

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

PRASHANT SAWANT, SP 2012-SU-018 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit accessory storage structure to remain 5.3 ft. from side lot line and reduction of certain yard requirements to permit construction of addition 10.2 ft. from side lot line. Located at 2300 Hunter Mill Rd., Vienna, 22181, on approx. 2.07 ac. of land zoned R-E. Sully District. Tax Map 37-2 ((12)) 2. (Decision deferred from 6/27/12) 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 19, 2012; and

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

1. The applicant is the owner of the land.
2. The Board has a staff recommendation of denial.
3. This is a large lot, but it has some development constraints.
4. There is an existing house that is constructed and has been added to all the way over to the right-side of the lot.
5. There was an existing carport that was enclosed apparently without a permit some years ago, but as the Board understands, it was determined to be vested because of the passage of time and the payment of taxes. That circumstance has driven a lot of this in that the wall is the closest part of the house to the side line and still is. Whether the Board approves or denies the application that is not going to change. That wall or that side of the house is already vested.
6. That proximity on that side is the principal impact on the neighbors or the appearance of the structure, and there is not much that could be done about that in any event.
7. Notwithstanding the staff recommendation with respect to the addition, in the memo the Board received last week, the massing of the structure and the proposed addition and the stepping back of first the garage, then the upstairs, and then the hip roof from the sideline, is very carefully addressed in the new proposed front elevation.
8. If you go up and down Hunter Mill Road, there is a vast mix of new and old houses. There are big houses. There are some more modest houses.
9. What is proposed in the attachment to the September 12th memo, it certainly is not out of line with what is in the neighborhood and what is around it.
10. It is an improvement over the existing house.
11. What is proposed in the attachment to the addendum would not have a significant negative impact on the neighbors any more so than what is already there.
12. Where it gets complicated is whether there are alternate locations for the structure

on this lot. But given the constraints that the Board has, and there has been testimony about the trees or the function of these rooms, the location of the existing bedrooms, the chimney, the easement on one side and the tree house, the driveway in the front, it is a close call, but the Board is satisfied that the applicable standards for a reduction to the minimum yard requirement have been met.

13. A distinguishing factor on this case is that the existing ground level of the house is already there, and the side wall of the house is already that close to the lot line.
14. What is proposed as it has been amended is less of a reduction than when they started.
15. The cumulative impact of what is being proposed is minimal or maybe even less than the way it is now.
16. It is a case-by-case analysis. It is a judgment call. It is often difficult, but the applicant clears 6, 7, and 9, maybe 9 just barely.
17. Looking at all the factors and everything in the record, they clear 9 with respect to the addition.
18. With respects to the shed, the Board was confused about whether it was in the septic field or not. It is in a very remote corner of the lot, screened somewhat by two big trees.
19. The Board has not really heard much about the shed and certainly has not heard complaints for the neighbors.
20. There are many accessory structures on other lots on Hunter Mill Road.
21. This is very small compared to the house and very far away from the house.
22. It is not creating, in and of itself, any particular impact. It seems to have been there for a long time.
23. There would be trouble concluding that the tree house was constructed in good faith; however, for the purposes of the application before the Board, the Board does not think the good faith standard is to be evaluated with respect to the tree house. It pertains to the shed.
24. The problem with the tree house is it is in the easement.
25. Somewhere along the way, the Zoning Administrator said you can not do that.
26. The easement is either going to be vacated or under the development conditions it will be relocated outside of the easements.
27. The Board did not see the paperwork for the easement. If it had, it would not be surprising if there was something wrong somewhere. The easement does not seem to make sense although the house was built to stay out, and that probably started this chain of events with this house being added to.
28. Given all that and notwithstanding the staff recommendation, the Board concludes that the application as modified satisfies the applicable standards for a reduction to the minimum yard requirements.
29. The Board is okay also with respect to the mistake issue for the shed so long as the septic field is on the location from one plat ago.
30. The Board has determined that the applicable standards for the Sect. 8-914 mistake section resolution have been met with respect to the shed and that the Sect. 8-922 standards have been met with respect to proposed addition.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

- 1. This special permit is approved only for the location of the accessory storage structure, and the home addition (approximately 1,970 square feet), as shown on the plat prepared by Dominion Surveyors, Inc., dated August 11, 2011 as revised through September 27, 2012, signed by George M. O'Quinn, Land Surveyor, submitted

with this application and is not transferable to other land.

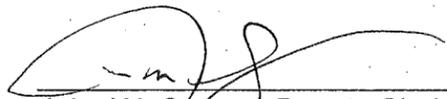
2. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
3. Pursuant to 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 (5,500 square feet existing + 8,250 square feet (150%) = 13,750 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 generally be consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.
5. Prior to commencement of and during the entire construction process, the applicant shall designate the area along the northern property boundary as a tree save area to protect existing off-site vegetation and shall install tree protection fencing to protect the vegetation in this area from construction activities. The protective fencing shall remain intact during the entire construction process and shall be the maximum limit for clearing and grading. The applicant shall monitor the site to ensure that inappropriate activity such as the storage of construction equipment does not occur in this area.
6. The existing tree house shall become compliant with all applicable Zoning Ordinance provisions:
 - a. All applicable permits and final inspections shall be obtained for the treehouse within four months of approval of this special permit;
and
 - b. The applicant shall vacate the drainage easement along the southern portion of the lot in the area of the tree house; or
 - c. The tree house shall be relocated to an area outside of required setbacks and easements, meeting all applicable Zoning Ordinance provisions.

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. Smith seconded the motion, which carried by a vote of 4-0. Chairman Ribble, Mr. Hammack and Mr. Beard were absent from the meeting.

A Copy Teste:

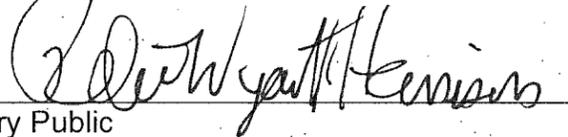


John W. Cooper, Deputy Clerk
Board of Zoning Appeals

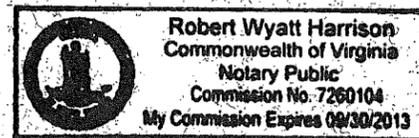
ACKNOWLEDGEMENT

County of Fairfax
Commonwealth of Virginia

The foregoing instrument was acknowledged before me this 3 day of
October, 2012.



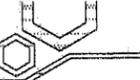
Notary Public



My commission expires: 9-30-2013



PROPOSED FRONT ELEVATION
 scale: 1/4" = 1'-0"

<p>drawing title: Proposed Front Elevation</p> <p>scale: As Noted</p>	<p>project title: SAWANT RESIDENCE 2900 Hunter Mill Road Vienna, VA 22181 project number: 0110</p>	<p>permit/revision date: Preliminary: Sep 09, 2010 Oct 14, 2010 CD's: Nov 18, 2010 Aug 21, 2012</p>	<p> alesher drafting & designs ALFONSO ESTRADA 2469 Pyreneas Court Reston, VA - 20191 703.906.7924</p>	<p> Mowen Construction LLC 21850 Golden Spika Terrace Sterling, VA 20156 Tel: 571.436.7627 Fax: 703.996.1581</p>	<p>drawing number: A-11</p>
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