

## COUNTY OF FAIRFAX, VIRGINIA

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

MOHAMMED FAROKHZAD, SP 2010-DR-027 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 addition to remain 7.6 ft. from side lot line. Located at 9817 Mill Run Dr. on approx. 1.47 ac. of land zoned R-1. Dranesville District. Tax Map 13-3 ((3)) 13. 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 16, 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 Minimum Yard Requirements Based on Error in Building Location.
3. The Board has determined that the applicant has satisfied the requirements listed in Subsection A through G of that Code Section; in particular under B that the non-compliance was done in good faith.
4. The applicant has testified that the construction was done by a contractor; they were unaware of a violation at the time the construction was done, and it did not show up until a neighbor did a new survey on the adjacent property, and determined that there was a mistake in one of the points in the property description.
5. The mistake was discovered several years later.
6. Given the size of the lot, allowing it to remain would not be detrimental to the use and enjoyment of the other property in the vicinity as well.

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 building addition shown on the plat prepared by William E. Ramsey, P.C., dated March 22, 2010, submitted with this application and is not transferable to other land.
2. Within 120 days of approval of this application, all applicable permits and/or final inspections shall be obtained for the hot tub and swimming pool enclosure and the detached accessory storage structure or the structure shall be removed.

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