

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MARY JANE LEE, SP 2013-PR-023 Appl. under Sect(s). 8-914 and 8-919 of the Zoning Ordinance to permit a reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 6.1 ft. from rear lot line and deck 2.7 ft. from rear and 2.4 ft. from side lot lines and to permit a noise barrier. Located at 9207 Briary Ln., Fairfax, 22031, on approx. 10,765 sq. ft. of land zoned R-3. Providence District. Tax Map 58-4 ((33)) 38. (Concurrent with VC 2013-PR-003). (Decision deferred from 6/5/13) 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 September 25, 2013; and

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

1. The owners of the property are Harlan Lee and Mary Jane Lee.
2. With respect to the barrier, the grade difference between the back yards and Route 236, with the 12-foot high fence, normally you would not see something like that, but that is particularly necessary in this case.
3. You may have cars turning from Taylor Drive onto 236 and lights that would be shining into the home.
4. With the seven-foot grade difference, you are really only going five feet up above the roadway elevation.
5. There was a pretty detailed report relative to the sounds and noise that was recorded in the backyard to justify the barrier, so that is certainly justified in this case.
6. With respect to the errors in building location, they will not have any impact on anyone in the rear of the property given the location of Little River Turnpike.
7. The non-compliance was done in good faith.
8. The reduction will not impair the purpose and intent of the Ordinance.
9. It will not be detrimental to the use and enjoyment of other property.
10. It will not create an unsafe condition with respect to other property and public streets.
11. It would be an unreasonable hardship in this case to remove it as referenced earlier when going through the variance requirements.

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 granted only for the purposes, structures and/or uses indicated on the plat prepared by William E. Ramsey, P.C., dated June 27, 2012, revised through September 11, 2013, as signed and sealed by William E. Ramsey, Land Surveyor, and approved with this application, as qualified by these development conditions.
- 2. All applicable permits and final inspections shall be obtained for the noise barrier and accessory structure (gazebo) within six months of special permit approval.

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 noted 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. Ms. Theodore was absent from the meeting.

A Copy Teste:



Suzanne Frazier
Deputy Clerk to the Board of Zoning Appeals