

## COUNTY OF FAIRFAX, VIRGINIA

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

BAO T. NGUYEN AND NINH T. NGUYEN, SP 2014-MA-166 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 27.3 ft. from one front lot line and roofed deck to remain 26.0 ft. from other front lot line. Located at 3319 Saint James Pl., Falls Church, 22042, on approx. 12,270 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((16)) 39. Mr. Hammack 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 October 29, 2014; and

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

1. The owner of the property is the applicants.
2. Listening to the testimony of Mr. Nguyen and comparing the drawing that was submitted with the building permit against the one that is the "as built," with respect to the east lot line, the dimensions are a little bit different on these things, but with respect to the east lot line where they extended the existing house towards Brad Street, the plat attached to the building permit showed 50.1 feet where the other plat showed 50.04 feet.
3. The next dimension on Brad Street, the permit plat showed 20.5 feet, and the "as built" shows 20.61 feet.
4. The Board was not sure where these discrepancies come from.
5. The 22 foot dimension is 22.65. The 14 foot dimension is 13.94. There is no dimension for the 5.75. The 14.21 remains the same. The 10.2 foot dimension is 11.74.
6. The dimensions are very close.
7. The Board does not know why the contractor did not somehow know that the overhangs had to be within that setback.
8. For the most part, except for the unenclosed porch with a curved roof, it is gutters and overhang.
9. The Board understood that Mr. Nguyen took the building permit out as the owner being the contractor, but he hired a contractor to do the work. He said he got the contractor off the Virginia Approved list.
10. So there are some discrepancies in there, but they are fairly small, and the Board did not think they were intentional.
11. With regard to the unenclosed porch, apparently there was some error in what was in the drawings that the builder actually, had and even those were modified. That is a fairly minor encroachment as well.

12. It is a very, very close case in some respects, but in particular, a the noncompliance was done in good faith or through no fault of the property owner, or was the result of an error in the location of a building subsequent to the issuance of a Building Permit.
13. The modifications will not affect any of the property values or affect property in the area in any kind of a negative way, given the very small encroachments.

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**, with the following development conditions:

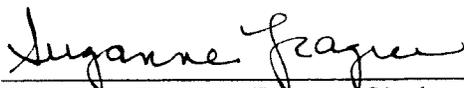
1. This special permit is approved for the location of the addition as shown on the plat prepared titled, "Special Permit Plat, Lot 39, Sec 3, Raymondale," prepared by Ram L. Pradhan, P.E., of Inova Engineering Consultants, Inc., dated July 25, 2014.
2. All applicable permits and final inspections shall be obtained for the dwelling within 180 days of the 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.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, 6 months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction 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.

Chairman Ribble seconded the motion, which carried by a vote of 7-0.

A Copy Teste:



Suzanne Frazier, Deputy Clerk  
Board of Zoning Appeals