

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

CARL S. EY AND JENNIFER KRALY EY, SP 2016-MA-050 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit a reduction in minimum yard requirements based on an error in building location to permit an accessory structure to remain 11.4 ft. from a side lot line and to permit an accessory dwelling unit. Located at 4700 Brookside Dr., Alexandria, 22312, on approx. 2.08 ac. of land zoned R-1, HC. Mason District. Tax Map 72 1 ((6)) 41 and 41 V9. Ms. Theodore 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 August 3, 2016; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-1, HC.
3. The area of the lot is 2.085 acres.
4. Staff recommends approval of the accessory dwelling unit.
5. The applicants have read, understand, and concur with the proposed development conditions.
6. This application is essentially to reestablish approval that has previously expired with no other substantive changes. Specifically, in April of 2015, the Board approved a special permit amendment for the accessory dwelling unit and the error in building location for the garage, which contains the accessory dwelling unit. The initial special permit approval occurred in January of 2014 with respect to the error in building location.
7. The structures are located on a large lot. There is significant screening.
8. The Board has previously determined that the applicant meets Subsection A–H under Section 8-914 for the error in building location. The Board upholds that finding and the support of extending special permit approval to allow time for the applicant to continue to address the issues related to the ongoing court case and related matters.
9. There have been no complaints that the Board is aware of related to this matter.

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. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit for the accessory dwelling unit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. The approval for the accessory dwelling unit is granted to the applicants only, Carl S. Ey and Jennifer K. Ey, and is not transferable without further action of the Board, and is for the location indicated on the application, 4700 Brookside Drive, Alexandria, and is not transferable to other land.
3. This special permit is approved for the accessory structure/accessory dwelling unit as shown on the special permit plat titled, "Plat Showing the Improvements on Lot 41 Pinecrest," prepared by Dominion Surveyors, dated May 28, 2013, and revised through November 4, 2014.
4. A copy of this special permit shall be posted in a conspicuous place within the accessory dwelling unit and be made available to all departments of the County of Fairfax.
5. All applicable permits shall be obtained within 30 days of approval. All necessary inspections shall be passed and completed by March 31, 2017.
6. The accessory dwelling unit shall not be occupied until approval of all required inspections.
7. The occupants of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance which states, in part, that one of the dwelling units shall be occupied by a person or persons who qualify as elderly (55 years of age or older) and/or permanently and totally disabled.
8. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice.
9. The accessory dwelling unit shall meet the applicable regulations for building, safety, health, and sanitation.
10. The accessory dwelling unit shall be approved for a period of five years from the final approval date of the special permit amendment 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.

- 11. If the use of the accessory dwelling unit ceases and/or the property is sold or otherwise conveyed, the accessory dwelling unit shall be converted to a use permitted by the Zoning Ordinance, or if the property is sold or conveyed, a special permit amendment may be submitted to permit the continued use of an accessory dwelling unit.
- 12. All parking shall be provided on site.

This approval, contingent on 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, on December 31, 2016 unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time to establish the use 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.

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

A Copy Teste:

Mary D. Padgett
 Mary D. Padgett, Deputy Clerk
 Board of Zoning Appeals

ACKNOWLEDGEMENT

County of Fairfax
Commonwealth of Virginia

The foregoing instrument was acknowledged before me this 10th day of August, 2016.

Lorraine A. Giovinazzo
 Notary Public

My commission expires: 6/30/18

