



VARIANCE ACCEPTED: February 9, 2016
BOARD OF ZONING APPEALS: May 4, 2016 @ 9:00 a.m.

County of Fairfax, Virginia

April 27, 2016

STAFF REPORT

VARIANCE APPLICATION NO. VC 2016-MA-002

MASON DISTRICT

APPLICANTS/OWNERS: Khanh Bao Bui

SUBDIVISION: Woodley, Section 4

STREET ADDRESS: 7204 Westmoreland Road, Falls Church 22042

TAX MAP REFERENCE: 50-3 ((4)) 199

LOT SIZE: 10,090 square feet

ZONING DISTRICT: R-4

ZONING ORDINANCE PROVISIONS: 18-401

VARIANCE PROPOSAL: To permit front yard paved parking coverage in excess of the maximum 30 percent allowed.

STAFF RECOMMENDATION: Staff recommends denial of VC 2016-MA-002; however, should the Board approve this variance, staff recommends that it do so subject to the Proposed Development Conditions contained in Appendix 1.

It should be noted that the content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Board of Zoning Appeals. A copy of the BZA's Resolution setting forth this decision will be mailed within five days after the decision becomes final.

Heath Eddy, AICP

The approval of this application does not interfere with, abrogate or annul any easements, covenants, or other agreements between parties, as they may apply to the property subject to the application.

For additional information, call Zoning Evaluation Division, Department of Planning and Zoning at 703-324-1280, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035. **Board of Zoning Appeals' meetings are held in the Board Room, Ground Level, Government Center Building, 12000 Government Center Parkway, Fairfax, Virginia 22035-5505.**



Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 48 hours advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

DESCRIPTION OF THE APPLICATION

The applicant is requesting a variance to permit greater than thirty (30) percent front yard coverage for parking of vehicles on the subject property in the R-4 District, which is limited by the provisions in Section 11-102.8 of the Zoning Ordinance.



Figure 1: Subject property. Source: Pictometry, 2015.

The table below summarizes the allowed front yard coverage in the R-4 District and what is currently located on the subject property.

	% Coverage Allowed and Existing	Square Feet of Coverage on Lot
Maximum Allowed in R-4 District	30%	914.4 allowed
Subject Property (based on 3,048 s.f. front yard area)	54.35%	1,656.5 actual

A copy of the variance plat titled “Variance Plat, Lot 199 Section 4, Woodley,” prepared by John Krobath, LS, of Exacta Virginia Surveyors, Inc., dated November 13, 2015, last revised February 9, 2016 and received February 9, 2016, is included in the front of the this staff report. Figure 2, below, is part of the Variance Plat.

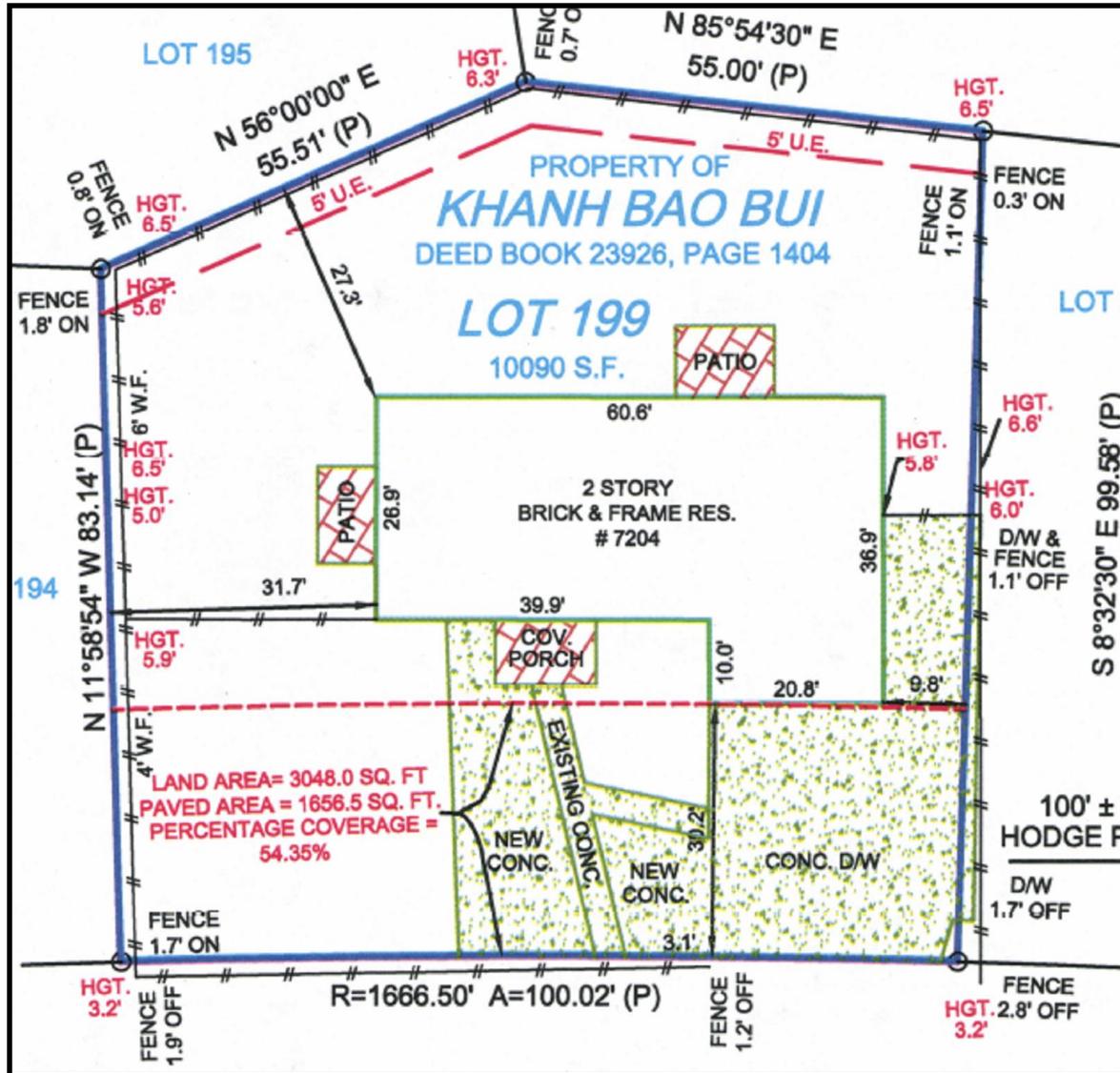


Figure 2: Variance Plat, partial. Area of paving in question identified as “New Concrete.”

CHARACTER OF THE SITE AND SURROUNDING AREA

The subject property is located in the Woodley subdivision south of Route 50 and the City of Falls Church. The property has a single driveway access on Westmoreland Road, and is located approximately 300 feet east of the Loehmann’s Shopping Center Plaza and 800 feet south of Arlington Boulevard (U.S. Route 50).

The property is developed with a 2-story single family detached residence, fencing along all property lines, and the driveway, which was expanded recently with additional pavement and is the reason for this variance application. Westmoreland Road is a busy collector street on which a relatively high volume of traffic (daily traffic of 2,900-3,900 trips per day) travels through the neighborhood as an alternative to using Arlington Boulevard. Westmoreland Road serves as the primary local connection between Graham Road and Annandale Road.

According to County records, the subject property was originally developed with a 1-story single family residence in 1951, with a sunroom and carport added in 1990. These additions were subsequently removed in 2012 and replaced with a 2-story addition including an attached garage and bedrooms above. A second story addition over the original residence was constructed in 2013. Copies of County records of building permit activity for the subject property are included in Appendix 5. The current owner bought the property in early 2015.

BACKGROUND

This variance application is the result of code enforcement activity against the property owner. The following is a summary of the violation history leading to the current application.

- April 13, 2015 - The Department of Code Compliance (DCC) received a call-in complaint regarding excessive numbers of vehicles parking on wooden planks in the front yard of the subject property.
- April 17, 2015 - A DCC inspector visited the property, and while there were no vehicles parked in the front yard, the inspector noted several pieces of plywood laying in the grass in the front yard.
- Between April 17 and May 12, a second complaint was received alleging that there was too much pavement in the front yard.
- May 12, 2015 – The DCC inspector conducted a second inspection and found that the property owner had now paved a significant portion of the front yard with concrete. The inspector found that there was a total paved area of 2,778 square feet based on field measurement, which was more than half of the estimated area of the front yard.
- May 15, 2015 – The DCC inspector issued a Notice of Violation (NOV) to the property owner citing violation of Section 11-102.8 of the Zoning Ordinance (a copy of the NOV is attached as Appendix 4).
- October 13, 2015 – The property owner informed the DCC inspector that they had appealed the NOV and had also applied for a variance. The appeal case has been intentionally scheduled for public hearing following the adjudication of this variance application by the Board, as variance relief granted by the Board would obviate the need for an appeal.



Figure 3 and 4: DCC Inspector images taken on inspection in April 2015 showing sheets of plywood on the front yard. Source: DCC.





Figures 5 and 6: Subsequent DCC inspection in May 2015 showing area now paved with concrete. Source: DCC.



According to the applicant's variance statement of justification, the applicant had contacted the Department of Public Works and Environmental Services (DPWES) about permitting requirements for extending the driveway, and was informed that the

surface area involved would not require permit review. The applicant subsequently added the additional paving as shown on the Variance Plat (labeled "new concrete").

This is the first variance or special permit application for the subject property. There are a total of three variance applications within 500 feet of the subject property, though two are related to requests for reductions in minimum yard requirements for structures. The one most directly related to this variance application is Variance Application VC 2015-MA-001, for the property located at 7208 Westmoreland Road (the property immediately adjacent to the subject property). The applicants in that case requested a variance to allow more than 30 percent front yard coverage and more than 30% rear yard coverage. On September 16, 2015, the BZA voted to approve the rear yard coverage variance but denied the front yard coverage variance (a copy of the Board resolution is attached as Appendix 6).

ZONING ORDINANCE REQUIREMENTS (Appendix 7)

In addition to meeting the definition of a variance, an application must satisfy a specific set of criteria in order for the Board to grant a variance. According to the recently amended Code of Virginia, Sec. 15.2-2309, a variance meeting the definition shall be granted if the following elements are met:

1. The evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance (Sect. 15.2-2309.2)

In staff's opinion, the strict application of the paving limitations imposed under Section 11-102.8 would not unreasonably restrict utilization of the property nor creates a hardship. Prior to increasing the driveway pavement, the subject property previously had a driveway sufficient in size to park at least four vehicles in addition to the 2-car garage (for a total of six parking spaces), and still have room remaining on the driveway if another car needed to be parked on-site. In staff's opinion, the previous number of off-street spaces is sufficient even taking into account the lack of on-street parking directly in front of the subject property.

2. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance (Sect. 15.2-2309.2(i))

The property appears to have been acquired in good faith, however staff does not believe any hardship exists. If any hardship is present, the applicant created it when he installed additional parking. The maximum front yard coverage paving standard went into effect in 2003, and the current coverage violation occurred last year.

3. The granting of the variance will not be of substantial detriment to the adjacent property and nearby properties in the proximity of that geographical area (Sect. 15.2-2309.2(ii))

In staff's opinion, the excess paving creates a condition that would be detrimental to properties in proximity to the subject property. The property immediately adjacent to the west was the subject of a variance case (VC 2015-MA-001) involving the same type of request and was denied by the BZA last September. The maximum front yard coverage standard was created for the exact purpose of preventing front yards from being paved over for parking, as the front yard begins to resemble a parking lot more typical of a commercial property, than the character of a low density residential neighborhood.

4. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general reduction to be adopted as an amendment to the ordinance (Sect. 15.2-2309.2(iii))

The subject property has no specific condition that warrants relief or the need for regulatory amendment. The prohibition against on-street parking is only present from the applicant's property west to Graham Road. On street spaces are available to the east along Westmoreland Road or immediately around the corner on Hodge Place.

5. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property (Sect. 15.2-2309.2(iv))

The variance request is to allow for extra paving of the front yard beyond what is permitted for a residential use in the R-4 District. However, the residential use of the property is not affected by this application and is permitted in the R-4 District.

6. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application (Sect. 15.2-2309.2(v))

The applicants have no other form of remedy under the Zoning Ordinance other than a variance.

CONCLUSION

In staff's opinion, the subject property does not exhibit any limitations that warrant relief from the standard for maximum paving in the R-4 District. Furthermore, the applicant has not demonstrated that the relief requested is based on any substantive proof that nearby properties enjoy a benefit to which he is currently deprived. The lot can

accommodate adequate off-street parking by right, and there is legal on-street parking in close proximity to the applicant's property.

RECOMMENDATION

Staff recommends denial of VC 2016-MA-002; however, if the Board chooses to approve this application, staff recommends that it do so subject to the Proposed Development Conditions included in Appendix 1.

APPENDICES

1. Proposed Development Conditions
2. Applicants' Statement of Justification and Photographs
3. Applicants' Affidavit
4. Notice of Violation
5. Building Permit Records
6. Adopted Resolution – VC 2015-MA-001
7. Applicable Code of Virginia Provisions

APPENDIX 1**PROPOSED DEVELOPMENT CONDITIONS****VC 2016-MA-002****April 27, 2016**

If it is the intent of the Board of Zoning Appeals to approve VC 2016-MA-002, located at Tax Map 50-3 ((4)) 199, to permit greater than 30% front yard coverage paved for parking, the BZA should condition the approval by requiring conformance with the following development condition.

1. This variance is approved for the location and size of the existing paved parking area (54.35% of the front yard) as shown on the variance plat, entitled "Variance Plat, Lot 199 Section 4, Woodley," prepared by John Krobath, LS, of Exacta Virginia Surveyors, Inc., dated November 13, 2015, last revised February 9, 2016 and received February 9, 2016, consisting of two sheets as submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted condition, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards including requirements for building permits.