COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

DOUGLAS AND ALISON DUENKEL, SP 2009-DR-035 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 accessory structure to remain 16.2 ft. from side lot line, addition 35.4 feet from front lot line and open deck 4.1 feet from the side lot line and 17.6 feet from the front lot line of a corner lot and fence greater than 4.0 feet in height to remain in front yard. Located at 1143 Kettle Pond La. on approx. 36,000 sq.ft. of land zoned R-1. Dranesville District. Tax Map 12-1 ((13)) 17 (Concurrent with VC 2009-DR-002). Mr. Byers 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 August 4, 2009; and

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

1. The applicants are the owners of the land.
2. It is determined that Items A through G have been complied with.
3. This is a unique property; it is surrounded on three sides by roads.
4. The property has one rear yard, one side yard, two front yards, and this does considerably limit the space where these items could be.
5. It is exactly, or plus or minus, 36,000 square feet, and the Board would not be addressing some of these issues if it was in excess, by any stretch of the imagination, beyond that 36,000 square feet.
6. All the letters have been noted; it is also noted that there have been neighbors who have signed petitions supporting the application as well as there are some in opposition to this.
7. The property is well landscaped and screened.
8. The fence is used for safety, concerning the pool.
9. There are no sight distance impacts or limitations.

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. 8-923 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. This special permit is approved for the location and size of an existing fence, accessory structure, addition and deck as shown on the plat prepared by Paul B. Johnson, Charles P. Johnson & Associates, Inc. dated March 2009, revised and signed through June 5, 2009 submitted with this application and is not transferable to other land.

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 including requirements for building permits.

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