COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JAMES L. LESLIE AND BERNADETTE BOKA LESLIE, SP 2012-MA-070 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 1.8 ft. from rear lot line and to permit existing fence greater than 4.0 ft. in height to remain in a front yard. Located at 4399 Medford Dr., Annandale, 22003, on approx. 13,182 sq. ft. of land zoned R-4. Mason District. Tax Map 71-1 ((15)) 86. (Concurrent with VC 2012-MA-005). 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 January 9, 2013; and

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

1. The applicants are the owners of the property.
2. With respect to the record before the Board, this is an unfortunate situation because the applicants purchased the property this way.
3. At the same time, the Board can straighten this out, at least with the special permit.
4. It does not seem to be bothering anyone.
5. This is a neighborhood where there are other structures obviously.
6. Whether they are in easements or not, the Board does not know.
7. There are certainly plenty of accessory structires
8. It is not atypical for this neighborhood.
9. There is no electricity or plumbing.
10. They are not large enough to need building permits.
11. The Board does not think the applicants are at fault with respect to the location of the structures.
12. With respect to the easement issue, it is difficult for the Board to be the ones making the call about the easement.
13. The Board is afraid that even if they were to leave out the development conditions about either taking out the back end of the shed on the right or shifting the sheds, that the Board would not really be resolving it because DPWES would still have that issue and it is still out there.
14. Staff is technically correct. If somebody is filing an application to do something for a structure that is in the wrong place, the engineer is required to show the easements on the plat to bring it to our attention.
15. The Board has the easement here.
16. Heaven knows there have been enough cases with people complaining about stormwater drainage and photos when it is raining. Who knows what is going to happen in the next hurricane.

17. It is unfortunate and it is a problem, but staff is correct that the structures do not belong in the easement, and that is why they are asking DPWES, and that is why they are telling us the structures cannot stay in the easement.
18. The Board felt that staff's development condition should be left the way it is, but approve the special permit otherwise.
19. The whole issue of the off-site fence, if that had come to the Board, it would have been easy to dispose of.
20. As far as the advertising for this case, the Board is dealing with Lot 86.
21. Whatever this is about, the Board is dealing with the fence on the right and not the fence up by the apartments.
22. The Board does not see that as part of anything.
23. The Board would not have the authority to approve or deny that. They would leave that alone, leave it where it is.
24. The development conditions do not need to be changed. It is what it is. The fence may belong to these people, but if it is located on the other property, it is not the subject of anything today.
25. The applicable standards in the respective motions have been satisfied with the imposition of the development conditions.

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 height and location of fences as shown on the plat prepared by Dickerson Survey and Arborist Services dated March 25, 2011 and revised through May 20, 2012 as submitted with this application and is not transferable to other land.

2. The applicants shall assume all responsibility for repair and/or replacement of any portions of the accessory structure which must be removed to accommodate repairs and/or maintenance within easements as shown on the special permit plat.

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.

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 commence construction 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. Smith seconded the motion, which carried by a vote of 4-0-2. Mr. Byers and Mr. Hammack abstained from the vote. Ms. Gibb was absent from the meeting.

A Copy Teste:

John W. Cooper, Deputy Clerk
Board of Zoning Appeals