

## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MINDY HOANG (NGO), VC 2013-PR-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 20.0 ft. from front lot line. Located at 2734 Oldewood Dr., Falls Church, 22043, on approx. 21,780 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 59. (Admin. moved from 8/7/13 and 10/9/13 at appl. req.) (Admin. moved from 9/11/13 for notices.) 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 November 6, 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 lot that is substantially within a 100-year flood plain and resource protection area.
3. There is a small house on the lot already that was built in 1947.
4. The current location of the house is too close to the resource protection area and flood plain.
5. The house in the photographs appears to be somewhat rundown.
6. What the applicant is proposing to do is replace the existing house with a somewhat larger dwelling, although it is fairly modest in size, closer to the street and further away from the flood plain and RPA line.
7. The applicant has presented testimony showing compliance with the variance standards.
8. The constraints on this lot, because of the RPA and flood plain and the circumstance that there was an existing house there that cannot really be rebuilt in the same location, suggest that relief is warranted.
9. Although the new house would be somewhat closer to the street than what appears to be the pattern of development in the neighborhood, it is still significantly back from the edge of pavement.
10. With the imposition of the development conditions, which address substantially environmental impacts and tree preservation among other issues, the impact of allowing this project has been satisfactorily mitigated.
11. One of the current requirements that was not in place in 1947 deals with the height of the house above the flood plain line.
12. This house basically cannot have a basement now.
13. That is another reason why the new house might need to be a little larger than the existing house.

14. They are not going to be able to have any storage or basement or something like that.

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 maximum size and location within the building envelope of the dwelling, as shown on the plat prepared by GeoEnv Engineers, dated August 13, 2013, as revised through August 14, 2013 and signed by Ibrahim A. Chehab, Professional Engineer as submitted with this application and is not transferable to other land.
2. All applicable building permits and final inspections shall be obtained for the single-family detached dwelling.
3. The infill lot grading plan or any plan required by the Department of Public Works and Environmental Services (DPWES) shall include a tree preservation plan which depicts proposed limits of clearing and grading at both the southwestern corner of the existing gravel driveway and the northern corner of the property to preserve the existing 27-inch diameter red oak tree and the 22-inch diameter white oak tree. The tree preservation plan shall be reviewed and approved by the Urban Forest Management Division (UFMD), DPWES.
4. An undesirable vegetation management plan shall be provided at the time of infill lot grading plan (or other plan) that provides for the management and treatment of invasive and undesirable plants, growing in the 'Undisturbed Area/Wooded Area'. This plan shall be reviewed and approved by UFMD. The management plan shall:
  - a. Identify targeted undesirable and invasive plant species to be suppressed and managed.
  - b. Identify targeted area of undesirable and invasive plant management plan, which shall be clearly identified on the landscape or tree preservation plan.
  - c. Incorporate recommended government and industry method(s) of management, i.e. hand removal, mechanical equipment, chemical control, other. Identify potential impacts of recommended method(s) on surrounding trees and vegetation not targeted for suppression/management and identify how these trees and vegetation will be protected (for example, if mechanical equipment is proposed in save area, what will be the impacts to trees identified for preservation and how will these impacts be reduced).
  - d. Identify how targeted species will be disposed.
  - e. Require that if chemical control is recommended, treatments shall be performed by or under direct supervision of a Virginia Certified Pesticide Applicator or Registered Technician and under the general supervision of Project Arborist.
  - f. Provide information regarding timing of treatments, (hand removal, mechanical equipment or chemical treatments) when will treatments begin and end during a season and proposed frequency of treatments per season.
  - g. Identify potential areas of reforestation and provide recommendations.
  - h. Provide for monthly monitoring reports to UFMD and SDID staff until Bond release or release of Conservation Deposit or prior to release if targeted plant(s) appear to be eliminated based on documentation provided by Project Arborist and an inspection by UFMD staff.

5. A landscape plan shall be submitted at the time of plan review and shall be subject to the review and approval of UFMD, which shows a variety of native and desirable tree species, of various sizes, to be planted on the site. All trees proposed to be planted shall be identified as Category I, II, III, or IV deciduous trees and/or Category I, II, III, or IV evergreen trees. In addition, minimum planting areas for proposed trees shall be provided in accordance with PFM 12-0601.1B.
6. The limits of clearing and grading shall be no greater than shown on the variance plat as modified by Condition 3 and for the installation of utilities and/or trails, or for ingress and egress to Lot 60, as determined necessary by the Director of DPWES. If it is determined necessary to install utilities and/or trails, or for ingress and egress to Lot 60, in areas protected by the limits of clearing and grading as shown on the variance plat, they shall be located in the least disruptive manner necessary as determined by the UFMD, DPWES. A replanting plan shall be developed and implemented, subject to approval by the UFMD, DPWES, for any areas protected by the limits of clearing and grading that must be disturbed for such trails or utilities, or for ingress/egress to Lot 60.
7. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing in the form of four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart or, super silt fence to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees shall be erected at the limits of clearing and grading as shown on the demolition, and phase I & II erosion and sediment control sheets.

All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved. Three (3) days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFMD, DPWES, shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by the UFMD, DPWES.”

8. The Applicant shall retain a professional arborist with experience in plant appraisal, to determine the replacement value of all trees 12 inches in diameter or greater located on the Application Property that are shown to be saved on the Tree Preservation Plan. These trees and their value shall be identified on the Tree

Preservation Plan at the time of the first submission of the respective site plan(s). The replacement value shall take into consideration the age, size and condition of these trees and shall be determined by the so-called "Trunk Formula Method" contained in the latest edition of the Guide for Plan Appraisal published by the International Society of Arboriculture, subject to review and approval by UFMD.

At the time of the respective plan approvals, the Applicant shall post a cash bond or a letter of credit payable to the County of Fairfax to ensure preservation and/or replacement of the trees for which a tree value has been determined in accordance with the paragraph above (the "Bonded Trees") that die or are dying due to unauthorized construction activities. The letter of credit or cash deposit shall be equal to 50% of the replacement value of the Bonded Trees. At any time prior to final bond release for the improvements on the Application Property constructed adjacent to the respective tree save areas, should any Bonded Trees die, be removed, or are determined to be dying by UFMD due to unauthorized construction activities, the Applicant shall replace such trees at its expense. The replacement trees shall be of equivalent size, species and/or canopy cover as approved by UFMD. In addition to this replacement obligation, the Applicant shall also make a payment equal to the value of any Bonded Tree that is dead or dying or improperly removed due to unauthorized construction activity. This payment shall be determined based on the Trunk Formula Method and paid to a fund established by the County for furtherance of tree preservation objectives. Upon release of the bond for the improvements on the Application Property constructed adjacent to the respective tree save areas, any amount remaining in the tree bonds required by this proffer shall be returned/released to the Applicant.

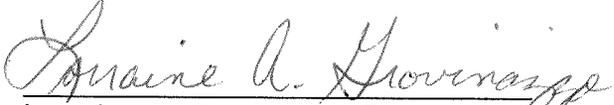
9. A site specific RPA boundary certification per Letter to Industry #08-12 shall be provided at the time of plan review.

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. 18-407 of the Zoning Ordinance, this variance 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 variance. 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. Hammack seconded the motion, which carried by a vote of 7-0.

A Copy Teste:

A handwritten signature in cursive script, reading "Lorraine A. Giovinazzo".

Lorraine A. Giovinazzo, Deputy Clerk  
Board of Zoning Appeals