

## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ALI LATIF, VC 2010-LE-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 6404 Hanover Ave. on approx. 11,844 sq. ft. of land zoned R-3. Lee District. Tax Map 90-1 ((11)) (40) 1. (Concurrent with SP 2010-LE-051) (Admin. moved from 8/4/10 for ads) 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 September 15, 2010; and

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

1. The applicant is the owner of the land.
2. On the record before the Board, the applicant has satisfied the required standards for variances.
3. Most of the driveway was shown roughly in its current location on the 1980 plat, which was approved with the variance for the fence.
4. Given the long history of the driveway being roughly in that location and the condition of the property with the next-door neighbor's driveway being almost right next to it, the driveway per se is not bothering anyone.
5. It appears that what looks like the side yard for this house for technical reasons is a rear yard, and there are many homes that have a driveway along the side that for whatever reason, it counts as the rear yard for this lot, and that may also be driving some of the conclusions about the percentages.
6. The extraordinary condition about this lot is that there is no street parking on either Old Keene Mill Road or Hanover Avenue, both very busy streets. This lot, in order to have off-street parking, has to have something.
7. With the topography, it would be worse to pave over more of the front yard, which would be more visible and less of a residential appearance, looking more like a parking lot in front of the house instead of what it is now, which is sort of an alley along the side, and it is more separated from the street.
8. Having identified that exceptional condition, in looking at the standards of 18-404, authorization of the variance will not be a substantial detriment to adjacent property.
9. What has changed on the lot is that there is now a giant house on it. The driveway itself is not what is causing the impact.
10. It will not change the character of the zoning district to grant the variance. If the variance were denied and they have to pave more of the front yard, that would be of more detriment to the neighbors.
11. With a case-by-case review, on a lot like this where, for technical reasons, the side yard is counted as a rear yard, where there has been a driveway there for 30 years, for the most part, except for the last few feet of it, the next-door neighbor has a very similar situation, and there is no on-street parking, it is a close call, these are difficult cases to grant, but the applicant has met the standard.

12. With the amendment to the variance statute by the General Assembly, the Board does not need a total taking, the Board does not need for all reasonable beneficial uses of the property to be taken, but there is reasonable use that is interfered with, with the 30 percent requirement on a lot like this.

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 rear yard coverage to remain on the property as shown on the plat prepared by George M. O'Quinn, Land Surveyor, Dominion Surveyors Inc., dated May 7, 2008, as revised through July 15, 2010, as submitted with this application and is not transferable to other land.

2. Within 6 months of approval of this special permit, the applicant shall obtain written approval from the Department of Public Works and Environmental Services (DPWES) for the concrete drive to remain within the storm sewer easement and sanitary sewer easement or the drive or portions thereof shall be removed from the easement(s). If required by DPWES, the applicant shall execute a Hold-Harmless Agreement related to the easement(s) in a form acceptable to the County Attorney's Office.

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. Smith seconded the motion, which carried by a vote of 6-0. Mr. Byers was not present for the vote.

NOTE: FENCES ARE CHAIN LINK UNLESS NOTED.

Application No. **VC 2010-LE-005**

*Approved*

*John Myers*

Chairman, Board of Zoning Appeals

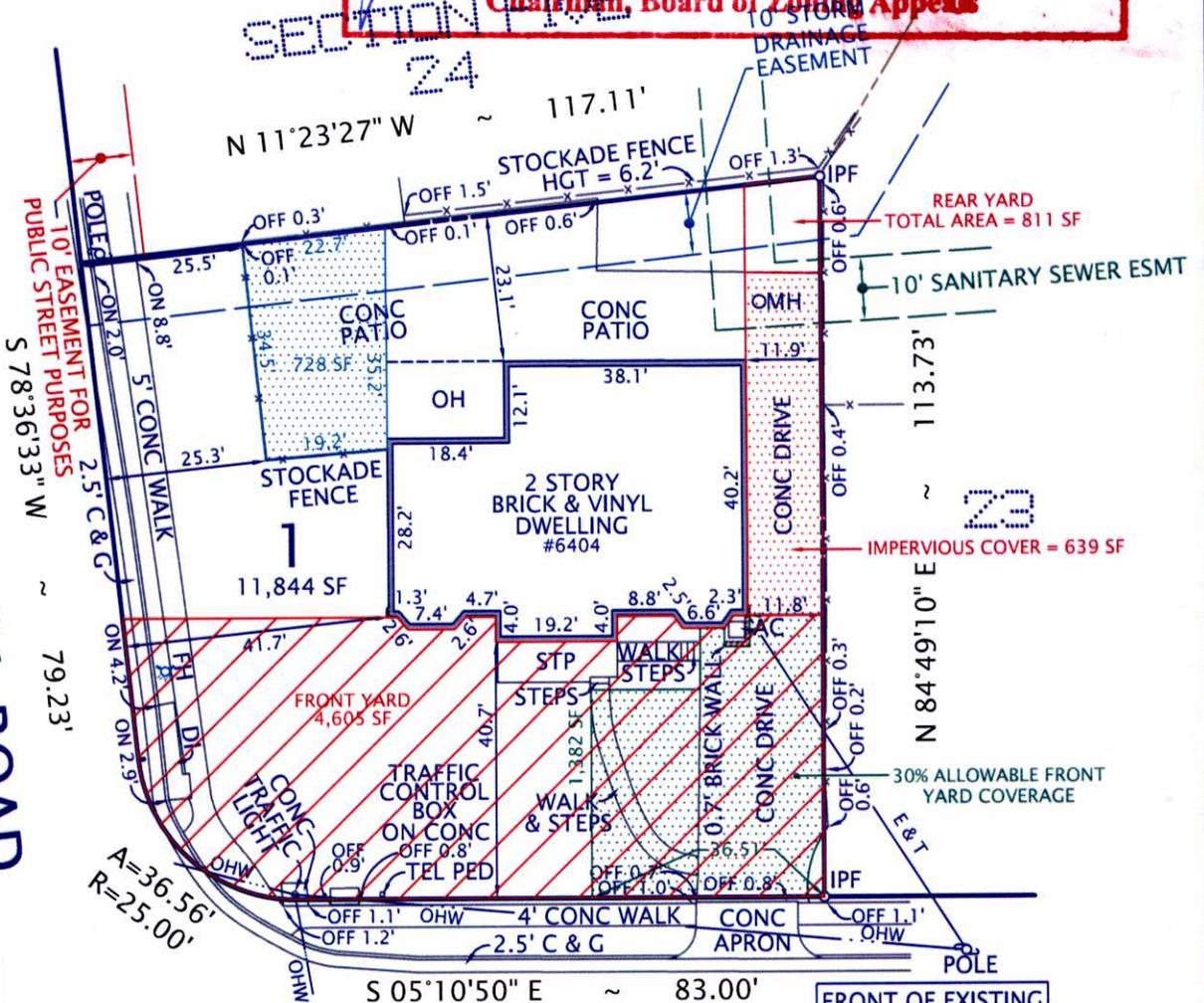
GRAPHIC SCALE  
1 inch = 30 ft.

PLAT NORTH

REAR YARD IMPERVIOUS COVER CALCULATION:

REAR YARD = 811 SF.  
REAR YARD IMPERVIOUS COVER = 639 SF.  
REAR YARD IMPERVIOUS COVER PERCENTAGE  
639 SF / 811 SF = 0.79.

**OLD KEENE MILL ROAD**  
WIDTH VARIES ~ STATE ROUTE NO. 644



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A 0.2 foot administrative reduction in the minimum required REAR yard has been GRANTED per Sect. 2-419 on **SEPT. 2, 2010** by:

*Daryl L. Varnit*  
Daryl L. Varnit, Assistant Branch Chief  
for Zoning Permit Review Branch

**HANOVER AVENUE**

80' WIDE ~ STATE ROUTE NO. 1193

**PLAT**

SHOWING HOUSE LOCATION ON  
LOT 1, BLOCK 40, SECTION ONE

**MONTICELLO FOREST**

(DEED BOOK 1191, PAGE 339)

**FAIRFAX COUNTY, VIRGINIA**

LEE DISTRICT

SCALE: 1" = 30'

MAY 7, 2008  
MARCH 9, 2010 (UPDATE PLAT)  
APRIL 30, 2010 (IMP COVER)  
JULY 15, 2010 (FNC HGT)