

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GERTRUDE M. JENKINS, VC 2011-PR-003 Appl. under Sect(s). 10-104 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 2920 Summerfield Rd. on approx. 10,023 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((15)) 73. (Concurrent with SP 2011-PR-001). Mr. Hammack 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 April 6, 2011; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 10,023 square feet.
4. According to the testimony, the pool was constructed in 1973 with a building permit.
5. The applicant has double front yards, which imposes a burden on the property that most homeowners don't have.
6. The encroachment into the required front yard is minimal.
7. The structure has been there since 1973 without complaint from anyone, so it is a little curious why it comes in at this time.
8. It has been taxed.
9. It would be permitted by right had a final inspection been done, which apparently no one can find the record of.
10. The Board is not completely satisfied with the explanation of the County that there is no record, so it must not have been done.
11. The Board hears things like this too often. Inspectors come out. They don't call the applicants. The applicants don't know when they are there, and oftentimes when they see violations, they don't know when they're there.
12. It puts an extreme burden on an applicant to rebut an inspection that has not been done after they'd paid for the building permit and gone through the process.
13. Under the new variance standards that apply, the applicant has satisfied the nine required standards set forth in variance applications.
14. The applicant meets Standard 2, the size of the lot.
15. The applicant meets Standard 3, the condition of the property.
16. The applicant meets Standard 4, that the strict application of the Ordinance would produce undue hardship in this case.

17. The application satisfies the other requirements.

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 (above-ground pool and deck) to remain in the front yard as shown on the plat prepared by George M. O'Quinn, Land Surveyor, Dominion Surveyors Inc., dated December 29, 2009, as revised through March 11, 2011, as 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.