

**BEFORE THE TOWN OF DENTON BOARD OF APPEALS**

**IN RE: WILLIAM & JULIE QUICK \*  
APPLICATION FOR VARIANCE  
FROM THE DENTON TOWN CODE \* CASE NO. BOA-22-003  
§128-112 & APPENDIX VIII**

\* \* \* \* \*

**MINUTES, FINDINGS OF FACT, CONCLUSIONS AND DECISION**

The Board of Appeals held a Public Hearing on Monday, September 12, 2022, at 6:30 p.m., at the Denton Town Office to consider an application for a Variance for William and Julie Quick, (hereinafter, the “Applicants”), from the strict application of the Town of Denton Zoning Code (Chapter 128-01, et seq.).

Board Members present were Chairperson Troy Livingstone, Vice Chairperson Florence Doherty, Member Lori Schmidt, and Alternate Member Gary Smith. Also present were Counsel for the Board, Chris Drummond, Town Administrator, Scott Getchell, Superintendent of Public Works, Mark Chandler, and Administrative Aide, Donna Todd. The Applicant’s Attorney, Sharon VanEmburch, Representative, Elizabeth Fink, William Quick, and Julie Quick were present.

Chairperson Livingstone opened the Public Hearing at 6:30 p.m., followed by the Pledge of Allegiance.

Chairperson Livingstone announced Matthew Mellor withdrew his application for the Special Exception request and moved to the Quick’s request for a variance.

Chairperson Livingstone swore in William Quick, Julie Quick, Sharon VanEmburch, and Elizabeth Fink.

Vice Chairperson Doherty read the public notice advertised in the Times Record for BOA-22-003 into the record.

At the conclusion of the Board's receipt of testimony and exhibits, the Board discussed the merits of the application. Mrs. VanEmburch requested that the Board consider a continuance at a later date so the Applicants may review and revise the application. The Board of Appeals unanimously agreed to a continuance at a later date.

The Board of Appeals reserved ruling on the application on September 12, 2022, and

reconvened on November 14, 2022, to receive additional evidence and to deliberate publicly.

Chairperson Livingston swore in additional witnesses, Mike Adams and Kathy Mackel.

For the reasons that follow, the Board of Appeals will grant a 2.54 feet side yard setback variance to construct an addition 7.46 feet from the side yard property line.

### **PROCEDURAL HISTORY**

On August 1, 2022, William and Julie Quick filed an application with the Board of Appeals seeking a variance from the strict application of the Town's Zoning Code for the required 10 feet side yard setback for an addition to a primary structure in the Town Scale Residential District (TR) on their property located at 117 South Fifth Avenue, Caroline County Tax Map 103, Parcel 226.

The application was properly advertised in the Times Record for two consecutive weeks on August 24<sup>th</sup> and August 31<sup>st</sup>, a sign was posted on the property on August 17<sup>th</sup>, and all property owners within 200 feet of the property received written notification of the Public Hearing. All public notice requirements have been satisfied.

Staff did not receive any additional public comments.

At the request of the Applicant, the Public Hearing was continued until November 14, 2022.

### **TESTIMONY AND EVIDENCE**

Mrs. VanEmburch testified that she represented the Applicants for the variance request at 117 South Fifth Avenue. This is a historic property located in the Historic Overlay Zone. The proposed addition will allow the Quicks to modernize their kitchen and build a usable garage while preserving the historic integrity of the house. Their home is located on a corner lot making it unique in the respect to having two front yards on Fifth Avenue and Randolph Street. A portion of the original structure on the rear of the property can be seen from Randolph Street, and the Applicants are trying to preserve the staircase off the original structure. The turning radius for the proposed garage addition places it in the setback area.

There is an existing encroachment per the Exhibit in the side yard setback area and the proposed garage addition's encroachment would be less. The Applicant is requesting a side yard setback variance.

Julie Quick testified her family has resided at 117 South Fifth Avenue since January 2005. The house was built in 1905, and the garage was built in 1922. The addition was later built for an office space. The Applicants provided some additional photographs of the house to the Board Members and provided additional information about the original kitchen area, chimney, and garage.

William Quick testified that the house was not built parallel to the property line. The proposed plan will square off the addition to the house, add a modern kitchen, add access to the garage from the house, and lessen the setback to the neighboring property.

Maria Weaver, Fifth Avenue Neighbor and closest to the property line, provided a letter of support for the proposed addition with the Board of Appeals application.

Mrs. Quick testified that the existing garage creates a hardship because its unusable. The Applicants are not able to park their vehicles in the garage. There is a safety issue backing out their vehicles on Randolph Street because of a blind curve next to the fence, and one of their vehicles was hit by another vehicle. The proposed garage will provide more space for parking vehicles off the road for snow plows and the turning radius to back up vehicles in their yard and drive safely into the street.

Mr. Quick referred to a photograph of steps that indicate a 3 feet 9 inches setback from the proposed garage and showing that a 6-foot setback would be in the middle of the existing steps.

The Applicants believe that the variance of 4.5 feet requested is the minimum necessary. The existing structure is 3.8 feet from the property line.

The bumpout for the proposed addition is to accommodate a staircase for the extra garage storage. This will provide the historic architecture of the roofline with the house and design the gable to match the house. The Applicants want to maintain the historic characteristics of the house and keep the roofline sympathetic to the house.

Mrs. Quick referred to a photograph with steps and measurements of 6 feet and 3 feet 9 inches. If the garage is located in the 6 feet, it will be placed in the middle of the steps and

there would be no access to the existing steps.

The Applicants are required to seek approval for the proposed addition from the Historic and Architectural Review Commission and believe this Commission requires the proposed addition to match the house from the view of the street.

Ms. Fink prepared the site plan for the Applicants and referred to the site plan identifying the existing structure to be demolished and the proposed addition. The closest point of the existing nonconforming structure is 3.8 feet from the neighboring property line and the proposed addition will be less nonconforming with the requested setback from the neighboring property to be 4.5 feet. Allowing this use does not prohibit any use permitted in this zoning district. The house is not located in the Critical Area. Ms. Fink believes granting the variance is in harmony with the intent of the Zoning Ordinance and that it is not injurious to any adjacent property. The existing structure does not match the house in bulk and scale, and this is the minimum relief necessary for the proposed addition.

The Applicants hired an architect that specializes in historic homes to design the proposed addition.

Mr. Quick stated the pitch of the roof would not match the house if the garage was moved to another location and would not be sympathetic to the house.

The Applicant's architect was not present to answer questions regarding the construction of the house in regard to the possible relocation of the addition and the impact of maintaining the historic characteristics of the proposed addition.

Ms. Fink stated that her father was the architect that designed the proposed addition and was experienced in the construction of historic buildings.

The Quicks are not able to move their driveway due to a utility pole on the sidewalk and one in their yard and would not be able to access an accessory structure.

The Quicks confirmed the existing garage is attached to the house through the existing addition but there is no entry to the garage from the house.

Testimony resumed on November 14, 2022, with an amended application presented by Mrs. Quick.

Mr. Drummond read to the Board Denton Town Code §128-163 (O), if any application or request is disapproved on the merits by the Board, or after the public hearing is withdrawn

by the applicant, thereafter the Board of Appeals shall not accept application for substantially the same proposal, on the same premises, until after one year from the date of such disapproval or withdrawal.

Mrs. Quick amended the previous application submitted in September to remove the bumpout on the garage as shown in Exhibit A and reduce the requested setback variance to 2.54 feet resulting in the garage to be located 7.46 feet from the property line. This resulted in changes to the garage including relocation of stairs inside the garage, widened the garage, and change the slope of the roofline. Steps can not be turned to face Randolph Street due to the electrical lines on that side of the house.

Mr. Adams summarized the changes referring to the floor plan. The garage was widened to accommodate two vehicles and the stairs. The pitch of the roof had to be modified to meet the Building Code for the stairs.

Mrs. Quick noted the garage could not be moved to face Randolph Street to meet the current setback requirement because it would be in the middle of the existing steps and block the back entrance. There are two sets of steps. One set is the historic steps to enter the back of the house, and the other steps were moved from the bumpout section of the garage to the middle of the garage.

Mrs. Mackel, Chairperson of the Denton Historic and Architectural Review Commission, noted the Commission approved the construction of the garage addition contingent on the Board of Appeals granting the variance for the setback. Their decision was based on the neighbor's approval of the addition and the materials met the integrity of the historic structure of the building. The Commission was not in favor of moving the garage forward. The Caroline County Historical Society does not have any jurisdiction for approval on this application.

Mrs. Quick clarified the location of the brick steps and the relationship to the design of the new garage. The garage doors were placed to allow for a turning radius that a vehicle exiting the garage would not hit the brick steps or the fence.

Mr. Adams clarified that the overhang on the garage and the house is an odd size. The wall line is in line with the new kitchen. The amended plan meets the required Building Code. The new addition is entirely independent of the existing house. The new wall is lined

up with the existing house for the roof line and the garage can not be shifted forward to the street. The egress window on the second floor has to remain for the master bedroom. Building the staircase by extending from the existing structure is not possible due to the framework of the garage. The staircase is built to meet the Building Code.

Mr. Drummond noted most standard garages are 20 feet by 24 feet. The distance from the front wall to the bottom step is 4 feet 2 inches. If the width is reduced, the bottom stair would be closer to the front wall.

### **DELIBERATIONS**

During and following the receipt of all testimony and evidence, the Board deliberated in open session.

Chairperson Livingstone asked for clarification on the bumpout of the proposed garage addition.

Mr. Drummond asked the Applicant if the bumpout for the staircase in the garage was the reason for the variance and was that necessary.

Vice Chairperson Doherty verified the small round item in the photograph next to the steps was not for utilities and was a trash can.

Vice Chairperson Doherty noted that the purpose of the setback requirement was for safety measures so that the Fire Department can access the properties.

Vice Chairperson Doherty verified that there is a planned second entrance to the first floor of the proposed addition.

Vice Chairperson Doherty verified that the purpose of the requested variance was to square the building with the house and not accommodate the property line which was almost 4 feet of the variance request.

Vice Chairperson Doherty verified the proposed fence on the site plan is an existing fence across the driveway.

Vice Chairperson Doherty noted that the requested variance for the storage may be accomplished in a different way reducing the requested variance to accommodate the minimum necessary relief.

Mr. Drummond clarified the Board's responsibility to determine the difference between

convenience and what is necessary for the Applicants regarding the garage staircase for the requested variance. If the staircase can be located outside of the requested setback area such as inside the garage, the request is for the convenience of the location of the staircase.

Vice Chairperson Doherty clarified the location of the addition to the house and steps entering into the garage from inside the house.

Vice Chairperson Doherty verified the existing concrete to be removed could accommodate the additional storage and access.

Alternate Member Smith clarified the possibility of the relocation of the staircase inside the proposed addition to reduce the requested variance setback. After reviewing the exhibit of the floor plan of the proposed addition, there was discussion by the Board to eliminate the bumpout for the staircase.

Member Schmidt asked the Quicks if their architect could eliminate the bumpout to minimize the requested variance setback. It was determined that eliminating the bumpout would reduce the requested setback from the property line from 4.5 feet to nearly 7 feet.

Vice Chairperson Doherty requested confirmation regarding the Historic and Architectural Review Commission's approval of the proposed addition. The Applicant's proposed addition has not been reviewed by the Commission.

Vice Chairperson Doherty inquired if the Quicks considered an accessory structure that is sympathetic to the house eliminating the garage addition and bumpout or variance.

Alternate Member Smith inquired if the Quicks are able to widen the driveway or curb cut to access an accessory structure.

Chairperson Livingstone suggested the Applicants may want to request a continuance to confirm with their architect that the bumpout is necessary or can be adjusted and to provide the Historic and Architectural Review Commission's approval and recommendations for the proposed addition. The Board of Appeals may only approve a variance for the minimum necessary and the existing conditions of their property line that is not parallel could justify the granting of the variance.

Vice Chairperson Doherty informed the Applicant that the current noncompliance of the setback with the existing structure is grandfathered. Any new construction is required to be in compliance with the Town Code. The size of the back yard does allow for other options.

Mr. Drummond confirmed that setbacks for accessory structures are five feet from the overhang of the rear yard and three feet from overhang of the side yard.

Member Schmidt requested verification of the depth of the garage which is 28 feet by 32 feet.

The deliberations continued on the amended application.

Vice Chairperson Doherty confirmed with the Applicants' Architect that there are structural reasons for the width of the garage.

Chairperson Livingstone confirmed that the Applicant provided due diligence in minimizing the variance request by removing the bumpout. The uniqueness of this property is the house is not parallel to the property line.

### **STANDARDS FOR GRANTING VARIANCES**

The Board is obliged to apply the testimony and evidence received during the hearings to the following zoning standards:

- (a) Strict enforcement of this chapter would produce unnecessary and undue hardship as distinguished from variations sought by applicants for purposes or reasons of convenience, profit or caprice. ***The amended application minimized the amount of requested setback to 7.46 feet from the property line resulting in 2.54 feet variance from the original application.***
- (b) Such hardship is the result of special conditions and/or circumstances not generally shared by other properties in the same zoning district or vicinity, and which are peculiar to the land, structure or building involved. Such conditions and/or circumstances may include but are not limited to the following: exceptional narrowness or shallowness, or both, or irregular shape or topography of the property; unusual and limiting features of the building; or the effective frustration or prevention of reception of satellite programming due to the presence of a physical object or objects which obscure the line of sight when such object or objects cannot be easily removed. ***The building structure is nonconforming, and an existing antique building located on a corner lot.***
- (c) Such special conditions or circumstances must not be the result of any action or actions of the applicant. ***The applicant did not create the old structure and are updating an existing structure to current Building Codes to create a more functional structure that will line up with the existing structure.***
- (d) Granting of the variance must be in harmony with the general purpose and intent of this chapter and must not be injurious to adjacent property, the character of the neighborhood or



the public welfare. ***The variance is consistent with the general purpose, not injurious to adjacent properties, and consistent with the Historic and Architectural Review Commission guidelines.***

- (e) Granting the variance shall not allow a use expressly or by implication prohibited in the zoning district involved. ***This is a residential district, and this variance supports a residential use.***
- (f) The condition, situation or intended use of the property concerned is not of so general or recurring a nature as to make practicable a general amendment to this chapter. ***The historic homes are unique, and this would not require a zoning amendment.***
- (g) The variance granted must be the minimum necessary to afford relief. ***Evidence was presented by the Applicant's designer to show the physical reasons necessary for granting this variance request. The dimensions on the amended site plan were the minimum necessary to afford relief.***
- (h) In granting a variance, the Board of Appeals may prescribe appropriate conditions in conformity with this chapter. Violation of such conditions, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter. ***The Board of Appeals does not require any additional conditions for this request.***
- (i) The applicant for a variance shall have the burden of proof on all points material to the application, which shall include the burden of presenting credible evidence as to each material issue and the burden of persuasion on each material issue. The Board of Appeals may disregard evidence, even if uncontroverted by an opposing party, if the Board finds such evidence not to be credible.

### **FINDINGS AND DECISIONS**

**Side Yard Setback Variance Request** – Upon motion made by Chairperson Livingstone, seconded by Member Schmidt, and passed unanimously, the Board approved the amended variance request of 2.54 feet side yard setback variance, allowing the structure to encroach in the required side yard setback provided that it is not less than 7.46 feet from the property line.

The decision is based on the findings of fact, the credibility of the witnesses' testimony, no general amendment is necessary, this is the minimum necessary to afford relief, Applicant has met the burden of proof for the construction, in general harmony with the area, and would not cause a reduction in the property values.

The 2023 Calendar for the Board of Appeals Meetings was approved, and the time of the meeting will begin at 6:00 p.m.

The meeting adjourned at 7:40 p.m.

ATTEST:

Donna R. Todd  
Donna R. Todd

11-28-2022  
Date

DENTON BOARD OF APPEALS:

Troy Livingstone  
Troy Livingstone, Chairperson

Florence E. Doherty  
Florence Doherty, Board Member

Mary Lori Schmidt  
Mary Lori Schmidt, Board Member