



APPLICATION ACCEPTED: December 27, 2006
DATE OF PUBLIC HEARING: September 22, 2010
APPLICATION SCHEDULED FROM INDEFINITELY DEFERRED
TIME: 9:00 a.m.

County of Fairfax, Virginia

September 15, 2010

STAFF REPORT

SPECIAL PERMIT APPLICATION NO. SP 2007-MA-001

MASON DISTRICT

APPLICANT: Donald J. McCarthy

OWNERS: Donald J. McCarthy
Jaki S. McCarthy

LOCATION: 3915 Glenbrook Road

SUBDIVISION: Sunny Hill

TAX MAP: 58-4 ((9)) 20A

LOT SIZE: 1.47 acres

ZONING: R-1

ZONING ORDINANCE PROVISION: 8-914

SPECIAL PERMIT PROPOSAL: To permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 8.2 feet with eave 7.5 feet from a side lot line.

A copy of the BZA's Resolution setting forth this decision will be mailed within five (5) days after the decision becomes final.

The approval of this special permit does not interfere with, abrogate or annul any easement, covenants, or other agreements between parties, as they may apply to the property subject to this application.

O:\dhedr\Special Permits\9-22) SP 2007-MA-001 McCarthy\SP 2007-MA-001 McCarthy staff report.doc Deborah Hedrick

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

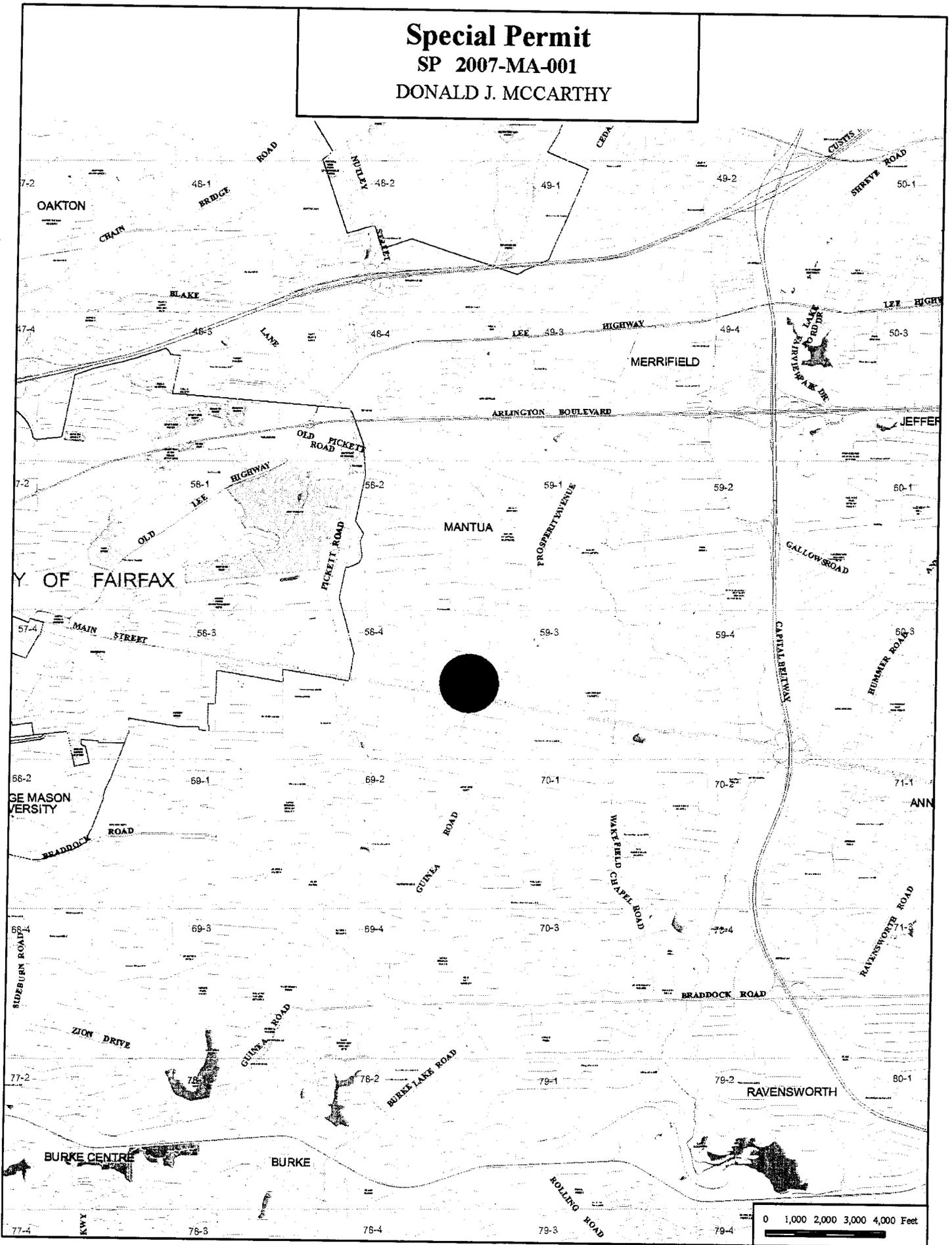


For additional information, call Zoning Evaluation Division, Department of Planning and Zoning at 324-1280, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035. **Board of Zoning Appeals' meetings are held in the Board Room, Ground Level, Government Center Building, 12000 Government Center Parkway, Fairfax, Virginia 22035-5505.**

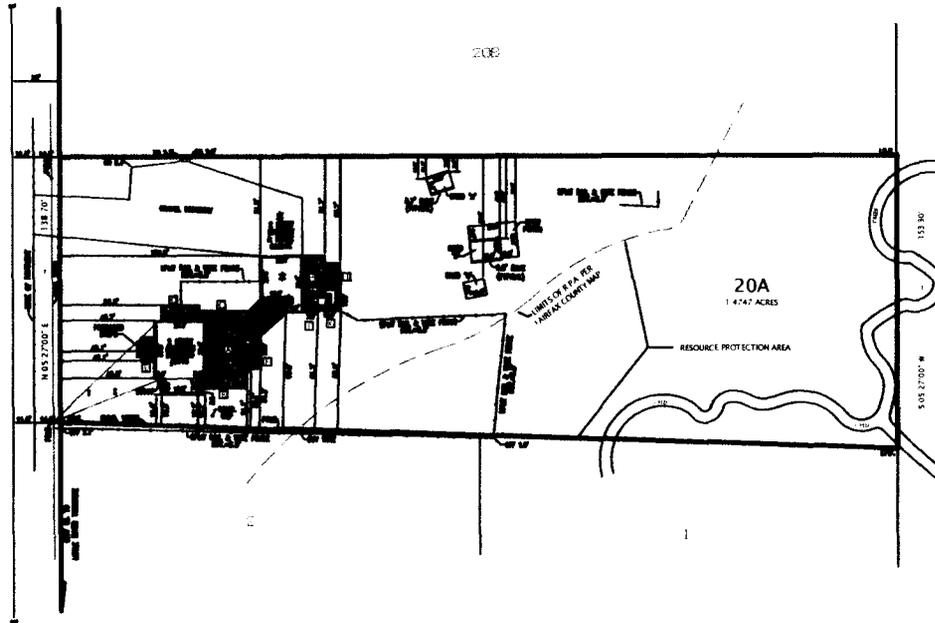


Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

Special Permit
SP 2007-MA-001
DONALD J. MCCARTHY



GLENBROOK ROAD
50.00' WIDE
150.00' WIDE



- NOTES
1. TAX MAP: 58-4-019-20A
 2. ZONE: R-1
 3. LOT AREA: 1.4747 ACRES
 4. REQUIRED YARDS

FRONT	=	40 FEET
SIDE	=	20 FEET
REAR	=	25 FEET
 5. HEIGHTS

DWELLING	=	18' 0" FEET
GARAGE	=	19' 3" FEET
OPEN PORCH	=	7' 0" FEET
SHED A	=	12' 4" FEET
SHED B	=	14' 7" FEET
SHED C	=	10' 4" FEET
PROPOSED 2 STORY ADDITION (A)	=	18' 0" FEET
PROPOSED 1 STORY ADDITION (B)	=	10' 9" FEET
PROPOSED 1 STORY ADDITION (C)	=	12' 5" FEET
PROPOSED 1 STORY ADDITION (D)	=	12' 9" FEET
PROPOSED 1 STORY ADDITION (E)	=	12' 0" FEET
PROPOSED 1 STORY ADDITION (F)	=	12' 0" FEET
PROPOSED WALKWAY	=	10' 0" FEET
PROPOSED 2 STORY ADDITION (G)	=	19' 3" FEET
PROPOSED DECK 1	=	8' 0" FEET
PROPOSED DECK 2	=	8' 0" FEET
 6. THIS PROPERTY IS SERVED BY PUBLIC WATER AND SEWER.
 7. THERE IS NO OBSERVABLE EVIDENCE OF GRAVE SITES OR BURIAL GROUNDS ON THIS PROPERTY.
 8. ALL IMPROVEMENTS SHOWN ON THIS PLAT ARE EXISTING UNLESS DENOTED AS PROPOSED.
 9. THE SURVEYOR IS NOT AWARE OF ANY UTILITY EASEMENTS 25 FEET IN WIDTH OR GREATER AFFECTING THIS PROPERTY.
 10. THERE IS A 0.5' EAVE LINE SHOWN ON THE DWELLING AND ON THE PROPOSED ADDITIONS UNLESS NOTED.
 11. ALL PROPOSED IMPROVEMENTS ARE SHOWN THIS [REDACTED]
 12. LIST OF PROPOSED IMPROVEMENTS

A	=	PROPOSED 2 STORY ADDITION
B	=	PROPOSED 1 STORY ADDITION
C	=	PROPOSED 1 STORY ADDITION
D	=	PROPOSED 1 STORY ADDITION
E	=	PROPOSED 1 STORY ADDITION
F	=	PROPOSED 1 STORY ADDITION
G	=	PROPOSED 2 STORY ADDITION
H	=	PROPOSED WALKWAY
I	=	PROPOSED 2 STORY ADDITION
J	=	PROPOSED DECK 1
K	=	PROPOSED DECK 2
L	=	PROPOSED STAIRS & LANDING

PLAT
SHOWING HOUSE LOCATION ON
LOT 20A
DIVISION OF LOT 20
SUNNY HILL
MASON DISTRICT
FAIRFAX COUNTY, VIRGINIA
SCALE 1" = 30' NOVEMBER 7, 2006

1433 0000 JARIS & DONALD J. MCARTHY

1433 0000

ALEXANDRIA SURVEYS INTERNATIONAL, LLC

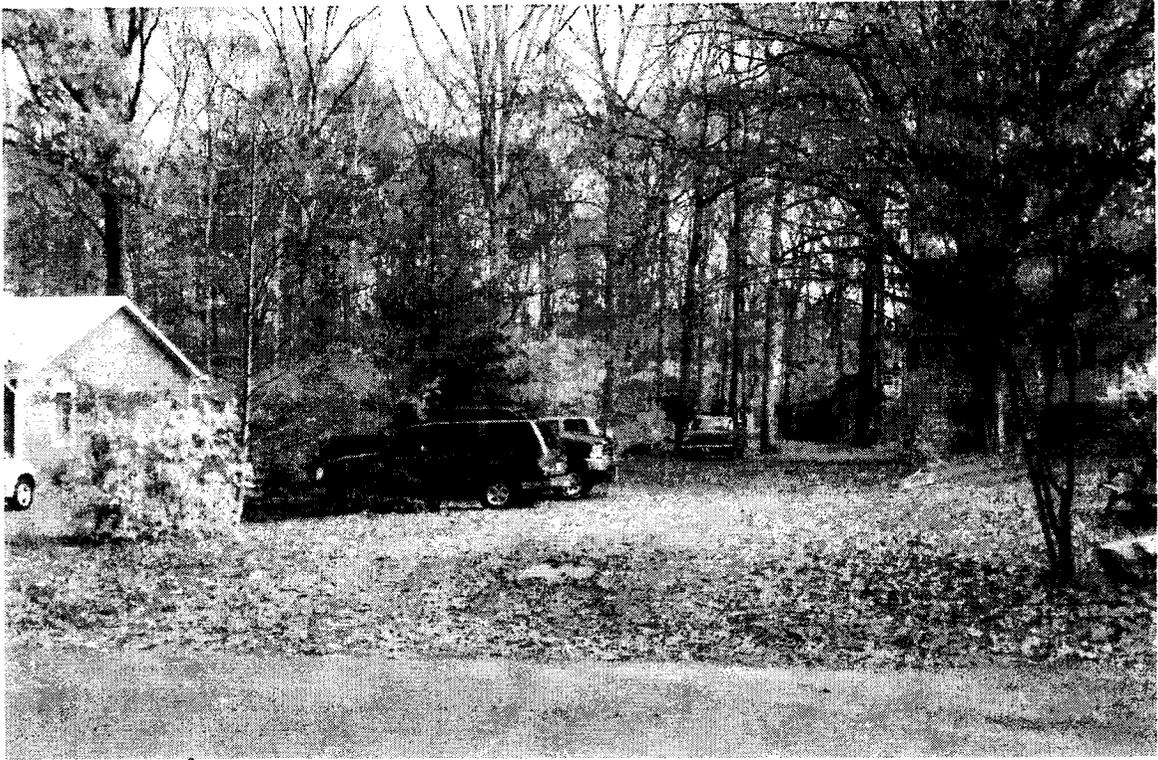
1433 0000



View From Drive way North and West end views



West side neighbor across Glenbrook Rd.



North end neighbor, driveway, barn, garage apartment





View from driveway across Glenbrook Rd.



West end neighbor



North side neighbor



North side neighbor, property line, driveway and detached garage apartment



North side neighbor along Glenbrook Rd.



West side view of House, and property line between south side neighbor



South side neighbor along Glenbrook Rd.





South side neighbor



North side neighbor across our driveway

North and West end views



West and South end views



3915 Glenbrook Rd. Fairfax, Va. 22031



View from Glenbrook Rd. North and West end views



North and West end views



North and west end views



West and south end views



East and North end views



North end view



West and south end views of shed



shed door faces west



North side neighbor on lot 20B, Lot 20A driveway, shed, barn and
some Amalys

DESCRIPTION OF THE APPLICATION

The applicant is requesting approval of a special permit for an error in building location to permit an accessory storage structure, depicted as "Shed A" on the plat, which measures 12.4 feet in height, to remain 8.2 feet with eave 7.5 feet from the northern side lot line.

	Structure	Yard	Min. Yard Req.*	Permitted Extension **	Min. Allowed	Structure Location	Amount of Error	Percent of Error
Special Permit	Accessory Storage Structure	Side	20.0 feet	N/A	20.0 feet	8.2 feet	11.8 feet	59%
Special Permit	Eave	Side	20.0 feet	3.0 feet	17.0 feet	7.5 feet	9.5 feet	56%

** Permitted extension per Section 2-412

LOCATION AND CHARACTER

Character of the Area

	Zoning	Use
North	R-1	Single Family Detached Dwelling
South	R-1	Single Family Detached Dwelling
East	R-2	Ridgelea Hills Homeowners Association Open Space
West	R-1	Single Family Detached Dwelling

Existing Site Description

The 1.47 acre lot is developed with a one and one-half story single family detached dwelling which was constructed in 1945. A detached two story garage and three accessory storage structures are also located on the subject property within the rear yard. A majority of the rear yard and portions of the side yards are encumbered by a Resource Protection Area (RPA). The subject lot and the surrounding lots are large lots and heavily treed with existing mature vegetation.

ANALYSIS OF SPECIAL PERMIT APPLICATION

- **Title of SP Plat:** Plat, Showing House Location on Lot 20A, Division of Lot 20, Sunny Hill
- **Prepared By:** Alexandria Surveys, International, LLC, dated November 7, 2006
- **Building Permit Required:** No, as the structure measures 103 square feet in size.
- **Location Error Made By:** Previous homeowners

BACKGROUND

The applicant has indicated in the statement of justification that the accessory storage structure, Shed A, was constructed in the 1950's, according to information provided by the previous homeowner. The subject property was subdivided in 1958 from Lot 20, into Lots 20A and 20B. The new lot line resulted in Shed A not meeting the minimum side yard setback requirements for the District. Tax records do not show the shed. The dwelling, which is situated toward the southwestern quadrant of the parcel, was constructed prior to adoption of the current Zoning Ordinance and therefore met the requirements at the time of construction.

The application was originally submitted as a result of a Notice of Violation (NOV) received by the applicant dated February 5, 2004, attached as Appendix 4. The NOV was issued for an accessory dwelling unit located within an existing two story accessory structure, a detached garage, which was constructed by building permit in the 1940's. Subsequent to the receipt of the NOV, the applicant appealed the NOV to the Board of Zoning Appeals (BZA). On May 25, 2004, the BZA heard A 2004-MA-007 and overturned the determination of the Zoning Administrator that two dwelling units existed on a single lot. The case was then appealed to the Fairfax County Circuit Court by the Zoning Administrator, where a Consent Decree was issued requiring the applicant to remove the components of the accessory dwelling unit, or obtain special permit approval by the BZA to permit the unit to remain.

The applicant met with staff to discuss proposals such as the construction of a breezeway to connect the principal structure to the accessory structure (2-story garage) in order to move forward with the request for an accessory dwelling unit. Since the lot is less than 2.0 acres in size, an accessory dwelling unit cannot be located in a separate structure. On December 27, 2006, the subject application was accepted by staff and scheduled for a public hearing on March 20, 2007. Over the past three and one-half years, the applicant has continually asked to have the application moved in order to work with his engineer and architect in an attempt to develop his property with by-right construction and to connect the principal dwelling and garage in order to retain the accessory dwelling unit. The applicant contends that the proposal, as depicted on the special permit plat, is not necessarily what he wishes to proceed with in the request, and, since the accessory dwelling unit has not been occupied, staff agreed to the deferrals.

Recently, the applicant withdrew the request for the accessory dwelling unit and stated he no longer wishes to proceed with that portion of the application. However, the accessory storage structure continues to require action by the BZA.

Since the Circuit Court issued a Consent Decree to either obtain a special permit, or, remove all components of the kitchen within the second story of the accessory structure, staff from the Department of Code Compliance is working with the applicant to ensure the issue is resolved.

The Board of Zoning Appeals (BZA) has not heard any similar applications in the vicinity of the application property.

ZONING ORDINANCE REQUIREMENTS (See Appendix 5)

- General Special Permit Standards (Sect. 8-006)
- Group 9 Standards (Sect. 8-903)
- Provisions for Approval of Reduction of the Minimum Yard Requirements Based on an Error in Building Location (Sect. 8-914)

CONCLUSION

If it is the intent of the BZA to approve this application, the BZA should condition its approval by requiring conformance with the conditions set forth in Appendix 1 of this report, Proposed Development Conditions.

The approval of this special permit does not interfere with, abrogate or annul any easement, covenants, or other agreements between parties, as they may apply to the property subject to this application.

APPENDICES

1. Proposed Development Conditions
2. Applicant's Affidavit
3. Applicant's Statement of Justification
4. Notice of Violation dated February 5, 2004
5. Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS

SP 2007-MA-001

September 15, 2010

1. This special permit is approved only for the location of a detached accessory storage structure (Shed "A"), as shown on the plat prepared by Alexandria Surveys International, LLC, dated November 7, 2006, submitted with this application and is not transferable to other land.

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.

Application No.(s): _____
 (county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: July 24, 2006
 (enter date affidavit is notarized)

I, Donald J. McCarthy, 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

92354

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)
Donald J. McCarthy	3915 Glenbrook Rd., Fairfax, VA 22031	Owner
Jaki S. McCarthy	3915 Glenbrook Rd., Fairfax, VA 22031	Owner

(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.

* 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): _____
(county-assigned application number(s), to be entered by County Staff)

Page Two

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: July 24, 2006
(enter date affidavit is notarized)

92354

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)

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)

(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.

Application No.(s): _____
(county-assigned application number(s), to be entered by County Staff)

Page Three

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: July 24, 2006
(enter date affidavit is notarized)

92354

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)

(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)

(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.

Application No.(s): _____
(county-assigned application number(s), to be entered by County Staff)

Page Four

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: July 24, 2006
(enter date affidavit is notarized)

92354

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: July 24, 2006
(enter date affidavit is notarized)

92354

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

Applicant's Authorized Agent

Donald J. McCarthy, Owner

(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 24 day of July 2006, in the State/Comm. of VIRGINIA, County/City of FAIRFAX.

Bernardette L. Callahan
Notary Public

My commission expires: 02/28/2009

RECEIVED
Department of Planning & Zoning

DEC 14 2006

Zoning Evaluation Division

December 14, 2006

Special Permit Justification Statement

Applicant: Donald J. McCarthy

Property: 3915 Glenbrook Rd.

Accessory dwelling unit and to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 8.2 feet with eaves 7.5 feet from side lot line.

The proposed use of the property is a single dwelling unit with an accessory dwelling unit as allowed under article Zoning Ordinance Section 8-918. The accessory dwelling unit would be operated as a dwelling unit with an estimated 1 or 2 people living in it. There will be no pupils, patrons, attendants, or employees associated with it. It is estimated that this would not appreciably impact any traffic, with an estimate of 2 trips into and out of the property per day. The area of the dwelling unit is indicated in the attached materials. There are no known hazardous or toxic substances associated with the property. As specified in Section 8-918 the accessory dwelling unit will be located within the structure of a single family detached dwelling unit. The gross floor area of the unit will not exceed 35% of the total gross floor area of the principal dwelling unit and will not contain more than 2 bedrooms. One of the dwelling units will be owner occupied and the other shall be occupied by a person or persons who qualify as elderly and/or disabled.

During the application for a special permit for an existing accessory dwelling unit, a separate existing shed was discovered to not have the required minimum yard setback. The shed was built in the early 1950's at the same time as the garage apartment, according to information provided by the previous owner. At the time the shed was built, the lot was larger, including the present lot and adjoining lot (as a single lot). The shed was in compliance with all minimum yard setback requirements at that time. The property was subsequently subdivided in 1958 from Lot 20, into Lots 20A and 20B. The new property line resulted in the shed not meeting the minimum yard setback requirements. The shed was not moved and has been in its existing location since it was built. The shed is not detrimental to the use or enjoyment of other properties, and does not create any unsafe conditions with respect to other properties or public streets. Moving the shed would require considerable hardship to us. No changes to the area of the shed are being made. We are requesting that the shed be given a special permit under Section 8-914 of the Zoning Ordinance to allow it remain in its existing location on Lot 20A, 3915 Glenbrook Rd.

The work to the structure will be completed in stages, therefore a stormwater management checklist is not applicable at this time. Parking requirements will also be in compliance with the Zoning Ordinance.

Special Permit Justification Statement

Applicant: Donald J. McCarthy

Address: 3915 Glenbrook Rd., Fairfax, VA 22031

During the application for a special permit for an existing accessory dwelling unit, a separate existing shed was discovered to not have the required minimum yard setback. The shed was built in the early 1950's at the same time as the garage apartment, according to information provided by the previous owner. At the time the shed was built, the lot was larger, including the present lot and adjoining lot (as a single lot). The shed was in compliance with all minimum yard setback requirements at that time. The property was subsequently subdivided in 1958 from Lot 20, into Lots 20A and 20B. The new property line resulted in the shed not meeting the minimum yard setback requirements. The shed was not moved and has been in its existing location since it was built. The shed is not detrimental to the use or enjoyment of other properties, and does not create any unsafe conditions with respect to other properties or public streets. Moving the shed would require considerable hardship to us. No changes to the area of the shed are being made. We are requesting that the shed be given a special permit under Section 8-914 of the Zoning Ordinance to allow it remain in its existing location on Lot 20A, 3915 Glenbrook Rd.

RECEIVED
Department of Planning & Zoning

DEC 14 2006

Zoning Evaluation Division

SP 2006-0219

Special Permit Justification Statement

Applicant: Donald J. McCarthy

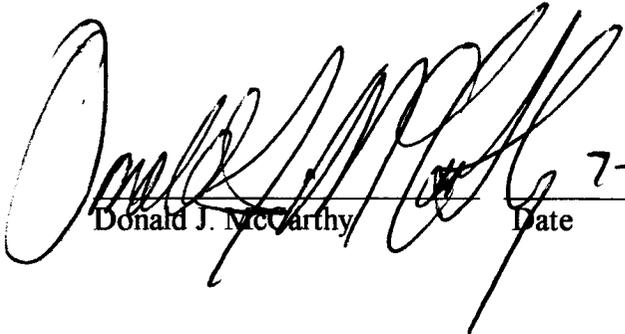
Property: 3915 Glenbrook Rd.

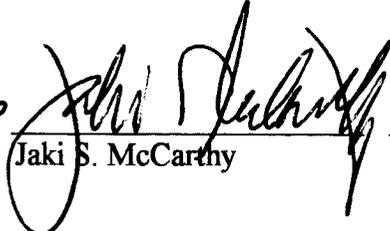
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RECEIVED
Department of Planning & Zoning
AUG 04 2006
Zoning Evaluation Division

Confirmation of Property Ownership
3915 Glenbrook Rd. Fairfax, VA 22031

The property at 3915 Glenbrook Rd. Fairfax, VA 22031 (Tax Map No. 58-4 (9), parcel 20A) is owned by Donald J. McCarthy and Jaki S. McCarthy.

 7-24-06
Donald J. McCarthy Date

 7/24/06
Jaki S. McCarthy Date

RECEIVED
Department of Planning & Zoning
AUG 04 2006
Zoning Evaluation Division

Donald J. McCarthy

3915 Glenbrook Rd.
Fairfax, VA 22031
703-503-3051

March 31, 2009

Deborah Hedrick
Zoning Administration Division
Department of Planning and Zoning
12055 Government Center Parkway, Suite 807
Fairfax, VA 22035

RECEIVED
DEPARTMENT OF PLANNING
AND ZONING

APR 1 2009

SPECIAL PERMIT &
VARIANCE BRANCH

Dear Ms. Hedrick,

Please accept this letter as a request for a deferral of my zoning appeals case. The reason for the request is the same as the previous request; I do not have a complete architectural plan to show the board of the new renovation including the enclosed breezeway between the house and the garage that I am satisfied with. Over the past year, I have been working with an architect and have multiple sketches and designs. However, none of these plans has been satisfactory. I would like to build a quality house for myself, wife, children and aging father in law which will accommodate us for the next 30 years or more.

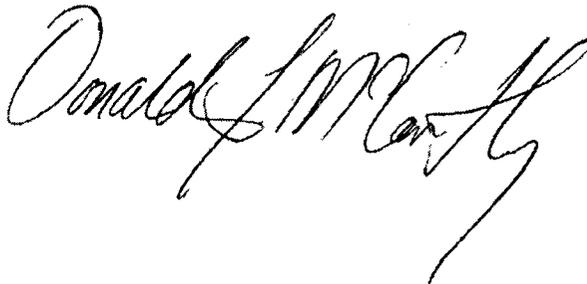
Due to my dissatisfaction with the existing plans that my architect and I have come up with in trying to renovate and connect the two structures, I have decided to take the project in a new direction. For the past six months I have been working with my architect on building a new house. This would entail the demolition of the two existing structures and therefore would not need an enclosed breezeway and perhaps would not require a special permit for an apartment for a person fifty five years or older. However, I am still designing an in-law suite with a second kitchen for my father-in-law.

I realize that Fairfax County has kept this case open for longer than it would have liked and would like to close the case. I also would like to close the case and move forward with my project. I have been living in Fairfax County for forty five years and am in the home renovation field. I have worked on thousands of houses in Fairfax County and can say that most of these houses are of similar style and shape. I am trying to design my "dream house" with craftsmanship, character, considered thought and planning. I have set a schedule for myself to start renovating or building something new within the next two years. I believe my design plans will be complete by the end of 2009. I would like to ask for an indefinite or extended deferral.

At the present time we have been cleared of all zoning violations with the exception of the accessory dwelling unit, which is currently unoccupied. It is not impacting the neighborhood or any of our surrounding neighbors. I look forward to your response and hope you will grant our request. If you would like to meet with me in person, I would be more than happy to do so. If you need to contact me, please call 703-408-2968 or email jaki.don@verizon.net.

Sincerely,

Donald J. McCarthy





FAIRFAX COUNTY

DEPARTMENT OF PLANNING AND ZONING

Zoning Administration Division
Zoning Enforcement Branch
12055 Government Center Parkway, Suite 829
Fairfax, Virginia 22035-5508

V I R G I N I A

(703) 324-1300

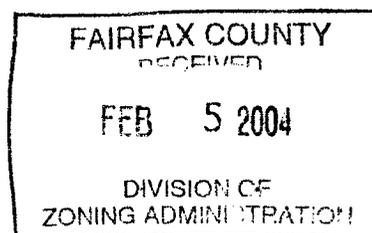
Fax (703) 803-6372

February 5, 2004

Donald J. McCarthy
Jaki S. McCarthy
3915 Glenbrook Road
Fairfax, VA 22031

Certified Mail
Return Receipt Requested
Receipt # 7002 0510 0002 4988 5726

Re: 3915 Glenbrook Road
Sunny Hill, Lot 11, Sec. 1
Tax Map Ref: 58-4 ((9)) 20A
Zoning District: R-1



Dear Mr. and Mrs. McCarthy:

A zoning inspection of the above-referenced property on January 21, 2004, revealed that the upper level of the detached garage is being used as a second dwelling unit consisting of an independent living facility which includes: permanent provisions for living, sleeping, eating, cooking, and sanitation. For your information and review, a dwelling unit is defined in Part 3 of Article 20 of the Fairfax County Zoning Ordinance as:

One (1) or more rooms in a residential building or residential portion of a building which are arranged, designed, and used or intended for use as a complete, independent living facility which includes permanent provisions for living, sleeping, eating, cooking and sanitation. Occupancy shall be in accordance with the provisions of Sect. 2-502.

Therefore, you are in violation of Sect. 2-501 of the Zoning Ordinance that states, in relevant part:

There shall be not more than one (1) dwelling unit on any one (1) lot, nor shall a dwelling unit be located on the same lot with any other principal building...

Additionally, this investigation has revealed that you are operating Rhino Construction, Inc., a gutter repair business, from this property and are using the lower level of the detached garage for the operation of the business. The investigation also revealed the gutter repair business is advertised on the internet under the web address www.flipgutters.com.

The use of Lot 20A, for the gutter repair business, is a contractor's office and shop. A contractor's office and shop is defined in Part 3 of Article 20 of the Fairfax County Zoning Ordinance as:

Establishments for the installation and servicing of such items as air conditioners, electrical equipment, flooring, heating, painting, plumbing, roofing, tiling and ventilating and establishments for the planting and maintenance of gardens, grounds and yards such as landscape contractors and lawn maintenance services. Such establishment shall not include retail sales to the general public except as a subordinate ancillary activity and display area accessible to the general public shall be limited to the lesser of either ten (10) percent of the gross floor area of the establishment or 1000 square feet.

A contractor's office and shop is allowed, by right, in the C-8, I-4, I-5, and I-6 Districts. A contractor's office and shop is not allowed by right, special permit, or special exception in the R-1 District. Therefore, you are in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance that states:

No use shall be allowed in any district which is not permitted by the regulations for the district.

Finally, the zoning inspection of the above-referenced property revealed the storage of a variety of materials and items located in the rear yard in excess of 100 square feet. These materials and/or items include, but are not limited to:

Ladders, concrete blocks, cardboard boxes, metal poles, and miscellaneous materials related to the gutter business such as windows and aluminum siding.

This outdoor storage is in violation of Par. 24 of Sect. 10-102 of the Fairfax County Zoning Ordinance which states, in part:

Storage, outdoor in R districts, provided such storage is located on the rear half of the lot, is screened from the view from the first story window of any neighboring dwelling, and the total area for such outdoor storage does not occupy more than 100 square feet.

You are, hereby, directed to clear these violations within thirty (30) days of receipt of this Notice. Compliance can be accomplished by the following:

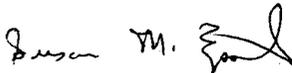
- Reducing the number of dwelling units on the property to one by removing the second kitchen and all related utilities to include electric, gas, plumbing, and all other related furnishings to the upper level of the garage, and
- Ceasing, on a permanent basis, the operation of the contractor's office and shop on the above-referenced property, and
- Removing, all equipment, materials and supplies related to the contractor's office and shop; and
- Removing the outdoor storage from this lot entirely or screening it from the view from the first story window of any neighboring dwelling, and limiting it to a total area not exceeding 100 square feet in the rear half of the lot.

You may have the right to appeal this notice, of zoning violation, within thirty (30) days of the date of this letter in accordance with Sec. 15.2-2311 of the Code of Virginia. This decision shall be final, and unappealable, if it is not appealed within such thirty (30) days. Should you choose to appeal, the appeal must be filed with the Zoning Administrator and the Board of Zoning Appeals (BZA) in accordance with Part 3 of Article 18 of the Fairfax County Zoning Ordinance. Those provisions require the submission of an application form, written statement setting forth the decision being appealed, date of decision, the grounds for the appeal, how the appellant is an aggrieved party and any other information you may wish to submit and a \$242.00 filing fee. Once an appeal application is accepted, it is scheduled for public hearing and decision before the BZA.

Failure to comply, with this notice, may result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance.

Should you have any questions or need additional information, please do not hesitate to contact me at (703) 324-1388 or (703) 324-1300.

Sincerely,


Susan M. Epstein
Senior Zoning Inspector

SME/seg



FAIRFAX COUNTY

DEPARTMENT OF PLANNING AND ZONING

Zoning Administration Division
Zoning Enforcement Branch
12055 Government Center Parkway, Suite 829
Fairfax, Virginia 22035-5508

V I R G I N I A

(703) 324-1300

Fax (703) 803-6372

March 12, 2004

Donald J. McCarthy
Jaki S. McCarthy
3915 Glenbrook Road
Fairfax, VA 22031

Re: 3915 Glenbrook Road
Sunny Hill, Lot 11, Sec. 1
Tax Map Ref: 58-4 ((9)) 20A
Zoning District: R-1

Dear Mr. and Mrs. McCarthy:

This letter is in response to your letter received on March 5, 2004, requesting an extension in time to comply with two of the zoning violations cited in the February 5, 2004 Notice of Violation. Specifically you are requesting an additional thirty days to come into compliance for operating a Contractor's Office and Shop which can be accomplished by ceasing this operation on a permanent basis and removing all equipment, materials and supplies related to the contractor's office and shop and either removing all outdoor storage or reducing the outdoor storage to comply with the zoning ordinance provisions. You have stated that you have separately filed an appeal for the zoning violation for a second dwelling unit.

Accordingly, you are hereby granted a thirty day extension of the February Notice of Violation. The new expiration date in which to clear the two zoning violations cited above is April 6, 2004. Depending on the outcome of the Appeal hearing, the second dwelling unit violation will be addressed separately.

Should you have any questions or need additional information, please do not hesitate to contact me at (703) 324-1388 or (703) 324-1300.

Sincerely,

Susan M. Epstein
Senior Zoning Inspector

SME/seg



FAIRFAX COUNTY

DEPARTMENT OF PLANNING AND ZONING
Zoning Administration Division
Zoning Enforcement Branch
12055 Government Center Parkway, Suite 829
Fairfax, Virginia 22035-5505

V I R G I N I A

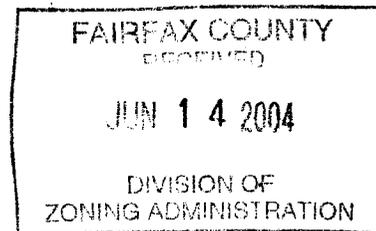
(703) 324-1300

Fax (703) 324-1343

June 11, 2004

Donald J. McCarthy
Jaki S. McCarthy
3915 Glenbrook Road
Fairfax, VA 22031

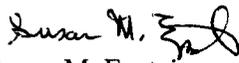
Re: 3915 Glenbrook Road
Sunny Hill, Lot 11, Sec. 1
Tax Map Ref: 58-4 ((9)) 20A
Zoning District: R-1



Dear Mr. and Mrs. McCarthy:

The purpose of this letter is to advise you of the results of an inspection on April 6, 2004, at the above-referenced property. This inspection revealed that two of the zoning violations cited in the February 5, 2004 Notice of Violation relating to outdoor storage and the operation of the Contractor's Office and Shop were cleared on April 6, 2004. As per our conversation, on June 8, 2004, you received a letter dated June 2, 2004, which provides the Board of Zoning Appeal's determination for Appeal A 2004-MA-007.

Sincerely,


Susan M. Epstein
Senior Zoning Inspector

SME/seg

8-006 General Standards

In addition to the specific standards set forth hereinafter with regard to particular special permit uses, all special permit uses shall satisfy the following general standards:

1. The proposed use at the specified location shall be in harmony with the adopted comprehensive plan.
2. The proposed use shall be in harmony with the general purpose and intent of the applicable zoning district regulations.
3. The proposed use shall be such that it will be harmonious with and will not adversely affect the use or development of neighboring properties in accordance with the applicable zoning district regulations and the adopted comprehensive plan. The location, size and height of buildings, structures, walls and fences, and the nature and extent of screening, buffering and landscaping shall be such that the use will not hinder or discourage the appropriate development and use of adjacent or nearby land and/or buildings or impair the value thereof.
4. The proposed use shall be such that pedestrian and vehicular traffic associated with such use will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood.
5. In addition to the standards which may be set forth in this Article for a particular group or use, the BZA shall require landscaping and screening in accordance with the provisions of Article 13.
6. Open space shall be provided in an amount equivalent to that specified for the zoning district in which the proposed use is located.
7. Adequate utility, drainage, parking, loading and other necessary facilities to serve the proposed use shall be provided. Parking and loading requirements shall be in accordance with the provisions of Article 11.
8. Signs shall be regulated by the provisions of Article 12; however, the BZA, under the authority presented in Sect. 007 below, may impose more strict requirements for a given use than those set forth in this Ordinance.

8-903 Standards For All Group 9 Uses

In addition to the general standards set forth in Sect. 006 above, all Group 9 special permit uses shall satisfy the following standards:

1. All uses shall comply with the lot size and bulk regulations of the zoning district in which located, except as may be qualified below.
2. All uses shall comply with the performance standards specified for the zoning district in which located.
3. Before establishment, all uses, including modifications or alterations to existing uses, shall be subject to the provisions of Article 17, Site Plans, or other appropriate submission as determined by the Director.

8-914 Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location

The BZA may approve a special permit to allow a reduction to the minimum yard requirements for any building existing or partially constructed which does not comply with such requirements applicable at the time such building was erected, but only in accordance with the following provisions:

1. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by ten (10) copies of a plat and such plat shall be presented on a sheet having a maximum size of 24" x 36", and one 8 ½" x 11" reduction of the plat. Such plat shall be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat shall be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia and such plat shall contain the following information:
 - A. Boundaries of entire property, with bearings and distances of the perimeter property lines and of each zoning district.
 - B. Total area of the property and of each zoning district in square feet or acres.
 - C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.
 - D. Location of all existing structures, with dimensions, including height of any structure and penthouse, and if known, the construction date(s) of all existing structures.
 - E. All required minimum yards to include front, side and rear, and a graphic depiction of the angle of bulk plane, if applicable, and the distances from all existing structures to lot lines.
 - F. Means of ingress and egress to the property from a public street(s).
 - G. For nonresidential uses, the location of parking spaces, indicating minimum distance from the nearest property line(s).
 - H. If applicable, the location of well and/or septic field.
 - I. For nonresidential uses, a statement setting forth the maximum gross floor area and FAR for all uses.
 - J. Location of all existing utility easements having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.
 - K. Seal and signature of professional person certifying the plat.

In addition, the application shall contain a statement of justification explaining how the error in building location occurred and any supportive material such as aerial photographs, Building Permit applications, County assessments records, a copy of the contract to build the structure which is in error, or a statement from a previous owner indicating how the error in building location occurred.

2. The BZA determines that:
 - A. The error exceeds ten (10) percent of the measurement involved, and
 - B. 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
 - C. Such reduction will not impair the purpose and intent of this Ordinance, and
 - D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
 - E. It will not create an unsafe condition with respect to both other property and public streets, and
 - F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.
 - G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
3. In granting such a reduction under the provisions of this Section, the BZA shall allow only a reduction necessary to provide reasonable relief and may, as deemed advisable, prescribe such conditions, to include landscaping and screening measures, to assure compliance with the intent of this Ordinance.
4. Upon the granting of a reduction for a particular building in accordance with the provisions of this Section, the same shall be deemed to be a lawful building.
5. The BZA shall have no power to waive or modify the standards necessary for approval as specified in this Section.