

## COUNTY OF FAIRFAX, VIRGINIA

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

MOHAMMAD ZIA TUFAIL, SP 2014-DR-224 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction of minimum yard requirements based on error in building location to permit accessory storage structure to remain 3.2 ft. from side lot line and 2.1 ft. from rear lot line, and dwelling to remain 9.7 ft. from side lot line. Located at 1916 Cherri Dr., Falls Church, 22043, on approx. 11,525 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((3)) 341. 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 February 4, 2015; and

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

1. The applicant is the owner of the property.
2. With respect to the dwelling, this is a situation where the noncompliance is through no fault of the property owner, as reflected in the staff report and as discussed at the hearing today. There were some changes and work done to the home in 2009 and final permits were signed off by the County. So the applicant, as part of his special permit application, has included a request to address the setback requirement issue. Therefore, the Board will not propose a modification to the development conditions based on that final sign off and the discussion the Board had at the hearing.
3. With respect to the shed issue, that is an issue of a noncompliance done in good faith. The applicant brought in a contractor to do the work. He has indicated that he did bring in an outside entity to consider whether it could be moved, and has agreed to have inspections done as part of the conditions.
4. The applicant is in compliance with the provisions of the Ordinance.

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 shed and dwelling, as shown on the plat prepared titled, "Special Permit Plat, Lot 341 Section 6, Pimmit Hills," prepared by Michael L. Flynn, of Alexandria Surveys, LLC, dated September 30, 2014.
2. All applicable permits and final inspections shall be obtained for the accessory storage structure (shed) 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, six 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.

Mr. Beard seconded the motion, which carried by a vote of 5-1. Mr. Hart was opposed. Mr. Smith was absent from the meeting.

A Copy Teste:

  
\_\_\_\_\_  
Suzanne Frazier, Deputy Clerk  
Board of Zoning Appeals