

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN A. AND MARY L. MCEWAN, VC 2008-MV-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit minimum lot width of 24.6 ft. Located at 9325 Ludgate Dr. on approx. 2.22 ac. of land zoned R-2. Mt. Vernon District. Tax Map 110-4 ((1)) 5. (Admin. moved from 8/5/08 at appl. req.) Mr. Byers 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 September 16, 2008; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 2.22 acres.
4. The application should satisfy the following variance standards.
5. The subject property was acquired in good faith.
6. The subject property does have at least one of the following characteristics, an extraordinary situation or condition.
7. The condition or situation of the subject property or the intended use of the subject property is not of so general or recurring in nature as to make reasonably practical the formulation of the general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
8. A strict application of this Ordinance would produce undue hardship.
9. Such undue hardships are not generally shared by other properties in the same zoning district in the same vicinity.
10. In this particular case, the strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property.
11. The granting of this variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
12. It will not be of a substantial detriment to the adjacent property.
13. The character of the zoning district will not be changed by the granting of the variance.
14. The variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.
15. From the standpoint of having been a buildable lot at one point, reference is made to the addendum to the staff report of 1992, and the decision of the Board of Zoning Appeals.
16. The development conditions dated September 9, 2008, should remain.

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 the minimum lot width of 24.6 feet, as shown on the plat prepared by Dominion Surveyors Inc., dated March 2, 2007, revised through December 26, 2007, submitted with this application and is not transferable to other land. All development shall be in conformance with this plat as qualified by these development conditions. These conditions shall be recorded by the applicant among the land records of Fairfax County. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning (DPZ) and the Department of Public Works and Environmental Services (DPWES) prior to the approval of any permits and grading plan for this lot.

2. All prospective purchasers of the property shall be notified in writing prior to sale of the property that these conditions have been recorded in the land records of Fairfax County and must be implemented prior to the approval of the grading plan for this lot.
3. Prior to any land disturbing activity, a grading plan which establishes the minimum limits of clearing and grading necessary to construct the improvements and a tree preservation and restoration plan shall be submitted to the Department of Public Works and Environmental Services (DPWES), including the Urban Forest Management Division (UFMD), for review and approval. The maximum extent of clearing and grading shall also be shown. The tree preservation and restoration plan shall preserve as much of the existing tree canopy as possible as determined by DPWES and shall meet the tree cover requirements of the Zoning Ordinance. Prior to any land disturbing activity for construction, a pre-construction conference shall be held between DPWES, including the Urban Forester and representatives of the applicant to include the construction site superintendent responsible for onsite 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. In no event shall an area of the site be left denuded for a period longer than fourteen (14) days. Any 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, duly considering the cost and engineering feasibility of their installation.

The grading plan shall require that the area outside of the limits of clearing and grading be preserved and labeled as "perpetually undisturbed open space". A Conservation Easement subject to UFM may be required in order to ensure the perpetual undisturbed state of the restoration area. The restoration plan shall be developed with the intention of revegetating and restoring the perpetually undisturbed open space to its natural habitat. No existing wooded areas may be disturbed to plant the restoration material. The applicant may maintain the undisturbed open space as needed to remove only undesirable vegetation such as brambles and vines with the intention of maintaining the evergreen tree cover until such time as natural succession takes over. There shall be no mowing of grass in the perpetually undisturbed open space.

4. Due to the presence of problem soils, if requested by DPWES during grading plan review, the applicants shall have a geotechnical study of the application property prepared by a geotechnical engineer, shall submit a report to DPWES for review and approval, and shall implement the recommendations outlined in the approved study.
5. All construction on site shall comply with the current Chesapeake Bay Ordinance requirements. An exception shall be obtained, if necessary, from the DPWES.

This approval, contingent upon the above-noted conditions, shall not relieve the applicants from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless the lot has been recorded in the land records. The Board of Zoning Appeals may grant additional time to record the lot 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 6-0. Mr. Hammack was absent from the meeting.