

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

HERMILIO MACHICAO, SP 2009-LE-007 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 dwelling to remain 13.2 ft. with eave 12.1 ft. and roofed deck to remain 25.4 ft. from a front lot line and permit construction of fence greater than 4.0 ft. in height in the front yard of a corner lot. Located at 5901 Amherst Ave. on approx. 11,268 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((4)) (1) 1. Mr. Smith 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 March 31, 2009; and

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

1. The applicant is the owner of the property.
2. The applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, Sect. 8-914, and Sect. 8-923.
3. These are obviously very unfortunate circumstances.
4. There are a lot of strong feelings on this issue.
5. The Board commends the many citizens who have taken their time out to be at the hearing doing what is in the best interest of their community to preserve and promote their community, which takes a lot of unity and initiative.
6. A number of the concerns relate to things that can be done by right on this property.
7. Regarding the height of the structure, the height can be done by right on this property. It can go six feet higher actually.
8. The floor area ratio is not something that is really an issue.
9. We are in an unfortunate circumstance. People are human beings. There was a mistake made in approving the building permit.
10. Construction was begun and was 80% complete when the error was discovered.
11. This case has been through an appeal and through litigation; there has been a lot of time and money spent.
12. There are still significant concerns about the size of the structure.
13. When looking at options, the Board could deny the application, but the house would still be at the same height, and there would still be issues where by right they can go closer to Highland Avenue by five feet, closer to the side yard/rear yard by five feet, and taller by six feet.
14. It almost offsets the 16- to 18-foot difference on Backlick Road.
15. Denial of the application is not a solution that is in the best interest of everyone.
16. Whereas by approving the application, the Board can impose conditions that will try to mitigate the unfortunate circumstances in which we find ourselves.
17. As in Sect. 8-914, the Board believes the non-compliance was done in good faith.
18. The applicant did go out and get a building permit.
19. In terms of detrimental to the use and enjoyment of other property in the neighborhood, the bulk issues could be done by right, and there are development conditions to mitigate some of the impacts.

20. To force compliance with the minimum yard requirements in this case would cause an unreasonable hardship upon the owner; it would be a significant expense.
21. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
22. With respect to the fence, the provisions in Sect. 8-923, the Fairfax County Department of Transportation made a determination that it will meet the sight distance requirements.
23. The presence of multiple yards comes into play, which is referenced in 8-923 (3).

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, and Sect. 8-923, Provisions for Increase in Fence and/or Wall Height in Any Front Yard. 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. This special permit is approved for the location of the existing dwelling, covered deck, and proposed fence as shown on the plat prepared by Alexandria Surveys, dated May 15 2008, revised through March 3, 2009, and signed March 13, 2009 as submitted with this application

and is not transferable to other land. All development onsite shall be in conformance with such plat. There shall be no decks, porches, or other additions added to the house.

2. Within three months of approval of this application, the applicant shall amend building permits for the dwelling to reflect the changes noted in Condition #3.
3. Prior to approval of final inspections and RUP issuance, the applicant shall make the following modifications to the dwelling as shown on the SP Plat: remove the front steps to the Highland Avenue porch entrance and replace the existing entrance door with French doors; replace the existing door along Backlick Road with a window; replace the garage door with sliding glass doors; and remove the concrete drive in the rear yard.
4. Prior to approval of final inspections and RUP issuance, foundation planting and shade trees shall be provided along the dwelling's entire Highland Avenue building frontage to soften the visual impact of the structure. The species, size and location shall be determined in consultation with and approval by Urban Forest Management Division (UFMD), DPWES.
5. The proposed six-foot high board-on-board fence shall be consistent with the inset picture on the SP Plat. The fence shall be maintained in good repair.

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 4-2-1. Mr. Byers and Chairman Ribble voted against the motion. Mr. Hammack abstained from the vote.