

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

BRANDON W. WINFREY, VC 2012-MV-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a deck 3.0 feet from rear lot line and 1.4 feet from side lot line and to permit greater than 30 percent minimum rear yard coverage. Located at 2200 Windsor Rd., Alexandria, 22307, on approx. 9,421 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (21) 32. (Decision deferred from 1/30/13) (Admin. moved from 3/6/13 due to inclement weather.) 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 April 24, 2013; and

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

1. The applicant is the owner of the land.
2. This is a close and difficult case.
3. It has improved significantly from the original application.
4. The problem with the minimum rear yard coverage was caused primarily by the pool and not the deck.
5. There was a building permit issued for the pool, although it appeared from the paperwork that the size of the pool was significantly smaller in the approval, and it was somewhat unclear as to how the pool got bigger.
6. When the application first came in, basically the whole backyard was covered up with the deck.
7. The Board expressed concerns to the applicant about the conflicts with the standards.
8. Reading the revised plat, the deck that is now proposed is a very minimal ring or frame right around the edges of the pool.
9. Although it is still over the 30 percent, it has been reduced from 57.3 percent to 48.3 percent.
10. Looking at the drawing, it does not appear to be possible to reduce that any more unless the size of the pool was reduced.
11. The variance standards are somewhat more severe than for building in error or some other type of application that the Board would be reviewing the situation under.
12. The Board gets past the exceptional characteristic standards in two ways.
13. Under 2B, exceptional shallowness at the time of the effective date of the Ordinance, this is a lot in Bell Haven. The house was built in 1952, but it only has a 25-foot deep backyard, which makes any accessory structures or additions very difficult.

14. For someone to have a swimming pool in a backyard, there is perhaps going to be some conflict with Ordinance provisions.
15. It is to be expected that someone is going to want to have a deck, patio, or something in a rear yard.
16. The other way in which the Board gets past Standard 2 is 2F, an extraordinary situation or condition of the subject property.
17. However it came about, the swimming pool is taking up the bulk of the backyard, almost half of it, and that is what puts it over the 30 percent.
18. The applicant did apply for the swimming pool and got a building permit, and somehow the paper trail is a little bit sketchy, but there appear to have been some inspections and processing of whatever the project was pursuant to that permit.
19. It is not reasonable to expect that someone would put a swimming pool in the backyard and it would have just grass right up to the edge of the pool. There has got to be some little covered over area for a deck, patio, or something to walk up to the pool or put a chair on.
20. At least with the new plat, it is reduced to just a little ring right around the edges.
21. It does not appear that it could be any smaller.
22. The other standards are satisfied.
23. Under 6B, if they were coming in fresh, the Board would probably say no, but the situation is that the house is more than 60 years old and is almost as far back on the lot as it could possibly go. A building permit got approved for a swimming pool, and the swimming pool is already in. The hardship would be that if the Board denied the variance, the problem is not the deck. It is still the swimming pool, and the swimming pool would have to come out.
24. Given all that, the Board believes it clears the hurdles, just barely.
25. This is not a situation that the Board is going to see repeated. This is a unique mess.
26. Even though it is difficult sometimes to justify going over 30 percent for something new, a swimming pool and a deck in the backyard, on the unique circumstance that were presented with this record and with the modifications that have been made, they clear the bar.
27. The character of the zoning district would not be changed. Bell Haven is what it is, and there are plenty of things in backyards in Bell Haven.
28. At least from the photograph the Board has seen, the backyard is screened, and it would not particularly bother anyone whether the ground level pool and deck is the size it is or the size that was on the building permit.
29. It is not sticking up or something that someone is going to be looking at out their window.
30. Under 9, it will not have a significant effect on anyone.
31. What this is has been carefully vetted.
32. There was a case-by-case review of this.
33. Under these unique circumstances, some relief is appropriate, maybe not what the applicant originally asked for, but as it has been modified, it is within the standards.

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 deck and rear yard coverage (48.3%) as shown on the plat prepared by William Blackwell, titled "Variance Plat, Belle Haven, Block 21, Section 7, Lot 32" dated March 27, 2013, as submitted with this application and is not transferable to other land.
2. Prior to commencement of and during the entire construction process, the applicant shall install tree protection fencing around an existing tree in the grass area to the east of the existing pool, to protect this tree 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 an inappropriate activity, such as the storage of construction equipment, does not occur within the area.
3. The applicant shall submit an Infill Grading Plan or Land Conservation Plan, whichever is applicable, to the Department of Public Works and Environmental Services for their analysis and review.

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.

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.

Ms. Gibb seconded the motion, which carried by a vote of 5-1-1. Mr. Byers voted against the motion. Mr. Hammack abstained from the vote.

A Copy Teste:



Kathleen A. Knoth
Clerk to the Board of Zoning Appeals