



Planning & Zoning Office
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A. Background

- February 12, 2020 DRB meeting Application 2019-119
 - Application for final subdivision approval created a two-lot subdivision at 530 milkweed lane
 - Submittal H, in the findings of fact, indicate a road design that would not exceed 15% grade
 - Submittal G was a letter dated October 16th 2019 signed by Jim Cochran that all driveways will be designed in accordance with section 600 of the Richmond zoning regulations
 - Condition 1 of the decision notes that the road grade needed to be reduced to 12% with the exemption being the last 200 feet to the foundation of any residence before a Certificate of Occupancy can be issued
 - No appeal of this decision was made
- April 13, 2022 application submitted an amendment to the finally subdivision 2019-119 to remove the driveway condition for a CO
 - DRB rejected the amendment for the following reasons
 - Not in Compliance with 500.1 of the Richmond Subdivision Regulations
 - All conditions of section 500 and Section 6.2 of the regulations have to be met
 - Proposed development would not comply with section 6.2 because the driveway does not comply with the zoning regulations
 - DRB does not have the authority to grant relief from the requirements for a certificate of occupancy laid out in Section 5.3
- May 10, 2022 applications submitted a zoning permit for a single-family home
 - Driveway grade was not changed per submittal H and G of 2019-119
 - Condition 1 of February 12 2020 decision was not met
- May 10, 2022 application submitted for a Certificate of Occupancy
 - Home matched plans submitted for a Certificate of Occupancy
 - Road grade exceeds 12% therefore CO cannot be given as conditions have not been met

B. Standards for a Certificate of Occupancy

- 5.3.5.2 Notes that as a condition of approval, the Development Review Board may require the applicant to receive a certificate of occupancy regardless of the nature of the proposed land development prior to the occupancy of the structure and/or commencement of the use.
 - In their February 12, 2020 DRB decision noted in the first condition of the approval that the applicants were required to bring the driveway up to standards
 - Submittal H and G noted that the applicants understood this condition and presented a plan to bring the driveway into compliance and signed a letter noting the condition

- 5.3.5.3 Notes that in order for the Administrative Officer to issue a Certificate of Occupancy, the Administrative Officer shall determine that:
 - a) The land is used and the structure is built according to the terms and conditions of an approved zoning permit, these Zoning Regulations, approved project plans, applicable conditions of approval, and any other applicable specifications; and
 - Driveway not built to in accordance with requirements in the Richmond Zoning Regulations which was a condition of February 12, 2020 DRB decision on application 2019-119
 - Certificate of Occupancy could not be granted due to failure to comply with conditions put on the lot as a result of the February 12, 2020 DRB decision on application 2019-119
- C. Standards for a variance
 - All of the criteria in Section 8.4.5 must be met in order to receive a variance from the DRB
 - 8.4.5 Variances - In accordance with the Act (§4469), on appeal from a decision of the Administrative Officer, the DRB may grant variances and render a decision in favor of the appellant only if all the following facts are found, and the findings are specified in its decision:
 - a) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of these Zoning Regulations in the neighborhood or Zoning District in which the property is located.
 - Applicants did not note indicate any such conditions in the 2019-119 final subdivision application
 - b) That because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these Zoning Regulations and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
 - There is a possibility that they can develop the lot in strict conformity with the zoning regulations. Bringing the road into compliance would allow the development of the property in strict conformance with the regulations
 - If such conditions existed, they could have appealed the February 12 2020 decision
 - no appeal was filed
 - Submittal H and G of the final Subdivision application 2019-119 provided documentation showing a plan to bring the driveway into compliance as well as a signed letter from the applicants to bring the driveway into compliance
 - This would indicate that it is possible for them to bring the driveway into compliance
 - c) That the unnecessary hardship has not been created by the appellant.
 - Applicants were aware of the 2019-119 decision that required the road to be brought up to town standards per condition 1 of the decision
 - Submittal H and G indicate that the applicants were aware of the requirement and presented a plan to bring the driveway into compliance
 - Applicants signed a document agreeing to bring the driveway into compliance
 - The decision was never appealed

- The applicants pulled a zoning permit for a single-family home after the 2019-119 decision
 - No plan was presented in the zoning application to bring the driveway into compliance
 - d) That the variance, if authorized, shall not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use of development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.
 - NA
 - e) That the variance, if authorized, shall represent the minimum variance that shall afford relief and shall represent the least deviation possible from these Zoning Regulations and from the Town Plan.
 - NA
 - 8.4.5 indicates that in order for a variance to be given all five of these criteria need to be met
 - 3 of the five conditions have not been met
 - Therefore a variance should be denied

D. Conclusions

- The DRB should reject the request for a variance based on the following information
 - The condition that the driveway needed to be brought up to standards was known to the applicant before pulling a permit to build their home
 - The 2019-119 decision was never appealed
 - The applicants pulled a zoning permit for a home without first addressing the driveway
 - Certificate of Occupancy cannot be issued due the non-compliance of the driveway
 - Applicants do not meet the conditions for a variance due to the following
 - Section a.
 - The applicants never indicated in their final subdivision application that there are unique physical circumstances or conditions to prohibit development on their lot.
 - Submittal H was a plan for the new driveway which indicated a driveway could be built that would be in compliance with regulations
 - Submittal G was a signed document by Jim Cochran where he agreed to bring the driveway into compliance
 - The fact that plans were submitted to correct the driveway and that Jim Cochran signed a document agreeing to bring the driveway into compliance would seem to indicate that there were not physical circumstances that would prohibit them from developing the lot
 - Hardship cannot be created by the provisions of these Zoning Regulations in the neighborhood or Zoning District in which the property is located.
 - Section b.
 - Applicant in their final subdivision application and zoning application never indicated that because of the physical circumstances or conditions of the lot, there is no possibility that the property can be developed in strict conformity with the provisions of these Zoning Regulations

- Submittal H and G would seem to indicate that the opposite was true
 - Previous decision was never appealed which would indicate that there were not physical circumstance prohibiting development otherwise there would have been an appeal
- Section c.
 - Applicant can be seen to have caused this hardship by not first correcting the driveway before building the home
 - Fixing the driveway was a known condition of getting a CO
- In order for a variance to be granted all 5 sections have to be satisfied
- 3 out of 3 are unsatisfied
- Therefor a Variance should not be issued