

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

NELSON AND NOEMY RAMIREZ, SP 2011-LE-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 storage structure to remain 16.1 ft. from side lot line and to permit fence greater than 4.0 ft. in height to remain in front yard of a corner lot. Located at 6001 Clames Dr. on approx. 25,804 sq. ft. of land zoned R-1. Lee District. Tax Map 81-4 ((16)) 5. (Decision deferred from 7/20/11). Mr. Hart moved that the Board of Zoning Appeals adopts 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 July 27, 2011; and

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

1. The applicants are the owners of the land.
2. There were some questions at the July 20th public hearing, but it is understood that everything has been resolved based on the revised conditions that the Board has and the confirmation from the applicant.
3. The Board does not think there is a problem with approving this contingent on the court order subsequently being approved. It was mentioned at the July 20th hearing that the Board has conditioned things before on a future approval of a parking reduction by the Board of Supervisors or approval by the Health Department or something like that. It is logical to do it that way rather than wait for the court order.
4. There were some concerns at the July 20th hearing about the Board's ability to approve something where the revised plat had a conflict with the sight distance triangle, but that issue has been resolved by Development Condition 2.
5. It was not expected that there was a 25 percent problem necessarily, but apparently there is, and Development Condition 4 is resolving that.
6. The fence itself is of a fairly open design.
7. The fence is a high quality fence.
8. It does not seem that the fence would be bothering anybody.
9. The shed also is a fairly high quality structure.
10. The shed is fairly far from the property lines.
11. The shed has been there for some time.
12. It is not thought that the fence would be necessarily bothering anyone in that location.
13. It is believed, with the imposition of the development conditions, the potential impacts from this have been satisfactorily mitigated.
14. With respect to the mistake section resolution, the applicable standards have been met.
15. With respect to the increase in fence height, the applicable standards 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 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 fences in the front yards, a maximum 6.0 feet in height, and pillars and decorative features at the maximum heights as shown on the special permit plat, and an accessory storage structure (shed) as shown on the plat prepared by Dominion Surveyors Inc. dated July 9, 2008 as revised through July 20, 2011, as submitted with this application and is not transferable to other land.
2. Notwithstanding what is shown on the plat, the portion of the fence and pillars within the sight distance triangle at the intersection of Clames Drive and Higham Drive shall be reduced in height to a maximum of 3 ½ feet or relocated outside of the sight distance triangle, per Section 2-505 of the Zoning Ordinance, within six months of this special permit approval.
3. The issuance of the special permit is conditioned upon the applicant obtaining an Amended Final Court Order within six months of this special permit approval.

4. Notwithstanding what is shown on the plat, the impervious area in the front yard shall be reduced to no more than 25% front yard coverage, per Section 11-102 of the Zoning Ordinance, within six months of this special permit approval.
5. All applicable permits shall be obtained if required, including electrical permits, within six months of this special permit approval.

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 6-0. Mr. Byers recused himself from the hearing.