



County of Fairfax, Virginia

MEMORANDUM

DATE: September 29, 2009

TO: John F. Ribble III, Chairman
Members, Board of Zoning Appeals

FROM: Deborah Hedrick, Planner
Special Permit & Variance Branch, DPZ

SUBJECT: SPA 2006-PR-038-02 – Merrifield Garden Center Corporation

The subject application is a request to amend SP 2006-PR-038 previously approved for an error in building location to permit a modification of previously approved development conditions, specifically, to modify Development Condition #3.

On June 17, 2008, the Board of Zoning Appeals heard special permit amendment SPA 2006-PR-038 on the subject property for the same request. The application was approved; included as Attachment 1 of this memorandum is a copy of the approved Resolution for SPA 2006-PR-038. The approved application provided the applicant with one (1) year to obtain necessary building permits and final inspections for the structure which is in error. Due to unforeseen issues, the applicant has been unable to obtain those permits and final inspections and requests an additional one (1) year of time.

Since this special permit amendment application has not changed from the previously approved application, staff has included the original staff report for your review. Additional updated materials are also attached for your review.

If you should have any additional questions, please do not hesitate to contact me at 703-324-1407.

Attachments

1. Approved Resolution for SPA 2006-PR-038
2. Updated Locator and Dot Maps
3. Special Permit Amendment Plat dated June 16, 2009
4. Updated Applicant's Affidavit
5. Updated Applicant's Statement of Justification
6. Photographs of the Property
7. Proposed Development Conditions

Department of Planning and Zoning
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035-5509
Phone 703 324-1290
FAX 703 324-3924
www.fairfaxcounty.gov/dpz/



County of Fairfax, Virginia

ATTACHMENT 1

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

June 20, 2008

Francis A. McDermott, Esquire
Hunton & Williams LLP
1751 Pinnacle Drive
Suite 1700
McLean, Virginia 22102

Re: Special Permit Amendment Application SPA 2006-PR-038
Merrifield Garden Center Corporation

Dear Mr. McDermott:

At its June 17, 2008 meeting, the Board of Zoning Appeals took action to **APPROVE** the above-referenced application. A copy of the Resolution is attached.

This action does not constitute exemption from the various requirements of this County and State. The applicant is responsible for ascertaining if permits are required and for obtaining the necessary permits such as Building Permits, Residential Use Permits and Non-Residential Use Permits. Information concerning building permits may be obtained by calling 703-222-0801.

Sincerely,

Suzanne L. Frazier
Board of Zoning Appeals

Enclosure: As stated

Excellence * Innovation * Stewardship
Integrity * Teamwork * Public Service

Department of Planning and Zoning
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035-5509
Phone 703 324-1280
FAX 703 324-1207
www.fairfaxcounty.gov/dpzi



COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MERRIFIELD GARDEN CENTER CORPORATION, SPA 2006-PR-038 Appl. under Sect(s). 8-914 of the Zoning Ordinance to amend SP 2006-PR-038 previously approved for error in building location to permit modification of development conditions. Located at 8132 Lee Hwy. on approx. 3.02 ac. of land zoned C-8 and HC. Providence District. Tax Map 49-2 ((1)) 26C. 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 June 17, 2008; and

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

1. The applicant is the owner of the land.
2. The Board has determined that the applicant has satisfied the required standards set forth in the Zoning Ordinance.
3. The applicant has done what they were required to do and are just being held up on the issuance of a permit. That justifies a reasonable extension to comply with the development conditions that the Board previously granted.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. 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 location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction 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 and size (approximately 438 square feet) of the existing one story structure as shown on the plat prepared by William H. Gordon Associates, Inc. dated, February 25, 2008, as submitted with this application and is not transferable to other land.
2. Other by-right, special permit and special exception uses on site shall be permitted without a special permit amendment if such uses do not affect this special permit use.
3. Building permits and final inspections for the structure shall be diligently pursued within 60 days and obtained within one year of final approval or this special permit shall be null and void.

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.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.

A Copy Teste:

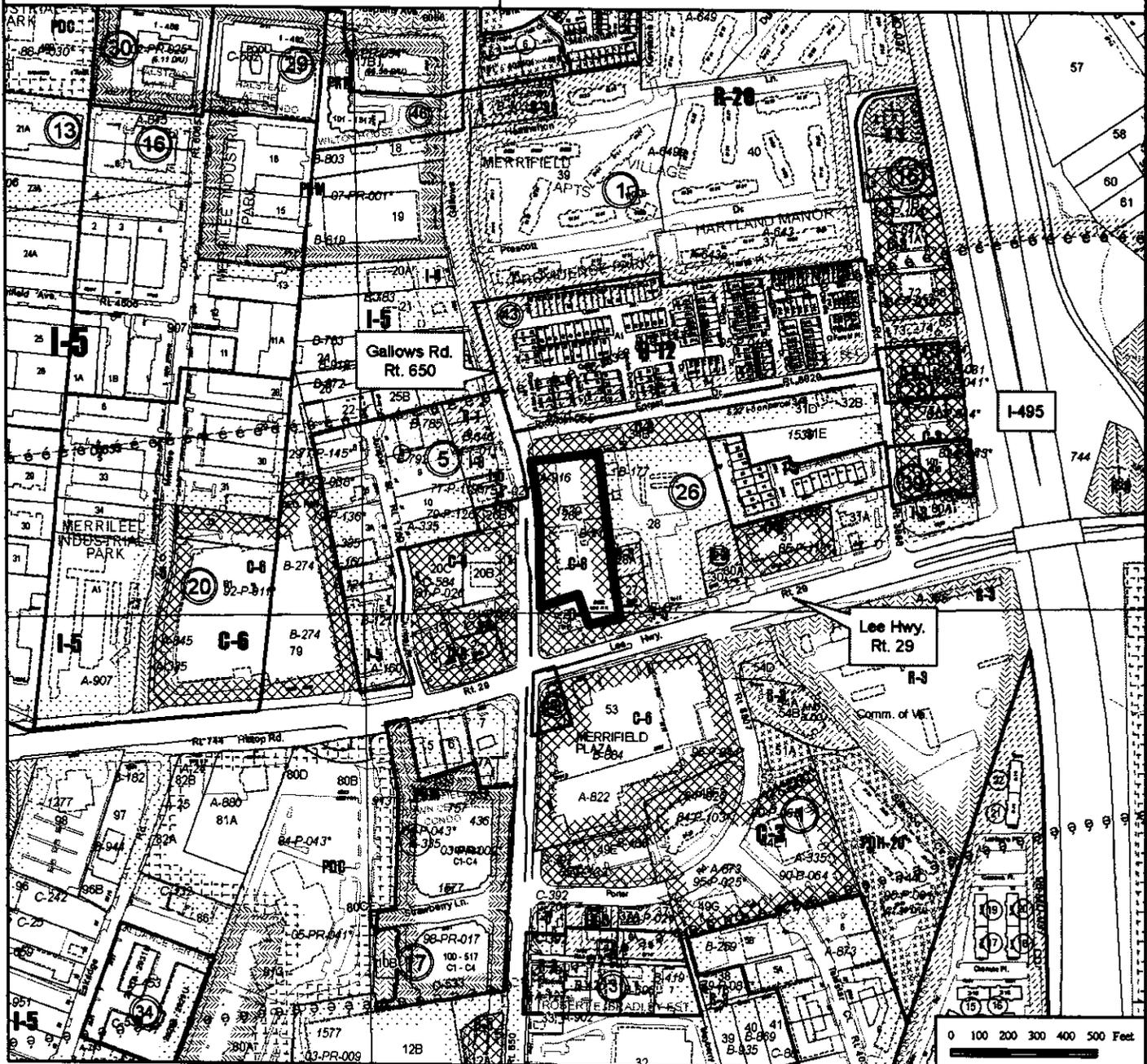

Suzanne L. Frazier, Deputy Clerk
Board of Zoning Appeals

Special Permit Amendment

SPA 2006-PR-038-02

Applicant: MERRIFIELD GARDEN CENTER CORPORATION
Accepted: 07/09/2009
Proposed: AMEND SP 2006-PR-038 PREVIOUSLY APPROVED FOR ERROR IN BUILDING LOCATION TO PERMIT MODIFICATIONS OF DEVELOPMENT CONDITIONS

Area: 3.02 AC OF LAND; DISTRICT - PROVIDENCE
Zoning Dist Sect: 08-0914
Art 8 Group and Use: 9-13
Located: 8132 LEE HIGHWAY
Zoning: C- 8
Overlay Dist: HC CRA
Map Ref Num: 049-2- /01/ /0026C



Special Permit Amendment

SPA 2006-PR-038-02



Applicant: MERRIFIELD GARDEN CENTER CORPORATION
Accepted: 07/09/2009
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Located: 8132 LEE HIGHWAY
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Map Ref Num: 049-2- /01/ /0026C



Application No.(s): SPA 2006-PR-038-02
 (county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: September 9, 2009
 (enter date affidavit is notarized)

I, Robert P. Warhurst, do hereby state that I am an
 (enter name of applicant or authorized agent)

(check one) applicant
 applicant's authorized agent listed in Par. 1(a) below 105038a

and that, to the best of my knowledge and belief, the following is true:

1(a). The following constitutes a listing of the names and addresses of all **APPLICANTS, TITLE OWNERS, CONTRACT PURCHASERS, and LESSEES** of the land described in the application,* and, if any of the foregoing is a **TRUSTEE,**** each **BENEFICIARY** of such trust, and all **ATTORNEYS** and **REAL ESTATE BROKERS**, and all **AGENTS** who have acted on behalf of any of the foregoing with respect to the application:

(NOTE: All relationships to the application listed above in **BOLD** print must be disclosed. Multiple relationships may be listed together, e.g., **Attorney/Agent, Contract Purchaser/Lessee, Applicant/Title Owner**, etc. For a multiparcel application, list the Tax Map Number(s) of the parcel(s) for each owner(s) in the Relationship column.)

NAME (enter first name, middle initial, and last name)	ADDRESS (enter number, street, city, state, and zip code)	RELATIONSHIP(S) (enter applicable relationships listed in BOLD above)
Merrifield Garden Center Corporation(1) Agents: Hampton C. Williams, III Robert P. Warhurst R. Kevin Warhurst C. David Watkins	P. O. Box 848 Merrifield, VA 22116	Applicant/Title Owner of Parcel 49-2-((1))-26C
Hunton & Williams LLP(2)	1751 Pinnacle Drive, Suite 1700 McLean, VA 22102	Attorneys/Agents for Applicant
Francis A. McDermott John C. McGranahan, Jr. Nicholas H. Grainger	1751 Pinnacle Drive, Suite 1700 McLean, VA 22102	Attorneys/Agents for Applicant
Aaron L. Shriber Elaine O. Cox	1751 Pinnacle Drive, Suite 1700 McLean, VA 22102	Planners/Agents for Applicant

(check if applicable) There are more relationships to be listed and Par. 1(a) is continued on a "Special Permit/Variance Attachment to Par. 1(a)" form.

* In the case of a condominium, the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium.

** List as follows: Name of trustee, Trustee for (name of trust, if applicable), for the benefit of: (state name of each beneficiary).

Application No.(s): SPA 2006-PR-038-02
(county-assigned application number(s), to be entered by County Staff)

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Special Permit/Variance Attachment to Par. 1(a)

DATE: September 9, 2009
(enter date affidavit is notarized)

105038a

(NOTE: All relationships to the application are to be disclosed. Multiple relationships may be listed together, e.g., **Attorney/Agent, Contract Purchaser/Lessee, Applicant/Title Owner**, etc. For a multiparcel application, list the Tax Map Number(s) of the parcel (s) for each owner(s) in the Relationship column.)

NAME (enter first name, middle initial, and last name)	ADDRESS (enter number, street, city, state, and zip code)	RELATIONSHIP(S) (enter applicable relationships listed in BOLD above)
Jeannie A. Mathews	1751 Pinnacle Drive, Suite 1700 McLean, VA 22102	Paralegal/Agent for Applicant
William H. Gordon Associates, Inc.(3) Agents: Robert W. Walker	4501 Daly Drive Chantilly, VA 22021	Planners/Engineers/Agents for Applicant

(check if applicable) There are more relationships to be listed and Par. 1(a) is continued further on a "Special Permit/Variance Attachment to Par. 1(a)" form.

Application No.(s): SPA 2006-PR-038-02
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SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: September 9, 2009
(enter date affidavit is notarized)

105038a

1(b). The following constitutes a listing*** of the **SHAREHOLDERS** of all corporations disclosed in this affidavit who own 10% or more of any class of stock issued by said corporation, and where such corporation has 10 or less shareholders, a listing of all of the shareholders:

(NOTE: Include **SOLE PROPRIETORSHIPS, LIMITED LIABILITY COMPANIES, and REAL ESTATE INVESTMENT TRUSTS** herein.)

CORPORATION INFORMATION

NAME & ADDRESS OF CORPORATION: (enter complete name, number, street, city, state, and zip code)

(1) Merrifield Garden Center Corporation
P. O. Box 848
Merrifield, VA 22116

DESCRIPTION OF CORPORATION: (check one statement)

- There are 10 or less shareholders, and all of the shareholders are listed below.
- There are more than 10 shareholders, and all of the shareholders owning 10% or more of any class of stock issued by said corporation are listed below.
- There are more than 10 shareholders, but no shareholder owns 10% or more of any class of stock issued by said corporation, and no shareholders are listed below.

NAMES OF SHAREHOLDERS: (enter first name, middle initial, and last name)

Robert P. Warhurst
Hampton C. Williams, III

(check if applicable) There is more corporation information and Par. 1(b) is continued on a "Special Permit/Variance Attachment 1(b)" form.

*** All listings which include partnerships, corporations, or trusts, to include the names of beneficiaries, must be broken down successively until (a) only individual persons are listed or (b) the listing for a corporation having more than 10 shareholders has no shareholder owning 10% or more of any class of stock. *In the case of an APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land that is a partnership, corporation, or trust, such successive breakdown must include a listing and further breakdown of all of its partners, of its shareholders as required above, and of beneficiaries of any trusts. Such successive breakdown must also include breakdowns of any partnership, corporation, or trust owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER or LESSEE* of the land. Limited liability companies and real estate investment trusts and their equivalents are treated as corporations, with members being deemed the equivalent of shareholders; managing members shall also be listed.* Use footnote numbers to designate partnerships or corporations, which have further listings on an attachment page, and reference the same footnote numbers on the attachment page.

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Special Permit/Variance Attachment to Par. 1(b)

DATE: September 9, 2009
(enter date affidavit is notarized)

105038a

NAME & ADDRESS OF CORPORATION: (enter complete name, number, street, city, state, and zip code)

(3)William H. Gordon Associates, Inc.
4501 Daly Drive
Chantilly, VA 22021

DESCRIPTION OF CORPORATION: (check one statement)

- There are 10 or less shareholders, and all of the shareholders are listed below.
- There are more than 10 shareholders, and all of the shareholders owning 10% or more of any class of stock issued by said corporation are listed below.
- There are more than 10 shareholders, but no shareholder owns 10% or more of any class of stock issued by said corporation, and no shareholders are listed below.

NAMES OF THE SHAREHOLDERS: (enter first name, middle initial, and last name)

William H. Gordon
Joseph W. McClellan
R. Steven Hulsey
Eugene C. Dorn

NAME & ADDRESS OF CORPORATION: (enter complete name, number, street, city, state, and zip code)

DESCRIPTION OF CORPORATION: (check one statement)

- There are 10 or less shareholders, and all of the shareholders are listed below.
- There are more than 10 shareholders, and all of the shareholders owning 10% or more of any class of stock issued by said corporation are listed below.
- There are more than 10 shareholders, but no shareholder owns 10% or more of any class of stock issued by said corporation, and no shareholders are listed below.

NAMES OF THE SHAREHOLDERS: (enter first name, middle initial, and last name)

(check if applicable) There is more corporation information and Par. 1(b) is continued further on a "Special Permit/Variance Attachment to Par. 1(b)" form.

Application No.(s): SPA 2006-PR-038-02
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SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: September 9, 2009
(enter date affidavit is notarized)

105038a

1(c). The following constitutes a listing*** of all of the PARTNERS, both GENERAL and LIMITED, in any partnership disclosed in this affidavit:

PARTNERSHIP INFORMATION

PARTNERSHIP NAME & ADDRESS: (enter complete name, number, street, city, state, and zip code)

(2)Hunton & Williams LLP
1751 Pinnacle Drive, Suite 1700
McLean, VA 22102

(check if applicable) The above-listed partnership has no limited partners.

NAMES AND TITLE OF THE PARTNERS (enter first name, middle initial, last name, and title, e.g. General Partner, Limited Partner, or General and Limited Partner)

Benjamin C. Ackerly
Robert A. Acosta-Lewis
Lawrence C. Adams
Michael F. Albers
Virginia S. Albrecht
Kenneth J. Alcott
Fernando C. Alonso
Chris M. Amantea
Thomas E. Anderson
Walter J. Andrews
W. Christopher Arbery
Charles E. G. Ashton
L. Scott Austin
Ian Phillip Band
Haywood A. Barnes
Rudene M. Bascomb
Philip M. Battles, III
Sean M. Beard
John J. Beardsworth, Jr.

Steven H. Becker
Stephen John Bennett
Melinda R. Beres
Lucas Bergkamp (nmi)
Lon A. Berk
Douglas M. Berman
Mark B. Bierbower
Stephen R. Blacklocks
Jeffry M. Blair
Michael J. Blayney
James W. Bowen
Lawrence J. Bracken, II
James P. Bradley
Sheldon T. Bradshaw
David F. Brandley, Jr.
Jeannie P. Breckinridge
Craig A. Bromby
A. Todd Brown
Tyler P. Brown

F. William Brownell
Peter N. Brudenall
Kevin J. Buckley
Kristy A. Niehaus Bulleit
Joseph B. Buonanno
Nadia S. Burgard
Eric R. Burner
M. Brett Burns
Brian M. Buroker
P. Scott Burton
Ferdinand A. Calice
Matthew J. Calvert
Daniel M. Campbell
Thomas H. Cantrill
Curtis G. Carlson
Jean Gordon Carter
Charles D. Case
Thomas J. Cawley
Lawrence Chek (nmi)

(check if applicable) There is more partnership information and Par. 1(c) is continued on a "Special Permit/Variance Attachment to Par. 1(c)" form.

*** All listings which include partnerships, corporations, or trusts, to include the names of beneficiaries, must be broken down successively until: (a) only individual persons are listed or (b) the listing for a corporation having more than 10 shareholders has no shareholder owning 10% or more of any class of stock. *In the case of an APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land that is a partnership, corporation, or trust, such successive breakdown must include a listing and further breakdown of all of its partners, of its shareholders as required above, and of beneficiaries of any trusts. Such successive breakdown must also include breakdowns of any partnership, corporation, or trust owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land. Limited liability companies and real estate investment trusts and their equivalents are treated as corporations, with members being deemed the equivalent of shareholders; managing members shall also be listed.* Use footnote numbers to designate partnerships or corporations, which have further listings on an attachment page, and reference the same footnote numbers on the attachment page.

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DATE: September 9, 2009
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PARTNERSHIP NAME & ADDRESS: (enter complete name, number, street, city, state, zip code)

(2)Hunton & Williams LLP (continued)
1751 Pinnacle Drive, Suite 1700
McLean, VA 22102

(check if applicable) The above-listed partnership has no limited partners.

NAMES AND TITLES OF THE PARTNERS: (enter first name, middle initial, last name, and title, e.g.,
General Partner, Limited Partner, or General and Limited Partner)

James N. Christman	John D. Epps	Robert J. Hahn
Whittington W. Clement	Patricia K. Epps	Jarrett L. Hale
R. Noel Clinard	Steven B. Epstein	John F. Haley
Herve' Cogels (nmi)	Phillip J. Eskenazi	Eric J. Hanson
Cassandra C. Collins	Joseph P. Esposito	Ronald M. Hanson
Stacy M. Colvin	Kelly L. Faglioni	Richard L. Harden
Joseph P. Congleton	Susan S. Failla	Lowell W. Harrison
Terence G. Connor	Eric H. Feiler	Ray V. Hartwell, III
Stephen Gregory Cope	Chet A. Fenimore	James A. Harvey
Cameron N. Cosby	Edward F. Fernandes	Timothy G. Hayes
Ted C. Craig	Norman W. Fichthorn	Mark S. Hedberg
Cyane B. Crump	Andrea Bear Field	Douglas J. Heffner
Ashley Cummings (nmi)	Kevin J. Finto	Michael S. Held
Alexandra B. Cunningham	William M. Flynn	Gregory G. Hesse
Sean B. Cunningham	Laura M. Franze	George H. Hettrick
William D. Dannelly	Lauren E. Freeman	David A. Higbee
Samuel A. Danon	Matthew Freimuth (nmi)	Thomas Y. Hiner
Barry R. Davidson	Edward J. Fuhr	D. Bruce Hoffman
John Deacon (nmi)	Charles A. Gall	Robert E. Hogfoss
John A. Decker	Daniel C. Garner	John R. Holzgraefe
John J. Delionado	Douglas M. Garrou	Cecelia Philipps Horner
Stephen P. Demm	Richard D. Gary	George C. Howell, III
Kenneth L. Dobkin	Andrew A. Gerber	Thomas M. Hughes
Dee Ann Dorsey	John T. Gerhart, Jr.	Kevin F. Hull
Edward L. Douma	Jeffrey W. Giese	Eric W. Hurlocker
Mark S. Dray	Neil K. Gilman	Donald P. Irwin
Sean P. Ducharme	C. Christopher Giragosian	Judith H. Itkin
Deidre G. Duncan	Timothy S. Goettel	Makram B. Jaber
George C. Dunlap, Jr.	Allen C. Goolsby	Lori M. Jarvis
Roger Dyer (nmi)	L. Raul Grable	Matthew D. Jenkins
Frederick R. Eames	Douglas S. Granger	Andrew E. Jillson
Maya M. Eckstein	J. William Gray, Jr.	Harry M. Johnson, III
Joseph C. Edwards	Charles E. Greef	James A. Jones, III
W. Jeffery Edwards	Robert J. Grey, Jr.	Kevin W. Jones
John C. Eichman	Greta T. Griffith	Laura E. Jones
Edward W. Elmore, Jr.	Bradley W. Grout	Dan J. Jordanger
Charles Elphicke (nmi)	Jeffrey W. Gutches	Roland Juarez (nmi)
Frank E. Emory, Jr.	Miles B. Haberer	Thomas R. Julin
Juan C. Enjamio	Virginia H. Hackney	W. Alan Kailer

(check if applicable) There is more partnership information and Par. 1(c) is continued further on a "Special Permit/Variance Attachment to Par. 1(c)" form.

Application No.(s): SPA 2006-PR-038-02
(county-assigned application number(s), to be entered by County Staff)

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Special Permit/Variance Attachment to Par. 1(c)

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PARTNERSHIP NAME & ADDRESS: (enter complete name, number, street, city, state, zip code)

(2)Hunton & Williams LLP (continued)
1751 Pinnacle Drive, Suite 1700
McLean, VA 22102

(check if applicable) The above-listed partnership has no limited partners.

NAMES AND TITLES OF THE PARTNERS: (enter first name, middle initial, last name, and title, e.g., General Partner, Limited Partner, or General and Limited Partner)

- | | | |
|-------------------------|-------------------------------|------------------------|
| E. Peter Kane | Thelma Marshall (nmi) | Henry V. Nickel |
| Thomas F. Kaufman | Jeffrey N. Martin | Lonnie D. Nunley, III |
| Geoffrey S. Kay | John S. Martin | Leslie A. Okinaka |
| Joseph C. Kearfott | J. Michael Martinez de Andino | John D. O'Neill, Jr. |
| Michael G. Keeley | Walfrido J. Martinez | Pam Gates O'Quinn |
| G. Roth Kehoe, II | Christopher M. Mason | Michael A. O'Shea |
| Douglas W. Kenyon | Joseph Clarke Mathews | Brian V. Otero |
| Michael C. Kerrigan | Laurie Uustal Mathews | Randall S. Parks |
| Ryan T. Ketchum | John Gary Maynard, III | Peter S. Partee, Sr. |
| Robert A. King | Fraser A. McAlpine | J. Steven Patterson |
| Robert Klotz (nmi) | William H. McBride | William S. Patterson |
| Sylvia K. Kochler | Michael C. McCann | Michael P. F. Phelps |
| Edward B. Koehler | Thomas A. McConnell | R. Dean Pope |
| John T. Konther | Patrick J. McCormick, III | Laurence H. Posorske |
| Torsten M. Kracht | Robert G. McCormick | Kurtis A. Powell |
| Christopher G. Kulp | Francis A. McDermott | Lewis F. Powell, III |
| Christopher Kuner (nmi) | Alexander G. McGeoch | Wesley R. Powell |
| David Craig Landin | Paul E. McGeown | J. Waverly Pulley, III |
| David C. Lashway | John C. McGranahan, Jr. | Robert T. Quackenboss |
| Andrew W. Lawrence | David T. McIndoe | Dearbhla Quigley (nmi) |
| Wood W. Lay | Mark W. Menezes | Dionne C. Rainey |
| Daniel M. LeBey | Gary C. Messplay | Gordon F. Rainey, Jr. |
| David O. Ledbetter | Patrick E. Mitchell | Katherine E. Ramsey |
| Bradley T. Lennie | Jack A. Molenkamp | John Jay Range |
| L. Steven Leshin | Charles R. Monroe, Jr. | Stuart A. Raphael |
| Ronald J. Lieberman | Will S. Montgomery | Craig V. Rasile |
| Catherine D. Little | T. Justin Moore, III | John M. Ratino |
| Robert H. Lockwood | Thurston R. Moore | Robert S. Rausch |
| David C. Lonergan | Bruce W. Moorhead, Jr. | Keila D. Ravelo |
| Audrey C. Louison | Robert J. Morrow | Belynda B. Reck |
| Carlos E. Loumiet | Ann Marie Mortimer | Baker R. Rector |
| David S. Lowman, Jr. | Michael J. Mueller | Shawn P. Regan |
| Tyler Maddry (nmi) | Eric J. Murdock | Sona Rewari (nmi) |
| Kimberly M. Magee | Frank J. Murphy, Jr. | Thomas A. Rice |
| Manuel E. Maisog | Ted J. Murphy | Jennings G. Ritter, II |
| Alan J. Marcuis | Thomas P. Murphy | Kathy E. B. Robb |
| Brian R. Marek | David A. Mustone | Daryl B. Robertson |
| Fernando Margarit (nmi) | James P. Naughton | Gregory B. Robertson |
| Stephen S. Maris | Michael Nedzbala (nmi) | Robert M. Rolfe |

(check if applicable) There is more partnership information and Par. 1(c) is continued further on a "Special Permit/Variance Attachment to Par. 1(c)" form.

Application No.(s): SPA 2006-PR-038-02
(county-assigned application number(s), to be entered by County Staff)

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Special Permit/Variance Attachment to Par. 1(c)

DATE: September 9, 2009
(enter date affidavit is notarized)

105038a

PARTNERSHIP NAME & ADDRESS: (enter complete name, number, street, city, state, zip code)

(2)Hunton & Williams LLP (continued)
1751 Pinnacle Drive, Suite 1700
McLean, VA 22102

(check if applicable) The above-listed partnership has no limited partners.

NAMES AND TITLES OF THE PARTNERS: (enter first name, middle initial, last name, and title, e.g.,
General Partner, Limited Partner, or General and Limited Partner)

Ronald D. Rosener
Michael Rosenthal (nmi)
William L. S. Rowe
Marguerite R. Ruby
D. Alan Rudlin
Mary Nash K. Rusher
Karen M. Sanzaro
Stephen M. Sayers
Arthur E. Schmalz
Gregory J. Schmitt
John R. Schneider
Howard E. Schreiber
Robert M. Schulman
Jeremy R. Schwer
P. Watson Seaman
James S. SeEVERS, Jr.
Douglass P. Selby
Joel R. Sharp
Michael R. Shebelskie
Rita A. Sheffey
Michael A. Silva
William P. Silverman
Jo Anne E. Sirgado
Thomas G. Slater, Jr.
Brooks M. Smith
Caryl Greenberg Smith
John R. Smith
Yisun Song (nmi)
Lisa J. Sotto
Joseph C. Stanko, Jr.
Marty Steinberg (nmi)
Todd M. Stenerson
John J. Stenger
Gregory N. Stillman
C. Randolph Sullivan
Chanmanu Sumawong (nmi)
R. Michael Sweeney, Jr.
Henry Talavera (nmi)
Andrew J. Tapscott

Robert M. Tata
Rodger L. Tate
W. Lake Taylor, Jr.
Wendell L. Taylor
Robin Lyn Teskin
Paul R. Tetlow
John Charles Thomas
Martin K. Thomas
Gary E. Thompson
B. Cary Tolley, III
Timothy J. Toohy
Bridget C. Treacy
Thomas B. Trimble
Estelle J. Tsevdos
Melvin E. Tull, III
Julie I. Ungerman
Surasak Vajasit (nmi)
Travis E. Vanderpool
Mark C. Van Deusen
C. Porter Vaughan, III
Enid L. Veron
Emily Burkhardt Vicente
Mark R. Vowell
Linda L. Walsh
William A. Walsh, Jr.
Lynnette R. Warman
Abigail C. Watts-FitzGerald
William L. Wehrum
Peter G. Weinstock
David B. Weisblat
Malcolm C. Weiss
Mark G. Weishaar
Hill B. Wellford, Jr.
David E. Wells
G. Thomas West, Jr.
Kevin J. White
Jerry E. Whitson
Jonathan M. Wilan
Amy McDaniel Williams

Matthew J. Williams
Holly H. Williamson
Michael G. Wilson
Allison D. Wood
John W. Woods, Jr.
David C. Wright
Richard L. Wyatt, Jr.
Scott F. Yarnell
William F. Young
Andrew D. Zaron
Lee B. Zeugin
Manida Zimmerman (nmi)

FORMER PARTNERS:
Kenneth D. Bell
T. Thomas Cottingham, III
L. Traywick Duffie
Whitney C. Ellerman
John M. Holloway, III
Thomas F. Lillard
Nash E. Long, III
Michael P. Massad, Jr.
R. Hewitt Pate
Donna M. Praiss
Edmund W. Sim
Steven P. Solow
Robert K. Wise

(check if applicable) There is more partnership information and Par. 1(c) is continued further on a
"Special Permit/Variance Attachment to Par. 1(c)" form.

Application No.(s): SPA 2006-PR-038-02
(county-assigned application number(s), to be entered by County Staff)

Page Four

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: September 9, 2009
(enter date affidavit is notarized)

105038a

1(d). One of the following boxes **must** be checked:

In addition to the names listed in Paragraphs 1(a), 1(b), and 1(c) above, the following is a listing of any and all other individuals who own in the aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the **APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE*** of the land:

Other than the names listed in Paragraphs 1(a), 1(b), and 1(c) above, no individual owns in the aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the **APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE*** of the land.

2. That no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household owns or has any financial interest in the subject land either individually, by ownership of stock in a corporation owning such land, or through an interest in a partnership owning such land.

EXCEPT AS FOLLOWS: (NOTE: If answer is none, enter "NONE" on the line below.)

NONE.

(check if applicable) There are more interests to be listed and Par. 2 is continued on a "Special Permit/Variance Attachment to Par. 2" form.

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: September 9, 2009
(enter date affidavit is notarized)

105038a

3. That within the twelve-month period prior to the public hearing of this application, no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household, either directly or by way of partnership in which any of them is a partner, employee, agent, or attorney, or through a partner of any of them, or through a corporation in which any of them is an officer, director, employee, agent, or attorney or holds 10% or more of the outstanding bonds or shares of stock of a particular class, has, or has had any business or financial relationship, other than any ordinary depositor or customer relationship with or by a retail establishment, public utility, or bank, including any gift or donation having a value of more than \$100, singularly or in the aggregate, with any of those listed in Par. 1 above.

EXCEPT AS FOLLOWS: (NOTE: If answer is none, enter "NONE" on line below.)
NONE.

(NOTE: Business or financial relationships of the type described in this paragraph that arise after the filing of this application and before each public hearing must be disclosed prior to the public hearings. See Par. 4 below.)

(check if applicable) [] There are more disclosures to be listed and Par. 3 is continued on a "Special Permit/Variance Attachment to Par. 3" form.

4. That the information contained in this affidavit is complete, that all partnerships, corporations, and trusts owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land have been listed and broken down, and that prior to each and every public hearing on this matter, I will reexamine this affidavit and provide any changed or supplemental information, including business or financial relationships of the type described in Paragraph 3 above, that arise on or after the date of this application.

WITNESS the following signature:



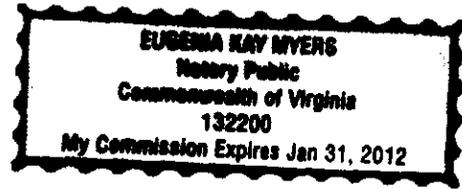
(check one) [] Applicant [x] Applicant's Authorized Agent

Robert P. Warhurst, President
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 9 day of September 2009, in the State/Comm. of Virginia, County/City of Fairfax

Eugenia Kay Myers
Notary Public

My commission expires: 1-31-2012
NRN: 132200



RECEIVED
Department of Planning & Zoning

JUN 16 2009

Zoning Evaluation Division

June 16, 2009

**APPLICANT'S STATEMENT
MERRIFIELD GARDEN CENTER
SPA 2006-PR-038-2**

Merrifield Garden Center Corporation (the "Applicant" and "Owner") seeks approval of a Special Permit Amendment ("SPA") application for Tax Map Parcel 49-2-((1))-26C (the "SPA Property"), a portion of the 8.93 acres which comprise the existing plant nursery and associated uses ("Merrifield Garden Center") located within the northeast quadrant of the Lee Highway and Gallows Road intersection within the Merrifield Commercial Revitalization Area. The Applicant has operated a plant nursery, including retail sales, display, wholesale, landscape contracting and other related uses on the Property since 1971. The Applicant's land is zoned, variously, C-8, I-5, R-3 and H-C and is surrounded by industrial and retail uses to the east, south and west, and townhouse use to the north.

SP 2006-PR-038 was approved for the SPA Property by the Board of Zoning Appeals on February 27, 2007, to permit a reduction in the minimum front yard requirement based upon an error in building location. Development Condition No. 3 of this approval stated:

Building permits and final inspections for the structure shall be diligently pursued within 60 days and obtained within one (1) year of final approval or this special permit shall be null and void.

The Applicant diligently pursued acquisition of the requisite building permit, and through trade permits accomplished modifications to meet Code and accessibility requirements, and final inspections necessary for the building subject to the approved Special Permit. Due to unanticipated delays, none the fault of the Applicant, they were unable to obtain final inspections prior to the expiration date of SP 2006-PR-038 per Development Condition No. 3. On February 26, 2008, the Applicant filed SPA 2006-PR-038 for the sole purpose of seeking additional time to comply with Development Condition No. 3. As was the case previously, the Applicant has been diligently pursuing the building permit and final inspections, but has been unable to obtain final authorization from the appropriate county agencies.

The physical improvements to the building requisite to obtaining the Non-RUP, including structural repairs, ADA accessible facilities and a fire suppression system, have been completed. Though the building modifications have occurred, it had not been possible to receive final inspections because of difficulties providing a required new waterline connection to the SPA Property, which now has finally been accomplished despite huge delays in utility relocation and funding of the Lee Highway/Gallows Road improvements (VDOT Project No. 0029-029-119). Despite having overcome all these obstacles and accomplished all of the required work, the Applicant has now been informed it may not obtain its building permit and final inspections until it has obtained approval of a unified site plan for the entire property or a minor site plan for the SPA Property. Mutual discussion with the Deputy Zoning Administrator has led to the determination that this building permit should await approval of a unified site plan, which cannot be approved until after the pending Special Exception and a concurrent Rezoning of a 10,000

square foot portion of the Merrifield Garden Center has been approved. It is because of this unforeseen delay that the Applicant will be unable to satisfy Development Condition No. 3, which is why this further Special Permit Amendment has been filed. No revisions from the previous approvals are requested, other than the extension of time to acquire building permit approval and final inspections.

The Special Permit Amendment ("SPA") Plat, dated June 2009, has been prepared by William H. Gordon Associates and consists of five (5) sheets. The SPA Plat depicts uses on the industrial and commercial-zoned parcels located outside of the application area, showing the relationship of existing and proposed uses on the site.

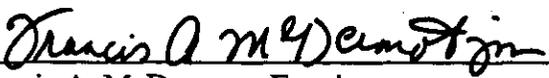
The SPA Property is zoned C-8 and H-C, and consists of approximately 131,474 square feet, or 3.02 acres, of land. As set forth in the Zoning Ordinance definition of a "Plant Nursery," such uses are deemed "Retail Sales Establishments" and therefore constitute a "by-right" use in the C-8 zoning district. The sole purpose of this SPA application is to request the Board of Zoning Appeals to reaffirm approval of SPA 2006-PR-038, which was approved to permit a reduction of the minimum front yard setback pursuant to Section 8-914 of the Zoning Ordinance ("Provisions for Approval of Reduction in the Minimum Yard Requirements Based on Error in Building Location").

The building identified as "Building S-1" on the SPA Plat intrudes into a portion of the minimum front yard along the Gallows Road frontage of the site. Merrifield Garden Center seeks to modify the 40-foot minimum setback in the C-8 zoning district to a minimum of 28 feet in a limited area, in order to retain "Building S-1" as its flagship, retail sales building in the C-8 zone. The requested 28-foot building setback constitutes seventy percent of the required setback. Only a 438 square foot portion of the 11,282 square foot building, or a 3.8 percent sliver of the building, extends into the minimum yard. "Building S-1" initially was constructed in the mid-1970s outside the minimum front yard setback which existed at that time, prior to the widening of Gallows Road from two lanes. The right-of-way was enlarged and Gallows Road was reconstructed to four lanes subsequent to the initial construction of this building. The intrusive portion of "Building S-1," which began as an "overhang" connection to the main building with the purpose of shading plants, evolved into a protected plant storage area with plastic siding, then to a roofed fertilizer storage area and, when the double-doors were removed, ultimately became part of the year-round retail sales establishment. This non-compliance evolved incrementally in good faith by the Applicant, who was not aware that this small corner of the building constituted any violation of the Ordinance.

The floor area ratio within the SPA Application area (Parcel 26C) is 0.11, out of a maximum permitted 0.5 FAR in the C-8 District. Fifty-five percent of the application area is retained in open space, when only 15 percent open space is required in the C-8 District. Also depicted within the SPA Application area is a reconfiguration of the parking spaces, resulting in a ten-foot minimum setback from the existing Lee Highway right-of-way line. The Applicant has rearranged uses so that no C-8 uses are located within the industrial zone.

In addition to the above information, the following is filed specifically pursuant to the requirements of Paragraph 6 of Section 8-011 of the Zoning Ordinance for the Special Permit Amendment application:

- A. **Type Of Operation:** Plant nursery.
- B. **Hours Of Operation:** Monday through Saturday 7:00 am to 9:00 pm and Sunday 9:00 am to 7:00 pm.
- C. **Estimated Number Of Patrons:** Average of 250 per day. Due to the unique seasonal nature of the business, the peak number of patrons occurs on weekends during portions of April, May and June.
- D. **Proposed Number Of Employees:** The applicant employs a total of 85 full- and part-time employees. However, during the busiest part of the peak season, the number of employees on the site at any one time is approximately 60. During other times, the number of employees on the site at any one time is approximately 37.
- E. **Estimate Of Traffic Impact Of The Proposed Use,** including the maximum expected trip generation and the distribution of such trips by mode and time of day:
- Average daily traffic (ADT): Weekday: 450 trips; Saturday: 510 trips
- AM Peak Hour: Weekday: 25 trips
- PM Peak Hour: Weekday: 28 trips
- F. **Vicinity Or Area To Be Served:** Eastern Fairfax County, particularly neighborhoods in Merrifield, Vienna, Falls Church and Tysons.
- G. **Description Of Building Facade:** No change; as constructed and identified on the the SPA Plat.
- H. **Hazardous Materials Statement:** Approved herbicides, pesticides and fertilizers typical for a plant nursery are utilized on site; however, no pesticides shall be applied to plants on site without prior approval of the pesticide by the Fairfax County Health Department.
- I. **Conformance Statement:** The uses shall conform to the provisions of all applicable ordinances, regulations, adopted standards and conditions as permitted by special exception and special permit and in the C-8 and HCOD zoning district, except those modified herein, or which may be modified or waived by the Director of DPWES at the time of site plan approval.


Francis A. McDermott, Esquire



HUNTON & WILLIAMS LLP
1751 PINNACLE DRIVE
SUITE 1700
MCLEAN, VIRGINIA 22102

TEL 703 • 714 • 7400
FAX 703 • 714 • 7410

June 15, 2009

RECEIVED
Department of Planning & Zoning
JUN 16 2009
Francis A. McDERMOTT
DIRECT DIAL: (703) 714-7422
E-MAIL: F.MCDERMOTT@HUNTON.COM
FILE NO.: 47697.9
Zoning Evaluation Division

BY HAND

Ms. Virginia H. Ruffner
Zoning Evaluation Division
Fairfax County Department of Planning and Zoning
12055 Government Center Parkway
Suite 800
Fairfax, Virginia 22035

**Merrifield Garden Center Corporation
Special Permit Amendment Application SPA 2006-PR-038-2
Fairfax County Tax Map Parcel 49-2-((1))-26C**

Dear Virginia:

On behalf of Merrifield Garden Center Corporation, we enclose the following application materials for a Special Permit Amendment on Fairfax County Tax Map Parcel 49-2-((1))-26C:

1. Application form (4 copies);
2. Special Permit Plat, which includes the SWM checklist (23 plus 8 ½ x 11 reduction);
3. Zoning Section Sheets 49-2 and 49-4;
4. Photographs of the property;
5. Special Permit Affidavit, which confirms Applicant's ownership of the subject property;
6. Applicant's Statement;
7. Authorization of Agents; and
8. Check in the amount of \$2,647.50 in payment of the application fee.

This Special Permit Amendment application is filed for the sole purpose of providing the Applicant additional time to comply with Condition No. 3, which requires that building



Ms. Virginia H. Ruffner
June 15, 2009
Page 2

permits and final inspections for the structure be obtained within one year of final approval of the Special Permit Amendment. Due to ongoing delays brought about by VDOT improvements to the adjacent right-of-way, requiring the relocation of water lines serving the Applicant's property, the Applicant has been unable to finalize inspections and obtain its building permit within the time required by Condition No. 3. No other revisions to the approved Special Permit are requested.

As always, if you have any questions or require additional information, please do not hesitate to contact Aaron Shriber at (703) 714-7465, Jeannie Mathews at (703) 714-7451, or me. I look forward to hearing from you concerning the acceptance of this application.

Very truly yours,

A handwritten signature in cursive script that reads "Francis A. McDermott jm".

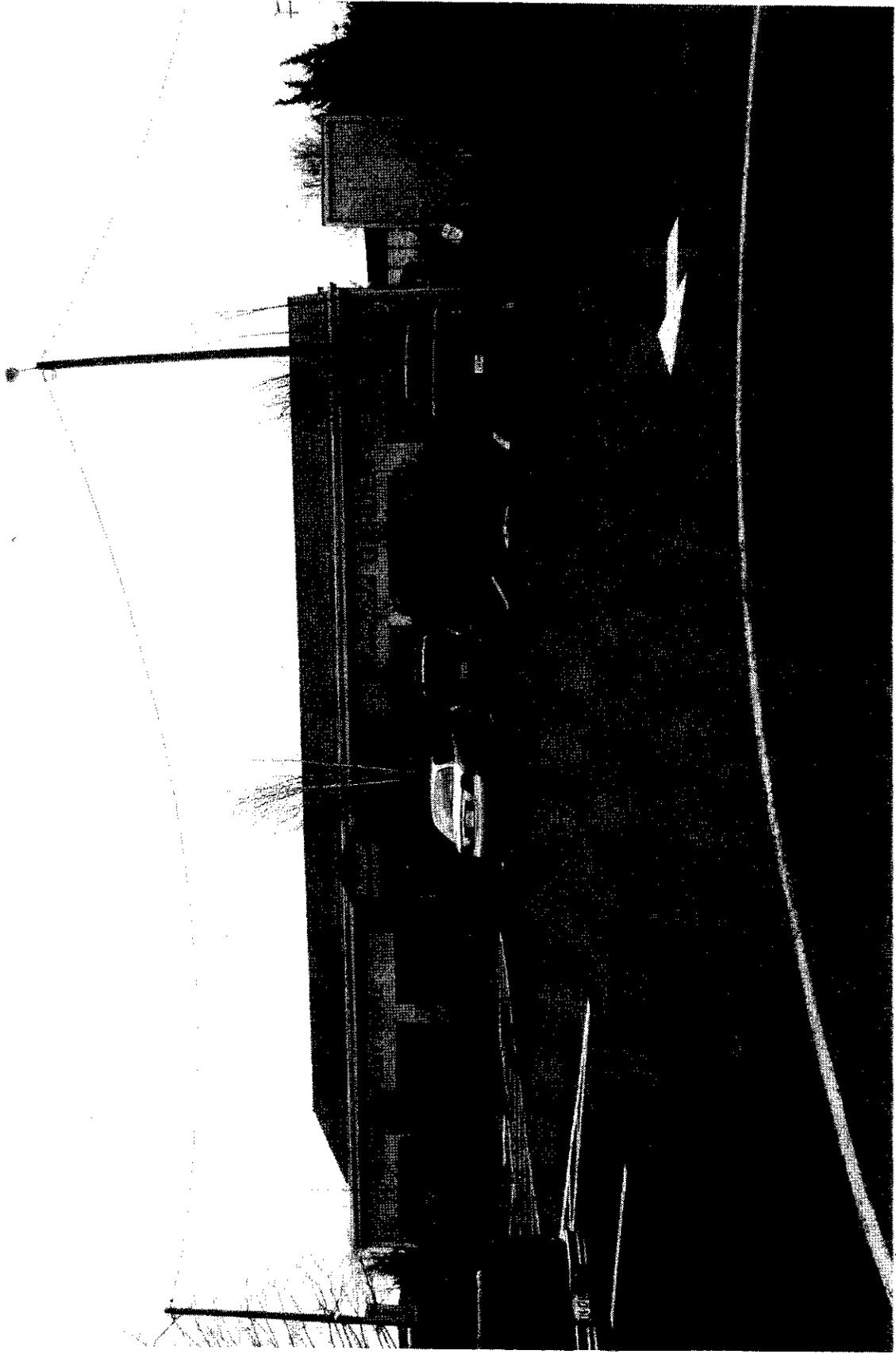
Francis A. McDermott

Enclosures

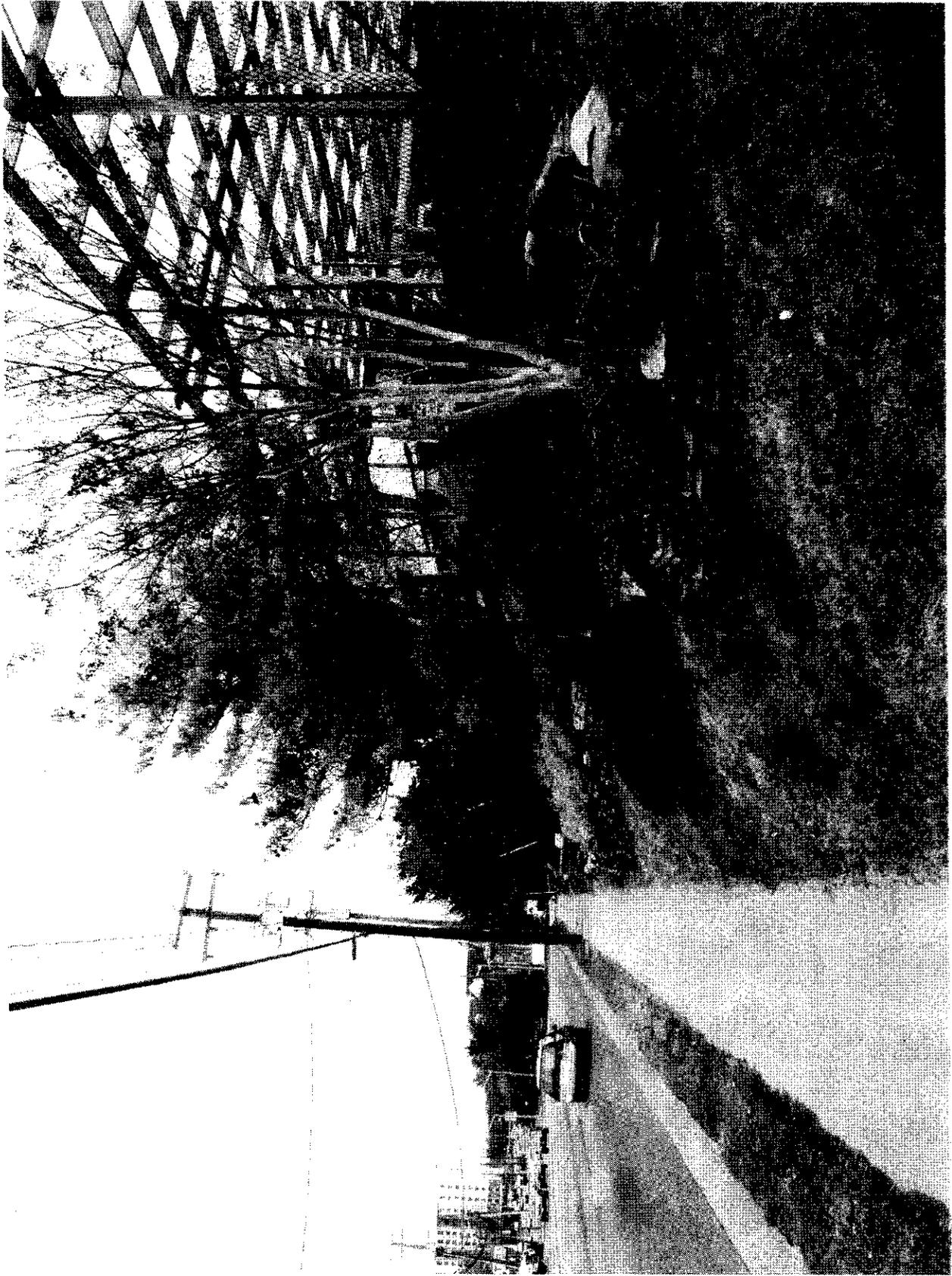
cc: Mr. David Watkins



View of Subject Building Looking Southeast



View of Subject Building Looking South



View of Western Property Boundary Looking North



View of Subject Building Looking South

PROPOSED DEVELOPMENT CONDITIONS

SPA 2006-PR-038-02

September 29, 2009

1. This special permit is approved for the location and size (approximately 438 square feet) of the existing one story structure as shown on the plat prepared by William H. Gordon Associates, Inc. dated, June 16, 2009, as submitted with this application and is not transferable to other land.
2. Other by-right, special permit and special exception uses on site shall be permitted without a special permit amendment if such uses do not affect this special permit use.
3. Building permits and final inspections for the structure shall be diligently pursued within 60 days and obtained within one year of final approval or this special permit shall be null & void.

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.