

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JONG YEOL NA AND KYUNG H. NA, SP 2011-SP-092 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 12.7 ft. from side lot line. Located at 9723 Thorn Brush Dr., Fairfax Station, 22039, on approx. 5.27 ac. of land zoned R-C and WS. Springfield District. Tax Map 97-3 ((15)) 51A. Mr. Hart 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 14, 2011; and

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

1. The applicants are the owners of the property.
2. The Board does not have a staff recommendation, but Mr. Hart made the motion about a year ago and would adopt the rationale in Appendix 6 of the staff report.
3. The application was approved then, and because of the wording of the development condition, time has run out.
4. The Board did not think anything really has changed in the past year.
5. The approval is appropriate for the reasons that the BZA stated before.
6. The Board has determined that the criteria in the standard motion had been met.
7. The Board received another letter from the next-door neighbor who does not oppose leaving the garage where it is.

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 accessory structure (detached garage) as shown on the plat prepared by Walter L. Phillips Incorporated, dated May 30, 2010, as revised through October 25, 2010, as submitted with this application and is not transferable to other land.
2. A building permit and final inspections for the accessory structure shall be diligently pursued and 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 5-0. Chairman Ribble was not present for the vote. Ms. Gibb was absent from the meeting.