

## COUNTY OF FAIRFAX, VIRGINIA

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

WAYNE MOTICKA, SP 2011-MA-055 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 0.0 ft. from rear lot line and 0.7 ft. from side lot line. **(THE BZA DID NOT APPROVE THE EXISTING 519-SQUARE-FOOT ONE-STORY VINYL STORAGE AREA.)** Located at 3206 Wayne Rd., Falls Church, 22042, on approx. 7,200 sq. ft. of land zoned R-4. Mason District. Tax Map 60-2 ((2)) (B) 8. (Concurrent with VC 2011-MA-009). (Decision deferred from 9/21/11 and 11/30/11 at appl. req.) Mr. Byers 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 February 1, 2012; and

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

1. The applicant is the owner of the land.
2. With respect to the 519-square-foot one-story vinyl storage area:
  - A. The applicant has not presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of a Reduction to Minimum Yard Requirements Based on Error in Building Location.
  - B. The storage area does not meet Determinations A through G.
  - C. The granting of the special permit will impair the intent and purpose of the Zoning Ordinance and will be detrimental to the use and enjoyment of other property in the immediate vicinity.
  - D. The granting of the special permit will create an unsafe condition with respect to both other properties and public streets, and to force compliance with setback requirements would not cause unreasonable hardship upon the owner.
  - E. The support beams are actually moving through the shed to the retaining wall.
  - F. The retaining wall is not on the applicant's property.
  - G. The retaining wall was put up by the prior owner.
  - H. The BZA is not able to approve the shed based on the fact that not only is the applicant in violation of the side yard requirements, but the side beams are not on the applicant's property. That is a violation in and of itself.
  - I. The property owner to the rear would be impacted. The applicant will have to work that out with the other property owner.
3. The shed needs to come out, but the rest can remain.

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-IN-PART**, with the following development conditions:

- 1. This special permit is approved only for the location of the addition, as shown on the plat prepared by Dominion Surveyors, Inc., dated January 6, 2011, submitted with this application and is not transferable to other land. **(THE BZA DID NOT APPROVE THE EXISTING 519-SQUARE-FOOT ONE-STORY VINYL STORAGE AREA.)**
- 2. All applicable permits and final inspections shall be obtained for the addition within nine months of approval of this special permit.

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 including requirements for building permits.

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