

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

SANTOS DEYSI REYES, SP 2016-LE-023 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit a reduction to the minimum yard requirements based on an error in building location to permit an addition to remain 9.8 ft. from a side lot line, and to permit an accessory dwelling unit. Located at 5928 Dove Dr., Alexandria, 22310, on approx. 13,426 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((1)) 12C. 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 May 25, 2016; and

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

1. The applicant is the owner of the land.
2. The Applicant has not presented testimony indicating compliance with Section 8-006, General Standards for Special Permit Uses, Section 8-914, Provisions for Approval for Reduction to the Minimum Yard Requirements Based on Error in Building Location, and Section 8-918, Accessory Dwelling Unit.
3. The dwelling was constructed in 1963, remodeled in 2003 and purchased by the Applicant on March 13, 2006.
4. Based on a complaint, the Department of Code Compliance (DCC) executed a property inspection on June 18, 2015. The inspection disclosed Fairfax County Zoning Ordinance violations with DCC subsequently issuing a Notice of Violation (NOV), dated June 26, 2015. Specifically, the violation noted there was an occupied, basement Accessory Dwelling Unit (ADU). Also, a new addition at the left side of the single-family dwelling had been constructed without permits.
5. Concurrent with the Zoning inspection, DCC conducted an additional inspection on June 24, 2015 for possible violations to the Virginia Uniform Statewide Building Code. This inspection disclosed the following regulated work had been performed without benefit of the required permits, inspections and approvals.
 - a. The carport was converted into habitable living space, including a bathroom.
 - b. An addition had been constructed at the right rear of the dwelling to include habitable space with a bedroom.
 - c. A roof structure over the basement areaway to the left rear of the dwelling was constructed.
 - d. An addition had been constructed at the left side of the dwelling for a habitable bedroom.
 - e. A basement renovation including a second kitchen, full bath, two bedrooms, gas furnace, and a gas water heater.

6. A Corrective Work Order dated June 30, 2015 directed the Applicant to apply for and obtain all required County permits within 30 calendar days, or obtain a County permit to demolish the work within the same timeframe.
7. On September 3, 2015 staff confirmed neither of the above actions had been completed, and the violations still remained. A Building Code NOV was then executed on September 4, 2015.
8. DCC subsequently filed a summons in the General District Court for the unpermitted work, but requested a continuance until July 20, 2016, allowing time for the Applicant to seek a Special Permit from this Board.
9. The Applicant filed a Special Permit for Error in Building location and the ADU in December 2015, which was accepted on March 17, 2016.
10. DCC performed an additional inspection on May 3, 2016, and noted the addition that is the subject of this Special Permit Application was painted on the interior, was occupied, and was being used as a bedroom for the Applicant's daughters. DCC staff also were informed that nine individuals were currently residing in the home.
11. The staff recommends denial for the ADU.
12. Under Section 8-006, the applicant fails to meet Standard 4: Pedestrian/Vehicular Traffic. Parking on Dove Street is extraordinarily difficult. It is unclear precisely how many vehicles will result from the occupants at the principal and second dwellings.
13. Under Section 8-914, the applicant fails to meet Standard C: 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 relocation of the building subsequent to the issuance of a Building Permit, if such were required. Based on the Applicant's own justification submission, the non-compliance was not done in good faith, and she was specifically at fault. Her quote was, "We built an addition without a permit. We knew we should have had one, but money was tight at the time. We know we did wrong, but now want to correct everything in good faith." The Applicant had sufficient funds to (1) convert a carport into habitable living space; (2) construct an addition at the right rear of the dwelling to include habitable living space with a bedroom, (3) construct a roof structure over the basement areaway to the left rear of the dwelling, (4) construct an addition on the left side of the dwelling to include a bedroom; and, (5) renovate the basement to include a second kitchen, a full bath, two bedrooms, gas furnace, and a gas water heater. It is simply not credible to believe funds to obtain a building permit were not available, given the permit cost was a nominal \$108.00.
14. Under Section 8-914, the applicant fails to meet Standard D. Such reduction or modification will impair the Ordinance's purpose and intent.
15. Under Section 8-914, the applicant fails to meet Standard E. It will be detrimental to the use and enjoyment of other property in the immediate vicinity.
16. Under Section 8-918 for the ADU, the applicant fails to meet the following standards:
 - a. Standard 5: The Applicant's Statement of Justification states her parents, each over 55, plan to move to Virginia to reside in the ADU. However, these individuals are not currently residing in the United States, and the Applicant failed to provide an estimate of precisely when they will arrive to occupy the proposed unit. The Applicant received a Notice of Violation for the occupied

basement ADU in June 2015. Since being issued this violation, the Applicant has continued to allow ADU occupancy by individuals who meet neither the age nor disability criteria. Based on the Applicant's actions to date, and the previously mentioned uncertainty over the presence of eligible occupants, Standard 5 is not met.

- b. Standard 6: Fairfax County has received numerous complaints regarding the number of occupants living in the house and a concern regarding the use of the ADU as a rental property.
- 17. The granting of this Special Permit will impair the intent and purpose of the Zoning Ordinance and it will be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 18. The granting of this Special Permit will create an unsafe condition with respect to other properties and public streets and to force compliance with setback requirements will not cause unreasonable hardship upon the Applicant.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

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

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

A Copy Teste:



Emily J. Armstrong, Deputy Clerk
Board of Zoning Appeals