

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

PAMELA M. DELILLIO, VC 2009-HM-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in the front yard of a lot containing 36,000 sq. ft. or less. Located at 2405 Sweetbay La. on approx. 17,981 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 26-4 ((3)) 90 (Concurrent with SP 2009-HM-077). 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 November 3, 2009; and

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

1. The applicant is the owner of the land.
2. After the Supreme Court Cochran decision, a variance of this nature probably would not be approved, but with recent amendments and removal of the language referencing "approaching confiscation," this variance under these conditions can be moved for approval.
3. The subject property was acquired in good faith.
4. The swing set was constructed in good faith, and only after having obtained approval from the design review board in Reston.
5. Additional landscaping has been included.
6. The applicant followed all procedures she thought were applicable.
7. There is an extraordinary situation or condition of the property in that it is a corner lot, and it does have multiple yards.
8. Although there may be another feasible or viable location to place the swing set, it would have to be squeezed up to the side next to and between two houses; that does not seem to be a viable location for the swing set.
9. The applicant has two small children.
10. The condition or situation on the property is not of so general or recurring a nature as to make it reasonably practical the formulation of a general regulation to be adopted by the Board.
11. When considering corner lots, the Board considers each one as they come, and with this application's circumstances, it would unreasonably restrict utilization of the subject property.
12. Authorization of the variance should not be of substantial detriment to the adjacent property.
13. There is support from a number of the neighbors and no opposition heard.
14. By granting this variance, it will not change the character of the zoning district.
15. This proposal seems reasonable as the yard really functions as a backyard.
16. The variance will be in harmony with the intended spirit and purposes of the Ordinance.
17. Frankly, the best place for this is in what functions as a backyard.
18. It is placed to preserve vegetation and trees.
19. This location is in the best interest of the applicant, citizens, neighbors, and the public.

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 the accessory structure (playground equipment) to remain in the front yard as shown on the plat prepared by Timothy J. Farrell, B.W. Smith and Associates, Inc., dated April 3, 2009, 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.

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