

## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS S. CHERRY, SP 2010-PR-054 Appl. under Sect(s). 8-922 of the Zoning Ordinance to permit reduction of certain yard requirements to permit construction of addition 6.0 ft. from side lot line. Located at 3115 Northwood Rd. on approx. 11,770 sq. ft. of land zoned R-3. Providence District. Tax Map 48-3 ((26)) 1. 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 December 1, 2010; and

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

1. The applicant is the owner of the land.
2. In general the application meets the required standards for a special permit.
3. The rationale in the staff report is adopted.
4. The Board has staff's recommendation of approval.
5. The lot is very narrow.
6. The other lots in the area are all kind of narrow, but this lot and a couple around it have very steep backyards sloping up.
7. Even if they wanted to put a driveway around the house and have a detached garage in the rear, it is unsure how they could do that. They would have to do a lot of grading, and there would be slope issues and things. As a functional idea, it is not going to work.
8. If a house like this wants to have someplace to park the cars under a roof, it is going to be in approximately the same configuration that it is in.
9. There is a mix of carports and garages in the neighborhood.
10. The carports and garages in the neighborhood are about the same impact as each of them has a pretty substantial roof on it.
11. Whether the side walls at one end were enclosed or not, or whether there were doors on both of the bays in front, it really did not change the bulk or the massing of it. It was more the placement of the structure and roof.
12. Many of the homes have either a two-car carport or two-car garage, and whether those structures were carports or garages did not make a whole lot of difference in terms of impact on the neighbors. Whether it was closed in or not, the ones that looked better were probably the ones that were closed in, and some of that shows in the photos, that the ones with carports sometimes have a lot of trash cans and things piled up that would otherwise be stored inside, but are on display because the carport cannot be enclosed.
13. There is not a significant negative impact from having an enclosed structure of that size compared to an open carport or something else.
14. There are different standards now for looking at this application then there were for the variance ten years ago. Under Sect. 8-922, it is somewhat easier for an applicant to satisfy the legal requirements.
15. It was thought that there was a hardship because of the topography and the narrowness of the lot. The topography was the driving circumstance at that time. The vote was four to three; however, the judge disagreed with that.

16. The statute is clearer now that the Circuit Court can do a de novo review.
17. As far as the current application and the applicable standards for a reduction in minimum yard, all of them are satisfied.
18. In regard to Subsection 9 of 8-922, that the BZA determine that the proposed reduction represents the minimum amount of reduction necessary to accommodate the proposed structure on the lot, a garage that is 18 feet wide certainly is the minimum.
19. They asked for two more feet ten years ago that would not be allowed as a special permit, but at 18 feet, it is a permissible application.
20. There may end up being functional problems with an 18-foot wide garage but that does not necessarily prevent the Board from approving it.
21. It may not be ideal for a two-car family, but on a lot like this, it is certainly a more reasonable request than if they were going any closer to the line.
22. The workshop in the back was a little more troublesome because of the configuration of the existing structure with the roofline coming down almost to the ground, but that is being changed. It is understandable there would be problems storing anything in a garage that is 18 feet wide and some storage space would be needed at the rear.
23. The roofline and the impact of the wall were looked at, and there is not going to be a significant negative impact, particularly on the next-door neighbor to the left, whether the garage extends back the full 32 feet or it is notched in for the last ten feet.
24. The Board does not always approve extensions that are 30-some feet long into a minimum side yard, but in this case, there is not going to be a significant impact.
25. The house next door is about the same distance from this house as all the other houses in the neighborhood, and they are all similarly situated on the lots.
26. On that side there are windows on the upstairs but the downstairs is just a solid wall and there is a big bush there. It seems that there would not be a significant negative impact on the upstairs windows of the house next door whether the workshop notched over a few more feet or not.
27. Based on the facts before the Board, it is concluded that there would not be a significant negative impact for allowing the further extension of the workshop in the back over and above the extension of the garage.
28. Looking at the legal issue about the Bell case, there is no recollection of anyone making that argument before. Fairfax County's ability to enact an ordinance that allows certain modifications to location of structures by special permit is consistent with what the Court allowed in Bell.
29. The issue of invalidation of a local ordinance as being arguably inconsistent with what the General Assembly has authorized is a matter for the Circuit Court to decide and not the Board of Zoning Appeals.
30. It is not the Board's function to invalidate the local ordinance and determine that the Board of Supervisors has gone beyond what the General Assembly allowed.
31. People argue covenants to the BZA, but the BZA is not allowed to reach those issues. A covenant is a private matter between private parties. There may be questions about whether the covenants are valid or enforceable or which lots can enforce the covenants against which other lots, but these two lots seem to be in different sections of the same subdivision.
32. The Board does not reach those covenant issues. That is for a court to decide, and if the neighborhood association or neighbors take it to court, and a judge gets into that, those issues would not be affected by a zoning approval. If the covenants preclude this for some reason, the Board is not changing that, and a judge can sort that out.

33. With the imposition of the development conditions recommended by staff, the potential impacts of the structure have been satisfactorily mitigated.
34. A specific reference is made to the drawings, that they are consistent with the other structures. Most of the houses on the street seem to be one of two. There was sort of a two-story house and a split-level house, and they all sort of had the carport or the garage to the side.
35. What is proposed in terms of the architecture and the materials is very much consistent with what is already there, whether it is a carport with a roof on it, or some people have enclosed them.
36. The Board has done a case-by-case review.
37. The Board has listened to the professional staff's recommendation and their conclusions about whether the application satisfies the Ordinance.
38. The Board agrees with those conclusions, and with those additional findings of fact, the applicant has cleared all the hurdles.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

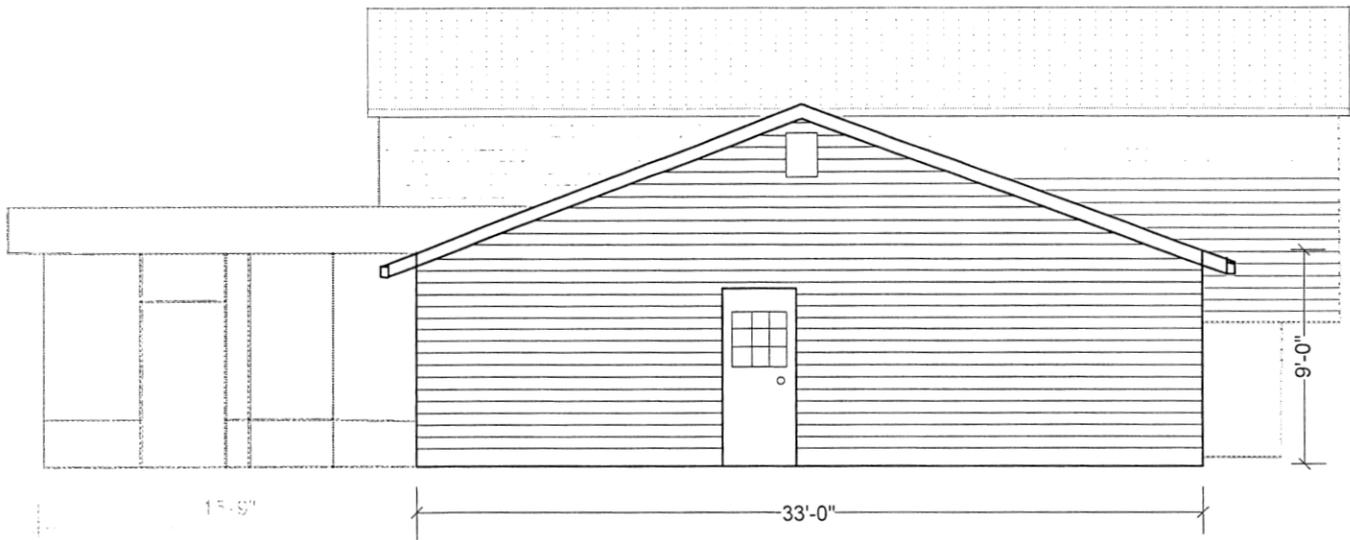
NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a one-story garage and workshop addition (approximately 590 square feet), as shown on the plat prepared by Alexandria Surveys International, LLC, dated January 12, 2010, as submitted with this application and is not transferable to other land.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,500 square feet existing + 3,750 square feet (150%) = 6,250 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

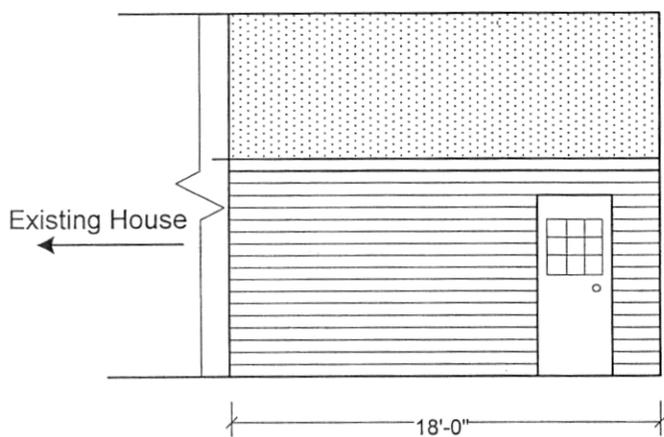
This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has 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 special permit. 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.

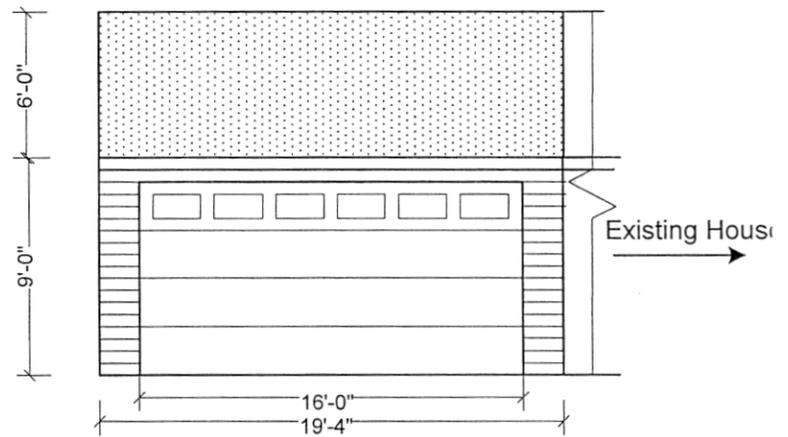
Mr. Byers seconded the motion, which carried by a vote of 6-0. Mr. Smith was absent from the meeting.



Addition Side Elevation view with existing house shadowed

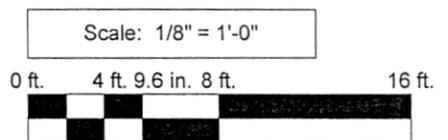


Addition Rear Elevation



Addition Front Elevation

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