

## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GEORGE KARSADI, VC 2012-MV-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory storage structure greater than 200 sq.ft. in size, fence greater than 7.0 ft. in height to remain in side and rear yards and fence greater than 4.0 ft. in height to remain in front yard. **(THE BZA DID NOT APPROVE THE SHED AND PORTIONS OF THE FENCE IN THE FRONT YARD)**. Located at 8356 Wagon Wheel Rd., Alexandria, 22309, on approx. 14,520 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 101-4 ((17)) 68. (Concurrent with SP 2012-MV-077.) (Admin. moved from 2/6/13 at appl. req.) (Decision deferred from 4/24/13.) 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 May 15, 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 difficult application.
3. As the Board has discussed many times, the standards for a variance are somewhat more vigorous than those for a special permit or a mistake section special permit.
4. The Board had some testimony regarding the topography both on the subject site and immediately adjacent to it.
5. With respect to the topography issue at the edges of the property, the applicant has shown that some relief is appropriate.
6. With the changed contour lines and the way the property drops down, on the technical rear of the subject property facing Lots 18 or 69, those fences in places exceed 7.0 feet and are as high as 8.4 feet in some locations.
7. The applicant has met the standards for those areas.
8. With respect to the fences in the front yard, however, the topographic issue is not germane to the height of those fences.
9. There is really nothing particularly extraordinary about the property or unusual in that respect for either a fence along the driveway or the patio facing Wagon Wheel Road, which was the subject of some opposition.
10. If the Board is going by the required standards for a variance, there has not really been evidence shown to the Board that those standards have been met, at least with those portions of the fences.
11. Those would have fit better with a mistake section kind of special permit, if that were appropriate, or at least that kind of analysis.
12. In some respects, perhaps on the driveway side, if there had been a special permit for a fence up to 6.0 feet, there might have been some justification for doing that.

13. What the Board is left with is just a variance. The only application for the fence is under the variance section, and it does not give the Board much to work with.
14. The fence could be approved-in-part and disapproved-in-part.
15. With respect to the size of the shed, because the special permit has been denied, there is no basis to approve the variance related to the size of the shed.
16. Under Sect. 18-404, with the analysis described by Mr. Hart regarding whether the property was exceptional in some way, with respect to the fences along the perimeter, it is, and with respect to the fences in the front yard, it is not.
17. The Board cannot conclude that the application of the Ordinance would produce undue hardship at least with respect to the courtyard fence on the Wagon Wheel Road side or the fence along the driveway on that side.
18. The Board cannot conclude that the strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict the utilization of the subject property.
19. This would be a special privilege or convenience rather than alleviating a hardship.
20. There were some mistakes made, things went up that probably should not have been put up, and everything kind of snowballed from there.

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 in part 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.

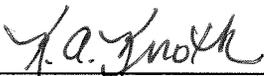
NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED-IN-PART** with the following limitations:

1. This variance is approved for the location and height of the fences as shown on the plat prepared by Dominion Surveyors Inc., dated August 28, 2012, as submitted with this application, and is not transferable to other land. Notwithstanding anything shown on the plat, the only fences that are approved for the location and height are the fences along Lot 18 and Lot 69 that are in a side or rear yard. The front yard fences on the plat are not approved, with the exception of the fencing between Lot 18 and the subject dwelling to close off the backyard as shown in Attachment 1.

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. Ms. Gibb was absent from the meeting.

A Copy Teste:



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Kathleen A. Knoth  
Clerk to the Board of Zoning Appeals

