

## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

DAVID W. AND JESSICA M. DIVELY, VC 2009-MV-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a lot width of 41.83 ft. Located at 8215 Riverside Rd. on approx. 38,623 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((1)) 17C. Ms. Gibb 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 March 31, 2009; and

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

1. The applicants are the owners of the property.
2. The Board concludes that the applicants have met the standards required by the *Cochran* case, which is that they are being denied all reasonable beneficial use of the property taken as a whole, as confirmed by the staff.
3. It is staff's opinion that unless this variance is granted, the applicants will not be able to use the lot at all.
4. It is an appropriate and right case to grant this variance.
5. This is an old lot that was created back in 1966, and it could be that this lot was created legally based on the old ordinances.
6. It meets the standards under *Cochran* and under the standards for variances, which are that the property was acquired in good faith, that the subject property has an unusual shape, and that the applicant has met Standards 3 through 9 required for a variance.
7. The applicants paid over \$300,000 for the property, evidencing good faith.
8. The subject property has a lot width that under today's Ordinance is too narrow, evidencing that the property has an unusual shape.
9. The applicants have also met Standards 3 through 9 required for a variance.

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 all 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 41.83 feet, as shown on the plat prepared by RC Fields, Jr. & Associates, dated August 22, 2008, as revised through February 24, 2009, 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 applicants 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 plans 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. The applicant shall install a stone/gravel base the entire length of the proposed driveway to be utilized during construction activities. Once construction is complete, the gravel surface is to be covered by Chesapeake Washed Gravel and shall be maintained in good condition.
4. Replacement of the existing structure, and/or construction of additions or accessory structures that conform with the applicable Zoning Ordinance provisions and these development

conditions, as determined by the Zoning Administrator, may be permitted without an amendment to this variance.

5. Placement of fences should avoid forested areas; however, they may be constructed within the tree save areas as long as good horticultural practices are observed and there is minimal disturbance to the vegetation.

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.

Mr. Smith seconded the motion, which carried by a vote of 7-0.