

## COUNTY OF FAIRFAX, VIRGINIA

### VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MOHAMMAD RAHIM, VC 2013-SU-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit dwelling greater than 35 ft. in height. Located at 16454 Glory Creek Tr., Centreville, 20120, on approx. 5.03 ac. of land zoned R-C and WS. Sully District. Tax Map 52-2 ((5)) 3. Mr. Hammack 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 October 9, 2013; and

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

1. The applicant is the owner of the land.
2. Having read the staff report and listened to the answers made by the applicant, the Board is convinced that he satisfies Sect. 2E, which requires a finding of exceptional topographic conditions; 2F, an extraordinary situation or condition of the subject property.
3. In addition, he satisfies Number 3, that the condition or situation of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of general regulations.
4. The staff report and the justification cites the difficulties that the applicant had in dealing with the ground and water problems, the requirement to bring in truckloads of dirt to remedy it.
5. The requirement that part of the yard, that the lot be sculpted in a different form in order to address water problems.
6. Certainly, Number 4, that the strict application of the Ordinance would produce undue hardship because the only thing that could be done, if this variance were denied, the entire roof would have to be lowered by four feet, which would be a great expense and hardship, although the Board is not supposed to consider expense. But it would preclude the owner from using the property until this type of a restoration could be made, and it may be unlikely that he could do that.
7. Number 5, that such undue hardships are not shared generally by the properties in the same zoning district.
8. Number 6, that a strict application of the Ordinance would effectively prohibit or unreasonably restrict the utilization of the subject property.
9. Number 7, the authorization will not be of substantial detriment to the adjacent properties.
10. Number 8, that the character of the zoning district will not be changed.
11. It is a five-acre lot.
12. Only the peak of the roof is in violation.

13. Probably no one would notice it if it did not have a sign out front that said this roof is four feet higher than allowed in the zoning district.
14. The ground and water problems were discovered during excavation. Those are things that do not show up or are very difficult to anticipate when designing a building. That's contributed to the problem in part.
15. That part of the overall variance request is compounded by the delivery and installation of floor joists and roof trusses that were larger than the design indicated. Why they were installed and were not caught is unclear.
16. When you look at the case in its entirety, this is one where variance requirements are satisfied.
17. In addition, the Board has a letter in support mailed in by Michael Frey, Supervisor in the district in which this unit is located.
18. There was a case several years ago where some townhouses in McLean were all constructed, and without remembering the reasons why they were constructed too high, they were. They came in, and this relief was granted.
19. With all due respect to staff's interpretation of location of the house, only two dimensions are looked at, and a house has three. The height is a third dimension. If the Zoning Administrator ever took that into consideration, it is unknown.
20. The depth of a basement, how deep can a basement go, could you dig a basement 50 feet deep, put a bunch of floors in, it is a multi-dimensional thing. Maybe that particular position ought to be reconsidered.

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 location and height of the dwelling as shown on the plat prepared by CPJ Associates., titled "Variance Plat, Crooked Creek, Lot 3," dated June 21, 2013, as submitted with this application, and is not transferable to other land.

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. Beard seconded the motion, which carried by a vote of 5-1. Mr. Hart voted against the motion. Mr. Smith was absent from the meeting.

A Copy Teste:

  
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Kathleen A. Knoth  
Clerk to the Board of Zoning Appeals