

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JEFFREY STEIN AND STEPHANIE STEIN, SP 2016-MA-017 Appl. under Sect(s). 8-914, 8-917, 8-918, and 8-923 of the Zoning Ordinance to permit modification to the limitation on the keeping of animals (chickens and goats); an increase in fence height in a front yard; an accessory dwelling unit; and a reduction in minimum yard requirements based on error in building location to permit an accessory storage structure to remain 10.8 ft. from a rear lot line. Located at 3321 Hawthorne Ln., Falls Church, 22042, on approx. 1.26 ac. of land zoned R-2. Mason District. Tax Map 60-2 ((1)) 24A. 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 June 29, 2016; and

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

1. The applicants are the owners of the land.
2. As to the request for a modification to the limits on the keeping of animals:
 - a. Pursuant to Section 2-512.3, a property is required to be at a 2-acre minimum to keep chickens or livestock as an accessory use at a ratio of 32 chickens per acre or five goats per acre.

The applicant proposes to keep 26 chickens in a 15- by 20-foot coop, 30.5 feet from the side property line (50 feet is required by the Ordinance). The applicant also proposes to construct a 7-foot high stockade fence in the side yard as a buffer.

- b. The applicant fails to meet the following standards per Section 8-006.
 - i. Standard 3 - Adjacent Development.

The chicken coop as proposed is 30.5 feet from the side lot line. The key issue is not just the view, but rather the noise and odor emitted from 26 chickens in an enclosed area. Eight homes are within 500 feet of the property.

None of the adjoining fences are of the style (split rail or cyclone) and height (none violate front-yard requirements) as proposed by the applicant. The fence is not compatible nor necessary, based on what is currently in the neighborhood.

ii. Standard 7 - Utilities, Drainage, Parking and Loading.

Failure to properly operate and maintain the composting of the chicken waste may result in a partial or incomplete composting, in which case, the facility will be operating as a storage facility, and offensive odors may result.

A waste management plan is paramount given the conservative size of a layer is five pounds, yielding roughly 1/3 pound of manure per day for each hen, 26 hens, therefore, produce roughly 7 3/4 pounds of manure per day, or roughly 54 pounds of manure per week.

Although the said property is not directly within a resource protection area (RPA) per Chesapeake Bay Preservation Ordinance, it is close to several, and animal waste will certainly be entering the RPA of Tripps and/or Holmes Runs. Increasing the nutrient inflow (from chicken and goat waste) to these streams, and the watershed should be avoided as the two-acre minimum county regulation was established to do.

County areas of preservation and protection lie close to the subject property- Tripps Run Park, Holmes Run Park, and the recently acquired John C. & Margaret White Gardens, which is adjacent to the subject property.

The Board has received an opposition petition signed by 30 homeowners, dated June 21, 2016.

The subject property is located at the crest of two watersheds, so that water runoff from the property will drain directly towards both watersheds. It drains north towards Tripps Run and south towards Holmes Run, both of which are tributaries that feed Lake Barcroft.

c. The applicant fails to meet the following Section 8-917 standards - Provisions for Modifications to the Limitations on the Keeping of Animals.

i. Standard 1 - Kinds, Numbers, Management Techniques, and Location.

The immediate area is heavily populated with 1,064 homes in an R-2 district. It is incompatible, as well as disharmonious, in operation not only with the surrounding homes, but to the overall character and general welfare of the neighborhood of 636 households.

The fact that the two applicants are asking for this number of chickens that will produce 13 dozen eggs per week in a private capacity defies logic.

ii. Standard 2 - Harmonious and Compatible.

Staff states with the imposition of the proposed development conditions the potential impacts to adjacent properties would be mitigated. The Board respectfully disagrees with this position for all the reasons cited above.

3. The applicant meets the standards for Section 8-918 - Additional Standards for Accessory Dwelling Units.

The applicant meets the 12 standards in the Ordinance. Specifically, the ADU will be used for the applicant's 90-year-old grandmother.

4. The applicant fails to meet the following Section 8-923 standards - Provisions for Increase in Fence Height in any Front Yard.

a. Standard 3 - Proposed Fence Height is Warranted.

To view lights of neighboring homes is normal in the R-2 District, and in fact, is true in many zoning districts throughout the County. This is not a country or a rural environment, it is an urban county of over 1.1 million persons—lights from adjoining properties are to be expected.

b. Standard 4 - Fence is in Character with On-site and Off-site Uses.

Other fences in the community are either split rail or cyclone, and none exceed the approved height. In addition, staff has expressed serious concerns concerning sight distance.

5. Based on the above, the Board partially approves the special permit. Specifically, the following:

a. The accessory dwelling unit is approved.

b. The error in building location is approved for the shed, originally built in 1986 and replaced in 1994.

c. The request for an increase in fence height is denied.

d. The request to permit modifications for the keeping of animals is denied.

6. The applicant has read, understands, and concurs with the proposed development conditions as modified.

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. The error exceeds ten (10) percent of the measurement involved, or
- B. The error is up to ten (10) percent of the measurement involved and such reduction or modification is requested in conjunction with the approval of a special permit for another use or application for a variance on the property, or is in conjunction with another special permit for an error in building location on the property that exceeds ten (10) percent of the measurement involved, and
- C. 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, and
- D. Such reduction or modification will not impair the purpose and intent of this Ordinance, and
- E. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
- F. It will not create an unsafe condition with respect to both other property and public streets, and
- G. To force compliance with the minimum yard requirements or location regulations would cause unreasonable hardship upon the owner.
- H. The reduction or modification 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 [the keeping of animals and fence are denied]**, with the following development conditions:

1. This approval is granted to the applicant, Jeffrey and Stephanie Stein only, and is not transferable without further action of the Board, and is for the location indicated on the application, 3321 Hawthorne Lane, and is not transferable to other land.
2. This special permit is granted for the ADU and shed as shown on the plat titled "Plat Showing the Improvements on #3321 Hawthorne Lane," prepared by George M. O'Quinn, L.S., of Dominion Surveyors, Inc., dated September 30, 2015, last revised by the applicant on May 18, 2016, and received May 22, 2016, consisting of one sheet, and approved with this application, as qualified by these development conditions.
3. A copy of this special permit shall be made available to all departments of the County of Fairfax upon request.

Pursuant to Sect. 8-918 (Accessory Dwelling Unit):

4. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.
5. The layout of the ADU shall be consistent with the depiction in Attachment 1 to these conditions. The applicant may increase the number of bedrooms to two, but shall comply with all standards in Sect. 8-918 of the Zoning Ordinance.
6. Parking for the ADU shall be accommodated on site.
7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice, and the accessory dwelling unit shall meet applicable regulation for building safety, health, and sanitation.
8. The accessory dwelling unit shall be approved for a period of five (5) years from the final approval date of the special permit, and may be extended for five-year periods with prior approval of the Zoning Administrator in accordance with Sect. 8-012 of the Zoning Ordinance.

Pursuant to Sect. 8-914 (Error in Building Location):

9. This special permit is approved for the location and size of the accessory storage structure as shown on the special permit plat, entitled "Plat Showing the Improvements on #3321 Hawthorne Lane," prepared by George M. O'Quinn, L.S., of Dominion Surveyors, Inc., dated September 30, 2015, last revised by the

applicant on May 18, 2016, and received May 22, 2016, consisting of one sheet as submitted with this application.

Pursuant to Sect. 8-015 of the Zoning Ordinance, the special permit approval shall take effect upon adoption of a resolution by the Board.

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. Beard seconded the motion, which carried by a vote of 5-0. Mr. Smith was not present for the vote. Ms. Theodore was absent from the meeting.

A Copy Teste:

A handwritten signature in cursive script, reading "Mary D. Padrutt".

Mary D. Padrutt, Deputy Clerk
Board of Zoning Appeals

ATTACHMENT 1: Layout of Accessory Dwelling Unit

