

1 REGULAR MEETING OF THE BOARD OF ZONING APPEALS

2 VIRTUAL PUBLIC HEARING

3 Thursday, May 14, 2020

4 7:30 p.m.

5
6 MS. ROUZI: The meeting for which this agenda has been
7 posted will be held pursuant to and in compliance with the
8 Virginia Freedom of Information Act, Section 2.2-3708.2 and
9 state and local legislation adopted to allow for continued
10 government operation during the COVID-19 declared emergency.

11
12 1. CALL TO ORDER

13 MR. JONES: This is Roy Jones and I would like to call to
14 order the Thursday, May 14, 2020, meeting of the Board of Zoning
15 Appeals.

16 Could we have a roll call please.

17
18 2. ROLL CALL

19 RECORDING SECRETARY: Mr. Jones.

20 MR. JONES: Here.

21 RECORDING SECRETARY: Mr. Calabrese.

22 MR. CALABRESE: Here.

23 RECORDING SECRETARY: Mr. Kien.

24 MR. KIEN: Here.

25 RECORDING SECRETARY: Mr. Misleh.

26 MR. MISLEH: Here.

27 RECORDING SECRETARY: Mr. Bartlett.

28 MR. BARTLETT: Here.

29 RECORDING SECRETARY: Thank you.

30 MR. JONES: Akida, procedurally should we take a roll
31 call of the members of the public who are present as well?

32 MS. ROUZI: Sure. I think we just have them sort of
33 introduce themselves, if that's okay, because I don't have their
34 names. But I can see Chris Fogle, Elaine, and that's it.

35 MR. FOGLE: Yes. Hi. This is Chris. Can you hear
36 me?

37 MS. ROUZI: Yes, we can hear you.

38 MR. FOGLE: Hi. Yes, I'm just a neighbor two doors
39 down. I live on the corner of Park Avenue and Pennsylvania
40 Avenue and so I just wanted to join and just kind of see, just
41 hear about the application. Thank you.

42 MS. ROUZI: Thank you.

43 MR. BOYLE: I guess we should have some formal
44 statement about who else is present and intends to speak.
45 Inconvenient to raise your right hand, but maybe at least get it
46 on the record, maybe starting with the applicant. If the chair
47 would ask who's present on behalf of the applicant and then
48 maybe members of the public who intend to speak.

49 MR. JONES: Thank you, Mr. Boyle.

50 With that, if you intend to speak or testify before
51 this Board tonight regarding this application or in general, we
52 could virtually raise your hand and swear that you will tell the
53 truth and nothing but the truth before this Board.

54 And with that, if you wouldn't mind stating your name
55 for the record and your relationship to either the applicant,
56 the application before this Board, or if you're making a
57 separate Petition.

58 So I think we'll start, if you have a new Petition
59 unrelated to this application, could you please state your name.

60 MS. ROUZI: I believe the applicant Andrew just signed
61 in. I think that was after everything you said, Mr. Jones. We
62 might want to repeat that.

63 Andrew, can you hear us?

64 Andrew, can you hear us? Can you unmute yourself?

65 We can't unmute him. He's on mute.

66 MR. CALABRESE: You can do a chat function with him
67 probably if he's not responding.

68 MR. BOYLE: That's right. Is everyone familiar with
69 the buttons at the bottom of your window? I personally have
70 been through a couple of these meetings, Akida, a few more, so
71 I'm going to rely on her for operating it.

72 Andrew, if you can hear us, you should have a
73 microphone button at the bottom of your screen to mute and
74 unmute.

75 MS. ROUZI: You got it.

76 Andrew, can you hear us?

77 MR. COLANGELO: I can see this. Can you guys hear me?

78 MS. ROUZI: Yes, we can hear you.

79 Andrew, can you hear us? We can hear you.

80 I'm sending a text.

81 MR. COLANGELO: I cannot hear you guys though.

82 MR. BOYLE: All right. We hear you and see you now.

83 MR. COLANGELO: My first time on Skype screenshare. I

84 just have to adjust my settings.

85 MR. BOYLE: Andrew, we can see and hear you now.

86 (Working out audio problems.)

87 MR. JONES: Sir, it's our understanding you are the

88 applicant for the variance application tonight.

89 3. PETITIONS

90 MR. JONES: We don't, to my knowledge, have any

91 Petitions.

92 So if you would, sir, if you wouldn't mind, just

93 swearing to tell the truth and the whole truth before this Board

94 tonight, if you'd raise your virtual right hand. We can swear

95 you in, and if you so swear, then you could please state your

96 name for the record.

97 MR. COLANGELO: My name is Andrew Colangelo.

98 MR. JONES: Thank you.

99

100 4. OLD BUSINESS:

101 MR. JONES: Mr. Boyle, I don't believe we have any Old
102 Business and other than the Approval of the Minutes, this
103 variance application is the only Agenda items tonight, is that
104 correct?

105 MR. BOYLE: That's correct.

106 And, Akida, have we lost a Board member or two? Is
107 everyone present?

108 MR. ROUZI: I wasn't looking. Hang on. Everybody's
109 here.

110 MR. BOYLE: I was marveling at our full Board. Well
111 done.

112 Do you want to read the Agenda item into the record,
113 Chair, please.

114 MR. JONES: Yes, sir.

115

116 5. NEW BUSINESS

117 Variance application V1615-20 by Lauren and Andrew
118 Colangelo, applicant and owner, for a variance to Section
119 48-1102(c) to allow a front yard setback of 25 feet instead of
120 32.2 feet, for the purpose of constructing a new single family
121 dwelling on premises known as 610 Park Avenue, RPC #51-129-035
122 of the Falls Church Real Property Records, zoned R-1B, Medium
123 Density Residential.

124

125 MR. JONES: The Agenda item is under New Business.
126 And this is for variance application V1615-20 by Lauren and
127 Andrew Colangelo, applicant and owners, for a variance to
128 Section 48-1102(c) to allow a front yard setback of 25 feet
129 instead of 32.2 feet, for the purpose of constructing a new
130 single family home dwelling on premises known as 610 Park
131 Avenue, RPC #51-129-035 of the Falls Church Real Property
132 Records, zoned R-1B, Medium Density Residential.

133 With that, Mr. Boyle, would you mind presenting
134 please.

135 MR. BOYLE: Yes, sir. Thank you.

136 Thanks to the Board and the applicant and members of
137 the public for participating in this. We can say it's unique at
138 the moment because it's never happened before for the BZA.
139 Council has been meeting remotely for some time. But highly
140 unusual and to have all this technology come together and move
141 these important public applications forward is a great relief.

142 Staff was beginning to wonder when our next public
143 hearing would be as well as the Boards related to this. We have
144 a HARB application that's been waiting that needs to come to the
145 BZA as well.

146 So thank you for pulling all your technical skills
147 together in what's a very unusual time for us and this Board.

148 With regard to this particular application, it's
149 before you tonight because a recent decision by the City

150 Attorney has directed staff to apply the Code sections that
151 speak to yard averaging for front yard setbacks. There's a
152 parallel conversation going on about a potential Code amendment
153 to that but after considerable conversation with the City
154 Attorney, staff has been directed to apply that section.

155 What it is simply, is that the Code states that the
156 front setback for a given property will be determined by the
157 average of the yards of the properties on either side, and
158 there's some provisions for what happens if there isn't a house
159 on the other side.

160 So what happens in this case is, we start off with the
161 basic front yard setback of 25 feet and then when looking at the
162 houses on either side, it's pushed back some distance. And this
163 yard has got some challenges as far as orientation. It's a
164 rectangle, it's kind of rotated 90 degrees. And when that front
165 setback is pushed back, it has a dramatic impact on placement of
166 the house.

167 So they're essentially asking for a variance to the
168 averaging requirement and dropping it down more resembling what
169 the basic front -- I'm not sure what to call it, the standard 25
170 foot setback without averaging.

171 The Board should have three emails in support of this
172 application and then a fourth email that came in just tonight
173 that we sent that expressed some concerns about the appearance
174 of the street along the frontage.

175 And I don't think we forwarded that to the applicant.
176 Akida, if you received that and could send that. Everyone else
177 should have that.

178 There was a question earlier in the week, I think from
179 Mr. Calabrese, about whether this was Code and whether you would
180 be waiving something out of your authority.

181 It is Code. It is a Code section that staff has not
182 applied for many years. The reason behind that is probably best
183 saved for another discussion and there is a potential Code
184 amendment in place that we're supporting.

185 However, the City Attorney felt that this is what the
186 Code wants and so the front yard setback for this property is
187 determined by the yards on either side.

188 And you'll hear in the applicants' presentation why
189 that imposes an undue hardship and why they think it would be
190 reasonable to obtain relief from this Board.

191 If no one received that last email, please let me
192 know, I'll make sure you see that and we'll get that to the
193 applicant.

194 It's essentially a front yard setback variance. This
195 Board over my tenure has seen I think two of these. So there is
196 some precedent for this Board hearing variances for averaged
197 front yards.

198 In those cases, the applicants just didn't want to run
199 into a potential appeal over if they went with the standard

200 setback, would someone object and say you need to do the
201 averaging. So they went ahead and asked for variances to the
202 averaging, the setback produced by the averaging.

203 So there is a precedent for this Board to hear this.
204 And I say that as confirmation that this is a Code provision.
205 It's very unusual to have an averaged front yard variance come
206 before this Board. But it is a Code Section and it is within
207 your standard authority to review like any other variance that
208 you hear.

209 So consider it or look at it in terms of a front yard
210 setback is X and they're asking for relief for the reasons that
211 you'll hear.

212 With that, I think I'll defer to the applicants'
213 presentation.

214 MR. CALABRESE: So, John, I don't think I saw all of
215 the neighbors' emails. I saw one from one neighbor that was
216 supportive. It sounds like there's some others that came in, so
217 if you could please forward that to me. It sounds like you said
218 one of them was negative, so I'd like to see that.

219 But the other question is so, I guess maybe I didn't
220 know the Code, we didn't understand the Code that well, but
221 there's always been a standard setback as you noted, but you're
222 saying as an option it's rarely used as an averaging setback.
223 Are they both available, is what you're saying, you can either

224 apply a standard setback or an averaging setback, is that how
225 the law is written?

226 MR. BOYLE: It is in the Code. And it does reference
227 the front setback will be the average of the yards on either
228 side.

229 Staff's problem for many, many years has been, and
230 this is getting into a little bit of the weeds of the Code
231 amendment we're trying to process, once upon a time the Code
232 said "average the yards" and then when you go over to the
233 definition of what a yard is, it would speak to the actual
234 position of the building.

235 At some point there was a Code amendment that dropped
236 that building reference and so it left the Code in this
237 perpetual loop of "average the yards." Well, the yard is 25
238 feet, so the average of 25 and 25 is 25. So for that reason,
239 staff has been trying to get a Code amendment over several
240 years, but that language is still in there, that you average the
241 yards on either side.

242 So it's not so much that it's an option but it's a
243 question of, is this inapplicable Code, is this Code that should
244 be applied, should it not be applied, or is it, what is the
245 intent of this Code section when it mentions averaging.

246 Each City Attorney, until the present one, felt that
247 it was a typo of some sort and so staff has not applied it.

248 Over the years there's been an appeal or two. There
249 have been homeowners that felt, you know what? I'm a little
250 nervous about getting into the ninth inning of my project to
251 have somebody appeal this averaging word, so they've applied for
252 variances over the years.

253 I've been Zoning Administrator since 2002 and I have
254 not applied this Code Section as averaging. What's changed is
255 the current City Attorney recently felt that it was intended to
256 average, even though it's not worded to include the building,
257 that there must be some intent there.

258 So we had a major change in our approach towards
259 these, how do we determine what the front yard is on a
260 residential property? And that's very recent. That's about
261 January of this year.

262 In speaking with the applicant, they had the choice
263 of, Well, the Zoning Administrator could say your setback is the
264 average of the properties, and he could appeal that; or we could
265 say your setback is 25 feet and risk the appeal of a third
266 party. And he said, you know what, let's just go ahead and ask
267 for a variance to the yard averaging requirement. Which in
268 conversation with the City Attorney said was legitimate. If
269 that's what the Code wants, they can request and make a case for
270 a variance against the averaging piece.

271 So getting back to your question, Mr. Calabrese, it's
272 not an option. I think the City Attorney would say, and I can

273 interpret her point, is that is what the Code is. We are to
274 average the properties on either side. And so they're here for
275 good old vanilla variance to a setback.

276 The number will be unusual because it's based on where
277 the buildings are on either side. So it won't be a variance to
278 25 feet, it would be a variance to where the neighbors placed
279 their houses, if that helps.

280 MR. CALABRESE: Okay. Essentially what you're saying,
281 until this Code is changed -- this is not relevant for this
282 applicant -- but all future variance applications are going to
283 be applications to this averaging, they're going to be a
284 variance to the averaging. Because you're saying we're now
285 interpreting the setbacks as strictly as what's in the Code
286 which is an average of the neighboring houses.

287 So until it's changed by the legislature or the City,
288 we're now going to be doing that; is that correct?

289 MR. COLANGELO: What's crazy too, sorry, guys, to jump
290 in, I was talking with John about this or I was reading the
291 Code, and, John, I don't have the Code up in front of me but
292 it's kind of crazy language. It's like any addition which is
293 being made to a house, to have an addition approved, I believe
294 this, John, the front of the house has to be the average.

295 So I believe the way the Code technically reads, if
296 you want to add an addition to the back of your home that
297 doesn't violate the back of the yards setbacks, in order for

298 that addition to be approved, the front of the house has to be
299 at the right setback, is that accurate, John?

300 MR. BOYLE: Yeah, that's essentially --

301 MR. CALABRESE: I asked a different question, John.
302 Thank you for that.

303 I'm just asking, are we now, as a matter of process
304 for this Board, when we hear these variance applications, it's
305 now going to be a variance of the averaging because of the new
306 interpretation of the City Attorney, is that correct?

307 MR. BOYLE: That's correct; however I'd say the
308 majority of the houses are built to an identical position.
309 We've studied this extensively and it's remarkable how many are
310 exactly 25 feet on the nose for the entire street. So we won't
311 quibble over a fraction of a foot but where they were trying to
312 hit 25 or 30 in the other zoning district, we take it at that
313 measurement.

314 So we probably won't see too many of these, where in
315 this case a new house is proposed and you've got the two
316 neighbors set further back than the basic 25. What you
317 typically see is everyone is at the 25. So I don't think this
318 is going to come up too often because you'd need several things
319 happening: You'd need probably new construction, neighbors set
320 much further back than what the Code wants and the applicant
321 feels is unreasonable, and then a variance application.

322 Most, by far, the plans we see come in and they show
323 where the neighbors' houses are, they're all set to the minimum
324 front yard, so I don't think we're going to see too many of
325 these.

326 MR. CALABRESE: All right. Thank you.

327 MR. BOYLE: Sure. Let's see if I can find the -- we
328 sent the Code language out on this Section but if the Board
329 would like, I could point you to it and read that into the
330 record.

331 MR. CALABRESE: The only other thing is I don't think
332 I got all the letters from the neighbors. I only got one.
333 Akida, are you trying to send all the letters? I'm sorry. And
334 then I'll stop.

335 MS. ROUZI: The two letters should be part of the
336 application package at the end.

337 MR. CALABRESE: Okay. That's all right. If it's in
338 there, I'll look. Because there was a separate email, I assume.
339 But if that's the case, I'll look at that. So thank you.

340 MS. ROUZI: Yeah, the two additional were separate
341 emails. I'll forward this one on again. But I'm happy to pull
342 them up on the screen if you can see that.

343 MR. CALABRESE: That's okay. I'm sure it's in here.
344 Thank you.

345 MR. BOYLE: What it comes down to is I think there
346 were three in support and one came in late this afternoon with

347 some concerns, raised an interesting concern. That one, I
348 forwarded a few minutes ago.

349 MR. CALABRESE: Thank you.

350 MR. BOYLE: Where are we? We're in my presentation.

351 Just to summarize, you should have the applicants'
352 package, showing a proposed house, a new house on Park Avenue,
353 and in that package is the setback line as required by the yard
354 averaging, keeping in mind that the basic setback is 25 feet and
355 the averaging would push it much further back.

356 The package includes, as Akida said, some emails from
357 neighbors in support, and then this evening we got one that
358 raised some questions.

359 This is a Code requirement per the City Attorney, that
360 the setback is being varied from is the required setback so
361 we'll leave it to the Board to decide whether the relief sought
362 is reasonable or not.

363 And with that, I think we'll defer to Andrew, the
364 applicant, and his presentation.

365 MR. COLANGELO: Thank you, Mr. Boyle. Thank you,
366 everybody.

367 I'm not like necessarily the best presenter and I
368 didn't know I was going to have the stage, if you will, but glad
369 to jump into this.

370 So I think the simplest way to talk about this is we
371 were a little bit surprised about it as we got into the process

372 because we'd always heard about the various setbacks, 25 feet
373 for this particular area of zoning, and when I talked to both
374 the neighbors on either side of me they said, when I was talking
375 to them about this variance, they said, "Well, how close are you
376 setting it to the street? Isn't the setback 25 feet?"

377 And I was like, yeah, it is 25 feet and I just want to
378 set it at 25 feet but there's a -- so they were surprised about
379 this but I had to explain to them this clause, this averaging
380 clause and how it worked.

381 It's just kind of an odd situation that a property
382 owner's land rights are essentially impacted by the adjacent
383 property, right, where the adjacent properties have decided or
384 their homes have been set, kind of impacts the amount of land
385 that's buildable for the property owner.

386 At the same time, generally I'm a layman here. Just
387 thinking, okay, if I'm setting my house at 25, this generally
388 sounds reasonable. So first I was taking this like reasonable
389 path, like who's not going to think setting their house at 25
390 feet is reasonable, and that's basically where every other house
391 is set at.

392 And then to take it a step further, I started to look
393 into this and I say, okay, I kind of get the gist of why they're
394 saying an averaging rule, so that I think the concept of the
395 rule is so that houses are essentially -- you don't have one
396 house that's right on the street and one house that's, you know,

397 50 feet back and it feels like a kind of to and fro of the
398 various front houses.

399 So I started to look at it further and just a layman's
400 standpoint -- real quick. Can I take control of the screen or
401 is there a way for me to -- I have a map up that I was just
402 going to reference.

403 MS. ROUZI: I don't have it in the packet then, huh?

404 MR. COLANGELO: No, but I'm requesting control right
405 now and if you --

406 MS. ROUZI: Okay. I'm going to give you control. No
407 problem.

408 MR. COLANGELO: Appreciate it.

409 MR. BOYLE: We can do that?

410 MS. ROUZI: I didn't know that we could. Other people
411 can't control applications -- it says you can't do it, Andrew.

412 MR. COLANGELO: Got you.

413 MS. ROUZI: If you email it to me right now, I can
414 pull it up for you.

415 MR. COLANGELO: Sure. And I'll briefly describe here.

416 I'll take a screen shot here.

417 Who am I emailing this to?

418 MS. ROUZI: Akida.

419 MR. COLANGELO: I'm sure Akida will pull this up in
420 one moment.

421 Just generally, it just sounds a little odd that I
422 have to set it further back but, okay, let me take a look at
423 this. It should be noted also I'm not asking for any other
424 variances. I'm not asking for a land coverage variance and I
425 have support of both of the neighbors here.

426 I'll reference this map in just a moment.

427 MR. CALABRESE: So, Mr. Colangelo, maybe while you're
428 waiting for that to load, just so you know, the criteria by
429 which we will evaluate your variance is on whether this --
430 whether by granting you or not granting you the variance it
431 provides an undue burden on your ability to build the house in
432 the way that is necessary and if there are no other options.

433 MR. COLANGELO: Yes.

434 MR. CALABRESE: So I understand that the requirements
435 seem odd. That's not, to be honest, completely relevant to our
436 decision-making. So if you want to focus more on the burden
437 this would place upon you and how it would create an undue
438 burden on you.

439 MR. COLANGELO: Yes, and I can get very technical here
440 in a second too.

441 So real quick, I'm sorry, I'm starting layman's
442 perspectives here and then I'll get into the technical side of
443 things.

444 So, houses number 1, 2, and 3, those are all facing
445 Park but less than 25 feet from Park. Some substantially less,

446 less than 20 feet from Park. So that's the one thing that I was
447 going to be referencing there.

448 MR. BARTLETT: Andrew, are you saying that those
449 houses, 1, 2 and 3, face Park Avenue?

450 MR. COLANGELO: So technically they have a front yard,
451 a front yard setback, if you will, that is required on Park.

452 MR. BARTLETT: John, are those corner lots? Do they
453 have two front yard setbacks as corner lots on Park,
454 Pennsylvania, Lee, and it looks like Oak maybe, I'm not sure?

455 MR. BOYLE: Exactly. Those are our famous corner lots
456 built before 1980 that the Board usually sees front yard setback
457 variances on.

458 Those houses were built at a time where the narrow
459 frontage was considered the front and would have been the full
460 setback of 25 or 30 feet. Then the other street frontage was
461 known as a street side yard. It had its own setback which was
462 one half of the neighbor's. So it would be basically one half
463 of the 25.

464 So looking at number 2, the property to the left was
465 probably set at 25 feet, so number 2 along Park was only
466 required back then to be one half of that neighbor's.

467 So this Board sees a lot of variances for corner
468 properties because of that. In the 1980s that street side yard
469 being one half of the neighbor's fell out and the street

470 frontage setback became a full 25 or 30, depending on the zoning
471 district.

472 So I think that's what the applicant's pointing out,
473 is we have this, all those corner houses now are built to the
474 old Code of probably 10 or 12 feet.

475 MR. COLANGELO: Yeah, it's quite close to that street.

476 Again, I'm in my layman's section of this just 'cause,
477 I don't know, I figured I'd hit it with both angles but the
478 layman's section just -- and mostly that this is the reference
479 of both of my neighbors that they were just surprised that I had
480 to even seek a variance if I'm only going at 25 feet.

481 But also, let's get into technical side of things.
482 What's interesting and what is unique about this particular lot
483 which I know I have to show an undue burden based on this
484 particular lot, this is an interesting lot.

485 Of these R-1B lots, only -- hold on. There's only a
486 certain few, Park Ave and Mr. Tire on Falls Ave which have front
487 lots facing mixed use and commercial zoning.

488 The general point here on Park Ave, is that they're
489 facing mixed use and commercial, like some really, really dense
490 uses are going to be coming in right across the street from us.
491 Trust me, if I could buy a house on North Lee or Riley or
492 somewhere nice and quiet, quite a pleasant residential feel, I
493 would appreciate doing that. But this house on Park happened to
494 pop up and I wanted to take advantage of that.

495 But my general point here is R-1B is, this area of
496 Park Ave is unique because it faces mixed uses. It's different
497 from practically all the other R-1B lots with the exception of
498 Mr. Tire.

499 So in general, the blanket application of R-1B lots
500 and just kind of what those are facing is different for
501 generally for Park.

502 And as your searches hone on this particular lot
503 further, this one is the shallowest, so this is a unique set of
504 circumstances, the shallowest interior lot that's on Park. So
505 because of that, I can't change the orientation of my house.
506 The front of my house has to be facing Park. It has to be
507 facing mixed use.

508 MR. BOYLE: Andrew, sorry to interrupt. I think it
509 would be very helpful to get into the record the documentation
510 in support of your variance. I think you make some very good
511 points there.

512 The secretary has those, but it would be excellent to
513 read through the points that you made in your justification, if
514 only to get it into the record and the Board would benefit by
515 hearing from the argument that you made.

516 MR. COLANGELO: Sorry. I'm trying to summarize these
517 points but I'm not the most eloquent speaker.

518 So, would you like me to basically read through these
519 bullet points?

520 MR. BOYLE: Yeah, that's what folks typically do.
521 This is very much as informal a formal conversation you'll have,
522 formal hearing that you'll have. It's very much a conversation
523 with the Board.

524 So, by all means, present your application in support
525 for the variance. I thought that was clear, then I could
526 explain it, which is why I deferred right off the bat. It's a
527 very concise application.

528 MR. COLANGELO: Got you. Sorry. I'm trying to be
529 smooth and I'm doing exceptionally well, I can tell.

530 So, I'll just read through this.

531 The unique and specific circumstances around this
532 situation include the averaging of the front yard rule applies
533 to all residential lots, the vast majority of which face onto
534 residential streets. 610 Park Ave is impacted due to the
535 blanket application of this rule.

536 In general, Park Ave contains only R-1B lots in the
537 City which face mixed use/commercial type of uses. And the one
538 exception I can find is the property next to Mr. Tire on Fall
539 Ave which has a front yard facing the parking lot for Mr. Tire.

540 As such, the properties facing mixed-use zoning
541 generally have unique circumstances. Of course, they have
542 different feels than Fulton or Riley or Grove Streets with their
543 front yards facing more residential landscapes.

544 In addition, these is a subset of parcels on Park
545 which are right across the street from mixed use zoning, and 610
546 Park Ave is one of them.

547 There is already higher traffic on Park Ave and
548 increased traffic likely in the future with mixed-use zoning
549 across the street and the potential for additional
550 redevelopment, which I'll note, I support.

551 This particular lot, 610 Park Ave, is an interior lot.
552 With it being an interior lot, it is basically forced to face
553 Park. Kind of uniquely on some other streets that face Park and
554 a side street, they actually have the opportunity to change
555 their orientation, such as 200 North Virginia, which is on the
556 corner of Park and Virginia. That used to face Park Ave. When
557 they rebuilt that home, they actually constructed it to face
558 Virginia Ave.

559 So, my interior lot on Park Ave, I don't have the
560 opportunity to change the orientation. I'm basically forced to
561 have my front yard, my true front yard feel on Park.

562 This particular lot is the shallowest interior lot on
563 Park Ave. So it's definitely a unique set of circumstances with
564 the dimensions of the lot and orientations that I'm facing.

565 Also interesting is Chapter 7 of the City's
566 Comprehensive Plan designates Park Ave as a "Great Street,
567 Civic" and then as they start to define "Great Streets" in
568 Chapter 7, appendix B, page 37, the third bullet point notes

569 that the features of "Great Streets" include buildings being
570 "close to the street."

571 So, it's interesting, the house where it's currently
572 set is at like 30 or 31 feet. When you're applying the
573 averaging rule, you're actually forcing the house to be further
574 back from the street. And by allowing this 25 foot minimum
575 variance, you're actually helping the City come in line with
576 what its vision, its stated vision in the Comp Plan is, of what
577 a Great Street is and having buildings be closer to the street.

578 The City has also designated the block immediately
579 across from 610 Park Ave as a revitalization area and you guys
580 seem to be encouraging redevelopment, which I support.

581 And then providing for a waiver of the averaging rule
582 will allow the house to be set further forward on the lot
583 providing for a bigger back yard, a safer and more peaceful use
584 of the property in light of the traffic and dense mixed-use
585 zoning that's coming across the street.

586 I'd love your guys' guidance here, if that was
587 appropriate or what else I could be doing to further this
588 conversation.

589 MR. JONES: If you've done your presentation, sir, I
590 think we could open it up to the Board to ask questions.

591 I'd like to start off. You mentioned that the current
592 structure on the property is at a 31 foot setback currently?

593 MR. COLANGELO: Correct. Roughly, yes.

594 MR. JONES: Is there anything prohibiting you from
595 building within the current framework, starting at 31 and moving
596 back?

597 MR. COLANGELO: I believe at the depth of the house,
598 it would start encroaching into the back setback.

599 Also, there's numerous reasons why, I mean I think for
600 this -- I mean, I think for the long term safety and enjoyment
601 of the property and the unique circumstances, which are the
602 outline, the way that this lot is positioned, it does have a
603 unique set of circumstances, that the 25 foot front yard setback
604 seems applicable due to these unique circumstances.

605 MR. JONES: Could you sort of illuminate or speak a little
606 bit more to the shallowness of the lot. If we took your exact
607 plan, moved it to 31 feet, are you saying that the back of that
608 structure would now encroach upon the rear setback?

609 MR. COLANGELO: I'd have to -- hold on one second.

610 MR. BARTLETT: I guess the question to John is what is
611 the rear yard setback for this lot per Code, and so if you moved
612 it back 7 feet, the rear yard setback would be 23 feet, but
613 what's the allowable?

614 MR. BOYLE: The base is 30. Let me see if there's a
615 reduction. No, there wouldn't be a reduction, so it would be 30
616 feet.

617 MR. BARTLETT: I think, Roy, following up on your
618 question, I wanted to find out, before you designed this

619 structure, did you know what your allowable rear yard setback
620 would be per Code of 32.2 feet, or --

621 MR. COLANGELO: I think I was -- I mean I had
622 researched the 25 foot front setback and, I mean, it's similar
623 to my neighbors as well. I was surprised when my builder
624 started to go into -- I'm not sure if one of the civil engineers
625 or somebody pointed this out to the builder but we've gone
626 through this entire build process and then he said, Oh, actually
627 there's an averaging rule that we have to look at and when he
628 measured the two adjacent houses, so at the 32.2 feet I believe
629 it is, when you add the 40, yeah, it encroaches on that back
630 yard.

631 So that's when it came up and when I started talking
632 to my neighbors about it they said, yeah, it was a surprise to
633 them as well.

634 MR. BOYLE: I should say on behalf of staff, this
635 project was typical in that it was many months under review and
636 during the submission process of this and discussion with staff
637 is when the City Attorney's finding came out. So they kind of
638 had staff's preference for Code application at the start be
639 interrupted by the City Attorney's take on the Code mid-process.

640 So that's the reason why the house was designed to a
641 different standard.

642 MR. MISLEH: John, do we have the measurements for the
643 neighboring houses? What are the setbacks for 608 and 612?

644 MR. BOYLE: I'll get those.

645 MR. BARTLETT: Mr. Misleh, that's a really good
646 question because I'm looking at the aerial of 608 and 612 and I
647 see 608 on the corner, on the corner of -- I think that's Lee.
648 And I've seen that house before and I understand that that
649 probably has a -- around, I don't know, a 30ish foot setback. I
650 can't tell.

651 But I'm trying to figure out how 612 is measured. Is
652 it measured to the front of that garage that faces Park Avenue
653 or is it measured based on the residential housing structure
654 that's attached to the garage at 612 because -- or 608, sorry.
655 608 has the garage that looks to be the same distance from Park
656 Avenue as the existing structure at 610.

657 MR. BOYLE: We have the plat for 608 and it would be
658 measured to the garage which was shown as 35.2. And there it is
659 through the miracle of Akida.

660 MR. BARTLETT: All right. So 608 is around 31, 610 is
661 around 31. 608 is around 32 something. So there is a 32.2?

662 MR. BOYLE: 608 to the side is 35.2.

663 That particular builder wanted the garage in front and
664 you can't have a garage in the front yard so he simply pushed
665 the house back far enough to get the garage out of the front
666 yard setback.

667 That's why it's garage in front. There's a few others
668 in town like that. That one is at 35.2.

669 Akida, what's the one on the other side?

670 MR. MISLEH: Am I correct, while you're looking for
671 that, Akida, that 612 used to be oriented towards Lee Street and
672 when they redeveloped it, they oriented the house towards Park?

673 MR. BOYLE: I think you're correct. We've had a
674 flurry of those recently where they've wanted to rotate.

675 MR. COLANGELO: Hey, John, if I could chime in on 608,
676 so talking about the uniqueness of my lot versus like say a 608,
677 I would have loved to have a lot like 608. And, Akida, I think
678 you had it up on the screen. I mean they have a luxurious
679 practically back yard, even compared to mine set at 25 feet.

680 I mean, that's a beautiful lot right there. I mean,
681 it looks like the house is built about halfway there. Gosh,
682 they have an 86 foot backyard. And I think we just did the math
683 there. My backyard we're talking about, you know, 23 feet, so
684 we're talking about a quarter of the depth of backyard there.

685 Interestingly when 608 was built, they had the luxury,
686 frankly, to push that back. That setback's at 35 feet. They
687 didn't even have to set it that far back. So in the process of
688 building their house, they just said, eh, go ahead, push it
689 further back. They actually have a pretty steep grade there.

690 Part of the reason that they have their house further
691 setback is so you can access that driveway. It would be a
692 pretty crazy grade there.

693 But, yeah, so that whole building of 608 is hurting me
694 as well here and I don't even have the benefit of that same back
695 yard.

696 MR. BOYLE: It gets to the conversation of whether
697 this Code section makes sense anymore, but at the risk of
698 complicating conversation, this is a very good example of what
699 you're looking at of why staff feels this Code section is a
700 problem right now.

701 The original averaging language was from a time in the
702 30s and 40s that specifically in a paragraph that mentioned
703 streets that were not built out. We still had unpaved streets
704 and houses were going up one by one in a haphazard manner and
705 that's where the averaging language came in, to kind of make a
706 uniform frontage along these streets as houses popped up.

707 Then there was the provision to drop the averaging
708 once a street got built out. When that Code changed, they
709 didn't take this averaging language out of this particular
710 section and I think that's important because the previous
711 section specifically referenced the position of the building.
712 Now all we have is the average of the yards.

713 Well, if you trip through a couple of the definitions,
714 the yard is 25, the yard is 25, the yard is 25. It doesn't
715 mention the position of the building. And this is a good
716 example. 608 pulled their building back far enough to get away

717 from a slope to allow a reasonable pitch in a driveway and get
718 into a two car garage.

719 So had he put his back at 100 feet off of Park,
720 according to the averaging rule, would have rendered the
721 applicant's property unbuildable and he would be in here tonight
722 for a variance because of where the neighbors placed their
723 houses.

724 Now, the resolution of that argument is for another
725 day. It needs a Code amendment and the City Attorney has felt
726 that it's in there and it does need a Code amendment but it's
727 there. It says average so we're going to average.

728 In speaking of the burden of this particular
729 applicant, application, you have this provision that sets this
730 front yard of the applicants' property entirely based on where
731 the neighbors placed their houses.

732 And if that neighbor comes in in the future and tears
733 his house down and moves it, it renders the applicants' property
734 nonconforming. And nonconforming houses are not to be expanded,
735 so he couldn't do an addition or a porch or something like that
736 based on what the neighbors do.

737 So staff very strongly feels that we're kind of in a
738 period of unclarity as to how to apply this Code. And the
739 burden tonight for the applicant obviously and as Mr. Calabrese
740 raised, is why do you need relief, in summation. And I think
741 staff is in the position of agreeing with the applicant that

742 it's difficult to apply a uniform standard when your setback is
743 X but this other guy's setback is something else. The setback
744 on the applicants' property is 33 and change but the setback on
745 the neighbor to the right might be 40 and the setback on the
746 corner is an entirely different number.

747 And I can tell you for trying to review building
748 permits for staff, that's a headache. And we hope to resolve
749 that through Code amendment. But we're here tonight for an
750 application on a variance for relief.

751 I would just draw attention to, we have these lots
752 that are very different in configuration and shape and square
753 footage and very different in placement of where the houses are
754 and would that not be worthy of consideration under the Board's
755 burden of reviewing and approving.

756 You could build to that setback, I'm sure, but does it
757 rise to a taking of property. The setback on one property is X
758 and the setback on another property is something else. To
759 staff, that seems very haphazard and inequitable, if that's a
760 word.

761 I like the 25, I like the 30. Very simple. But we're
762 dealing with this Code that was written at a time when many of
763 the lots in the City, they've been subdivided but they hadn't
764 been built on. So they're trying to deal with this placement of
765 structures as the town built out.

766 Well, the town is built out yet we're still averaging.

767 So I guess I'd ask the Board to consider is the very
768 fact the Code asks for an averaging of setbacks a hardship.

769 I'm speaking a little more than I usually do because
770 we're vested in where this goes from here and whatever you
771 decide tonight is going to be instructional on where we take
772 this.

773 Yes, this is the Code, yes, we're to average. Does
774 that very fact that we average on this property, and his setback
775 is different than anyone else in town, does that rise to the
776 burden of what the BZA sees?

777 I, as Zoning Administrator, would take what your
778 opinion is and wrap that up and include it in part of our
779 argument to have this Code amended.

780 Again, like I said, I'm speaking a little more than I
781 usually do but this is a pretty sensitive topic as far as how we
782 handle our many, many, many single family properties in town.

783 MR. MISLEH: John, if the neighbors were less than 25
784 feet, would it still be the average?

785 MR. BOYLE: No. The way it's worded, it's a minimum
786 of 25 and no more than 50.

787 MR. KIEN: Hey, John. This is Peter. Can I get
788 clarity on something really quick here.

789 So if we were to apply the averaging rule to this
790 particular plat, the way I'm looking at it, and push this

791 property back, we would be simply creating another variance
792 needed for the rear setback, is that correct?

793 MR. BOYLE: For the proposed house.

794 MR. KIEN: For the proposed house. Forward talking
795 and to stay within both of these, a complete redesign for the
796 applicant.

797 MR. BOYLE: That's correct.

798 It's not a matter for this Board, I think, but this
799 applicant did start the process with guidance from staff that
800 your front yard setback is 25 feet. Then in a separate question
801 that came to the City Attorney at a subdivision hearing at the
802 Planning Commission, the question of front yard averaging was
803 raised because subdivisions have to show their setbacks. The
804 City Attorney opined that we need to average.

805 So through no fault of his own, this applicant has
806 invested time and money and what have you and extensive talks
807 with staff believing there was a 25 foot setback. So that's why
808 this house has been designed -- I wouldn't characterize it as
809 him trying to fit something in. He's working with the setbacks
810 we gave him. The City Attorney in mid-discussion felt that it
811 should be applied differently.

812 His options then are, do I apply for a variance, which
813 we encourage. Do I get the Zoning Administrator to issue an
814 opinion and then either appeal or support it? And then does he
815 risk a third party appealing the averaging?

816 Believe it or not there's a group out there that
817 watches front yard averaging in Falls Church. They have
818 appealed from time to time. They feel that that's the way the
819 Code should be applied.

820 So to answer your question, this house was designed as
821 though the front yard setback was 25. You can see they actually
822 set it back at almost 26. And they're well within the rear 30.
823 So without the averaging this house fits fine.

824 Akida, do we have the slide showing where the front
825 yard setback would fall if it were averaged?

826 MS. ROUZI: Oh, yes. Hang on.

827 MR. BOYLE: It's in the applicant's presentation.

828 MS. ROUZI: Is that it, John?

829 MR. BOYLE: Yeah.

830 So that graphic shows essentially what the variance is
831 that's being requested.

832 MR. CALABRESE: So, John, a question. The other homes
833 that are in that neighborhood, they built according to the
834 averaging requirement, is that correct? They followed the
835 averaging requirement for those homes.

836 MR. BOYLE: I can't be sure because they were built so
837 long ago.

838 Well, the one with the garage, he pushed it back far
839 enough to avoid a pretty severe slope. Basically the
840 engineering of the driveway defined where it went. So he needed

841 to pull it well back and I don't think he was concerned at all
842 about the averaging.

843 I can tell you when that 608's plan came in, I
844 reviewed it as though it were a 25 foot setback and he didn't
845 want to set it at 25 because it was very steep from Park so he
846 pulled it back far enough where they didn't have to excavate,
847 and what have you, so it sits where it sits.

848 But that's actually a very good example of the impact
849 the averaging has on your neighbors. Had 608 pulled it back
850 another 50 feet, we'd be talking about a zero building envelope
851 on this property. And staff has a problem with setbacks being
852 determined by where your neighbor places the house. But again,
853 a discussion for another day.

854 MR. CALABRESE: So, I, from an editorial standpoint,
855 it does sound like this Rule or this requirement is outdated and
856 perhaps had an uneven application. But the City has known this
857 for what, 50 years, since we started having paved streets?

858 MR. BOYLE: Yes.

859 MR. CALABRESE: Why has this not been changed? Why
860 are we saying now in 2020 that it's all of a sudden something
861 that should be changed when, in fact, the City has made these
862 changes like 70 years ago? I'm not sure I understand why all of
863 a sudden now it's something that's been discovered. It's been
864 around for that long.

865 MR. BOYLE: I think the thing that's different now
866 than many years ago is the number of tear-downs that we have.
867 The houses that were built -- the housing stock in Falls Church,
868 I'd say 80 percent of it is built in the World War II era and
869 the 1950s. They were placed en masse at the minimum setback.
870 They were averaged but they were averaged because they were all
871 set at 25 feet.

872 The phenomenon that's happened now is the perfectly
873 good million dollar houses are being torn down and replaced.
874 We've never seen this before. So, the question is, where do you
875 set them?

876 As houses get rebuilt, it changes the setbacks from
877 neighbor to neighbor and I think that's what's causing the
878 issue.

879 MR. BARTLETT: John, can I ask you a follow-up
880 question to David's question here.

881 It seems like while the averaging rule was on the
882 books for a certain timeframe, it was not being applied by,
883 based on legal opinion, practice, etcetera. So it seems like
884 staff has been sharing that interpretation with the public while
885 it's actually inaccurate to say that the front yard setback in
886 this case was 25 when it really is -- they were all always
887 subject to the averaging rule.

888 So while you can read the Code and look at one section
889 it says it's 25 and then later on in the Code it says you should

890 actually average, the practice of the City has been that we're
891 not going to apply the averaging rule until this recent new
892 emphasis to do so; is that correct?

893 MR. BOYLE: Yes and no, of course. We did average, my
894 predecessor and me. And my predecessor takes it back into the
895 1980s. But we're averaging, according to the provisions of the
896 Code which references the yard. The yard, it gets to be some
897 very tedious Code language, but the yard is the basic 25 or 30
898 without exception. So the average of 25 and 25 is 25. So, yes,
899 we're applying the average.

900 What changed is some language from the 1930s that was
901 carried through to about I think the 1944 Zoning Code, had a
902 second definition about "yard shall be the location of the
903 building." And that definition fell out. And now all staff has
904 is yard which is defined as 25 or 30 feet. It does not
905 reference the building.

906 So for the last, going on 40 years, we've averaged the
907 yards, and me being a math major, it was very simple for me to
908 do 25 and 25 is 25. And so when folks come in and ask what
909 their setbacks are, that's what they've been instructed to do.

910 What's changed is this City Attorney feels that there
911 must be a reason it's in there, let's average the buildings as
912 well as the yards. And she's taken the position of, Let's
913 change the Code but obviously it's in there for a reason.

914 I obviously disagree with that because a yard is
915 defined very differently than building location, so here we are.

916 This is probably the first iteration of this
917 discussion in front of the Board over this what's a yard and
918 what's a building location.

919 But in response to your question, we did average but
920 it's a distinction without a difference. The yards were 25 feet
921 and without that section pointing to the actual building
922 location, it really had no meaning. So 25 or 30, full speed
923 ahead. And then in the midst of discussion for this project
924 came the City Attorney's opinion for a subdivision, not even for
925 a building application.

926 So that's how we got here and that's literally 40
927 years of Code application with a big left turn here in the last
928 six months.

929 MR. CALABRESE: I mean, this Board, we're not in the
930 business of interpreting the meaning of the Code. Our business
931 is to determine the strict application of it and whether the
932 strict application creates an undue burden.

933 I'm having a hard time. It sounds like the City
934 Attorney thinks that we should interpret the law, the Code
935 strictly, that we should average. You're saying that you think
936 she's wrong. But our job is not to interpret. We don't have
937 that ability to do that.

938 I don't think that's -- and if we were to render a
939 decision that's based on what we think is our own interpretation
940 of the law or, worse, that we think the law is wrong, so we're
941 going to make an equitable decision that we're going to rule in
942 a different way. I don't know that that's something we can do.
943 It would certainly be subject to an appeal.

944 MR. BOYLE: I think you're right in raising that
945 position. It's not the Board's position to make Code
946 amendments. But I think there's enough to work with if you
947 embrace the averaging of, let's say for argument's sake, the
948 actual buildings. Does that pose a hardship on this particular
949 property? And leave the discussion of whether the Code has a
950 typo in it or not for another day. That's not this Board's
951 purview.

952 You can review this application as the City Attorney's
953 instructed and that while I don't think the Code -- as Zoning
954 Administrator, I don't think the Code references the buildings.
955 She's saying it must, otherwise why would it be there.

956 So the averaging rule in this case is looking at the
957 position of the buildings on either side. So for the purpose of
958 this application, does holding this property owner to the
959 average of the buildings on either side pose a hardship in
960 addition to the other items that he's raised.

961 So you can have that conversation without worrying
962 about rewriting the Code.

963 MR. CALABRESE: That makes sense.

964 MR. COLANGELO: John -- sorry, guys. Dave, do you
965 mind if I jump in for a second?

966 MR. CALABRESE: Sure.

967 MR. COLANGELO: Real quick. So and I think I've
968 consulted a couple of lawyer friends and they said, Andrew, you
969 have to show a unique hardship specific to this specific lot.
970 And hopefully I've done that being that it's facing Park, a busy
971 street, a Great Street. It's a unique circumstances in that
972 it's right across from a mixed use potential dense development.
973 It is the shallowest interior lot on Park.

974 So I think I'm showing the unique circumstances of
975 this lot which is a key component to you guys providing the
976 variance here.

977 Second point, John, which I was just going to kick
978 over to you. And you guys are saying, okay, we can't -- I'm not
979 saying you're saying this, but you could say is it up to us to
980 interpret how the Code is written.

981 And, John, help me here, but I believe the way the
982 Code is written, is that let's say somebody wanted to create a
983 sunroom on the back of their house. The way the Code is
984 written, the way I read it, you can't add a sunroom on the back
985 of your house if the front of your house is not at a average.
986 If your front yard setback is nonconforming, you can't add a
987 room or you can't make any type of adjustment to your house.

988 John, am I correct in that?

989 MR. BOYLE: Yes. You're referring to your house being
990 nonconforming because it's not the average of the neighbors on
991 either side.

992 Yeah, your house was rendered nonconforming when 608
993 was built.

994 MR. COLANGELO: I'm sorry, I'm talking about any
995 houses going forward. If any other houses, the way the Code's
996 written, if somebody is trying to add a sunroom to the back of
997 their house and the front of their house is nonconforming, then
998 they can't add a sunroom to it. I think it's even any additions
999 that current residents are trying if it's a nonconforming house.

1000 Even going forward beyond my house, I'm talking about
1001 a blanket application of this rule. The way it's being read is
1002 that no changes can be made to houses or additions -- additions
1003 can be made to houses if your front yard setback is
1004 nonconforming.

1005 MR. BOYLE: That's correct. If it's nonconforming in
1006 any way, it's not to be expanded.

1007 And that's part of our concern with the interpretation
1008 of this Code Section.

1009 If the Board -- I don't think it would rise to the
1010 level of rewriting the Code which we agree is not your authority
1011 or your burden here tonight, but if the Board would like, if you
1012 wanted to jump into the definitions and see what the issue is

1013 with this averaging, you'll see that the setback is defined as
1014 the yard and the yard is 25 feet.

1015 I guess you'd be colliding with the City Attorney's
1016 opinion that you need to consider the building location.

1017 Nowhere in the Code does it say reference the building
1018 location. But that's staff's position and the City Attorney
1019 disagrees.

1020 I don't want to make this a argument between staff and
1021 the City Attorney. She has a different burden than we do and we
1022 play well together.

1023 I think the Board could look at what is a setback and
1024 how is that defined. I think after you read a couple of the
1025 definitions you would see that the setback here is 25 feet. So
1026 this applicant is asking for a variance to build to what the
1027 Code requires.

1028 Perhaps that's a leap too far and Mr. Calabrese has
1029 already raised a concern about differing from the City Attorney
1030 but it helps to view that in the context of what's being asked
1031 here. They're not pulling the house further than what I think a
1032 reasonable group of people would agree is the setback. They're
1033 simply asking to build it to what the Code allows.

1034 The averaging position, that would be an interesting
1035 debate: Does this Board have the authority to look and say, you
1036 know what? The average of 25 and 25 is 25. It may take another

1037 evening to have that discussion but since staff has been at the
1038 center of this Code amendment, that's been our position.

1039 The Code does not reference building location. We're
1040 here tonight because the setback has been applied to this
1041 property as the average of the building locations. And is it
1042 within the purview of this Board to say, you know what, the
1043 front setback is actually the yard and the yard is 25 feet.

1044 MR. BARTLETT: I don't understand that confusion or
1045 concern about the front yard setback and the yard and the
1046 building location. You have three houses that are facing Park
1047 Avenue. One is 31 feet, one is 32 feet, and so the average of
1048 this required front yard is the average of those other two front
1049 yards.

1050 What's the concern about your terminology associated
1051 with building location, John?

1052 MR. BOYLE: Because all we have now in the Code is
1053 "yard." And if you go through the definitions, the yard is
1054 defined in this zoning district as 25 feet. The averaging
1055 position appears in a separate section but it references --
1056 you'd have to trip through the Code.

1057 It's complicated because the front yard setbacks are
1058 established by looking at three different Code sections in this
1059 particular circumstance. One of those Code sections fell out
1060 and the one that fell out years ago said you will
1061 reference the actual physical location of the building.

1062 So we're left with what we have in print and it simply
1063 says what's the average of the yards.

1064 MR. BARTLETT: But was that missing Code provision due
1065 to this circumstance?

1066 MR. BOYLE: Then you would reference the position of
1067 the buildings. See, I look at it this way.

1068 MR. BARTLETT: How would that apply to this
1069 circumstance? What's different about it?

1070 MR. BOYLE: Then you would get the red line. See, I
1071 look at it this way. If I say you must reference the position
1072 of the buildings, if me as Zoning Administrator said, your
1073 setback is based on the position of the buildings on either
1074 side, and an attorney came in and said, what's that based on, I
1075 wouldn't have anything in the Code to point that to other than
1076 average the yards. And then they would go through the step by
1077 step process of well, what is a yard and the only answer in our
1078 Code is 25 feet.

1079 Forty years ago, fifty years ago, averaging meant the
1080 position of the building because of a paragraph that's no longer
1081 in the Code.

1082 So my position and my predecessor's position has been
1083 the building location has no longer been referenced, we're just
1084 going to do 25 and 30 as each zoning district requires.

1085 That's worked well until very recently. The City
1086 Attorney has taken the position that there must be a reason that

1087 the averaging term is in there so let's average. And that's a
1088 good legal position to take. It must be in there for a reason.
1089 They didn't put that word in there just for giggles. So she
1090 said until we get a Code amendment we're going to average and
1091 perhaps that means including the buildings.

1092 I would like a little more clarity than that, but
1093 that's why we're here.

1094 MR. CALABRESE: So, Mr. Colangelo, the first time you
1095 went in to the City and you were told the setback was 32.2 feet,
1096 would you have designed the house with that setback?

1097 MR. COLANGELO: If I was told 32.2? I mean, I
1098 probably would have gone for a variance in that situation and
1099 just done it at an earlier date.

1100 MR. CALABRESE: Okay, okay, okay.

1101 MR. COLANGELO: I don't know, I mean I'm supposed to
1102 be showing a unique situation here I think for this particular
1103 lot. So I get it, guys, with the Code and everything, and like
1104 is it exactly to Code and I guess, John, my point what I'm
1105 saying, like the way the Code reads, and I just think this is
1106 pretty extreme that the lawyer has, and I'm just trying to drive
1107 it home, the way the lawyer, City Counsel, City Attorney, I'm
1108 sorry I'm messing up the exactly terminology there, has stated
1109 that basically you can't make any addition to a house if it's
1110 nonconforming and that's just the way that the Code reads.

1111 So I think my lot has unique circumstances in the
1112 shape. I don't have the luxury of the depth of 608 but I just
1113 also think, and I think where the amendment is going here which
1114 I unfortunately don't have a ton of time to wait for because I
1115 know that takes time and COVID's hit and everything, is a
1116 recommendation of the waiving of the averaging. But the way
1117 that the Code reads, if somebody wants to make an addition to
1118 their house, a sunroom on the back, you can't do it to
1119 nonconforming houses.

1120 MR. CALABRESE: No, what I was getting at, and I think
1121 you answered my question, we're not going to grant a variance
1122 because the City gave you wrong information, let's put it that
1123 way. If the City said then this was it and it turns out they
1124 were wrong, that is not a valid justification. Unfortunately
1125 that's just an error.

1126 But so what I was asking you and I think you answered
1127 it, if you were given the "correct" so to speak, information,
1128 you would have still asked for the variance. What you were
1129 saying, I believe, is at the 32.2, it would have been a burden.

1130 What I'm trying to get at, the burden isn't that you
1131 already designed the house and now you have to go back and redo
1132 it. The burden is that at the 32.2, you're saying it would be a
1133 burden to design a house with that setback.

1134 MR. COLANGELO: On this particular lot, yeah. On this
1135 particular lot, for sure.

1136 MR. MISLEH: I think it's hard for you to average
1137 between two unequal properties. The 608, the depth of 608
1138 renders that owner a lot more capability like John said, you
1139 know, you could have placed it even 50 feet back which would
1140 have even further unduly impacted the owner of 610 Park.

1141 So I think that when you use the term average and
1142 you're averaging between two so unequal properties, I think
1143 that's a burden in and of itself.

1144 MR. CALABRESE: Is the person, the one neighbor that
1145 sent the negative variance, I'm reading their letter, where are
1146 they located in reference to the house, this property?

1147 MR. BOYLE: Let me check. They were around the corner
1148 I think. Give me a minute. Go ahead and I'll find it.

1149 MR. CALABRESE: They said they're on North Lee.

1150 MR. COLANGELO: They're the third property in on Lee
1151 from Park.

1152 MR. CALABRESE: Okay. So my basic question is how are
1153 they -- your direct neighbors, I think your direct neighbors
1154 said they were supporting this application, is that correct?

1155 MR. COLANGELO: Yes.

1156 MR. CALABRESE: So this person would be nonadjacent
1157 and perhaps not even within sight.

1158 MR. COLANGELO: It doesn't seem like it. I mean,
1159 their main reference here, and I'm just going, sorry, guys,
1160 layman's terminology here again, just looking at this, they seem

1161 to feel that the presence of the house is just too close to the
1162 street, claustrophobic aesthetic environment on the block, which
1163 is one of their main points, I feel like.

1164 I mean, the challenge with this general argument, I
1165 feel, is if you look at the houses on -- I think the address is
1166 -- actually if you look at the houses on that email that I sent
1167 to Akida, all three of those houses have quote, unquote, front
1168 yards on Park and are less than basically 20 feet from the curb.
1169 So, yeah, that whole aesthetic feel of Park, I'm just not buying
1170 it.

1171 But their other main point, it blocks sight lines from
1172 neighborhood homes and --

1173 MR. CALABRESE: If they're not adjacent neighbors, I
1174 was just getting at that, if they're not adjacent, I think their
1175 objection takes on a different flavor or different impact.

1176 MR. MISLEH: I think, David, that the three
1177 immediately adjoining properties wrote letters in favor of, is
1178 that right, Andrew?

1179 MR. COLANGELO: I'm aware of the two adjacent
1180 neighbors. I'm not aware of who the third letter in support was
1181 from.

1182 MR. CALABRESE: Okay. Thank you.

1183 MR. BARTLETT: John and Akida, I have a zoning
1184 question for you.

1185 If you look at 201 Pennsylvania Avenue, which is on
1186 the corner of Park and Pennsylvania Avenue, when 608 was built,
1187 would the averaging rule have been the average yard on Park
1188 between 610 and 201 Pennsylvania Avenue, since that 201
1189 Pennsylvania Avenue, it's a corner lot and has two front yards?
1190 Would the average have been the 31 feet from current 610 and
1191 what I'm looking at is like 15 feet for 201 Pennsylvania Avenue,
1192 therefore their averaged would have been less than 25 and so
1193 therefore, they would have automatically been limited to 25
1194 feet?

1195 MR. BOYLE: Well, first it looks like the corner house
1196 on Pennsylvania was built in 1927, so not historic but
1197 definitely predates both the City and Fairfax County's Zoning
1198 Codes.

1199 But trying to fit it into the Code today, I'd say it
1200 follows the pattern of averaging with its neighbor on
1201 Pennsylvania.

1202 MR. BARTLETT: No, I'm talking about building 608 Park
1203 Avenue, John. If Park Avenue, 608 Park Avenue had to apply the
1204 averaging rule, would it have been allowed to build up to 25
1205 feet as a front yard setback?

1206 MR. BOYLE: I see. Yeah, you start with the minimum
1207 of 25 and then the averaging paragraph says, however it will be
1208 the average of the buildings on either side not more than 50.
1209 So with that one on the corner of Pennsylvania being very close,

1210 for example, say if 608 had come in and said, hey, we want to
1211 build a 10 feet or whatever Pennsylvania is, we would have said
1212 no, it's 25.

1213 So, yeah, they would have started at 25 and the
1214 averaging rule doesn't allow us to push them any further back
1215 than 50.

1216 MR. BARTLETT: But 608 Park Avenue could have built to
1217 25 feet?

1218 MR. BOYLE: Yes.

1219 MR. BARTLETT: Thank you.

1220 MR. CALABRESE: I don't have any further questions.

1221 MR. COLANGELO: I appreciate everybody taking the
1222 time.

1223 MR. CALABRESE: Thank you.

1224 MR. COLANGELO: Sorry, can you guys brief me on the
1225 process or do I sign off at this point?

1226 MR. BOYLE: Mr. Chair, I think we close it to comments
1227 or ask if there's any comments from the public. Do we still
1228 have a member of the public in the queue here?

1229 If not, then I think we close it to Board discussion.

1230 MR. FOGLE: Yes, Hi. Sorry, this is Chris Fogle. I'm
1231 just rejoining. I was out for a while.

1232 I'm the neighbor at 201 Pennsylvania, two doors down.
1233 And I just wanted to voice my support. I don't have any
1234 concerns with the application. Thank you.

1235 MR. COLANGELO: Thank you, Peter.

1236 MR. CALABRESE: Are we in discussion phase now?

1237 MR. BARTLETT: I think so, David.

1238 MR. CALABRESE: So I guess I first was concerned about
1239 a lot of the legal issues, which it sounds like we have a
1240 problem with the Code.

1241 As I noted, I wouldn't feel comfortable us making
1242 interpretation or otherwise our own judgment on whether the Code
1243 is correct or not and why it was written the way it was, we have
1244 no idea.

1245 I do take the City's attorney word very seriously.
1246 They would be the experts, in my mind, on how it should be
1247 interpreted, but also you, John. You know it very well.

1248 But I guess in asking the petitioner the question that
1249 whether he would have requested a variance if originally he was
1250 told it was the 31 feet, and the burden that he's described, I
1251 would be satisfied that that would meet the burden, the undue
1252 burden, if he had to meet the 32 feet, and putting aside all
1253 this business with whether it was averaged or how it was
1254 averaged.

1255 So, anyway, I feel more comfortable with that, with
1256 there being a burden it would appear.

1257 MR. JONES: Thank you, David.

1258 MR. KIEN: Yeah, Keith, I think you asked the last
1259 question that kind of seals it as far as the burden is concerned

1260 for me, in regards to if 608 could have built to 25 feet, then I
1261 don't see why someone else shouldn't be given the same
1262 consideration. It shouldn't be first come, first serve.

1263 MR. BARTLETT: Yeah, I remember from my property law
1264 classes, I don't remember conditional zoning applying to one
1265 neighbor who's there before the other neighbor and then because
1266 of a choice that one makes, you can't do the other. That, for
1267 me, I feel is what should allow us to incorporate some of these
1268 concerns into his application for the variance. It just makes
1269 me uncomfortable.

1270 MR. MISLEH: I agree with the points you've both made.
1271 Thank you.

1272 MR. JONES: Thank you, all.

1273 It sounds like we're done with the comment portion.
1274 Would any of my colleagues like to make a motion?

1275 MR. CALABRESE: I can make a motion to approve the
1276 variance -- I don't have the variance number here. But approve
1277 the variance -- if someone can tell me the variance number --
1278 but I would make a motion to approve it.

1279 MR. MISLEH: It's V1615-20.

1280 MR. CALABRESE: Thank you.

1281 MR. KIEN: I second that motion.

1282 MR. JONES: For purposes of the record, we have a
1283 motion to approve and a second to approve the variance
1284 application V1615-20 by Lauren and Andrew Colangelo, applicant

1285 and owner, for a variance to Section 48-1102(c) to allow a front
1286 yard setback of 25 feet instead of 32.2 feet, for the purpose of
1287 constructing a new single family dwelling on premises known as
1288 610 Park Avenue, RPC #51-129-035 of the Falls Church Real
1289 Property Records, zoned R-1B, Medium Density Residential.

1290 Akida, could we have a roll call, please.

1291 RECORDING SECRETARY: Mr. Jones.

1292 MR. JONES: Yes.

1293 RECORDING SECRETARY: Mr. Calabrese.

1294 MR. CALABRESE: Yes.

1295 RECORDING SECRETARY: Mr. Kien.

1296 MR. KIEN: Yes.

1297 RECORDING SECRETARY: Mr. Misleh.

1298 MR. MISLEH: Yes.

1299 RECORDING SECRETARY: Mr. Bartlett.

1300 MR. BARTLETT: Yes.

1301 RECORDING SECRETARY: Thank you.

1302 MR. JONES: Your application is approved, Mr.

1303 Colangelo. Congratulations, and good luck with your project.

1304 MR. COLANGELO: Thank you guys so much. Appreciate
1305 the time.

1306

1307 6. APPROVAL OF MINUTES

1308 a. Approval of the March 12, 2020, Meeting Minutes

1309

1310 MR. JONES: The next item on the Agenda is the
1311 Approval of the Minutes from the March 12, 2020, meeting
1312 minutes.

1313 If we can just take a few minutes to read through
1314 those items to make sure for their accuracy.

1315 (Minutes reviewed.)

1316 MR. MISLEH: I move to approve the meeting minutes of
1317 the Board of Zoning appeals from March 12, 2020.

1318 MR. JONES: Is there a second?

1319 MR. BARTLETT: I'll second that motion.

1320 MR. JONES: Roll call please.

1321 RECORDING SECRETARY: Mr. Jones.

1322 MR. JONES: Yes.

1323 RECORDING SECRETARY: Mr. Calabrese.

1324 MR. CALABRESE: Yes.

1325 RECORDING SECRETARY: Mr. Kien.

1326 MR. KIEN: Yes.

1327 RECORDING SECRETARY: Mr. Misleh.

1328 MR. MISLEH: Yes.

1329 RECORDING SECRETARY: Mr. Bartlett.

1330 MR. BARTLETT: Yes.

1331 RECORDING SECRETARY: Thank you.

1332

1333 7. OTHER BUSINESS

1334 MR. JONES: Mr. Boyle and Akida, do we have any Other
1335 Business or applications that are coming down the pipeline?

1336 MR. BOYLE: I think we may have one related to the
1337 historic property on Lincoln. They have to get teed up with the
1338 HARB first who will make a recommendation to this Board but I
1339 don't think it's been scheduled for the BZA yet so we're going
1340 to have to follow up with the Board and let you know if that's
1341 confirmed for next month or not.

1342 MR. JONES: Very good, sir.

1343 And I don't believe there's any Other Business to
1344 address.

1345

1346 8. ADJOURNMENT

1347 MR. JONES: So with that, is there a motion to
1348 adjourn?

1349 MR. CALABRESE: I'll make the motion.

1350 MR. JONES: Do we have a second?

1351 MR. KIEN: I second.

1352 MR. JONES: Roll call.

1353 RECORDING SECRETARY: Mr. Bartlett.

1354 MR. BARTLETT: Yes.

1355 RECORDING SECRETARY: Mr. Misleh.

1356 MR. MISLEH: Yes.

1357 RECORDING SECRETARY: Mr. Kien.

1358 MR. KIEN: Yes.

1359 RECORDING SECRETARY: Mr. Calabrese.

1360 MR. CALABRESE: Yes.

1361 RECORDING SECRETARY: Mr. Jones.

1362 MR. JONES: Yes.

1363 RECORDING SECRETARY: Thank you.

1364 MR. JONES: Good night, everyone.

1365 MR. BOYLE: Thank you.