

## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES H. WEBB, JR., SP 2008-MA-071 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit additions to remain 10.7 ft. from side lot line and permit fence greater than 4.0 ft. in height to remain in front yard. Located at 3502 Pinetree Ter. on approx. 24,800 sq. ft. of land zoned R-2. Mason District. Tax Map 61-2 ((16)) 792. 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 September 23, 2008; and

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

1. The applicant is the owner of the land.
2. With respect to Sect. 8-923, 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 for this use as contained in the applicable sections of the Zoning Ordinance.
3. With respect to Sect. 8-914, the Board has determined that the applicant has met the required standards under that provision of the Ordinance.
4. The evidence supports the fact that the applicant purchased the property in the existing condition, so the issue of whether the buildings/structures were there as a result of his action or whether he acted in good faith is resolved.
5. In looking at the General Standards that the Board has to apply, given the fact that the garage has been there for at least some period of time, shows that it is not detrimental to the adjoining property owners.
6. Allowing a garage door to be installed and it to be further enclosed for security reasons is not unusual for the Board to hear and allow, and will certainly not change the general appearance or have a detrimental impact on the neighborhood.
7. Regarding the fence, it has been there for a long period of time without objection. The additional height is not objectionable, is minimal, and does not even come close to the six feet that many people request.

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 existing carport enclosure (garage), attached storage structure and fence height as shown on the plat prepared by George M. O'Quinn, Dominion Surveyors, Inc., dated April 29, 2008 revised through July 3, 2008, submitted with this application and is not transferable to other land.
2. Within 120 days of approval of this application, building permits for the enclosed carport shall be diligently pursued and obtained or the enclosed carport shall be removed or brought into compliance with Zoning Ordinance Requirements.

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.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.