

## COUNTY OF FAIRFAX, VIRGINIA

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

ROBERT H. ALLRED, TRUSTEE, SP 2011-PR-079 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirement based on error in building location to permit addition to remain 5.7 ft. from side lot line and an existing fence 6.0 ft. in height to remain in front yard of a through lot. Located at 8423 Hunt Valley Dr., Vienna, 22182, on approx. 10,540 sq. ft. of land zoned R-3 (Cluster). Providence District. Tax Map 39-1 ((22)) 4. 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 November 16, 2011; and

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

1. The applicant is the owner of the property.
2. The applicant testified the construction was actually completed by a prior owner.
3. The applicant had no knowledge of the error when he bought the property.
4. The applicant has done everything to rectify it.
5. It is only a sliver of the sunroom that is in violation of the setback ordinance, and a lot of that is the overhang.
6. The applicant is on a through lot with frontage on a busy road, Wolf Trap Road.
7. Under the circumstances, with a trail in the rear of the property, a 6-foot fence is justified.
8. It is the functional rear yard of the property.
9. The applicant has met the six subsections set forth under Sect. 8-914, in particular, that the noncompliance was done in good faith.
10. The reduction will not impair the purpose and intent of the Ordinance or be detrimental to the use and enjoyment of the property.

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 addition and fence, as shown on the plat prepared by Dominion, dated June 7, 2011, as revised through July 25, 2011, as submitted with this application and is not transferable to other land.
- 2. Appropriate permits and final inspections for the addition shall be diligently pursued and obtained within six 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 6-0. Mr. Beard was absent from the meeting.