

## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JACQUELINE STAPLETON AND JORGE J. VIVANCO, SP 2011-MA-038 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 4.0 ft. from side lot line and 1.7 ft. from rear lot line. Located at 3431 Aston St. on approx. 23,398 sq. ft. of land zoned R-2. Mason District. Tax Map 59-2 ((11)) 1. Ms. Gibb 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 July 20, 2011; and

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

1. The applicants are the owners of the land.
2. This is a fairly close case.
3. The shed was built without permit.
4. It was not just replacing an old shed, because the old shed was gone, but there was a footprint, and it was enlarged.
5. The non-compliance was done in good faith.
6. The applicants believed that they did not need a building permit.
7. The applicants built the shed and did not realize that they needed a permit.
8. The applicants meet the other required standards for a special permit, just barely.
9. The Board had testimony from a neighbor that the applicants' shed is not detrimental to the use and enjoyment of the property in the immediate vicinity.
10. The Board received a letter from the neighbor, but the shed is behind a six-foot tall wooden fence.
11. There are large mature trees right behind it.
12. The impact is not so detrimental that the Board cannot grant it.
13. To force compliance with the minimum yard requirements would cause unreasonable financial hardship on the owners.

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 and size of the accessory structure, as shown on the plat prepared by Land Development Consultants, Inc., dated May 11, 2010, signed April 25, 2011, as submitted with this application and is not transferable to other land.
2. Appropriate permits and final inspections shall be diligently pursued and obtained within six months of final approval of this application.
3. Within six months, siding shall be added or constructed to the rear of the accessory structure that is similar or consistent in color and materials to the siding which is currently on the three sides of the shed that have been completed.

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.

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