

## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

ROBERT L. WELSH, VC 2013-MV-021 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit reduction in minimum lot area and lot width requirements. Located at 7843 Southdown Rd., Alexandria, 22308, on approx. 14,228 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((18)) 9B. 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 January 8, 2014; and

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

1. The applicant is the owner of the land.
2. Mr. Hart agrees with Mr. Hammack that this is a very difficult case and did not know what to do with it.
3. Mr. Hart admits that sometimes on cases, he looks at everything and does not know which way to go and what to do.
4. Mr. Hart does not know whether it might have been better to do the appeal first, because he would have been more inclined to go with the appellant's position on the appeal than to try and blast through the variance standards.
5. Mr. Hart believes in looking closely at the standards in the statute and one other statute he is going to reference, that although this application is very unusual that they do, in fact, meet the required standards, and the Board would like to talk through that.
6. The property was acquired in good faith, so Number 1 is okay.
7. Number 3, the condition is not of so general or recurring in nature that the Board can make a general regulation.
8. This is a freak situation.
9. It is not easily capable of repetition.
10. Among the circumstances Mr. Hart would point out is that this is one of the oldest subdivisions in the County.
11. The creation of the subdivision in 1912 predated not only the Zoning Ordinance, but predated the Subdivision Ordinance.
12. The Board has a plat where it is obvious that the parent tract from which Lots 9A and 9B both were created had what appears to be an engineering anomaly, whether that was in error or not, but that the parent lot was somewhat wider on the plat that was recorded than the location of the corners of the lot today.
13. Somehow it lost about five feet.
14. The Board also has this confusing situation where the lot is subdivided in 1946 under circumstances that are not completely clear now.

15. The Board has a note by Mr. Covington at some point after 1955 showing that he writes that this was a building lot created in 1946 and then some confusing numbers that the Board does not understand.
16. He writes, "Okay. W. Covington." The Board is satisfied that he was making a determination at some point after 1955 that this was a buildable lot.
17. Why the question was asked, the Board does not know.
18. Whether there was another letter or something written, the Board does not know.
19. That happened, and it is also apparent that for whatever reason, the Department of Tax Administration treated this thereafter and for about 30 years as a building lot.
20. It was sold as a building lot.
21. The applicant's parents bought it as a building lot and made some estate plans based on that, as the Board had in the previous hearing.
22. Mr. Hart does not think it is something that is saying illegally subdivided lots, if this was illegally subdivided, which he wonders about, doubts that, but this is not something subject to a general regulation.
23. The strict application of the Ordinance would produce undue hardship, Number 4. Of course, it would.
24. If this is an unbuildable out lot, they cannot do anything with it, other than have a vegetable garden or something appurtenant to the house next door.
25. The hardship is not shared generally by other properties in the same zoning district and the same vicinity. Mr. Hart hopes not, if this is the kind of thing that happens.
26. Basically, this is a lot that is within a whisker of being wide enough.
27. It is within a whisker of being big enough.
28. It is approximately the same size as the lot directly across the street, which has a house on it.
29. It is in an established subdivision, where a house on a lot like this would not be out of line.
30. It is consistent with what is around it.
31. Under Number 6, that the strict application of the Ordinance would effectively prohibit or unreasonably restrict the utilization of the subject property, yes, of course it would.
32. It makes no sense to have created in 1946 an unbuildable out lot in this location in a block of lots like this with houses on them that is a whisker too short at the street and a whisker too small.
33. There would be no reason to do that.
34. If you were creating the lot, you would make two building lots. There would be no reason to have that.
35. The lot on the right is so much bigger. They could have made it just a whisker smaller. It would not make sense.
36. Number 7, that the authorization on the variance will not be of substantial detriment to adjacent property. Again, of course not.
37. It is similar to the pattern of development in the neighborhood.
38. With the development conditions that staff has proposed, the impact of this would be mitigated.

39. The shed on there, which does not seem to be bothering anyone, or the little tip of the patio that extends over, those would be coming out.
40. There would be some other assessment of the vegetation and review of that, which would be consistent with environmental concerns in protecting the neighborhood.
41. Number 8, that the character of the zoning district will not be changed by the granting of the variance, of course not.
42. This is one lot that is consistent with the pattern of what is around it.
43. Number 9, that the variance would be in harmony with the intended spirit and purposes of the Ordinance and would not be contrary to the public interest, yes, if anybody had been asked, people would say it would be unreasonable for the County after all this time to have reneged somehow and made this into an unbuildable out lot, having charged all those taxes or whatever.
44. That is not necessarily a reason for granting the variance, but it points out that it seems inconsistent with what the Board tries to do in the County to be fair to everybody.
45. Granting a variance in this situation for a lot that is almost wide enough and almost big enough, that has been taxed for all this time, with the engineering discrepancy in the back and the notation from Mr. Covington, for whatever that means, that allowing this now would not be contrary to the public interest.
46. It is not hurting anybody, but it is hurting this lot owner very much if we do not approve it.
47. Number 2 under 18-404 seemed to be the most difficult one.
48. The subject property has at least one of the following characteristics: exceptional narrowness, shallowness, size, shape, topographic conditions, no.
49. That is A through E.
50. And G, no. There is nothing immediately adjacent to the subject property.
51. It is F. F is the one that the Board has to conclude that it meets, and the Board thinks it does.
52. An extraordinary situation or condition of the subject property, the extraordinary situation here is, the Board has a mysterious subdivision coupled with what appears to be an engineering mistake or anomaly in the back.
53. There would be no logical reason for somebody to create a lot that was a little bit off, and particularly where they are losing about five feet in the back anyway because of the discrepancy from the plat.
54. Coupled with the chain of events with Mr. Covington's notation on the plat, with the changes in the assessment of the lot by Tax Administration, and the changes in ownership, it is possible to construe the extraordinary situation to be something other than a physical condition.
55. It could be, as in this case, a paperwork created extraordinary situation.
56. It does not say that it has to be a geometric thing necessarily, and this could be an extraordinary situation.
57. The other statute Mr. Hart wanted to point to, which the Board rarely looks at, was 15.2-2201.
58. The part Mr. Hart wanted to quote was something about a definitional section in the Virginia Code that is dealing with variance.

59. The Board usually looks at the standards instead of the definition.
60. Variance means, in the application of a Zoning Ordinance, a reasonable deviation from those provisions regulating the size or area of a lot or parcel of land or the size, area, bulk or location of a building or structure when the strict application of the Ordinance would result in unnecessary or unreasonable hardship to the property owner, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the intended spirit and purpose of the Ordinance and would result in substantial justice being done.
61. The Board thinks it is okay on all of that.
62. The Board never really gets to the part about substantial justice being done.
63. The Board thinks that is a catchall phrase that the Generally Assembly threw in, and maybe somebody had the wisdom to say, you know, once in a while, substantial justice needs to be done and some mess like this is going to be thrown on our desk and the Board has got to figure out how to fix it now.
64. Substantial justice being done is to allow, in this situation, the lot owner to have his lot.
65. It is a little bit too narrow.
66. It is a little bit too small.
67. But on top of everything else, in the course of looking at the whole County, is it substantial justice to deny that at this point? No.
68. For that reason, looking at this other statute, looking at the extraordinary situation or condition being this paperwork mess coupled with the engineering mistake in the back, the Board thinks that the standards have been met.
69. Mr. Hart usually agrees with Mr. Hammack on a lot of these.
70. Mr. Hart has been very tough on variances at times, and there are a lot of weak variance applications.
71. The Board does not see a lot anymore, but does see weak variance applications sometimes.
72. This one coupled with the substantial justice business at the end of that sentence is an approvable variance.

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. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This variance is approved for the lot, as shown on the plat prepared by Walter L. Phillips, dated August 23, 2013, as revised through October 3, 2013 as submitted with this application and is not transferable to other land.
3. All applicable building permits and final inspections shall be obtained for any construction.
4. Prior to construction, an 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. The

tree preservation plan shall be reviewed and approved by the Urban Forest Management Division (UFMD), DPWES.

5. 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.
6. Notwithstanding Note 12 on the variance plat, the shed and portion of the patio on Lot 9b shall be removed within six months of the approval of this permit. No trees will be removed during the demolition of the shed and portion of the patio.
7. Large healthy trees along the frontage of the property shall be preserved to the extent reasonably possible, after allowances are made for a drive entrance. Prior to construction, a tree preservation plan shall be approved by UFMD and trees within the preservation area 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 and 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. 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.”

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 the development conditions have been recorded in the land records. The Board of Zoning Appeals may grant additional time to record the conditions 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.

Ms. Theodore seconded the motion, which carried by a vote of 4-1. Mr. Hammack voted against the motion. Mr. Beard and Mr. Byers were absent from the meeting.

A Copy Teste:

Lorraine A. Giovinazzo

Lorraine A. Giovinazzo, Deputy Clerk  
Board of Zoning Appeals

ACKNOWLEDGEMENT

County of Fairfax  
Commonwealth of Virginia

The foregoing instrument was acknowledged before me this 16 day of  
January, 2014.

Cheryl Lynette Foddrell  
Notary Public

My commission expires: Sept. 30, 2017

