

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PARAMVIR S. SONI, VCA 2003-DR-018 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 2003-DR-018 to permit modification of development conditions. Located at 10208 Colvin Run Rd. on approx. 41,129 sq. ft. of land zoned R-1. Dranesville District. Tax Map 12-4 ((1)) 33A. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 29, 2008; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 41,129 square feet.
4. The property was acquired in good faith.
5. A situation occurred that rendered the existing house uninhabitable. The owner was not responsible for that. The pipes bursting were with a prior owner. The owner was the unfortunate recipient of the problem.
6. The owner is proposing what has been described by Mr. Ulfelder of the Great Falls Citizens Association as an acceptable compromise, and the Board concurs.
7. In terms of the historic significance, the applicant has a reasonable proposal to retain the historic portion of the house that is one hundred (100) years old. The portion of the house that was significantly damaged and cannot feasibly be retained is not of any historic significance.
8. The proposed addition meets the setback requirements on the lot.
9. It is a reasonable amendment to the conditions of the variance application.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for a variance as shown on the plat prepared by Land Design Consultants, dated April, 2008 as revised through July 7, 2008. All development shall be in conformance with this plat as qualified by these development conditions.
2. Prior to the issuance of a demolition permit and/or land disturbance permit, the applicant shall employ an arborist to prepare a condition analysis for the 65 inch white oak tree. Tree preservation recommendations for this tree provided by the arborist shall be implemented to ensure that the oak tree is adequately protected before, during and after construction, as determined in conjunction with the Forest Conservation Branch, DPWES.
3. Prior to any land disturbing activity, both a grading plan and a tree preservation plan showing the improvements on Lot 33A shall be submitted to the Department of Public Works and Environmental Services (DPWES), including the Forest Conservation Branch, DPWES, for review and approval. The plans shall depict preservation of the 65 inch white oak tree located on Lot 33A and other mature trees on site, as determined feasible by the Urban Forester, and the limits of clearing and grading which protect the trees. Prior to any land disturbing activities for construction, a pre-construction conference shall be held on site between the Forest Conservation Branch, DPWES, and representatives of the applicant to include the construction site superintendent responsible for on-site construction activities. The purpose of this meeting shall be to discuss and clarify the limits of clearing and grading, areas of tree preservation and the erosion and sedimentation control plan to be implemented during construction. All utilities located outside the limits of clearing and grading shall be located and installed in a manner which is the least disruptive to the natural vegetation as possible.

All trees and tree save areas shown to be preserved on the tree preservation plan shall be protected by tree protection fence placed at the drip line. Tree protection fencing consisting of four foot high, 14 gauge welded wire attached to 6 foot steel posts driven 18 inches into the ground and placed no further than 10 feet apart shall be erected at the limits of clearing and grading.

The tree protection fencing shall be made clearly visible to all construction personnel. The fencing shall be installed prior to any clearing and grading activities on the site, including the demolition of any existing structures. The installation of tree protection fence shall be performed under the supervision of a certified arborist. Prior to the commencement of any clearing, grading, or demolition activities, the projects certified arborist shall verify in writing that the tree protection fence has been properly installed. Such tree fencing shall be installed around the 65 inch white oak tree immediately upon approval of the variance application.

4. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided in accordance with the requirements of the Public Facilities Manual and the Chesapeake Bay Preservation Ordinance as determined by the Department of Public Works and Environmental Services (DPWES).
5. The final location of the proposed garage on Lot 1 shall be determined in consultation with the Urban Forester to ensure the preservation of the 65 inch oak, but shall not be closer than 25 feet from the eastern lot line.
6. The applicant shall provide a 15 foot public street easement along the Colvin Run Road frontage. The trail may remain within this easement.
7. The addition shall be constructed in substantial conformance with the renderings contained in Attachment 1. The entire front wall of the existing structure shall be retained to maintain the facade of the original structure as outlined in Attachment 1.
8. The exterior materials and finishes for the new construction shall be compatible with the existing portion of the dwelling that is being retained.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this variance shall not be valid until this has been accomplished.

Pursuant to Sect. 18-401 of the Zoning Ordinance, this variance shall automatically expire without notice, thirty (30) months after the date of approval unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 5-2. Mr. Byers and Mr. Hammack voted against the motion.

A Copy Teste:

Suzanne L. Frazier, Deputy Clerk
Board of Zoning Appeals