

## COUNTY OF FAIRFAX, VIRGINIA

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

JEAN-CHARLES JAFFRAY, SP 2011-DR-025 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 open deck to remain 24.7 ft. and stairs to remain 25.7 ft. from front lot line. Located at 5910 Woodley Rd. on approx. 20,041 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((4)) 309F. Mr. Hammack 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 June 8, 2011; and

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

1. The applicant is the owner of the property.
2. Even though there was a little bit of inconsistent testimony about the measurements on the plat, the applicant satisfies the requirements under Section 8-914.
3. The applicant hired architects and builders and relied on them to design and construct the project.
4. It seems also that the County has come in somewhat after the fact.
5. After the applicant obtained a building permit and later a final inspection, the County came in and found some errors that he could be cited for.
6. The Board hopes, assuming this permit is granted, this allows the court case to be resolved.
7. Maybe the County will take a look at the grading permit that he has filed.
8. The Board determined that the applicant has satisfied the requirements set forth in Sections A through F under Section 8-914.
9. The applicant has particularly satisfied the requirement of Section B, that the non-compliance was done in good faith or through no fault of the property owner, for reasons that have already been specified.
10. The reduction will not impair the purpose and intent of the Ordinance or be detrimental to the use and enjoyment of other property in the immediate vicinity.
11. There is, from the photographs, a fairly steep topographical change from the entrance to the house, the stairs, down to the street.
12. The stairs could have been reconfigured so there would be no requirement had they known at an early enough time, and this would not be required, but the Board did not see that the way the stairs are constructed is detrimental to anyone in the neighborhood or the enjoyment of the property in the immediate vicinity.
13. The Board does not think it creates an unsafe condition with respect to both other property and public streets.
14. To force compliance at this point would cause an unreasonable hardship on the applicant.

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 the open deck and open stairs as shown on the plat prepared by Suburban Development Engineering Incorporated, dated March 14, 2011, as submitted with this application and is not transferable to other land.
2. A building permit and final inspection for the retaining wall adjacent to the open deck and for the stairs (if applicable) shall be obtained within six (6) months of final approval of this application.

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. Byers seconded the motion, which carried by a vote of 7-0.