

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

G. RAY WORLEY, SR. & ESTELLA C. (H.) WORLEY, SP 2008-PR-034 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 6.6 ft. from the rear lot line and to permit an accessory dwelling unit. Located at 2537 Gallows Rd. on approx. 15,375 sq. ft. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 4B. 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 June 17, 2008; and

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

1. The applicants are the owners of the land.
2. With respect to the accessory dwelling unit, the Board has a favorable staff report and adopts the rationale in the staff report.
3. With the conditions proposed, there will not be significant negative impact on anyone.
4. With respect to the shed, it has been in that location for a number of years and does not seem to be affecting anyone. With the conditions, its approval will not create a negative impact on anyone.
5. With respect to the shed, the applicant has shown compliance with the standards.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in Sect(s). 8-918 of the Zoning Ordinance, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location. Based on the standards for building in error, 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 an 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 approval is granted to the applicants only, G. Ray Worley, Sr., and Estella C (H.) Worley, and is not transferable without further action of this Board, and is for the location indicated on the application, 2537 Gallows Road (15,375 square feet), and is not transferable to other land.
- 2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Lucarelli, Montes and Wells, P.C., dated March 20, 2008 and approved with this application, as qualified by these development conditions.
- 3. A copy of this special permit SHALL BE POSTED in a conspicuous place in the interior of the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
- 4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.
- 5. The accessory dwelling unit shall contain a maximum of 833 square feet, including a maximum of two sleeping areas, including one bedroom and a multipurpose room.
- 6. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
- 7. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.

8. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
9. Parking shall be provided as shown on the special permit plat.
10. Prior to occupancy of the accessory dwelling unit, a breezeway shall be constructed in between the primary dwelling and the accessory dwelling unit in substantial conformance with the architectural renderings and materials included in Attachment 1 to these conditions.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. 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. Byers seconded the motion, which carried by a vote of 7-0.

A Copy Teste:

Suzanne L. Frazier, Deputy Clerk
Board of Zoning Appeals