

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

CHRISTOPHER AND LISA SMITH, VC 2008-MV-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 8319 Cedardale Dr. on approx. 12,525 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-4 ((6)) (4) 18 (Concurrent with SP 2008-MV-107). (Decision deferred from 2/24/09) (Moved from 3/3/09, inclement weather) (Admin. moved from 4/14/09 at appl. req.) (Decision deferred from 4/21/09 at appl. req.) Mr. Hart 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 28, 2009; and

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

1. The applicants are the owners of the property.
2. The applicant has presented testimony showing compliance with the required standards for a variance, consistent with the amendment to the State Code, July 1, 2009.
3. The swimming pool and surrounding concrete deck is an existing condition that would be a significant hardship to modify.
4. It has been there for many years without complaint and seems to have come up only in conjunction with the other application.
5. A modification of the 30 percent requirement through a variance would be appropriate in that they cannot really easily take the pool out or remove the deck to get down below the 30 percent.
6. There have been other cases like this, but none after the amendment.
7. 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 as opposed to a convenience for the applicant, consistent with the new State Code provision.
8. It meets the standards consistent with the new State Code provision.

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 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 greater than 30 percent rear yard coverage for the structures as shown on the plat prepared by George M. O'Quinn, Dominion Surveyors, Inc., dated November 28, 2001, revised by Christine Leonard through September 20, 2008 submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards including requirements for building permits.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.