

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN C. WOOD, TRUSTEE, AND ELYSE DIBIAGIO-WOOD, TRUSTEE, SP 2008-DR-098 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 5.5 ft. from rear lot line and reduction of certain yard requirements to permit construction of addition such that sideyards total 18.9 ft. Located at 1404 Baritone Ct. on approx. 15,298 sq. ft. of land zoned R-2 (Cluster). Dranesville District. Tax Map 19-3 ((4)) 325. 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 February 3, 2009; and

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

1. The applicants are the owners of the property.
2. With respect to the addition, the Board has a favorable staff recommendation and adopts the rationale in the staff report.
3. The addition seems consistent with other homes in the neighborhood.
4. The Board does not believe, based on the record, that it would have a significant negative impact on anyone.
5. The standards set forth in the Section 8-922 resolution have been met.
6. With respect to the shed, it has been there for ten years or more without complaint.
7. In the location it is in and with the vegetation around it, the Board does not believe that there will be a significant negative impact on anyone.
8. The standards set forth in Section 8-914 have been met.

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. 8-922 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 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. These conditions shall be recorded by the applicant among the land record of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recordation shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of a proposed addition and shed as shown on the plat prepared by Peter R. Moran, Land Surveyor, dated August 20, 2007, revised through January 25, 2008, submitted with this application and is not transferable to other land.
3. Pursuant to Provision 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of the existing principle structures may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (3,247 square feet existing + 4,870.5 (150%) = 8,117.5 permitted) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction, special permit or variance. Notwithstanding the definition of gross floor area as set forth in the Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be consistent with the architectural renderings and materials included in Attachment 1 to these conditions.

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.

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 or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction 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.

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