

## COUNTY OF FAIRFAX, VIRGINIA

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

LARRY FERGUSON AND NICOLE FERGUSON, SP 2015-MV-153 Appl. under Sect. 8-914 of the Zoning Ordinance to permit a reduction in minimum yard requirements based on an error in building location for an accessory storage structure to remain 0.8 ft. from a rear lot line and 2.0 ft. from a side lot line. Located at 7892 Steadman St., Alexandria, 22309, on approx. 8,400 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 101-1 ((5)) (24) 3. 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 March 30, 2016; and

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

1. The applicants are the owners of the land.
2. With regard to the Statement of Justification letter from the applicants, dated November 11, 2015, the Board has found that:
  - a. There is no empirical evidence to suggest that a shed which is in compliance would not be perfectly acceptable from the stand point of storage. The shed can be moved or the roof can be lowered to bring it into compliance.
  - b. The letter states that there is no indication that it will disturb their neighbors in the future, but that is a hypothetical. That is making an assumption that everything will remain the same.
  - c. There are issues, from the standpoint that the backyard is 8,400 square feet.
3. The applicant has not 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. There are eight specific criteria for a mistake in building location. At least four of these are not met:
  - a. Criteria C states that the noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the relocation of the building subsequent to the issuance of a Building Permit, if such was required. In this case a building permit was not required. It was a 144 square feet, whereas, the minimum is 256 square feet, however, this was not built by a contractor. This was specifically built by the applicant, therefore, it is the fault of the property owner and applicant, that it is misplaced. With the facts before us, there is no evidence the county was ever consulted to determine the legality of

either the height or the location of the shed. The shed is 0.8 feet from the side lot line and 2.0 feet from the rear lot line.

- b. Under Criteria D, such reduction or modification will impair the purpose and intent of this Ordinance. The shed is 13.2 feet high. The cedar fence adjacent to the shed is 6 feet. This means the shed is 7.2 feet higher than the 6-foot fence. It is also 4.7 feet above the allowed height of a shed, which is 8.5 feet.
- c. Under Criteria E, it will be detrimental to the use and enjoyment of other property in the immediate vicinity. In the statement of justification, the applicant indicated that there had been no complaints since the shed was built, and there were four letters of support from neighbors in the area. However, that does not preclude the fact that there is no caveat to the Zoning Regulations which states just because there have not been complaints does not mean that it is compliant. What is not taken into consideration is, if a next door neighbor moves, a new neighbor may very strenuously object.
- d. Under Criteria F, it may create an unsafe condition with respect to both other property and public streets.
- e. Under Criteria G, to force compliance with the minimum yard requirements or location regulations would not cause unreasonable hardship upon the owner. There are no utilities in the shed. It could either be moved or reduced in height to be in compliance. None of these things from the applicants' standpoint are considered acceptable.

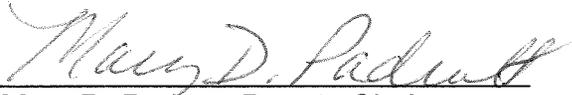
AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. Based on Number 3 above, the Board has found that the granting of this 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.
2. That the granting of this special permit may create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements is not going to cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

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

A Copy Teste:

A handwritten signature in cursive script, reading "Mary D. Padrutt". The signature is written in black ink and is positioned above a horizontal line.

Mary D. Padrutt, Deputy Clerk  
Board of Zoning Appeals