY: Yes.
145 APPLICANT: And I don't know if you saw the pictures.
146 VICE CHAIR MURPHY: The pictures were included in our packet.
147 APPLICANT: So what I was going to say is there's already 40 feet from the
148 street to our house and I know the property line is a little up. And as you can
149 see there, it wouldn't be unusual construction that you can see the neighbor have
150 the porch done. And there are a number of the houses in the street that have
151 porches and are even closer to the street line.
152 VICE CHAIR MURPHY: Okay.
153 MR. BOYLE: Regarding other structures on the street, did the Board receive
154 a copy of the 1994 variance that was granted?
155 We researched what other variances had been granted on this street and it
156 turns out the BZA approved a variance in April of 1994, V1180-94 (1), at 507 Spring
157 Street, for very similar circumstances, to permit an interior side yard of 10 and
158 two tenths instead of 15 feet and to permit an open porch to project into the front
159 yard, whereas the applicant desired to add an open porch and they accepted a
160 demonstrated hardship that was approved, 4 in favor and none opposed.
161 I'll say that in researching the Code related to this, and Mr. Murphy can
162 speak to what he's found, it's clear that the Code changed at some point after this
163 structure was constructed, after this home was built. It was built in 1942. It
164 appears looking at the other structures in the neighborhood that the likely front
165 yard setback at that time was 25 feet which it essentially complies with. The plat
166 we have shows the house not exactly at 25 feet but the neighborhood appears to be
167 built at 25 feet.
168 At some point after 1942, the Code changed for 30 feet for a front yard

169 setback which essentially placed many of these homes in that neighborhood in their
170 front yards. So it's a very common situation we see in Falls Church where
171 structures were built either before the City Code was adopted as we see it today or
172 variances were granted, which we don't have the details for.

173 So to the extent that the applicant is saying that this exists on the
174 street, I would agree with that. We do see this in that neighborhood.

175 VICE CHAIR MURPHY: Okay. So the best of your knowledge, there is not a
176 variance on this house or its current location.

177 MR. BOYLE: Correct. We couldn't locate a variance for this address. The
178 one that we did locate was a few houses up. Staff considers this structure to be
179 an existing non-conforming with the current Code. We can assume, I think, that it
180 complied with Code at the time it was constructed, either through a variance we do
181 not have available or through the Code that was active at that time and then the
182 Code subsequently changed after this house was constructed.

183 VICE CHAIR MURPHY: I guess my question for the Zoning Administrator is
184 which of those two positions is staff taking, that this is a lawful non-conforming
185 use or that there was a variance that was granted at some point for the
186 construction of this property, because it has substantial impact on how this is
187 handled?

188 MR. BOYLE: I have no record of a variance, although your research and our
189 research indicates that depending on when that 1941 Code was adopted, if that Code
190 was adopted after this house was constructed, then I think we agree the only way
191 this house could have been built is essentially by variance. There were no yards
192 in the '34 Code, if I understand.

193 VICE CHAIR MURPHY: Well, there were no setbacks required other than
194 averaging with existing structures. So if you look at the line of houses along
195 Spring Street, they very well could have complied with the existing Code because
196 they are all roughly in line with each other in that block.

197 The only requirements were that a front yard, at least in the 1934 Code,
198 that a front yard did not have to be less than 20 feet or more than 50 feet. If
199 that Code was in place, this would be a lawful non-conforming use, and I provided a
200 copy of the 1934 Code to the Zoning Administrator.

201 MR. BOYLE: It's my position that this is a lawful non-conforming. What we
202 do know is that the Code at some time had a front yard of 25 feet. The averaging
203 may have been in place. I think it was one of two. Either the averaging was in
204 place, which is what located this house, or there was a 25 foot front yard which
205 may also be what they're attempting to do at that time. It's not unusual to see
206 surveys come back in the area of 25 feet and not precisely 25.

207 Either that's the case or the front yard was set at 25 feet and subsequently
208 the Code changed to 30. I don't think the Code went 25-30 and then back to 25
209 again. I think once it changed to 30, it stayed there.

210 We don't know what was in effect in 1942 and we don't have a variance.
211 We're not sure when the Code changed, other than in 1944 it definitely was 25 feet.
212 And then at some point after that it went to 30.

213 We do know the Code today requires a 30 foot front yard and this house is
214 situated in that front yard so the assumption I'm making, the position I'm taking
215 is that it was constructed lawfully by one of those two Codes and has subsequently
216 become non-conforming. So we consider this a lawful non-conforming structure.

217 VICE CHAIR MURPHY: Thank you. Does anyone else have any comments for the
218 Zoning Administrator or the applicant?

219 If not, I will open this up to the public. And any additional questions we
220 can ask during our discussion.

221 So I'll open this up to the public. Is there anyone here who wishes to
222 speak on this matter? If so, please come up, sign in on the form right in front
223 here, and state your name and address for the record.

224 MR. FLANAGAN: Sure. My name is Christopher Flanagan. I live at 517 South

225 Spring Street, which is right next door.
226 I'd just like to say I'm in favor of it. Anything that creates value, I
227 believe in. Yes, I think it's only 5 and a half feet we're discussing, but if you
228 ride down Spring Street, they take care of their home. They're looking to create
229 value in their home, create tax revenue. I'm in favor of.
230 VICE CHAIR MURPHY: Thank you, sir.
231 Is there anyone else who wishes to speak on this from the public?
232 Seeing none, I will close this to the public.
233 Additional questions or discussion?
234 MR. BOYLE: We did receive one letter in favor from Carl and Charmaine Barr
235 from 515 South Spring Street. If you'd like, we can read that into the record or
236 provide the Board with copies.
237 VICE CHAIR MURPHY: I think providing a copy for the record is acceptable.
238 MR. BOYLE: Okay.
239 MR. WILLIAMSON: So the earliest Code we have is 1944 -- '34, excuse me, and
240 the front yard setback was 25 feet at that time.
241 VICE CHAIR MURPHY: The 1934 Code only required averaging around existing
242 structures. This Code was copied from the minutes of the Town Council on November
243 12, 1934, which has the vote and the acceptance and the adoption of this zoning
244 ordinance.
245 If you'll give me one second I'll give you the
246 setback.
247 In a A-1 residence district, and for background there were only two
248 districts in the City at this point, A 1 and B 1 for residence and business, No
249 building or structure shall be erected, reconstructed, or altered nearer to the
250 street line on which it faces than the minimum setback observed by any existing
251 building on the same side of the street and fronting thereon within the same block,
252 at the time of the passage of this ordinance.
253 So the only front setback requirements in here were averaging. There were
254 no side yard setback requirements at all and the only other applicable portion of
255 this is in no case shall the setback be less than 20 feet or more than 50 feet.
256 So if this Code was in fact in effect in 1942 when the house was built, it
257 was within the requirements that were presented here for the front yard setback and
258 there were no setbacks for the side yards at this time so it would have been
259 lawfully conforming as the Zoning Administrator has determined for us this evening.
260 So the 20 feet would have been the issue in 1934.
261 We know that at some point between August 18, 1941, and February 14, 1944, a
262 revised Zoning Code was adopted and that Code we have not been able to find an
263 exact version of it or the exact date that it was in fact approved.
264 I scrolled through the Town Council minutes through the year 1942 and did
265 not find any reference to it so I'm assuming that it was done in '43 or '44.
266 MR. BOYLE: On the plat that the Board received, it's indicated that the
267 building sets 24 feet back. Without knowing the setbacks of the adjacent houses,
268 we couldn't confirm it but that appears consistent with an averaging. And as you
269 stated, we do know for a fact that the Code subsequently became 25 feet. So at
270 least in 1944 it became an existing non-conforming structure when it was at 24 and
271 the Code became 25 feet and it retains that status today with our 30 foot front
272 yard setback.
273 So again, I think it's correct to view this as an existing non-conforming
274 structure.
275 VICE CHAIR MURPHY: Okay. I'd like to take a minute just to explain to the
276 applicant who's probably somewhat confused about the discussion that's going on,
277 what all this means.
278 APPLICANT: Yeah.
279 VICE CHAIR MURPHY: There are a number of variance procedures that can be
280 used. There are other issues if there was a variance that had been provided for

281 this house. A variance essentially rezones the property. So if a variance had
282 been granted for a smaller side yard setback or a front yard setback, it would be
283 by right development because the setback would have been set at 24 feet by that
284 variance and the side yard would have been set at ten feet by that variance.

285 But it sounds like there's been no evidence of a variance ever being granted
286 on this house and nothing has been presented to us before.

287 So then we come down to the issues, is it a lawful non-conforming use? When
288 it was built did it meet the requirements in place at the time that it was built.
289 If that's the case, we have different procedures we can use other than a straight
290 variance.

291 The Charter in the City of Falls Church grants the Board of Zoning Appeals
292 some additional authorities that aren't necessarily available to other Boards of
293 Zoning Appeals in the State of Virginia, one of which is Section 38-10(c) of our
294 old Code which is now Section 48-172(3) and that's an extension of a residential
295 structure in a R-1A or R-1B district. When an existing residential structure is
296 non-conforming with respect to any current setback requirement and the provisions
297 of Section 38-6(C)(3) or the appropriate Code as recodified, do not apply, the
298 Board may grant a variance for structural addition which would occupy a required
299 setback area based upon consideration of peculiar circumstances, such as
300 configuration of the lot interior circulation, existing utility services serving
301 the structure, existing driveways, topographic features and similar existing
302 conditions provided that no portion of the addition would encroach further in the
303 required setback than the existing structure.

304 This is the section of Code that the BZA generally used to allow second
305 story additions on existing non-conforming houses. This is a much lower standard
306 than a hardship standard as far as the second story goes. We'd have to find or
307 have you provide to us this evening some sort of peculiar circumstances that would
308 result in us allowing you to put a second story on the house. It's a much lower
309 standard than a hardship standard which is required for a regular variance under
310 State Code in the normal variance procedures.

311 So the first part of this discussion has been an attempt to make sure that
312 we're clear on what the status of this house is so that the proper section of Code
313 can be recommended and considered by the Board of Zoning Appeals.

314 The second story addition, V149609 was presented as a request for a variance
315 to 38-16(E)(3)(a), which is the yard requirements in R-1A districts, and that
316 requires a hardship finding which is much more substantial than peculiar
317 circumstances.

318 So I would ask the Board if the Board is comfortable considering V149609
319 under the requirements of Section 38-10(c), and consider this an extension of a
320 residential structure and existing non-conforming structure.

321 There are implications to this that the applicant should also be well aware
322 of. This is an extension of an existing structure. If the structure were
323 demolished, the variance would be extinguished. It would go away. A variance
324 that's granted under 38-16(E)(3)(a) is a permanent change to the zoning of this
325 property. It essentially would permanently set the side yard setbacks at ten and a
326 half feet and the front yard setback at 24 and a half feet, which would then in the
327 future allow any development within that rezoned area.

328 So 38-10(c) fairly narrowly would provide, should the Board vote that way,
329 would provide authority to build a second story on your existing house rather than
330 providing a variance which would essentially rezone the property.

331 So that's an issue for the Board to discuss as well.

332 I do have one question for staff which is a very technical question which I
333 hope staff can answer.

334 Should V19609, a variance to a 24 and a half front yard, 24 and a half foot
335 front yard, should that be approved by this Board under 38-16(E)(3)(a) as
336 recodified recently, would that make the second variance request moot?

337 MR. BOYLE: I see. Your point is, if you reset the front yard --
338 VICE CHAIR MURPHY: Yes, sir.
339 MR. BOYLE: -- at that distance, does that become the front yard --
340 VICE CHAIR MURPHY: Yes, sir.
341 MR. BOYLE: -- for extending the porch.
342 That was my position. In discussing it with the City Attorney, he did not
343 think it reset the front yard. But we both agreed it needed more discussion.
344 Staff has treated variances as resetting the Code on that property. You
345 know, when a new setback is established, everything flows from that. The City
346 Attorney did want to discuss that further though.
347 VICE CHAIR MURPHY: I would note there were some changes to State Code in
348 this area over the past couple of years. If I can find the specific section in
349 here. Essentially what the Code says now is that once a variance is granted, the
350 structure is considered as conforming which would --
351 MR. BOYLE: In its entirety or just for that issue at hand?
352 VICE CHAIR MURPHY: It's hard to say. That would be probably for the courts
353 to decide.
354 However that's an issue for this Board to discuss and decide as well. If we
355 go forward with the approval of the second story, the lower standard under 38-
356 10(c), then we still have to address the second issue.
357 MR. BOYLE: All right. For sake of clarity, for using the former 38-10(c),
358 does the Board think that establishes a new front yard setback from which to
359 project the porch?
360 VICE CHAIR MURPHY: In my opinion 38-10(c) is a very limited approval to
361 expand an existing non-conforming structure. I believe this issue has come before
362 the courts where a house was demolished and was forced then to adhere to the
363 current zoning requirements on the lot.
364 So I would say a 38-10(c), at least as it's been applied and to the best of
365 my knowledge upheld by the Virginia Supreme Court, that it's a very limited
366 variance to extend a non-conforming existing structure and should that existing
367 structure go away, the variance goes away with it.
368 That was the ruling in the City here within the past couple of years.
369 MR. BOYLE: All right. That would be consistent then. If you approved
370 under 38-10(c), then the porch is a separate issue that needs its own
371 consideration. If you approve as a variance to the yard requirements under 38-
372 16(E)(3), I would agree that it redraws the front yard to that point. But again,
373 as you mentioned, the threshold for that is different.
374 If it would help the Board, I'm not sure if Mr. Williamson -- I know Mr.
375 Castillo have not seen a 38-10(c) application before. If it helps, what the Board
376 has traditionally done, historically done, is where a variance comes to it very
377 rigidly described for a particular yard requirement of the Code and the variance is
378 being sought for that yard where the structure is not planned to extend further and
379 the house is already sitting in that yard, the Board then can exercise its
380 authority under 38-10(c) to approve it.
381 It's not something staff would ask for in advance or staff wouldn't phrase
382 an application that way in advance and an applicant wouldn't apply for a variance
383 under 38-10(c). We send items to the Board as pure variances to the yards that are
384 required. Then the Board under its authority can review it for possible inclusion
385 under 38-10(c).
386 So that's what you have. We have a variance to a side and front yard
387 setback and then a porch variance for a porch projection into a front yard. The
388 Board always has as an option 38-10(c) to see if what is before you is eligible for
389 that and that is the lesser threshold.
390 Historically the Board has approved that type of variance for second story
391 additions. There are many sections of town where homes were constructed as ranches
392 and subsequently the Code changed, placed them in front yards, second stories are

393 desired by the families and they'll come before you for that front yard-side yard
394 variance and the Board elects to consider it under the 38-10(c), which only the
395 Board has the authority for.

396 The porch I think remains a separate issue depending on which direction the
397 Board goes. But if that helps, there's a little history on how the Board has
398 viewed their 38-10(c) powers in the past.

399 MR. WILLIAMSON: So that means that it would be at this Board's discretion
400 as it has been in the past to include this V1497-09 as part of the 38-10(c)
401 decision?

402 VICE CHAIR MURPHY: No, it's my understanding that we could not address the
403 porch under 38-10(c) because it is encroaching further into a required set back
404 which is one of the requirements in 38-10(c). When you strictly put a second story
405 on the house, the footprint is staying the same and it's not encroaching further
406 into any of the setbacks. Historically the Board has also allowed extensions along
407 the same plain so they have allowed extensions out the back which was my question
408 earlier. Because in fact it's not encroaching any further into the setback than
409 what's already there.

410 MR. WILLIAMSON: Okay.

411 VICE CHAIR MURPHY: That has been since I've been on the Board which is
412 since 2006, that's how these have been handled. There have been very, very few of
413 them since I've been on the Board. But there's been cases where they've come back
414 before us and that was the basis, the Board had approved them originally.

415 So essentially if we go with 38-10(c), we're granting an exception or a
416 variance under a different section of our Charter to allow the expansion of a non-
417 conforming structure. If we grant a variance under 38-16(E)(3)(a), we are changing
418 the setbacks on this property.

419 And I did find quickly the language that I was looking for. Notwithstanding
420 any other provision of law, the property upon which a property owner has been
421 granted a variance shall be treated as conforming for all purposes under state law
422 and local ordinance. And that's in 15.2-2309, Section 2. That's in the
423 Authorities granted to Boards of Zoning Appeals. But that is fairly new language
424 as well. Within the last year or two they added that language, that if a variance
425 is granted of the 38-16(E)(3)(a) type, it will be treated as conforming for all
426 purposes.

427 So there's different levels of authority that could be granted here and
428 there are also very different levels, at least in my opinion, very different
429 levels, thresholds that have to be reached to get to those two things.

430 MR. WILLIAMSON: Right.

431 VICE CHAIR MURPHY: Peculiar circumstances versus demonstrable hardship are
432 different thresholds.

433 MR. WILLIAMSON: Okay.

434 MR. BOYLE: Correct. In addition, I would remind the board that the
435 language approaching confiscation has fallen out of the State Code now. So this
436 Board I think is still finding its way, what does it mean, what is a hardship if
437 it's no longer defined as approaching confiscation.

438 When that was in the State Code and our Code, that was a very high hurdle to
439 meet. In talking with the City Attorney and this Board asked the City Attorney for
440 his opinion, what was the intent by dropping that, his comment was that clearly it
441 was to relax the threshold. But hardship is still there and we have our language
442 in our Code, so I think the bar has been lowered but I think the burden is still on
443 the applicant to state why is a variance needed in this case.

444 MR. CASTILLO: Well, if I can ask the applicant, would it be appropriate at
445 this time to ask about the hardship stemming from the porch.

446 VICE CHAIR MURPHY: Yes, if we're hearing both these together.

447 MR. CASTILLO: Could you talk a little bit more about the -- the issue
448 really being what hardship would arise from having the 8 foot porch as opposed to a

449 12 foot porch with respect to the planned addition that you have.
450 APPLICANT: Well, the reason we're doing the remodel is the bedrooms. There
451 are three bedrooms upstairs and they have no insulation. The house hasn't been
452 remodeled since it was built in 1940, so the bedrooms upstairs are of no use for
453 now because they're like cold in the wintertime and hot in the summer.
454 VICE CHAIR MURPHY: Okay. But say for the sake of the argument that you are
455 able to do your second story addition under 38-10(c). Now let's say that there's
456 the issue of do you get the extended front porch or not. And I think the question
457 is what hardship would you experience from having an 8 foot front porch as opposed
458 to a 12?
459 APPLICANT: No, it's 7 foot. It's not 12.
460 MR. BOYLE: Right. If I could explain, the Code only allows a porch to
461 project 8 feet into the front yard. Since the house is already --
462 VICE CHAIR MURPHY: 6 feet.
463 MR. BOYLE: -- roughly 6 feet into the front yard, without the variance then
464 he only has 2 feet in which to project the porch. The house is already 6 feet into
465 that yard. If a porch can only go 8 feet in, the house is taking 6 of it. So
466 without a variance, he's left with a 2 foot wide porch. If that helps explain it.
467 APPLICANT: But there is an existing door porch which is 4 feet.
468 MR. BOYLE: A stoop and stairs. He's not asking for a 12 and a half foot
469 porch. He's asking to project his porch 12 and a half feet from today's front yard
470 setback which results in actually a 7 foot porch.
471 MR. CASTILLO: 7 foot. And I guess my question would then be, to
472 oversimplify it, a two story addition with virtually no porch versus the porch that
473 you're seeking, what hardship would you say you would be experiencing as a result?
474 APPLICANT: My house would just look like a box for design purpose. And the
475 current front porch, I mean the door porch is 4 feet so I'm only asking for what?
476 3 feet. It's going to go 3 feet. If they're doing a 7 foot porch.
477 MR. BOYLE: I see. The existing stoop is 4 feet, so the new porch would
478 only be 3 feet beyond that.
479 APPLICANT: 3 feet.
480 VICE CHAIR MURPHY: Are there going to be steps off the new porch as well?
481 APPLICANT: Uh-huh.
482 VICE CHAIR MURPHY: So it's the 8 foot porch that is shown.
483 APPLICANT: We planning to put the steps to the driveway so it will be to
484 the side.
485 VICE CHAIR MURPHY: Would that be when you're facing the house, would that
486 be to the --
487 APPLICANT: To 517.
488 VICE CHAIR MURPHY: I don't have the surrounding addresses. But if you're
489 facing the house, would it to be the right side when you're facing it or to the
490 left side?
491 APPLICANT: The left side I think. You want to see a picture?
492 MR. FLANAGAN: The right side.
493 APPLICANT: Right side? Yeah, the right side.
494 MR. WILLIAMSON: So the porch would project the same number of feet into the
495 yard as it currently does?
496 APPLICANT: No, it's going to have --
497 MR. WILLIAMSON: Including the steps?
498 APPLICANT: It's going to add 3 feet extra, more.
499 MR. WILLIAMSON: I'm thinking about the steps going down off the porch
500 today.
501 MR. BOYLE: Oh, I see what you're saying.
502 APPLICANT: I didn't measure it.
503 MR. BOYLE: That's a good point. In the photos, does it show the location
504 of the steps?

505 APPLICANT: Yes.
506 VICE CHAIR MURPHY: Yes.
507 MR. BOYLE: Mr. Williamson's point is that the proposed porch would occupy
508 approximately the same area as the current stoop and steps.
509 MR. WILLIAMSON: And so with the steps going to the side, the porch
510 currently is narrower than is otherwise being requested.
511 MR. BOYLE: That's interesting.
512 MR. WILLIAMSON: But distance into the yard, I don't know how wide these
513 steps are but it would appear to be approximately the same amount of distance into
514 the yard.
515 MR. BOYLE: It might be 38-10(c) for both.
516 VICE CHAIR MURPHY: I don't believe so for one reason and that reason is
517 these are allowable projections into a front yard. They're not for the existing
518 home.
519 I do have a question for the Zoning Administrator. Now that we're talking
520 about porches and steps, old Section 38 28 5 A addresses certain things that are
521 allowed in the minimum front yard, rear, or side street yard and that's cornices,
522 eaves or other architectural features, 2 feet 6 inches, uncovered stairs or fire
523 escapes, 4 feet 6 inches, terrace steps, uncovered porches and landings not higher
524 than the entrance floor of the house, 6 feet, bay windows, etcetera.
525 When you get down to Section D that talks about in the required front yard
526 in the R-1A or R 1 B district only, in
527 addition to the projection set forth in Subsection B 5 A of this Section, a deck or
528 unenclosed porch may project up to 8 feet into the required front yard.
529 Do you normally interpret that as additive or do you interpret the entire
530 extension into the required front yard as the 8 feet?
531 I was not here at the meeting last month. I was in Norway on business at
532 that time but I believe that issue came up with the steps.
533 MR. BOYLE: That can be verified.
534 VICE CHAIR MURPHY: That can be verified. I believe that issue came up the
535 steps on that deck.
536 MR. BOYLE: It did. Because that Paragraph D does not mention steps for
537 porches in a front yard, it has been staff's policy not to include the steps in the
538 8 feet. Because the steps are specifically mentioned elsewhere in the Code, then
539 we do take them into consideration. So steps were part of that deck discussion for
540 this case. It's been our policy not to include them.
541 So the porch could occupy the 8 feet. The steps are not part of the
542 measurement. That would not be the case in a side or a rear.
543 MR. WILLIAMSON: So if it is a lawful non-conforming use, those steps --
544 VICE CHAIR MURPHY: The way I read Section 38-10(c) or recodified Chapter
545 48-172(3) --
546 MR. BOYLE: And I hope all the people that are reading this in the future
547 appreciate your efforts here.
548 VICE CHAIR MURPHY: This authority granted to the Board of Zoning Appeals
549 only exists for a residential structure, not these accessory additional items that
550 are not considered part of the structure. They're considered projections into the
551 yard. They are as the Code is currently written, whether it's Chapter 38 or Chapter
552 48, as it's currently written these types of projections are dealt with
553 differently.
554 My opinion or my position on that is that our 38-10(c) authority is for
555 residential structures, whereas these projections for additional projections are
556 not residential structures. So I would not feel that that's covered under 38-
557 10(c).
558 MR. BOYLE: The impact of that then would be that the porch would not be
559 eligible for 38-10(c).
560 VICE CHAIR MURPHY: That would be my position.

561 MR. CASTILLO: And I guess that raises the question which I would throw open
562 is the definition of residential structure. I'm seeing structure is defined.
563 A structure is defined as anything constructed by an assembly of materials,
564 the use of which requires a fixed location on the ground or is attached to
565 something having a fixed location on the ground.
566 MR. BOYLE: Correct.
567 VICE CHAIR MURPHY: I would certainly agree that's a structure.
568 MR. BOYLE: Yeah.
569 VICE CHAIR MURPHY: But not necessarily a residential structure. I would
570 look at it more of an accessory use or accessory structure much as a garage would
571 be considered even if it was attached, an accessory use or accessory structure to
572 the principal use which is customarily incidental to that use.
573 The principal use of the structure on the lot is a residence. If it were a
574 garage or a shed or a deck even, I don't believe those have been considered part of
575 the primary structure but would rather have been treated as accessory or
576 projections or other things.
577 Is that customarily how it's been handled in the Zoning Office?
578 MR. BOYLE: Yes. Detached structures are considered accessory to the
579 primary use.
580 I could argue both sides of this. I'm not sure what the best application is
581 having just pondered this now. The Code does specifically talk about limiting
582 projections of stairs elsewhere, so you can glean from that that that's a sensitive
583 item. However elsewhere we speak to portions of whatever is attached to the house
584 becomes part of the house for setback. If you attach a garage to the house, then
585 it becomes the house for side yard-front yard-rear yard setbacks. So would the
586 porch then become part of the house? Does that become part of the residential
587 structure? That's a mighty fine line to draw but I think it's reasonable. There
588 is no clear indication what the Code is intending. It speaks to both. So common
589 sense may have to rule.
590 MR. WILLIAMSON: So question for the applicant or for staff, if you were
591 granted the variance for the addition, but not for the porch, how big would the
592 porch then be?
593 MR. BOYLE: It would be 2 feet.
594 VICE CHAIR MURPHY: 2 feet.
595 APPLICANT: 2 feet, yeah.
596 MR. WILLIAMSON: 2 foot porch. Okay.
597 VICE CHAIR MURPHY: It essentially would be an architectural detail rather
598 than a porch.
599 MR. WILLIAMSON: A functional porch for --
600 MR. CASTILLO: It would be a hazard.
601 VICE CHAIR MURPHY: I think that's where I was headed.
602 MR. BOYLE: A balance beam.
603 MR. WILLIAMSON: I'd like to see someone try to navigate a 2 foot porch.
604 MR. BOYLE: Well, drawing on discussions from other cases that we've had
605 like this and again, this is a very common situation we have, we have the structure
606 as it exists. Is it a hardship to require them to demolish the house and rebuild
607 it according to current setbacks? Is the fact that he didn't build it, he
608 purchased it this way, is that a hardship?
609 The lay of the land out there is that the house does occupy the setbacks.
610 There's nothing unusual about the lot itself that would satisfy the normal hardship
611 test. It doesn't have an unusual configuration. It's slightly non-conforming for
612 width. It's non-conforming for square footage but it's a rectangle. There's no
613 utilities running through it that would impact it like you might see in true
614 hardship cases.
615 But it's conceivable that the Board could consider the 38-10(c) just to be
616 consistent with other Boards or in feeling that it truly meets the test of a 38-

617 10(c) for the second story addition and then see that there's no hardship
618 whatsoever with which to improve the porch, which would be an odd circumstance out
619 there and probably set it apart from the other structures on the street. And is
620 that the intent of the Code here?

621 There are two significant issues that aren't coordinated well in the
622 language of the Code. It doesn't seem practical to allow the one without having
623 the other fail without a true hardship. So is the fact that the house is there and
624 his only remedy would be to demolish it a hardship?

625 This speaks to what is the new test that this Board has since approaching
626 confiscation is no longer part of the consideration. Clearly nothing is on this
627 property that would -- without giving them a variance would confiscate the land,
628 but this Board I think is working through what is the new standard that we're going
629 to have.

630 It would be nice if we already had 100 cases under our belts without the
631 approaching confiscation to see what is clearly a worthy of a variance and what is
632 clearly not. But we're still in our first couple of variances since that Code
633 change occurred, so I would suggest the Board consider what is a reasonable
634 standard to apply now that approaching confiscation doesn't exist.

635 MR. WILLIAMSON: So, Mr. Chair, are you inclined to ask the applicant how to
636 proceed or do you want to hear views from the Board?

637 VICE CHAIR MURPHY: I think this is essentially going to be an issue for the
638 Board to decide. I'm fairly comfortable with the 38-10(c) application for the
639 addition of the second story. The peculiar circumstances that exist are that the
640 lot is, in fact, non-conforming in width and we've got an issue there. It is non-
641 conforming with the front setback. There are patios and sheds and driveways and
642 other things on this property that would cause problems if the house had to move
643 above and beyond, even if this only allowed them to build or said no to everything,
644 they could build in the existing building envelope by Code leaving certain portions
645 of the house non-conforming.

646 But this house and this application of 38-10(c), I'm fairly comfortable that
647 the authority to extend a residential structure is fine. I don't have a lot of
648 problems with that.

649 This authority does not allow or actually is very clear that we can do this
650 provided that no portion of the addition would encroach further into the required
651 setback area than the existing structure. So if the porch itself were considered
652 part of the structure, then the structure itself is extending further into the
653 setback and we couldn't use this for that.

654 So I'm looking at two separate actions because I think we've got two
655 separate issues. Unfortunately I think the second story under 38-10(c) has one
656 threshold and I think the porch extension further into the minimum front yard has
657 the variance threshold, the hardship.

658 MR. CASTILLO: Could I just interject? Would a porch be a structural
659 addition though? Or is it conceivable that it might not be?

660 VICE CHAIR MURPHY: I'm not sure structural addition is the language that's
661 used in the Code. Provided that no portion of the addition would encroach further
662 into.

663 MR. CASTILLO: Well, it says, May grant a variance for a structural
664 addition. So I think it's not clear but I think that no portion of the addition --
665 if you can distinguish between the structural addition and another addition, is
666 there some leeway?

667 VICE CHAIR MURPHY: Well, I would say then that we don't have to grant the
668 authority to grant this to anything other than a structural addition. So if it's
669 not a structural addition, we don't have the authority under 38-10(c) or 48-172(3).
670 If it's not part of the structure, it can't be covered under this section of Code;
671 if it is part of this structure, it can't be covered under this section of the Code
672 because it encroaches further into the setback.

673 So if this were coming to us as one action, I don't think this action would
674 be eligible for 38-10(c). However this is coming to us as two separate actions,
675 one for the second story addition and one for the porch. I think the 38-10(c), in
676 my opinion, is it does apply to the second story addition. I can't see any way to
677 squeeze the porch into the requirements of 38-10(c), so in fact that one would be
678 looking at an application for a variance to Chapter 38-28(B)(5)(d).

679 MR. BOYLE: I'd agree except with one point considering Mr. Williamson's
680 point about the existing stoop and steps. Probably project at least as far as the
681 proposed porch. In that sense it would not project further.

682 VICE CHAIR MURPHY: Let me ask a question then. If we just look at the
683 total encroachment into the required front yard, right now the Code requires 30
684 feet for the front yard in the R-1A district. The house is already 6 feet into
685 that front yard. The porch would be roughly 8 feet into that front yard and steps
686 would be another 3 to 4 feet. What we're talking about here is a 12 foot front
687 yard. That's far less than half of the required front yard.

688 Looked at in those terms, yes, there are permitted encroachments into that
689 front yard already to a certain extent. But the total impact if those steps come
690 out, the front of the porch as is shown in the drawings, we're looking at roughly a
691 12 foot front yard; is that correct, Mr. Boyle?

692 MR. BOYLE: Yes.

693 APPLICANT: I can move it to the side. We can move it to the side. Like I
694 was saying, it doesn't have to.

695 MR. WILLIAMSON: So we would apply 38-10(c) to the first of these two
696 applications.

697 VICE CHAIR MURPHY: I think we could do that, yes.

698 MR. WILLIAMSON: Could do that. And that would establish essentially the
699 new structure. Because what I believe is that, I simply can't imagine a 2 foot
700 porch.

701 VICE CHAIR MURPHY: I can't either. This really comes down to, in my mind,
702 has a hardship been presented for the porch. And I have not heard anything yet
703 that approaches a hardship for the porch.

704 If you look at hardship approaching confiscation which was the standard in
705 the past, that essentially meant the property couldn't be used for the purposes
706 it's zoned for. So you couldn't build a house on it, period. The case was because
707 there were utilities that ran through the back right through the middle of the
708 building envelope. Or the lot was so wide and was not very deep at all so, in
709 fact, the front yard setbacks overlapped the back yard setbacks. There was no
710 building envelope at all on the property.

711 So the Virginia Supreme Court in Cochran had been very strict in that
712 approaching a confiscation. Now approaching confiscation has been removed but we
713 still have demonstrable hardship which is a level above peculiar circumstances.

714 I would remind the Board that under State Code as it's currently written, No
715 variance shall be authorized by a Board unless it finds all of the -- well, it
716 doesn't say all of them, but all of the following: A, B and C.

717 A: the strict application of the ordinance would produce undue hardship
718 relating to the property;

719 B: The hardship is not shared generally with other properties in the same
720 zoning district and in the same vicinity, and;

721 C: The authorization of a variance will not be a substantial detriment to
722 the adjacent property and the character of the district would not be changed with
723 the granting of a variance.

724 I'm fairly comfortable with Point C. I don't believe this would be a
725 detriment to the surrounding properties. I don't think this would harm or change
726 the character of the neighborhood. It's Points A and B that I'm having trouble
727 with right now.

728 I haven't heard of an undue hardship and we have heard testimony from the

729 Zoning Administrator that, in fact, this hardship is shared generally by other
730 properties in the same area.

731 MR. CASTILLO: But with respect to B, there are other properties sharing
732 this hardship that have had variances to allow porches, is that correct? My
733 recollection is we'd seen something to that effect.

734 MR. BOYLE: Yes. The variance from 1994, V1180-94(1) at 507 Spring was to
735 permit an interior side yard of 10 and 2 tenths feet instead of 15 feet and to
736 permit an open front porch which projects into a minimum front yard to be 32 and 2
737 tenths feet in width instead of 10 feet wide as permitted on premises known as 507
738 Spring. And that was the last portion they requested a variance on.

739 It is a very common feature there and I think the house to the left in the
740 photos is shown with a porch. How these occur, you know, by what mechanism they
741 get built is sometimes a mystery but it's a fact of life out there and one thing to
742 consider is, you know, how does the community want to use its land. And the Code
743 is always chasing that through revisions and amendments and what have you. So
744 that's why we have Boards.

745 MR. WILLIAMSON: So there is an example of hardship being shared, excuse me.

746 VICE CHAIR MURPHY: My question is actually when you read that, was that a
747 variance to extend further into a required front yard or was that a variance for
748 the width of the porch? Because I heard no mention of into a required front yard
749 in that variance.

750 MR. BOYLE: To permit -- it's a variance to Section 38-28(B)(3).

751 VICE CHAIR MURPHY: 38-28(B)(3).

752 MR. BOYLE: To permit an open front porch which projects into a minimum
753 front yard to be 32 and 2 tenths feet in width instead of 10 feet wide as permitted
754 on premises known as 507 South Spring.

755 VICE CHAIR MURPHY: 38-28(B)(3) which is a discussion of averaging front
756 yards. There is nothing in that section of Code that addresses porches or
757 encroachments into minimum front yards.

758 MR. BOYLE: And it is dealing with the width permitted.

759 VICE CHAIR MURPHY: I'm not sure what that variance was relating to or what
760 authority it granted frankly based on what's written there.

761 MR. BOYLE: They go on in the whereas portion. The applicant desired to add
762 an open porch on the front of the residence extending full width of the structure
763 and whereas the topographic features of the site supported the need for a full open
764 porch instead of a 10 foot wide porch. Yes.

765 VICE CHAIR MURPHY: Now there are requirements for enclosed porches or
766 porticos but that's not 10 feet either.

767 I'm not sure what that variance granted but it does not appear from what's
768 been read that, in fact, it was to extend further into a required front yard. It
769 was, in fact, rather than limiting it to half the width of the house, it's the full
770 width of the house. So I wouldn't necessarily say that's the same thing.

771 MR. WILLIAMSON: Well, I would just say that I think a two foot porch is a
772 hardship. I think that there are, as we've heard witnesses say, that it would not
773 be detrimental to the character of the neighborhood. It certainly sounds like
774 there's a very similar circumstance on the street as well.

775 VICE CHAIR MURPHY: That's why I have the problem, because the requirement
776 for the granting of a variance is that it is not commonly shared by other
777 properties on the street. That it is, in fact, something different.

778 The intention of these requirements is when it's a broadly shared issue and
779 generally shared by other properties in the same zoning district and the same
780 vicinity, that the proper way to address this is through a change in the Zoning
781 Code, not through a variance and that's why that's in there. Because, in fact, if
782 there are ways to address this, you don't want to necessarily grant individual
783 after individual after individual a variance. If it's that common an occurrence in
784 the general vicinity, then the proper way to address that is through a change in

785 the zoning Code.

786 MR. WILLIAMSON: So we have one, one that we know of. One example.

787 VICE CHAIR MURPHY: We have a variance that was granted for a porch that was
788 wider, not one that encroached into the front yard.

789 But when we had the discussion of averaging earlier when trying to determine
790 if this was a lawfully non-conforming structure, part of that determination on the
791 part of the Zoning Administrator, not to put words into his mouth, was that, in
792 fact, all the houses there are similarly situated. So this exact situation is
793 shared generally by other properties in the vicinity.

794 MR. BOYLE: If it would help to continue, we could do a study on that street
795 and see if it's possible that these three houses were built at roughly the same
796 time and the rest of the houses on the street were built after the 30 foot front
797 yard came in. Which is not unusual in the City. You see homes built over a span
798 of 30 years and they comply with the Code that was present at the time.

799 That would be an option. We could do a study and see how unusual the
800 circumstance is on that street.

801 VICE CHAIR MURPHY: I would ask the Board how you'd like to proceed. I
802 think we have a number of options for whoever makes a motion. We have two separate
803 items before us, V149609, to add the second story to 515 South Spring Street, that
804 could be addressed by a variance for the setbacks for this property under the
805 section of Code previously known as 38-16(E)(3)(a), and that would require the
806 finding of demonstrable hardship; or the Board could or the motioner could suggest
807 that we address this under 38-10(c) as the extension of a residential structure
808 under the existing non-conforming residential structure, and that as our Code is
809 written requires a finding of peculiar circumstances. Which I think is a lower
810 threshold, at least in my opinion.

811 Then we have the second issue which is what to do about 149709, which is to
812 allow an unenclosed porch 12 and a half feet into an existing front yard instead of
813 8 feet.

814 I guess a question that raises, if in fact the house is 6 feet in and the
815 porch is 8 feet wide as it is on the drawings, that's 14 feet, not 12 and a half.
816 If it's 7 feet as here, as written on the plat, that the plat does not necessarily
817 agree with the drawings right now, that's still 13 feet.

818 So in any case, for the second one the Board could grant a variance for a
819 porch at 12 and a half feet. I think 13 feet would not be a substantive change, 12
820 and a half feet, they might just have to make the porch a little narrower.

821 But I think the appropriate way to address that is in fact under 38-
822 28(B)(5)(d). I don't think we can -- I would not support and would not vote for a
823 motion to address that one under 38-10(c), because, in fact, in my opinion it's not
824 the residential structure and if it is part of the residential structure, then it
825 extends further into a required setback area than the existing structure and 38-
826 10(c) would not be applicable.

827 So it looks like we have some options on the first one, probably not as many
828 options on the second one. We can continue this in its entirety for staff to do a
829 study to determine how common this situation is in the 4, 5, 600 blocks of Spring
830 Street. It's been awhile since I've been that far down Spring Street but I don't
831 believe there is that much of a difference. It's been many years since I've been
832 there but most of the houses were fairly similar in their siting based on my
833 recollection.

834 So, those I think are the options for the Board tonight. And I guess at
835 some point, unless there's any more questions, we'll need a motion of some sort on
836 what to do.

837 MR. CASTILLO: I guess I just go back to the applicant one more time about
838 the discussion of the hardship you feel you would experience. What we're looking
839 for here in part with respect to the porch is to get a better sense of, given our
840 powers and mandate, whether and how we can find that there would be a hardship

841 associated with this current state of affairs and the two foot porch versus
842 something larger, of course.

843 And the other question being a two story addition without a porch versus a
844 two story addition with the porch of the kind you're seeking. Could you articulate
845 how that would create a hardship for you? That would be very helpful to us to the
846 extent that you can articulate that.

847 APPLICANT: Well, the two stories without the porch, it would just -- we
848 would have to do a different design and that is going to cost me more money to get
849 drawings. And I can't think of any hardship. Just the design.

850 MR. WILLIAMSON: Are there people coming and going to the home that might
851 have difficulty with such a small porch or no porch?

852 APPLICANT: Yeah, because as you can see the driveway is on the other side.
853 And we're planning to move the one door closer to the driveway. And as you can see
854 from the picture, the entrance to the house has to come out the street and go out
855 the steps. So we're just trying to make it easier to enter from the side. And
856 other than that, I can't think of anything.

857 MR. CASTILLO: With your planned addition, are there any people in
858 particular you're designing this for to get into and out of the house?

859 APPLICANT: Yeah, my parents. They're retiring.

860 MR. CASTILLO: And they'll be living with you?

861 APPLICANT: They'll live there.

862 MR. WILLIAMSON: That's part of the reason for the addition.

863 APPLICANT: Uh-huh.

864 MR. WILLIAMSON: I don't have any further questions.

865 VICE CHAIR MURPHY: Mr. Castillo, any additional questions?

866 MR. CASTILLO: No.

867 VICE CHAIR MURPHY: Do I have a motion?

868 **MOTION:**

869 MR. WILLIAMSON: Well, I would make a motion to approve under Section 38-
870 10(c) of our Code V149609 based on this being an existing non-conforming structure
871 as outlined tonight.

872 MR. CASTILLO: With respect to 149609.

873 MR. WILLIAMSON: Yes.

874 MR. CASTILLO: I would second that.

875 MR. WILLIAMSON: Yes. 149609.

876 VICE CHAIR MURPHY: Discussion.

877 Would the motioner be opposed to adding some language addressing the
878 peculiar circumstances that the Board found with the existing structures on the
879 property, including patios and sheds and location of the driveway, etcetera?

880 MR. WILLIAMSON: Motioner is very open to your suggestions.

881 VICE CHAIR MURPHY: Okay.

882 MR. CASTILLO: Wouldn't really be overriding peculiarity be the fact that
883 the structure is situated where it is? Given that the regulatory regime that's now
884 in place wasn't there when that was sited. I mean, they would have built this
885 house differently had they known this was coming, don't you think?

886 MR. BOYLE: It is a peculiarity.

887 What you'd be doing by including I think this suggested additional language
888 is tightening the decision up to withstand scrutiny, does this meet the threshold
889 of a 38-10(c).

890 MR. CASTILLO: Yes.

891 VICE CHAIR MURPHY: And certainly some of the peculiar circumstances that
892 are allowable or justifiable are interior circulation, existing utility serving the
893 structure, existing driveways and similar existing conditions. And we did note
894 that there were sheds and patios and a driveway and other things that would raise
895 some issues, peculiar issues, as opposed to just the fact that it's non-conforming
896 which frankly in Falls Church I don't believe is all that peculiar.

897 MR. WILLIAMSON: Okay. So, Mr. Chair, I would add to my motion to reason
898 being of the peculiar circumstances that exist on this property including its
899 existing location, the existing location of the driveway, the poor circulation as
900 described in the testimony and the utilities.

901 VICE CHAIR MURPHY: Is that okay by the seconder?

902 MR. CASTILLO: Topographically -- I just have one question for the
903 applicant. Your house is sited fairly on a bit of a hill, is that correct?

904 APPLICANT: Yes, correct.

905 MR. CASTILLO: I would say that would be also a feature to take into
906 account.

907 MR. WILLIAMSON: I will further amend my motion to include topographical
908 location of the home.

909 VICE CHAIR MURPHY: Okay. So I have a motion and a second.
910 Any further discussion on the motion?
911 Okay. I'll ask the secretary for a roll call vote.

912 RECORDING SECRETARY: Mr. Murphy.

913 MR. MURPHY: Yes.

914 RECORDING SECRETARY: Mr. Castillo.

915 MR. CASTILLO: Yes.

916 RECORDING SECRETARY: Mr. Williamson.

917 MR. WILLIAMSON: Yes.

918 VICE CHAIR MURPHY: So the variance for the second story addition or the
919 exception extension of a residential structure as allowed in 38-10(c), formally
920 known as 38-10(c) now known as 48-172(3) has been granted.

921 So the Board of Zoning Appeals has granted you the authority to build the
922 second story addition on the existing footprint of your house.

923 As we mentioned, this is an approval to extend the non-conforming structure.
924 This is not authority to demolish the structure and rebuild in the same location.

925 As your construction is going on, should any issues arise that may raise
926 questions about whether or not the existing structure is being demolished, I would
927 encourage you to contact the zoning office and other officials in the City prior to
928 going too far with that.

929 Just a word of warning. This does apply to extending the existing house,
930 not to demolish the house and rebuild a new one. So that resolves the first one.
931 Congratulations. You can build your second story.

932 Now I would ask for a motion from the Board on V19709 addressing the porch.
933 And again, I believe our options in this case were to call a vote on a
934 request for a variance to 38-28(B)(5)(d), to allow an unenclosed porch to project
935 12 and a half feet into the existing front yard instead of 8; or possibly an option
936 would be to continue this until our next scheduled meeting. If the Board feels
937 that more information is required from staff regarding the nature and how generally
938 this would be shared by other properties in the same vicinity. So I think either
939 one of those are options on how we might address this one.

940 MR. CASTILLO: May I just ask the applicant what his preference would be on
941 further study versus an up or down vote at this point or are we past that?

942 VICE CHAIR MURPHY: Feel free.

943 MR. CASTILLO: Do you have a position, sir, on us looking into this in more
944 detail versus --

945 APPLICANT: No.

946 MR. CASTILLO: -- going to decide this once and for all tonight?

947 APPLICANT: When will you have a decision? At the next Board meeting?

948 MR. CASTILLO: November 12th, correct.

949 MR. BOYLE: Yes.

950 APPLICANT: Yeah, that's fine with me.

951
952 **MOTION:**

953 MR. CASTILLO: Okay. I would make a motion then that we analyze and study
954 the conditions of the area to ascertain whether and to what extent there are or not
955 shared hardships of this nature.
956 MR. BOYLE: Continue.
957 MR. CASTILLO: And continue it, yes.
958 VICE CHAIR MURPHY: Is there a second?
959 MR. WILLIAMSON: Yeah, I'll second that.
960 VICE CHAIR MURPHY: Discussion.
961 No discussion. Okay. So I'll ask for a roll call vote on the motion to
962 continue consideration of V1497-09 until our next meeting so that we can get some
963 additional information from staff on the existing conditions within the
964 neighborhood in general.
965 So roll call vote.
966 RECORDING SECRETARY: Mr. Murphy.
967 MR. MURPHY: Yes.
968 RECORDING SECRETARY: Mr. Castillo.
969 MR. CASTILLO: Yes.
970 RECORDING SECRETARY: Mr. Williamson.
971 MR. WILLIAMSON: Yes.
972 VICE CHAIR MURPHY: Thank you very much. So we're keeping this issue open
973 essentially by continuing it to the next meeting.
974 Administratively I'd like to make sure from Mr. Boyle as a continuation this
975 does not need to be readvertised. We just continue --
976 MR. BOYLE: That is correct.
977 VICE CHAIR MURPHY: -- consideration of this at our next meeting.
978 MR. BOYLE: Correct.
979 VICE CHAIR MURPHY: Well, thank you very much for your time. It's been a
980 long night. I don't think you planned on being here this long. And we look
981 forward to seeing you again at our meeting on November 12. Hopefully there will be
982 some additional board members present at that meeting as well.
983 Good luck with the second story addition and we look forward to working with
984 you on the balance of your request.
985 APPLICANT: Thank you for your time.

986
987 **3. MINUTES AND RESOLUTIONS**
988 **July 16, 2009 Meeting Minutes**
989 **September 17, 2009 Meeting Minutes**
990

991 VICE CHAIR MURPHY: All right. If we move on our agenda, the next item is
992 Minutes and Resolutions. We have two sets of minutes before us. We have the July
993 16, 2009, minutes and we have the September 17, 2009 minutes.

994 I was present and will comment on the July 16th minutes; however I was not
995 present for the September 17th minutes. So I will not vote on their approval
996 because I was not here. However for administrative purposes we have a quorum. A
997 majority of the quorum can approve minutes, etcetera. So we'll only require two
998 votes to approve the minutes of the 17th.
999

1000 **MOTION:**

1001 MR. CASTILLO: Move to approve the minutes.

1002 MR. WILLIAMSON: Second.

1003 VICE CHAIR MURPHY: As amended. All those in favor?

1004
1005 (Upon voice vote, the motion passed unanimously.)

1006
1007 VICE CHAIR MURPHY: All right. We'll move onto the minutes of September 17.
1008

1009 MR. WILLIAMSON: Do remember receiving there were other supporting
1010 statements. I notice we have the request not to approve the application in here.
1011 I think there were other supporting statements we received as well. Am I
1012 remembering that correctly?

1013 MR. CASTILLO: In advance of the meeting we did, yes.

1014 VICE CHAIR MURPHY: And were those included with the package that you
1015 received in advance of the meeting?

1016 MR. CASTILLO: Yes.

1017 VICE CHAIR MURPHY: I think the general practice is not to include those in
1018 the minutes but to include, if there was a request to include this in the minutes
1019 or read it in as we had earlier, where we stated that it would be acceptable for
1020 Mr. Boyle to include it with the minutes, the letter that we had not seen.

1021 MR. WILLIAMSON: Okay.

1022 VICE CHAIR MURPHY: Again, I don't know. I was not here for this one.

1023 MR. WILLIAMSON: Sitting here I can't recall if we received it as part of
1024 the packet or subsequent to receipt of the packet, which is why I asked. I would
1025 just ask that staff check the records and add them if they were received after the
1026 packet was sent out.

1027 VICE CHAIR MURPHY: But you're confident those comments are included in the
1028 official record of the Board in the folder for that action.

1029 MR. BOYLE: Yes. Then the question was whether to read this aloud at the
1030 meeting which we started to do and then I believe the intent was to simply add it
1031 to the minutes.

1032 VICE CHAIR MURPHY: All right. Do I have a motion?

1033 **MOTION:**

1034 MR. CASTILLO: Move to approve the minutes.

1035 MR. WILLIAMSON: Motion to approve the minutes from September 17th.

1036 MR. CASTILLO: Second.

1037 VICE CHAIR MURPHY: In favor?

1038

1039 (Upon voice vote, the motion passed unanimously.)

1040

1041 VICE CHAIR MURPHY: Abstain. So they are approved, 2 to 1.

1042

1043 **4. OTHER BUSINESS:**

1044

1045 VICE CHAIR MURPHY: Our next item of business is Number 4, Other Business.
1046 There is no Other Business as far as I know.

1047 Mr. Boyle, is there any Other Business that you'd like to update us on?

1048 MR. BOYLE: We will make an effort to get copies of the New Code to the
1049 Board, just in that it's been recodified and renumbered.

1050 The November meeting has two appeals on it pertaining to an occupancy permit
1051 at Eden Center and then we'll add this item as a continued matter for next meeting.
1052 So there will be a November meeting.

1053 VICE CHAIR MURPHY: To refresh my memory, what is the date of the November
1054 meeting?

1055 MR. BOYLE: I believe it's the 12th.

1056 VICE CHAIR MURPHY: All right.

1057

1058 **5. OLD BUSINESS: None**

1059

1060 **6. PETITIONS: None.**

1061

1062 **7. ADJOURNMENT:**

1063

1064 MR. CASTILLO: Move to adjourn.

1065 MR. WILLIAMSON: Second.
1066 VICE CHAIR MURPHY: All those in favor?
1067 (A chorus of "ayes").
1068
1069 (The meeting was adjourned at 9:16 p.m.)
1070
1071 Respectfully Submitted, Noted and Approved:
1072
1073
1074
1075 Ann Hieber
1076 Recording Secretary
1077
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