

Dear Neighbors,

The Town was obliged to amend its standard for variances in July 2015, in order to comply with the Code of Virginia's amended standard that was adopted in March 2015, and went into effect on July 1, 2015. Unfortunately, the Town's amended standard was adopted all right but never actually put into effect and has therefore, for the past two years, been inaccessible to the public.

The result has been that Townspeople seeking variances for any reason have had to base their applications on a voided standard, and it is likely that there are other Townspeople who considered seeking variances but decided not to when they looked up the standard in the Town Code. (The Town's attorney, the Town's director of Planning & Zoning, and the current chair of the Town's Board of Zoning Appeals are all on record that the State amendment substantially lowered the standard by which variances can be granted.)

We had applied for a variance and our hearing took place in late December 2016 (the entire process up to that point having taken nine months of our lives and cost us quite a lot of money). At our hearing, one member of the BZA being absent, our application wound up being denied on a (3-3) tie vote. (Note that although the Commonwealth of Virginia allows local jurisdictions to appoint alternates to serve on BZAs in the absence of regular members, the Town has chosen not to avail itself of this proviso which would make the absurdity of a tie-vote denial impossible.) Afterwards, feeling the process had been problematic in a number of ways, we researched the issue in depth, submitting numerous FOIA requests to the Town's Public Information Officer, Lynne DeWilde.

Comparing the Code of Virginia and the Town Code showed them to be incompatible with each other regarding the standard for the granting of variances. On May 30, we made another FOIA request to the Town, as follows: "Over the past two years, based on: information you've sent me, (our) meeting minutes, and my own sorry experience with the BZA, it would appear that the Town of Vienna's Board of Zoning Appeals continues to use as its standard for granting variances a 1969 Town ordinance that contradicts the Code of Virginia as amended on March 26, 2015 (which you also sent me – thank you). My question: Does the Town ordinance legally supersede current State Code?"

On May 31, 2017, we received the following in response from Ms. DeWilde: "I ran your question by Town Attorney Steve Briglia. He reiterates that the BZA properly followed all state and Town code provisions for your variance application. You would need to contact an attorney if you wish legal interpretation or guidance."

Boom! And thank you very much.

On June 5, we pointed out the discrepancy between State and Town codes in a lengthy research paper distributed to the Mayor and the members of the Town Council. The Mayor and five of the six Town Council members reached out to us in response, but only one checked the discrepancy we'd alleged. She then came to our home this past Sunday morning to admit our allegation was factual: the Town Code, as published, had never been amended to comply with State Code.

We would very much like to noodle on this with other concerned members of the community. We're in the process of auditing the minutes of all BZA meetings from July 1, 2015, to the present to find out who has sought a variance during these two years. Unfortunately, anyone who considered doing so but

decided not to because the (wrong) standard was too steep to make the cost and effort worthwhile, will need to self-identify.

We've made a FOIA request to the Town asking for any verification there may be from the State that the Town's amended standard, once it's published (which may be as soon as today), complies with the State's.

If you're interested in discussing this issue and its ramifications, come to our house this Sunday at 4 PM.

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