

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MIDDLEBURG ASSOCIATES, LLC, SP 2010-DR-001 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 10.2 ft with eave 9.5 ft. from a side lot line. Located at 1253 Ingleside Ave. on approx. 18,050 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((3)) 1B. 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 10, 2010; and

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

1. The applicant is the owner of the land.
2. 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.
3. The Board has determined that the error exceeds 10 percent of the measurement involved.
4. There is some confusion about exactly who was notified and when, and what was said and what was heard; where the source of the error came from; was it the surveyor or the person who put in the footings.
5. The Notice of Violation was issued July 16, 2009, and the structure was already complete. It does appear pretty clear that there was an error in building location, which is the Standard B; it either has to be done in good faith or through no fault of the property owner, or was the result of an error in location of the building subsequent to the issuance of the building permit.
6. There does not appear to be any motive in trying to move this; it did not free up some valuable space for some other alternative; there would not have been any motive to do this, other than an error that was found.
7. The Board is sympathetic to Mr. Blum's concerns, although the garage is pretty close to the lot line on the adjoining property, as well as the six-foot fence and some vegetation.
8. To force compliance with the minimum yard requirements would cause an unreasonable hardship upon the owner, and it would not be in the best interest of Mr. Blum either.
9. There is already some concern about the tree; to go out there and have to dig out the existing footings, and pour new concrete and tear down one wall and put up a new one, we have already got landscaping installed and the driveway and the fencing.
10. It would be a lot more detrimental to go in and try and change this at this point in time.

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 the Zoning Ordinance. 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 an existing detached accessory structure (detached garage) as shown on the plat prepared by Harold A. Logan, Harold A. Logan Associates P.C., dated December 9, 2009 and signed through December 10, 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.

Ms. Gibb seconded the motion, which carried by a vote of 5-0. Mr. Beard and Mr. Hammack were absent from the meeting.