

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOHN B. MCCRACKEN JR., SP 2011-MV-073 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.8 ft. from side lot line and to permit an accessory dwelling unit within an existing dwelling. Located at 2403 Fairview Dr., Alexandria, 22306, on approx. 10,680 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((4)) (4) 8. Mr. Smith 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 December 7, 2011; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 10,680 square feet.
4. With respect to the shed under Sect. 8-914:
 - A. There was testimony that the shed was built five years ago, as noted by Mr. Byers.
 - B. It is not something that you would necessarily pick up because a building permit for a shed this size is not needed.
 - C. If it had been 8.5 feet in height or less, it would not have violated the setback requirements. It happens to be 9.7 feet, so it is just a little over a foot in difference, which is something that actually could be remedied relatively easily, but really would not be worth it.
 - D. It is not causing any harm to anyone.
 - E. The Board heard no testimony in opposition.
 - F. Looking at the shed from the pictures, it is not an eyesore.
 - G. It appears that there is a tree buffer on the adjoining property.
 - H. There is also a shed on the adjoining property relatively near.
 - I. There is no harm caused and no complaints.
 - J. It will not be detrimental to the use and enjoyment of other property in the vicinity.
 - K. It does not create an unsafe condition with respect to property or public streets.
 - L. It would be an unreasonable hardship to force compliance in this case.
5. With respect to the accessory dwelling unit:
 - A. The Board agrees with the recommendation of staff, as stated in the staff report, which recommends approval in this case.
 - B. Looking at the conditions, the proposed accessory dwelling unit will not constitute sufficient change to modify or disrupt the predominant character of the neighborhood.
 - C. The conditions do a good job, and the applicant has indicated agreement with the development conditions, which make clear that the occupants of the dwelling unit will be limited to the applicant's immediate family members, which will help to address any other concerns with renting it out to someone outside the family.
 - D. There will be applicable building permits and final inspections obtained for the kitchen.
 - E. All parking will be confirmed on site, and it looks like there is adequate space for that.

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. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the kitchen. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This approval is granted to the applicant and title owners only, John B. McCracken, Jr. and Mary C. McCracken, and is not transferable without further action of this Board, and is for the location indicated on the application, 2403 Fairview Drive, Alexandria, (10,680 square feet), and is not transferable to other land.
3. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by Alexandria Surveys International, LLC, dated February 7, 2011 as revised through July 22, 2011, and approved with this application, as qualified by these development conditions.

4. A copy of this special permit SHALL BE POSTED in a conspicuous place on the property of the use and made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
5. The occupants of the accessory dwelling unit shall be limited to the applicant's immediate family members.
6. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states in part that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
7. The accessory dwelling unit shall contain a maximum of 804 square feet, and the layout shall be generally as depicted on the floor plan included as Attachment 1 to these conditions.
8. All applicable building permits and final inspections shall be obtained for the kitchen in the accessory dwelling unit.
9. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulation for building, safety, health and sanitation.
10. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.
11. If the use of the accessory dwelling unit ceases for the applicant's immediate family members and/or the property is sold or otherwise conveyed, the accessory structure shall be converted to a use permitted by the Zoning Ordinance or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
12. All parking shall be provided on site as shown on the special permit plat.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect.8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 6-0. Chairman Ribble was absent from the meeting.

A Copy Teste:

Kathleen A. Knoth
Clerk to the Board of Zoning Appeals

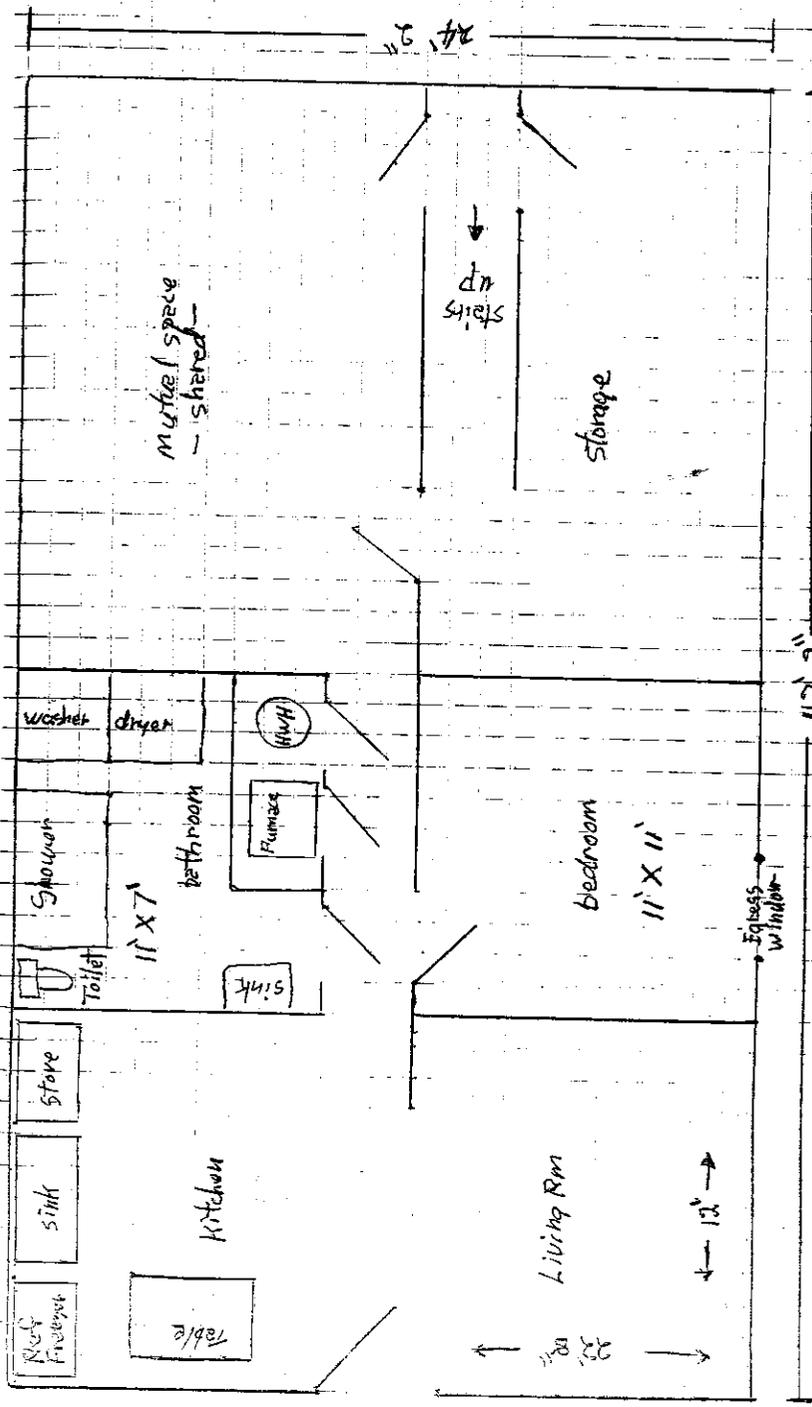
ACKNOWLEDGEMENT

County of Fairfax
Commonwealth of Virginia

The foregoing instrument was acknowledged before me this _____ day of
_____, 2011.

Notary Public

My commission expires: _____



basement and main floor

42'2" X 24'2"

Top Floor

48'2" X 24'2"

Total House Sq. Ft.

3,162

Mother in law

506 sq. ft

42' 2"

24' 2"

Living Rm

bedroom

Mutual space - shared

Storage

Stairs up

store

sink

Ref Freezer

table

Kitchen

Toilet

Shower

11' x 7'

bathroom

sink

Furnace

Washer

dryer

Egress window