

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

WILMER CARCAMO, SP 2013-LE-063 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on errors in building locations to permit dwelling to remain 16.4 ft. from rear lot line and such that side yards total 16.3 ft. and accessory storage structure **(THE BZA DID NOT APPROVE THE SHED.)** to remain 2.1 ft. from side lot line and 4.9 ft. from rear lot line. Located at 6916 Lodestone Ct., Alexandria, 22306, on approx. 8,874 sq. ft. of land zoned R-3 Cluster. Lee District. Tax Map 92-1 ((10)) 8083. (Admin. moved from 11/6/13 for notices.) Mr. Beard 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 4, 2013; and

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

1. The applicant is the owner of the property.
2. The Board has a real concern and is torn with these additions and situation.
3. The dilemma of the Board is that it feels these were not done in good faith, as the testimony has indicated.
4. There have been others in the area who have been allowed to do this within the general distance parameters that are found in this case, although the Board certainly does not want to sound like it is establishing any type of precedent here pursuant to people not moving through the process as called for with the County.
5. The Board determines each case on a case-by-case basis.
6. The Board finds it very troubling that once the permit was denied for the enclosure of the carport that the applicant proceeded to build basically an addition onto his house, although that is somewhat mitigated by the fact that he took an existing porch, if you will, and turned it into a room.
7. To the reality, if you will, is if this were to be turned down here, this would be a dramatic impact upon the applicant from the standpoint of what would have to happen to bring this into compliance unless again he took it to court.
8. The Board thinks the reality is that this probably should go on forward, subject, of course, to Development Conditions, subject to all necessary inspections from the County.
9. Once they go out and inspect, as Mr. Hart pointed out, perhaps they will find out there are not footings and the thing might have to be taken down anyway or a drastic modification to it.
10. One of the issues was the moving of the shed, which the Board understands was the crux of the grievance of neighbors, which is now going to be taken care of.

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 for the location of the addition and carport enclosure as shown on the plat prepared by Joseph W. Bronder, Land Surveyor, of DiGiulian Associates, P.C., dated November 19, 2010, as revised through May 11, 2013.
- 2. All applicable permits and final inspections shall be obtained for the addition and carport enclosure within 180 days of 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. Hart seconded the motion, which carried by a vote of 6-0. Mr. Byers was not present for the vote.

A Copy Teste:

A handwritten signature in cursive script, reading "Lorraine A. Giovinazzo". The signature is written in dark ink and is positioned above a horizontal line.

Lorraine A. Giovinazzo, Deputy Clerk
Board of Zoning Appeals