COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JUAN CARLOS PINTO, SP 2008-BR-045 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 8.0 ft. with eave 6.7 ft. from side lot line. Located at 6214 Duntley Pl. on approx. 13,064 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-4 ((2)) 485. 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 July 15, 2008; and

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

1. The applicant is the owner of the land.
2. Based on the record before the Board, it is appropriate to conclude that the error was done in good faith.
3. There was no contractor involved, and apparently the individuals doing the work were not construction professionals.
4. The structure itself is not significantly different in terms of massing than the original carport, which had a pretty substantial roof.
5. The addition appears to be compatible with other homes in the neighborhood based on the photographs.
6. There would not be a significant negative impact on anybody if it were allowed to remain.
7. There would be a hardship in having to remove what has been put in place already.
8. With the imposition of the development conditions, including obtaining a building permit and final inspections, any public health and safety issues will be caught.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This special permit is approved for the location of an addition (enclosed carport) as shown on the plat prepared by Larry N. Scartz, dated January 29, 2008, as submitted with this application and is not transferable to other land.

2. A building permit and final inspections for the addition shall be diligently pursued and obtained within 120 days of final approval of this application or this special permit shall be null and void.

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.

Mr. Byers seconded the motion, which carried by a vote of 5-0. Mr. Smith and Mr. Hammack were absent from the meeting.

A Copy Teste:

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Paula McFarland, Deputy Clerk
Board of Zoning Appeals