

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MAX E. GAGERMEIER, JR. & BONNIE C. GAGERMEIER, SP 2008-MA-062 Appl. under Sect(s). 8-914 and 8-922 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.7 ft. from side lot line and 3.0 ft. from rear lot line and to permit reduction of certain yard requirements to permit construction of accessory structure 7.5 ft. from side lot line. **(THE BZA APPROVED THE ACCESSORY STORAGE STRUCTURE ONLY)**. Located at 4000 Lake Blvd. on approx. 26,905 sq. ft. of land zoned R-2. Mason District. Tax Map 59-4 ((2)) 8. Ms. Gibb 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 September 16, 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 shed, it has little impact on the neighborhood or the neighboring property.
3. The shed looks like the house and is very well kept.
4. With respect to the shed, the applicant has presented testimony indicating compliance with the general standards for special permit uses as set forth in Sect. 8-006 and the additional standards as contained in the appropriate sections of the Zoning Ordinance.
5. With respect to the garage, the staff report recommends denial based on the fact that there is a better location, which would not require this special permit, and it is staff's position that fewer trees would have to be taken out.
6. The applicant testified that one reason for proposing the garage in the location was to avoid taking out several trees, and that it does not have an impact on the neighbor, even though it is very close, because the neighbor has no windows facing that side, and because the garage fits better with their driveway than if moved closer to the house, and to avoid exacerbating a ponding issue.
7. It is a close case, but not convincing enough to go contrary to the staff report.
8. The applicant has not presented testimony indicating compliance with the standards for the special permit with respect to the garage.

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. 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 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 IN-PART** with the following development condition:

1. This special permit is approved for the location and size of a shed, as shown on the plat prepared by Dominion Surveyors Inc., dated June 28, 2007, as revised through May 29, 2008, as submitted with this application and is not transferable to other land. **(THE BZA APPROVED THE ACCESSORY STORAGE STRUCTURE ONLY.)**

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. Hart seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.