



County of Fairfax, Virginia

MEMORANDUM

DATE: October 19, 2011

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

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

SUBJECT: SPA 2006-PR-038-03 – 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, and to permit a reduction in land area.

On June 17, 2008, the Board of Zoning Appeals approved special permit amendment SPA 2006-PR-038 on the subject property for the same request. 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. On October 6, 2009, the Board of Zoning Appeals approved SPA 2006-PR-038-02 which amended the development conditions to provide the applicant an additional 18 months to obtain necessary building permits and final inspections for the structure which is in error. Copies of the approved Resolutions are included as Attachment 1 of this memorandum. Due to unforeseen issues, as outlined in detail in the applicant's Statement of Justification, the applicant has been unable to obtain building permits and final inspections prior to the expiration date per the development condition.

Since this special permit amendment application has not changed from the previously approved applications, staff has included the original staff report for your review. New material submitted subsequent to the staff report are attached to this memorandum.

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

Board of Zoning Appeals
October 19, 2011
Page Two

Attachments

1. Approved Resolutions for SPA 2006-PR-038 and SPA 2006-PR-038-02
2. Updated Locator and Dot Maps
3. Special Permit Amendment Plat dated June 28, 2011
4. Updated Applicant's Affidavit
5. Updated Applicant's Statement of Justification
6. Photographs of the Property
7. Proposed Development Conditions



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/dpz/



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.

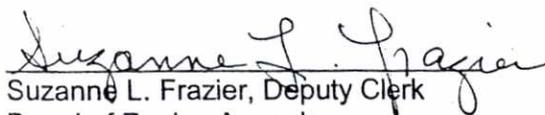
NOW, THEREFORE, BE IT RESOLVED that the subject application is approved, with the following development conditions:

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



County of Fairfax, Virginia

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

October 9, 2009

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

Re: Special Permit Amendment Application SPA 2006-PR-038-02
Merrifield Garden Center Corporation

Dear Mr. McDermott:

At its October 6, 2009 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 Frazier, Deputy Clerk
Board of Zoning Appeals

Enclosure: As stated

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/dpz/

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MERRIFIELD GARDEN CENTER CORPORATION, SPA 2006-PR-038-02 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 modifications of development conditions. Located at 8132 Lee Hwy. on approx. 3.02 ac. of land zoned C-8, CRA and HC. Providence District. Tax Map 49-2 ((1)) 26C. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 6, 2009; and

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

1. The applicant is the owner of the property.
2. The applicant provided testimony, and staff agreed, that the applicant has worked diligently to get its building permit within the year since the time their special permit was approved.
3. Things went awry and the Board understands how those things happen.
4. The applicant continues to work to file a site plan.
5. The applicant has made arrangements to have the site plan prepared.
6. Since the staff is in agreement and, from the report, the applicant has done a lot of work so far, the Board saw no reason not to allow the applicant to have 18 more months to obtain a site plan.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the appropriate sections of the Zoning Ordinance.

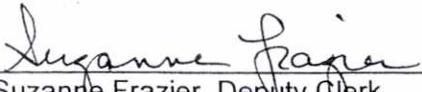
NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

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 eighteen (18) months 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.

Mr. Beard seconded the motion, which carried by a vote of 6-0. Chairman Ribble was absent from the meeting.

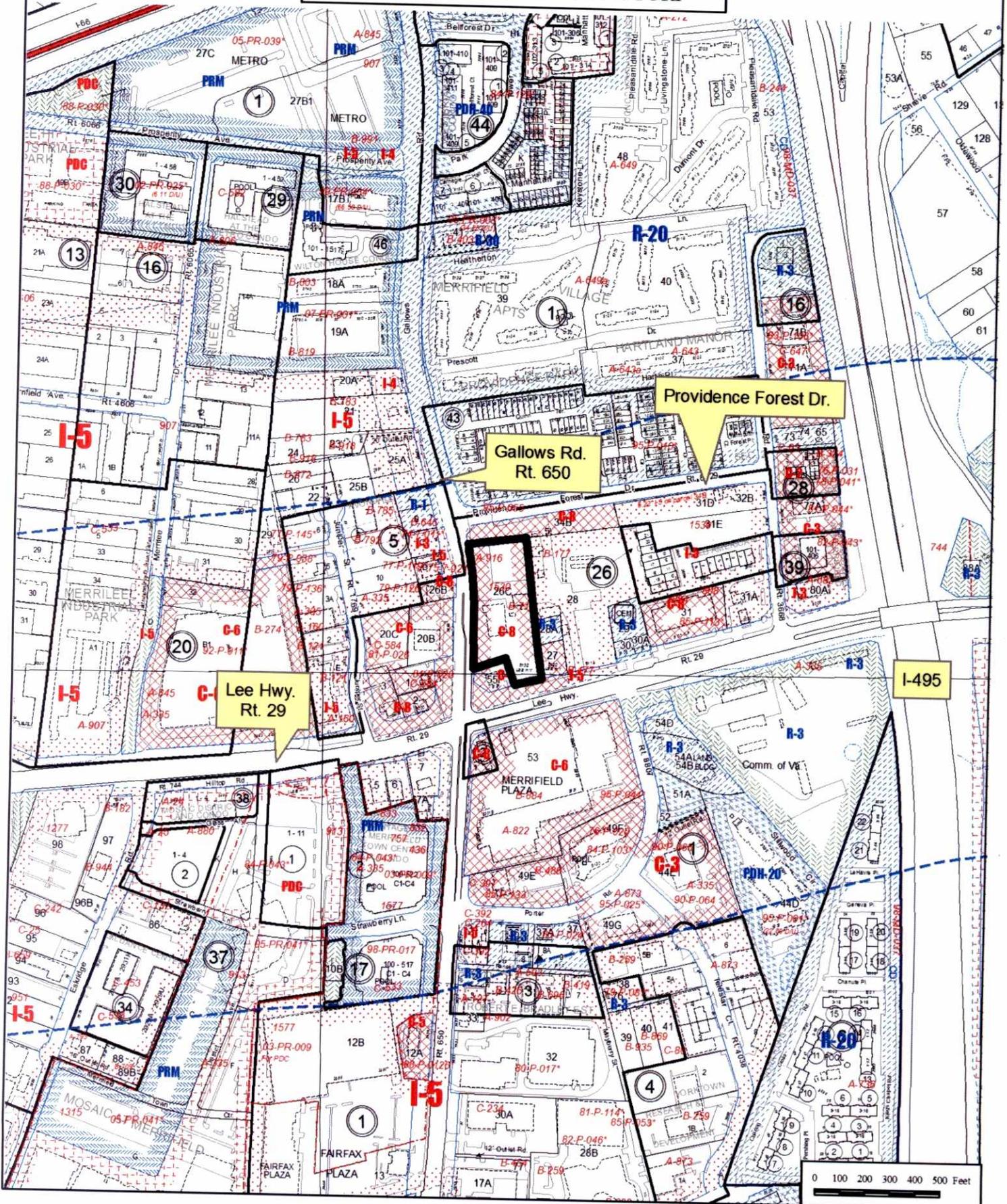
A Copy Teste:



Suzanne Frazier, Deputy Clerk
Board of Zoning Appeals

Special Permit Amendment

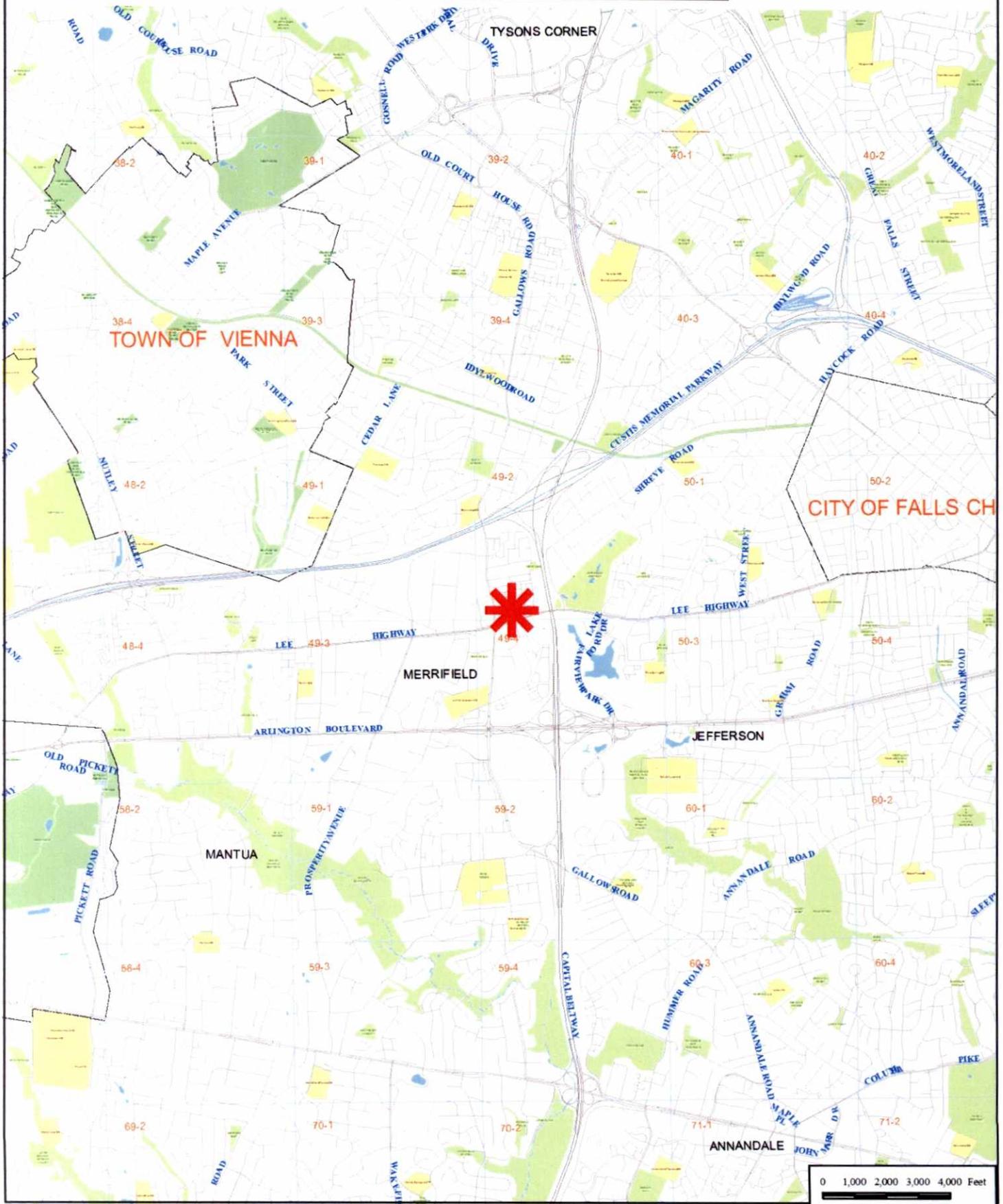
SPA 2006-PR-038-03
MERRIFIELD GARDEN CENTER CORP



Special Permit Amendment

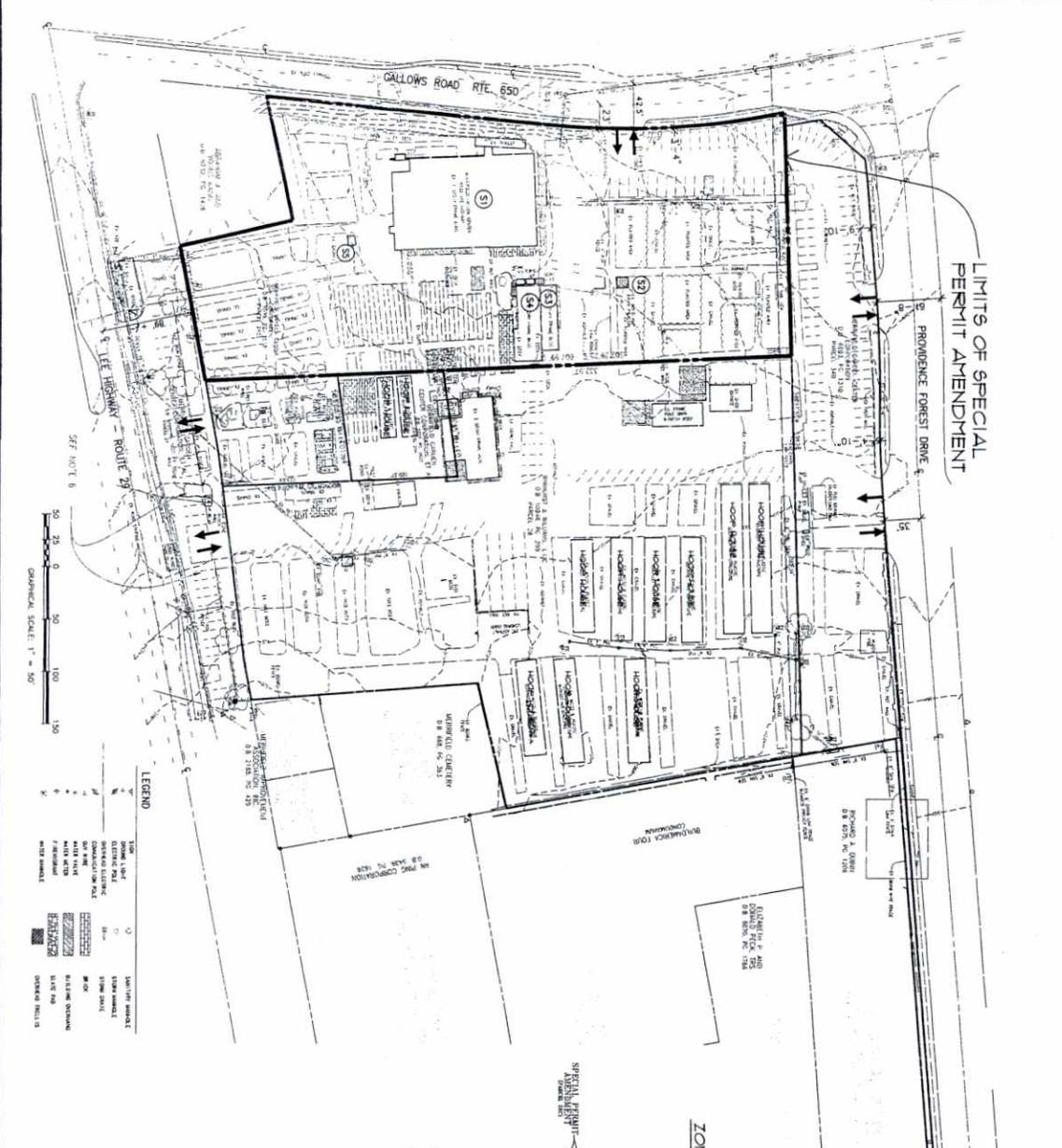
SPA 2006-PR-038-03

MERRIFIELD GARDEN CENTER CORP



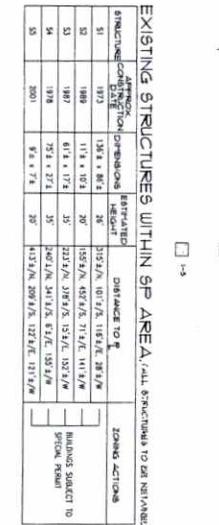
CURVE TABLE:

CHORD	ARC LENGTH	RADIUS	DELTA	CHORD BEARING
0	0	0	0	0
1	1.5708	1.5708	90	0
2	3.1416	3.1416	180	180
3	4.7124	4.7124	270	360
4	6.2832	6.2832	360	0
5	7.8540	7.8540	450	90
6	9.4248	9.4248	540	180
7	10.9956	10.9956	630	270
8	12.5664	12.5664	720	360
9	14.1372	14.1372	810	450
10	15.7080	15.7080	900	540
11	17.2788	17.2788	990	630
12	18.8496	18.8496	1080	720
13	20.4204	20.4204	1170	810
14	21.9912	21.9912	1260	900
15	23.5620	23.5620	1350	990
16	25.1328	25.1328	1440	1080
17	26.7036	26.7036	1530	1170
18	28.2744	28.2744	1620	1260
19	29.8452	29.8452	1710	1350
20	31.4160	31.4160	1800	1440
21	32.9868	32.9868	1890	1530
22	34.5576	34.5576	1980	1620
23	36.1284	36.1284	2070	1710
24	37.6992	37.6992	2160	1800
25	39.2700	39.2700	2250	1890
26	40.8408	40.8408	2340	1980
27	42.4116	42.4116	2430	2070
28	43.9824	43.9824	2520	2160
29	45.5532	45.5532	2610	2250
30	47.1240	47.1240	2700	2340
31	48.6948	48.6948	2790	2430
32	50.2656	50.2656	2880	2520
33	51.8364	51.8364	2970	2610
34	53.4072	53.4072	3060	2700
35	54.9780	54.9780	3150	2790
36	56.5488	56.5488	3240	2880
37	58.1196	58.1196	3330	2970
38	59.6904	59.6904	3420	3060
39	61.2612	61.2612	3510	3150
40	62.8320	62.8320	3600	3240
41	64.4028	64.4028	3690	3330
42	65.9736	65.9736	3780	3420
43	67.5444	67.5444	3870	3510
44	69.1152	69.1152	3960	3600
45	70.6860	70.6860	4050	3690
46	72.2568	72.2568	4140	3780
47	73.8276	73.8276	4230	3870
48	75.3984	75.3984	4320	3960
49	76.9692	76.9692	4410	4050
50	78.5400	78.5400	4500	4140



EXISTING STRUCTURES WITHIN SP AREA (ALL STRUCTURES TO BE RETAINED)

STRUCTURE NO.	APPROX. CONSTRUCTION DATE	HEIGHT	DISTANCE TO 'R'	ZONING ACTIONS
S1	1973	13'6" x 8'6"	30'	205' S/W, 107' W/E, 118' E/E, 28' S/W
S2	1989	11'6" x 10'6"	20'	105' S/W, 65' W/E, 71' E/E, 11' S/W
S3	1987	6'1" x 17'6"	35'	223' S/W, 218' W/E, 15' E/E, 152' S/W
S4	1978	7'5" x 27'1"	35'	267' S/W, 241' W/E, 8' E/E, 152' S/W
S5	2001	9' x 7'8"	20'	113' S/W, 209' W/E, 122' E/E, 11' S/W



MERRIFIELD GARDEN CENTER
 PROVIDENCE DISTRICT, FAIRFAX COUNTY, VIRGINIA

William H. Gordon Associates, Inc.
 ENGINEERS SURVYORS LAND PLANNERS LANDSCAPE ARCHITECTS
 4501 Doby Drive, Chantilly, Virginia 20151
 (703) 263-1900 (703) 263-8200 (703) 263-7400 (703) 263-8766

DATE: JAN 28, 2011
 SCALE: 1" = 50'
 SHEET: 3 OF 5

Application No.(s): SPA 2006-PR-038-3
 (county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: October 13, 2011
 (enter date affidavit is notarized)

I, R. Kevin 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

112602a

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: Robert P. Warhurst R. Kevin Warhurst C. David Watkins Hampton C. Williams, III(fmr)	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
Elaine O'Flaherty Cox Susan K. Yantis	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.

* 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-038-3
(county-assigned application number(s), to be entered by County Staff)

Page 1 of 1

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

DATE: October 13, 2011
(enter date affidavit is notarized)

112602a

(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: Joseph W. McClellan Jeffrey S. ("Scott") Peterson	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-038-3
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: October 13, 2011
(enter date affidavit is notarized)

112602a

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	
The Hampton C. Williams, III Trust	(Doris I. Williams, Trustee and Sole Beneficiary)

(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): SPA 2006-PR-038-3
(county-assigned application number(s), to be entered by County Staff)

Page 1 of 1

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

DATE: October 13, 2011
(enter date affidavit is notarized)

112602a

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

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.

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: October 13, 2011
(enter date affidavit is notarized)

112602a

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) [X] 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 | Lon A. Berk | Joseph B. Buonanno |
| Robert A. Acosta-Lewis | Douglas M. Berman | Nadia S. Burgard |
| Lawrence C. Adams | Mark B. Bierbower | Eric R. Burner |
| Michael F. Albers | Stephen R. Blacklocks | M. Brett Burns |
| Virginia S. Albrecht | Jeffry M. Blair | Brian M. Buroker |
| Kenneth J. Alcott | Michael J. Blayney | P. Scott Burton |
| Fernando C. Alonso | Matthew P. Boshier | Ellis M. Butler |
| Chris M. Amantea | James W. Bowen | Ferdinand A. Calice |
| Thomas E. Anderson (former) | Lawrence J. Bracken, II | Matthew J. Calvert |
| Walter J. Andrews | James P. Bradley | Daniel M. Campbell |
| Charles E. G. Ashton | Sheldon T. Bradshaw | Thomas H. Cantrill |
| L. Scott Austin | David F. Brandley, Jr. | Curtis G. Carlson |
| Ian Phillip Band | Craig A. Bromby | Jean Gordon Carter |
| Sean M. Beard | Benjamin P. Browder | Charles D. Case |
| John J. Beardsworth, Jr. | A. Todd Brown | Thomas J. Cawley |
| Steven H. Becker | Tyler P. Brown | James N. Christman |
| Stephen John Bennett | F. William Brownell | Whittington W. Clement |
| Melinda R. Beres | Kevin J. Buckley | Herve' Cogels (nmi) |
| Lucas Bergkamp (nmi) | Kristy A. Niehaus Bulleit | Cassandra C. Collins |

(check if applicable) [X] 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.

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

DATE: October 13, 2011
(enter date affidavit is notarized)

112602a

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)

- | | | |
|-------------------------|---------------------------|-------------------------|
| Stacy M. Colvin | Melanie Fitzgerald (nmi) | Thomas Y. Hiner |
| Terence G. Connor | Robert N. Flowers | D. Bruce Hoffman |
| S. Gregory Cope | William M. Flynn | Robert E. Hogfoss |
| Cameron N. Cosby | Laura M. Franze | John R. Holzgraefe |
| Ted C. Craig (former) | Lauren E. Freeman | Cecelia Philipps Horner |
| Cyane B. Crump | Edward J. Fuhr | George C. Howell, III |
| Ashley Cummings (nmi) | Charles A. Gall | Kevin F. Hull |
| Alexandra B. Cunningham | Daniel C. Garner | Donald P. Irwin |
| William D. Dannelly | Douglas M. Garrou | Judith H. Itkin |
| Samuel A. Danon | Richard D. Gary | Makram B. Jaber |
| Barry R. Davidson | John T. Gerhart, Jr. | Lori Elliott Jarvis |
| John A. Decker | Jeffrey W. Giese | Matthew D. Jenkins |
| John J. Delionado | Neil K. Gilman | Andrew E. Jillson |
| Stephen P. Demm | C. Christopher Giragosian | Harry M. Johnson, III |
| Dee Ann Dorsey | L. Raúl Grable | James A. Jones, III |
| Edward L. Douma | Douglas S. Granger | Kevin W. Jones |
| Mark S. Dray | J. William Gray, Jr. | Laura E. Jones |
| Sean P. Ducharme | Charles E. Greef | Dan J. Jordanger |
| Deidre G. Duncan | Christopher C. Green | Roland Juarez (nmi) |
| Roger Dyer (nmi) | Robert J. Grey, Jr. | Thomas R. Julin |
| Frederick R. Eames | Greta T. Griffith | W. Alan Kailer |
| Maya M. Eckstein | Bradley W. Grout | Andrew Kamensky (nmi) |
| Joseph C. Edwards | Jeffrey W. Gutches | E. Peter Kane |
| W. Jeffery Edwards | Miles B. Haberer | Thomas F. Kaufman |
| John C. Eichman | Robert J. Hahn | Joseph C. Kearfott |
| Edward W. Elmore, Jr. | Jarrett L. Hale | Michael G. Keeley |
| Frank E. Emory, Jr. | Eric J. Hanson | G. Roth Kehoe, II |
| Juan C. Enjamio | Ronald M. Hanson | Douglas W. Kenyon |
| John D. Epps | Jason W. Harbour | Michael C. Kerrigan |
| Patricia K. Epps | Ray V. Hartwell, III | Ryan T. Ketchum |
| Phillip J. Eskenazi | Jeffrey L. Harvey | Robert A. King |
| Joseph P. Esposito | John D. Hawkins | Robert Klotz (nmi) |
| Kelly L. Faglioni | Timothy G. Hayes | Edward B. Koehler |
| Susan S. Failla | Rudene Mercer Haynes | John T. Konther |
| Eric H. Feiler | Mark S. Hedberg | Torsten M. Kracht |
| Edward F. Fernandes | Colleen Heisey (nmi) | Christopher G. Kulp |
| Norman W. Fichthorn | Michael S. Held | Christopher Kuner (nmi) |
| Andrea Bear Field | Gregory G. Hesse | David Craig Landin |
| Kevin J. Finto | David A. Higbee | Gregory F. Lang |

(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-038-3

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

Page 2 of 3

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

DATE: October 13, 2011

(enter date affidavit is notarized)

112602a

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)

David C. Lashway
Andrew W. Lawrence
Daniel M. LeBey
Bradley T. Lennie
L. Steven Leshin
Catherine D. Little
David C. Lonergan
David S. Lowman, Jr.
Michael J. Madden, Jr.
Tyler Maddy (nmi)
Kimberly M. Magee
Manuel E. Maisog
Douglas M. Mancino
Alan J. Marcuis
Brian R. Marek
Stephen S. Maris
Thelma Marshall (nmi)
Jeffrey N. Martin
John S. Martin
J. Michael Martinez de Andino
Walfrido J. Martinez
Joseph Clarke Mathews
Laurie Ustal Mathews
John Gary Maynard, III
Fraser A. McAlpine
William H. McBride
Michael C. McCann
T. Allen McConnell
Robert G. McCormick
Francis A. McDermott
Alexander G. McGeoch
Paul E. McGeown (former)
John C. McGranahan, Jr.
David T. McIndoe
Gustavo J. Membiela
Mark W. Menezes
Gary C. Messplay
Patrick E. Mitchell
Jack A. Molenkamp

T. Justin Moore, III
Thurston R. Moore
Bruce W. Moorhead, Jr.
Robert J. Morrow
Ann Marie Mortimer
Michael J. Mueller
Eric J. Murdock
Frank J. Murphy, Jr.
Ted J. Murphy
Thomas P. Murphy
David A. Mustone
James P. Naughton
Michael Nedzbala (nmi)
Henry V. Nickel
Lonnie D. Nunley, III
Michael A. Oakes
Leslie A. Okinaka
John D. O'Neill, Jr.
Pam Gates O'Quinn
Michael A. O'Shea
Brian V. Otero
Raj Pande (nmi)
Randall S. Parks
Peter S. Partee, Sr.
J. Steven Patterson
William S. Patterson
Michael P. F. Phelps
Robert Dean Pope
Curtis D. Porterfield
Laurence H. Posorske
Kurtis A. Powell
Lewis F. Powell, III
J. Waverly Pulley, III
Robert T. Quackenboss
Dionne C. Rainey
Katherine E. Ramsey
John Jay Range
Stuart A. Raphael
John M. Ratino

Robert S. Rausch
Belynda B. Reck
Baker R. Rector
Shawn Patrick Regan
Sona Rewari (nmi)
Thomas A. Rice
Jennings G. ("J. G.") Ritter, II
Kathy E. B. Robb
Daryl B. Robertson
Gregory B. Robertson
Patrick L. Robson
Robert M. Rolfe
Ronald D. Rosener
Michael Rosenthal (nmi) (former)
Brent A. Rosser
William L. S. Rowe
Marguerite R. Ruby
D. Alan Rudlin
Mary Nash K. Rusher
D. Kyle Sampson
Karen M. Sanzaro
Stephen M. Sayers
Arthur E. Schmalz
Gregory J. Schmitt
John R. Schneider
Howard E. Schreiber
Jeffrey P. Schroeder
Robert M. Schulman
Jeremy R. Schwer (former)
P. Watson Seaman
James S. SeEVERS, Jr.
Douglass P. Selby
Joel R. Sharp
Michael R. Shebelskie
Rita A. Sheffey
Ryan A. Shores
Aaron P. Simpson
Jonathan G. Simpson
Jo Anne E. Sirgado

(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.

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

DATE: October 13, 2011
(enter date affidavit is notarized)

112602a

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)

Laurence E. Skinner	Peter G. Weinstock
Thomas G. Slater, Jr.	David B. Weisblat
Brooks M. Smith	Malcolm C. Weiss
Caryl Greenberg Smith	Mark G. Weisshaar
John R. ("J. R.") Smith	Hill B. Wellford, Jr.
Yisun Song (nmi)	Kevin J. White
Lisa J. Sotto	Jonathan M. Wilan
Joseph C. Stanko, Jr.	Amy McDaniel Williams
Marty Steinberg (nmi)	Holly H. Williamson
Todd M. Stenerson	Michael G. Wilson
John J. Stenger	Evan D. Wolff
Gregory N. Stillman	Allison D. Wood
Fradyn Suarez (nmi)	John W. Woods, Jr.
C. Randolph Sullivan	David C. Wright
R. Michael Sweeney, Jr.	Richard L. Wyatt, Jr.
Henry Talavera (nmi)	Scott F. Yarnell
Andrew J. Tapscott	William F. Young
Robert M. Tata	Lee B. Zeugin
Rodger L. Tate	Manida Zimmerman (nmi)
W. Lake Taylor, Jr.	
Wendell L. Taylor	
Robin Lyn Teskin	
John Charles Thomas	
Gary E. Thompson	
B. Cary Tolley, III	
Timothy J. Toohey (former)	
Bridget C. Treacy	
Thomas B. Trimble	
Julie I. Ungerman	
Surasak Vajasit (nmi)	
Mark C. Van Deusen	
C. Porter Vaughan, III	
Emily Burkhardt Vicente	
Mark R. Vowell	
Linda L. Walsh	
William A. Walsh, Jr.	
Lynnette R. Warman	
Abigail C. Watts-FitzGerald	
William L. Wehrum	

(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-038-3
(county-assigned application number(s), to be entered by County Staff)

Page Four

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: October 13, 2011
(enter date affidavit is notarized)

112602a

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: October 13, 2011
(enter date affidavit is notarized)

112602a

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:

R. Kevin Warhurst

(check one)

Applicant

Applicant's Authorized Agent

R. Kevin Warhurst, Agent for Applicant

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

Subscribed and sworn to before me this 13 day of October 2011, in the State/Comm. of Virginia, County/City of Fairfax.

Eugenia Kay Myers
Notary Public

My commission expires: 1-31-2012



June 28, 2011
Revised July 28, 2011

**APPLICANT'S STATEMENT
MERRIFIELD GARDEN CENTER
SPA 2006-PR-038-3**

RECEIVED
Department of Planning & Zoning
JUL 28 2011
Zoning Evaluation Division

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 retail sales establishment, plant nursery and associated uses ("Merrifield Garden Center") located in 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 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. The Applicant sought and obtained approval of SPA 2006-PR-038 on June 17, 2008 for this purpose, and continued its diligent pursuit of the building permit and final inspections. When the Applicant encountered another unexpected hurdle with DPWES's requirement for a unified site plan for the entire 8.93 acres, the Applicant sought and obtained approval of SPA 2006-PR-038-2 on October 9, 2009.

The physical improvements to the building requisite to obtaining the Non-RUP, including structural repairs, ADA accessible facilities and a fire suppression system, were completed in 2009. 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 was finally 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 then faced the requirement of obtaining approval for a unified site plan for the entire property or a minor site plan for the SPA Property. Mutual discussion with the Deputy Zoning Administrator led to the determination that such building permit should await approval of a

unified site plan, which could not be approved until after a pending Special Exception and a concurrent Rezoning of a 10,000 square foot portion of the Merrifield Garden Center were approved. The rezoning and special exception were approved on August 3, 2009. The Virginia legislature adopted Virginia Code § 15.2-2288.4 which extended the expiration date for approved and valid special use permits to July 1, 2011. The applicant has now obtained site plan approval and is pursuing building permits and final inspections, but will be unable to complete this process prior to July 1, 2011. 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 28, 2011, 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 124,891 square feet, or 2.8671 acres, of land (formerly 3.02 acres or 131,474 square feet, prior to VDOT right-of-way expansion). 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-038-2, 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.

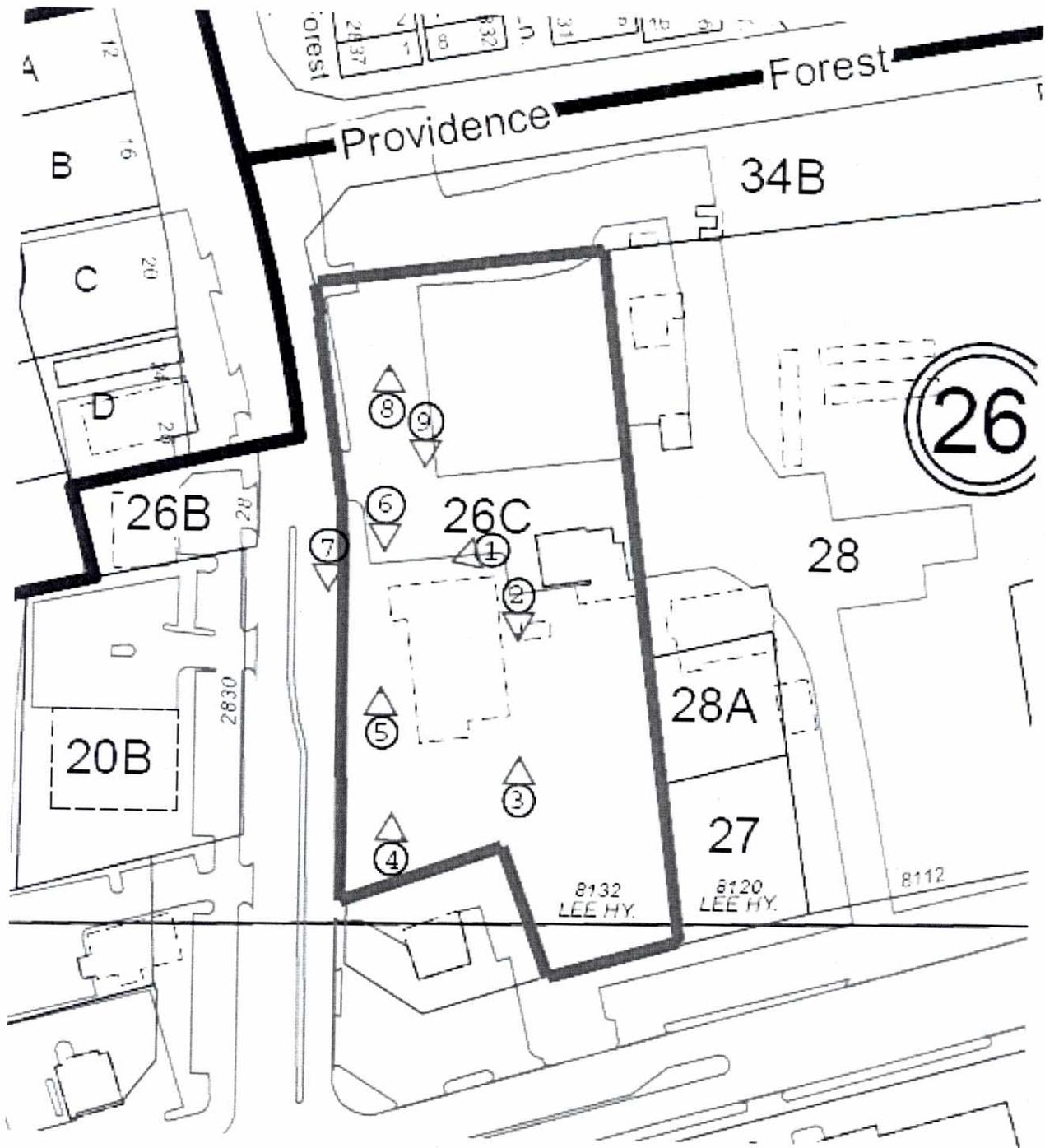
In addition to the above information, the following is filed specifically pursuant to the requirements of Paragraph 6 of Section 8-011 of the Zoning Ordinance for the Special Permit Amendment application:

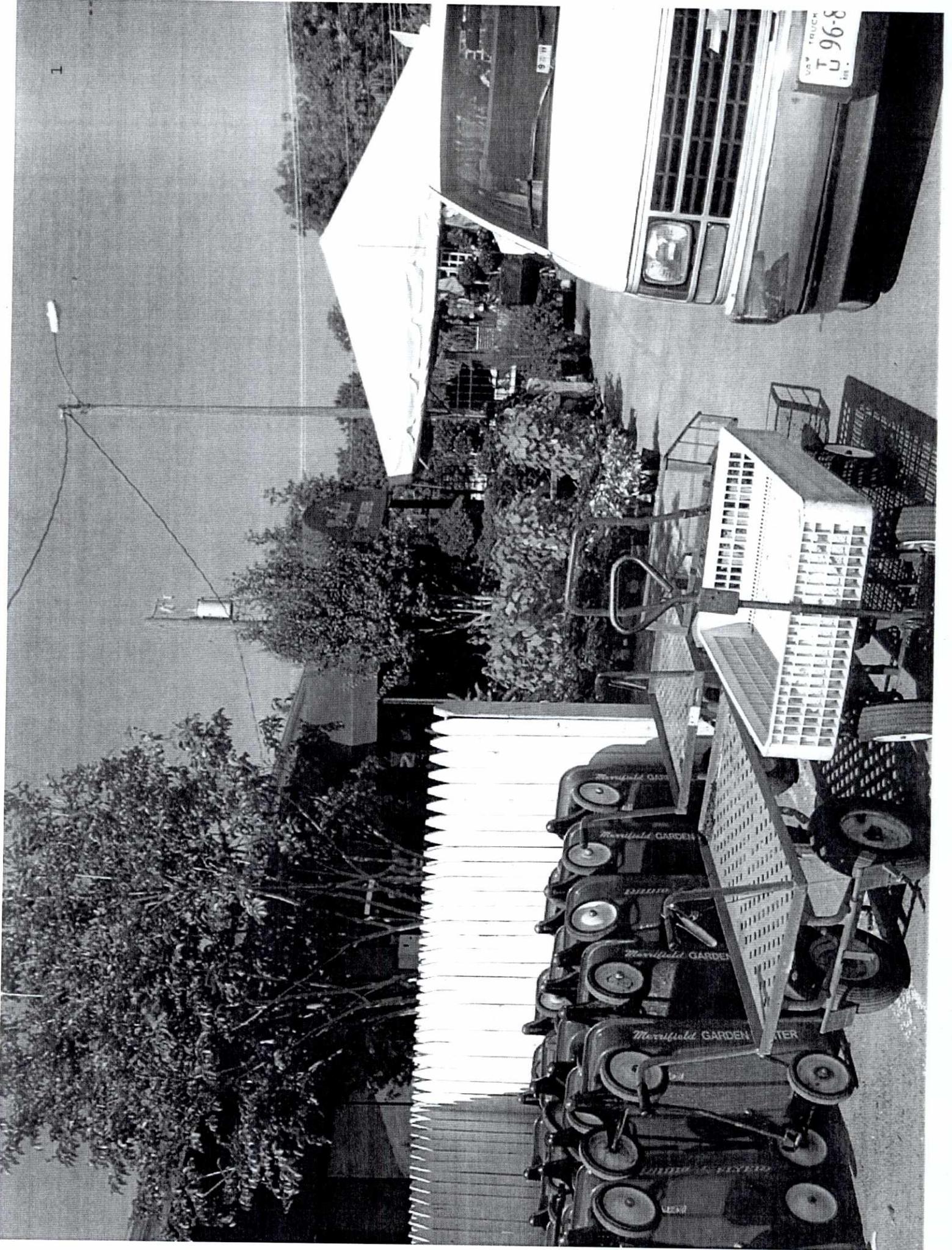
- A. **Type Of Operation**: Plant nursery.
- B. **Hours Of Operation**: Monday through Saturday 7:00 am to 9:00 pm and Sunday 9:00 am to 7:00 pm.
- C. **Estimated Number Of Patrons**: Average of 250 per day. Due to the unique seasonal nature of the business, the peak number of patrons occurs on weekends 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

MERRIFIELD GARDEN CENTER CORPORATION
SPA 2006-PR-038-3
Photo Location Key







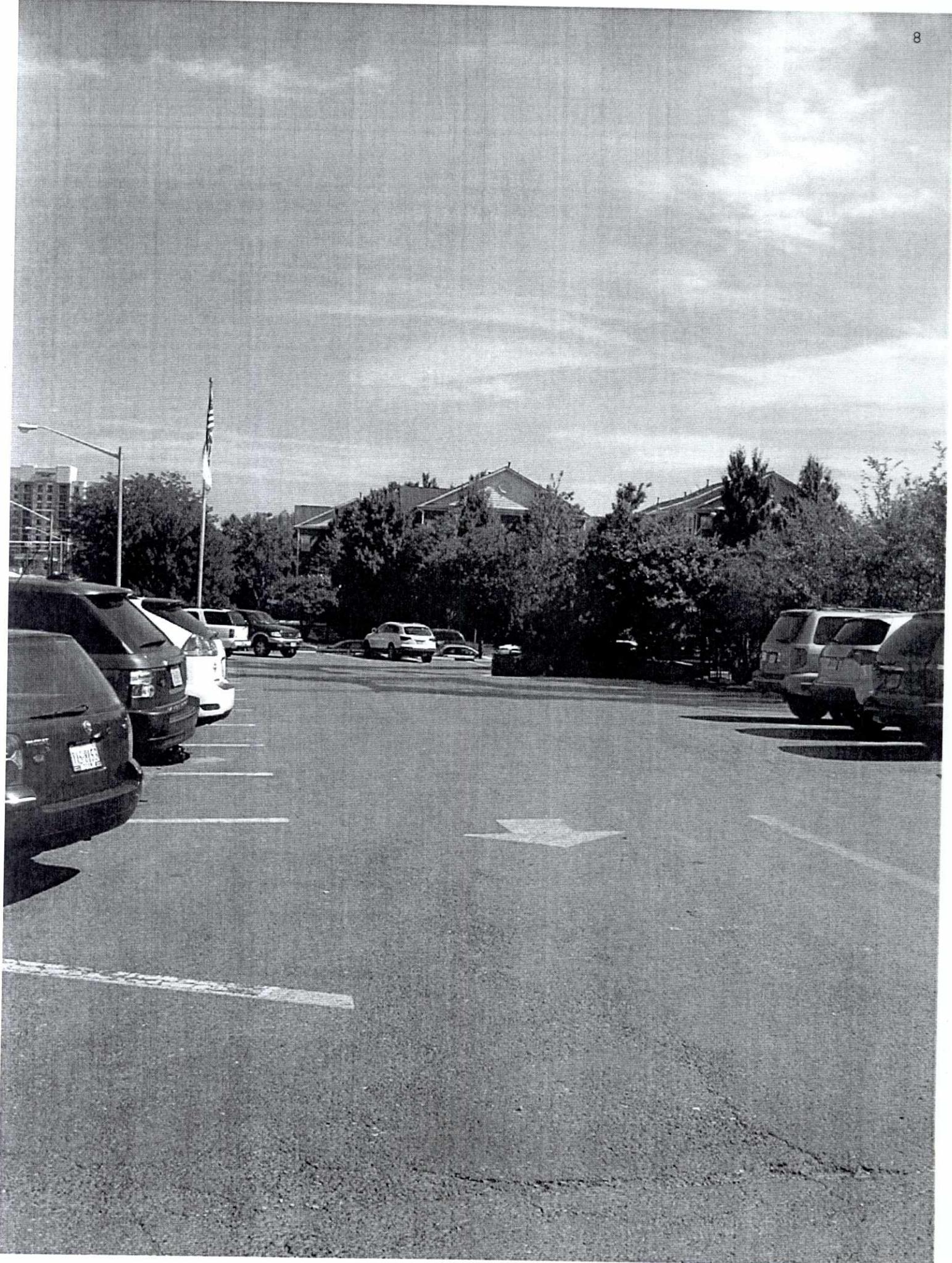














PROPOSED DEVELOPMENT CONDITIONS

SPA 2006-PR-038-03

October 19, 2011

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 28, 2011, 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 eighteen (18) months 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.



APPLICATION ACCEPTED: March 20, 2008
BOARD OF ZONING APPEALS: June 17, 2008
TIME: 9:00 a.m.

County of Fairfax, Virginia

June 10, 2008

STAFF REPORT

SPECIAL PERMIT AMENDMENT APPLICATION NO. SPA 2006-PR-038

PROVIDENCE DISTRICT

APPLICANT/OWNER: Merrifield Garden Center Corporation
STREET ADDRESS: 8132 Lee Highway
TAX MAP REFERENCE: 49-2 ((1)) 26C
LOT SIZE: 3.02 acres
ZONING DISTRICT: C-8 and HC
ZONING ORDINANCE PROVISIONS: 8-914
SPECIAL PERMIT PROPOSAL: To amend SP 2006-PR-038 previously approved for error in building location to permit modification of development conditions.

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 application does not interfere with, abrogate or annul any easements, covenants, or other agreements between parties, as they may apply to the property subject to the application.

For additional information, call Zoning Evaluation Division, Department of Planning and Zoning at 703-324-1280, 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).

O:\dhedr\Special Permits\6-17 SPA 2006-PR-038 Merrifield Garden Center Corporation\SPA 2006-PR-038 Merrifield Garden Center staff report.doc
Deborah Hedrick

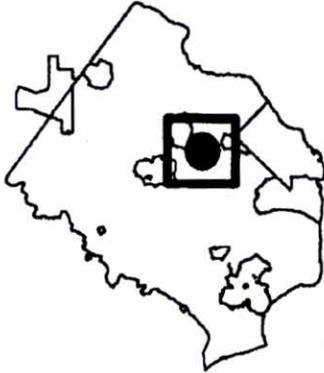
Excellence * Innovation * Stewardship
Integrity * Teamwork * Public Service

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/



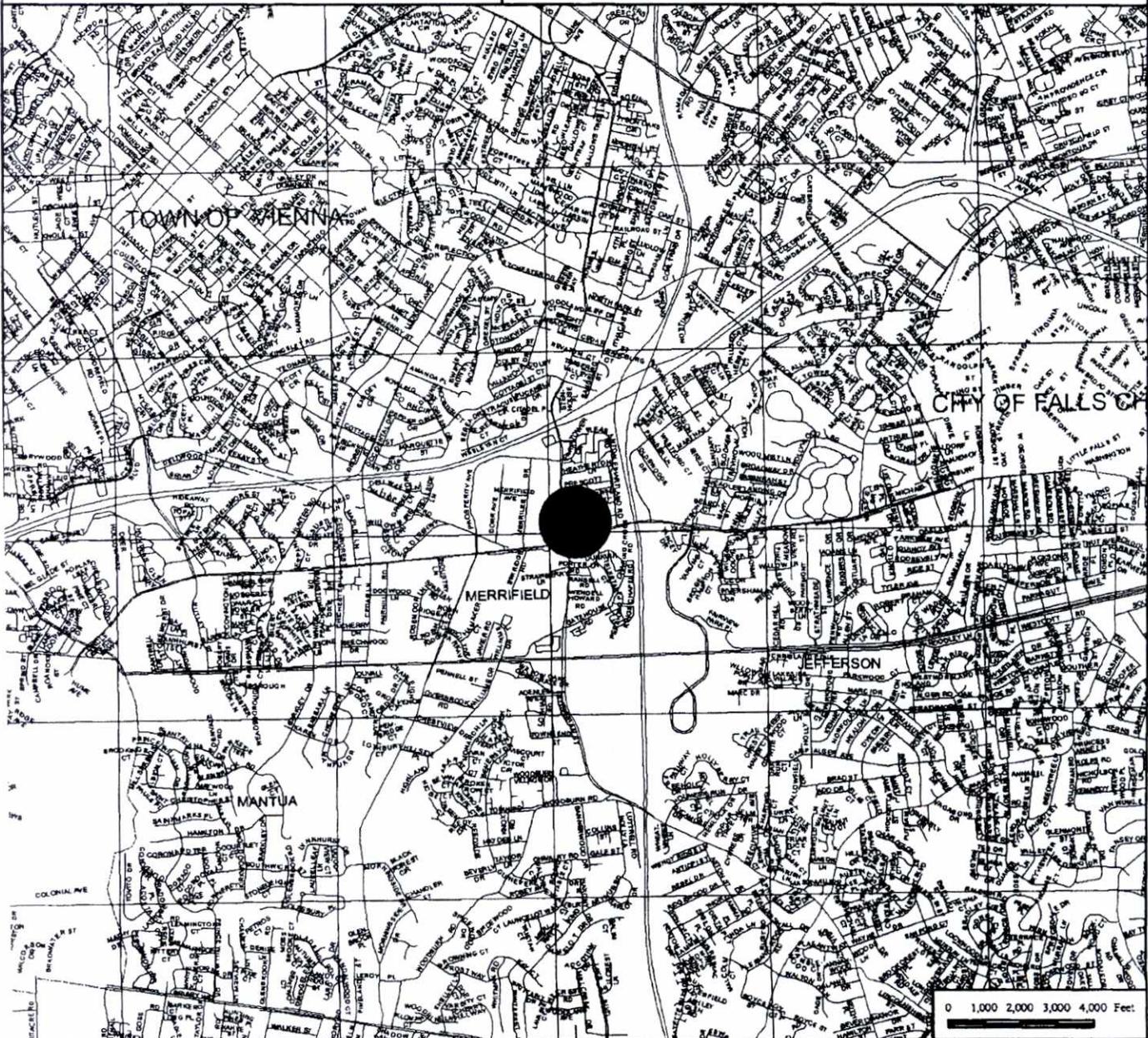
Special Permit Amendment

SPA 2006-PR-038



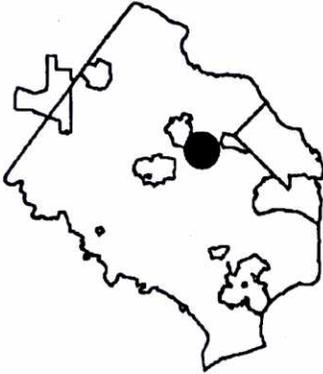
Applicant: MERRIFIELD GARDEN CENTER CORPORATION
Accepted: 03/20/2008
Proposed: AMEND SP 2006-PR-038 PREVIOUSLY APPROVED FOR ERROR IN BUILDING LOCATION TO PERMIT MODIFICATION OF DEVELOPMENT CONDITIONS

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
Map Ref Num: 049-2- /01/ /0026C



Special Permit Amendment

SPA 2006-PR-038



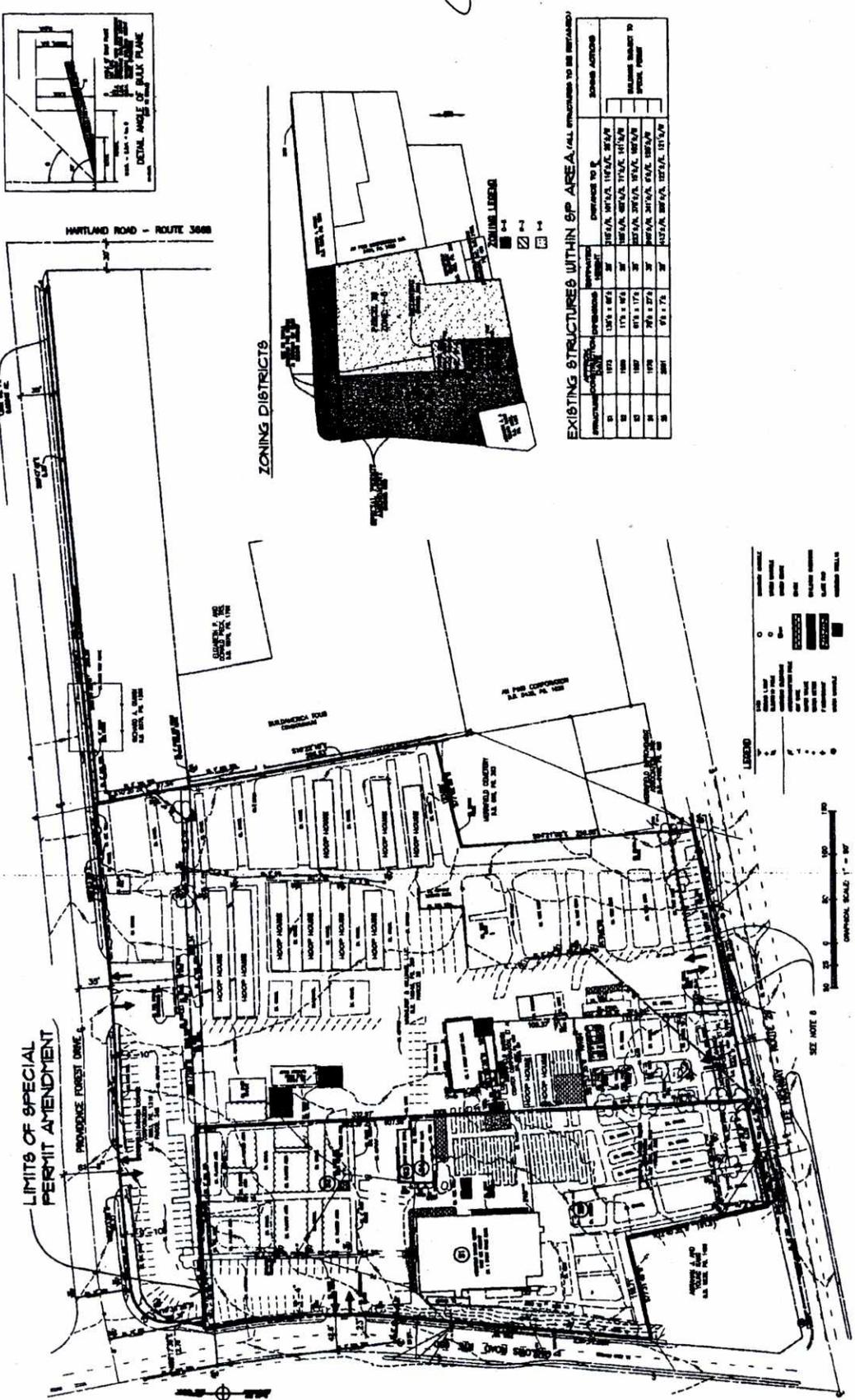
Applicant: MERRIFIELD GARDEN CENTER CORPORATION
 Accepted: 03/20/2008
 Proposed: AMEND SP 2006-PR-038 PREVIOUSLY APPROVED FOR ERROR IN BUILDING LOCATION TO PERMIT MODIFICATION OF DEVELOPMENT CONDITIONS

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 Art 8 Group and Use: 9-13
 Located: 8132 LEE HIGHWAY
 Zoning: C- 8
 Overlay Dist: HC
 Map Ref Num: 049-2- /01/ /0026C



CURVE TABLE:

CHORD	ARC LENGTH	CHORD BEARING	CHORD BEARING	CHORD BEARING	CHORD BEARING
0	0	0	0	0	0
10	10	0	0	0	0
20	20	0	0	0	0
30	30	0	0	0	0
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50	50	0	0	0	0
60	60	0	0	0	0
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290	290	0	0	0	0
300	300	0	0	0	0



AERIAL PHOTOGRAPH OF
MERRIFIELD GARDEN CENTER
1970

1970 DRAINAGE ANALYSIS FOR NORTH/EAST PARCEL
THE DRAINAGE ANALYSIS FOR THE NORTH/EAST PARCEL
INDICATES THAT THE PARCEL IS DRAINAGE
TO THE SOUTH AND EAST. THE DRAINAGE
DIRECTION IS INDICATED BY THE ARROWS
ON THE MAP. THE DRAINAGE ANALYSIS
INDICATES THAT THE PARCEL IS DRAINAGE
TO THE SOUTH AND EAST. THE DRAINAGE
DIRECTION IS INDICATED BY THE ARROWS
ON THE MAP.

2004 DRAINAGE ANALYSIS FOR NORTH/EAST PARCEL
THE DRAINAGE ANALYSIS FOR THE NORTH/EAST PARCEL
INDICATES THAT THE PARCEL IS DRAINAGE
TO THE SOUTH AND EAST. THE DRAINAGE
DIRECTION IS INDICATED BY THE ARROWS
ON THE MAP. THE DRAINAGE ANALYSIS
INDICATES THAT THE PARCEL IS DRAINAGE
TO THE SOUTH AND EAST. THE DRAINAGE
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ON THE MAP.

STORMWATER MANAGEMENT NARRATIVE
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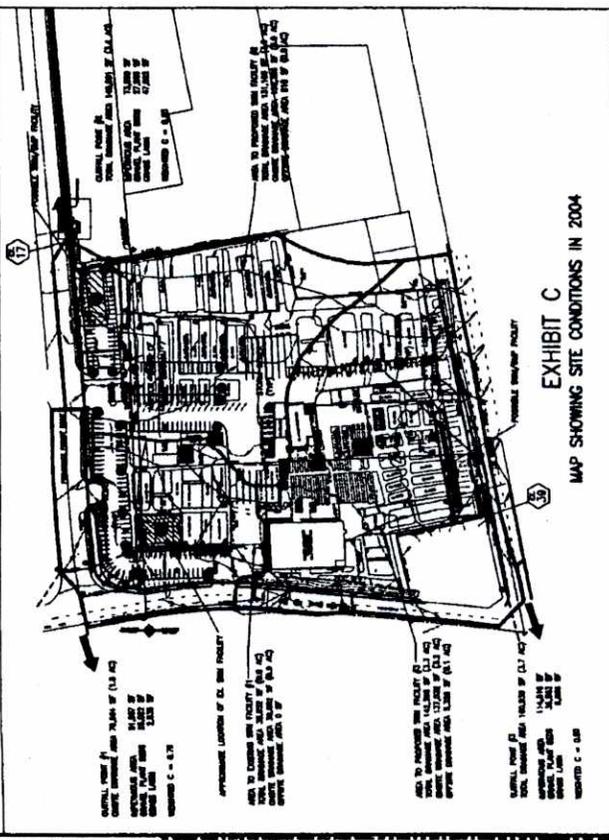
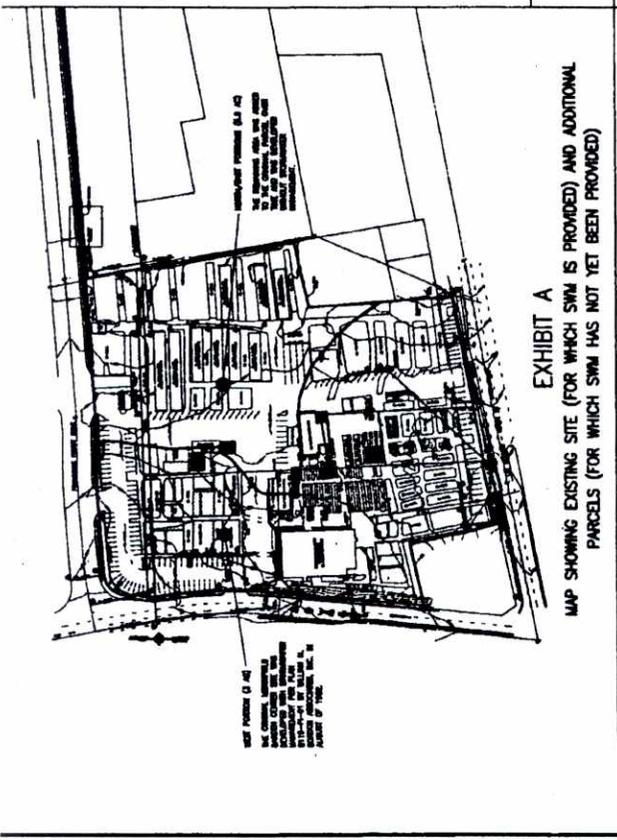
EXHIBIT B
MAP AND PHOTOGRAPH SHOWING SITE CONDITIONS IN 1970
(FOR ANALYSIS OF NORTH/EAST PARCEL)

STORMWATER MANAGEMENT NARRATIVE
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NARRATIVE DISCUSSES THE BEST
MANAGEMENT PRACTICES THAT WILL
BE USED TO MANAGE THE
STORMWATER FROM THE PARCEL.





View of Subject Building Looking Southeast

2/20/08

RE
Department of Planning & Zoning

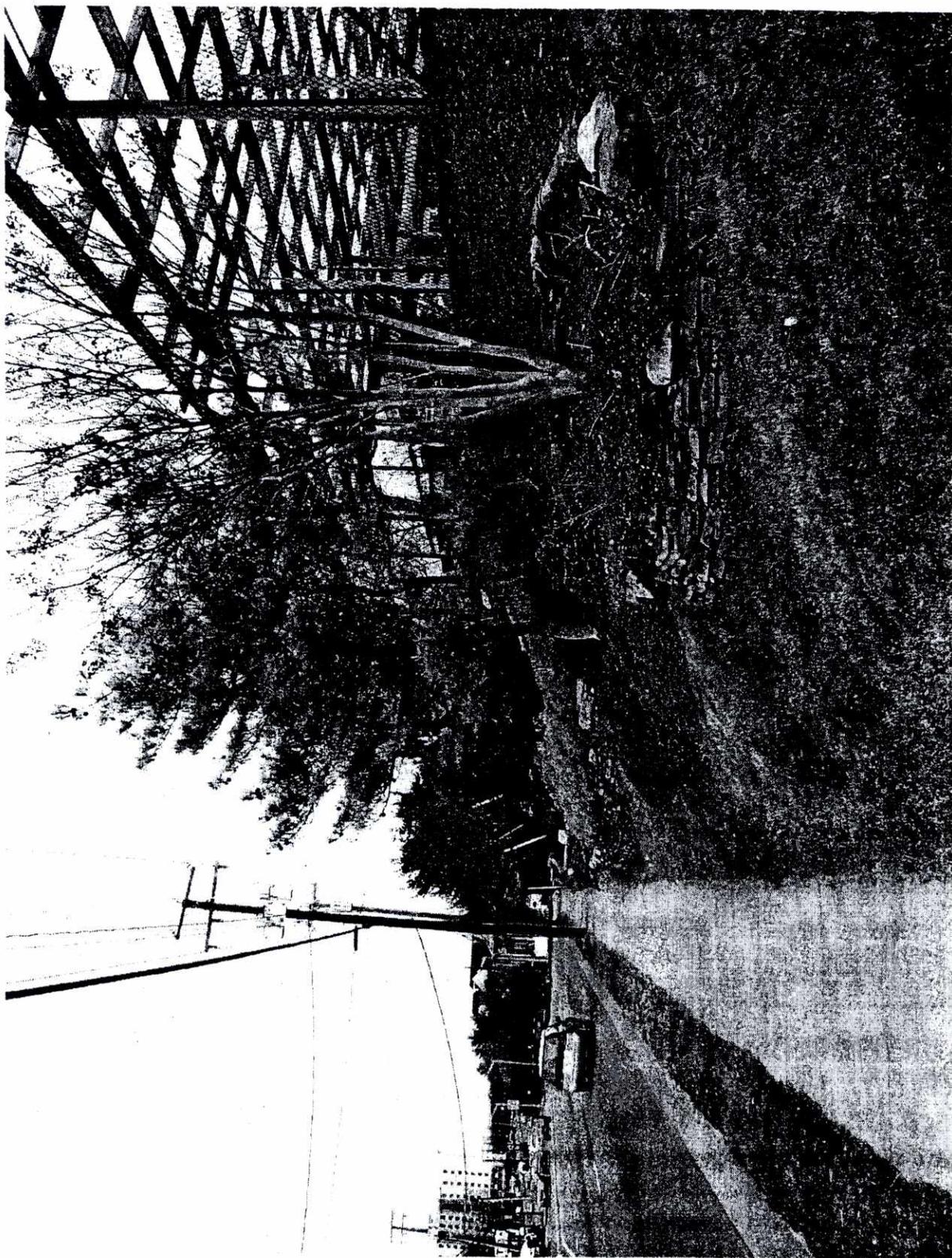
FEB 26 2008

Zoning Evaluation (1/15/08)



View of Subject Building Looking South

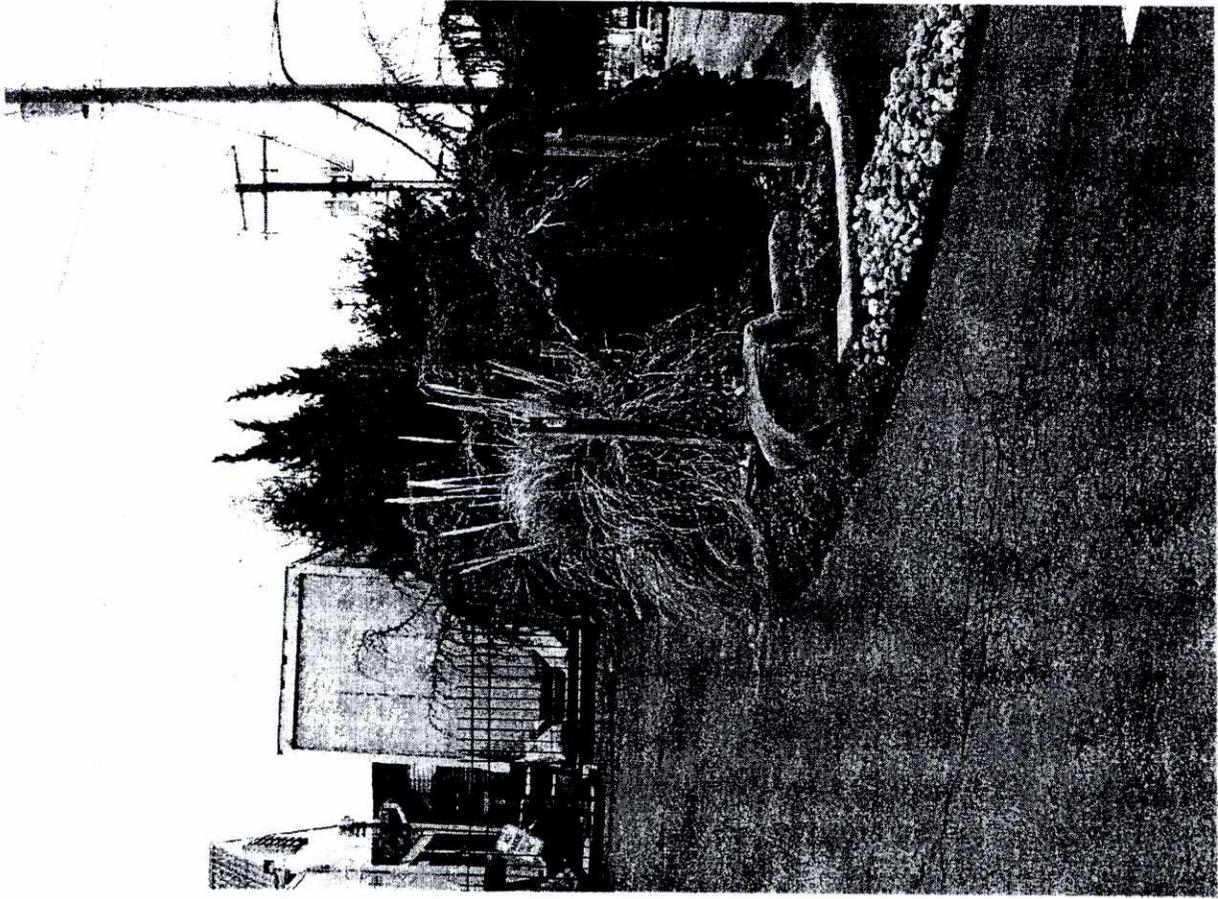
2/20/08



View of Western Property Boundary Looking North

2/20/08

RECEIVED
Department of Planning & Zoning
FEB 26 2008
Zoning Evaluation Unit



View of Subject Building Looking South

2/20/08

DESCRIPTION OF THE APPLICATION

To amend SP 2006-PR-038 to permit the modification of Development Condition 3 to allow more time to obtain building permit approval for a retail sales structure that was built in error on the Merrifield Garden Center property. A copy of the Resolution and plat approved in conjunction with SP 2006-PR-038 is attached as Appendix 4.

Surrounding Are Description:

	Zoning	Use
North	C-8	Surface Parking
East	C-8, R-3, I-5	Plant Nursery
South	C-8, C-6	Service Station, Merrifield Plaza
West	C-6	Eating Establishments, Quick-service Food Store

BACKGROUND

Records indicate that a building was constructed in 1976, and was in conformance with the ordinance that was in effect at that time. Sometime after the building's construction, Gallows Road was widened which required additional right-of-way from this property. Over the ensuing thirty years, the intrusive portion of the building, which began as an overhang connection to the main building with the purpose of shading plants, was expanded and eventually evolved into a part of the year-round retail sales establishment.

ANALYSIS OF THE APPLICATION

Special Permit Plat (Copy at front of staff report)

Title of SP Plat: Merrifield Garden Center, Special Permit Amendment Plat, SPA 2006-PR-038, Providence District, Fairfax County, Virginia

Prepared By: William H. Gordon Associates, Inc., dated February 25, 2008

Error Made by: Applicant

Building Permit Required: Yes; however, not obtained

Proposal:

SP 2006-PR-038 was a request to permit a reduction to minimum yard requirements based on error in building location to permit a 438 square foot portion of an 11,282 square foot retail sales building on the Merrifield Garden Center property to remain 28.0 feet from the front lot line along the right of way of Gallows Road.

On February 27, 2007, the Board of Zoning Appeals approved SP 2006-PR-038 to permit the error in building location. Development Condition 3 allowed the applicant one year to obtain building permit approval and final inspections. To date, these have not been obtained and in anticipation of the end of the one (1) year timeframe, the applicant applied for this special permit amendment in order to modify the development condition to extend their time.

ZONING ORDINANCE REQUIREMENTS

Applicable bulk regulation(s) and additional location regulations are set forth on Page 1.

The application must meet all of the following standards, copies of which are attached as Appendix 5:

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

CONCLUSION

If it is the intent of the BZA to approve SPA 2006-PR-038, the BZA should condition its approval be requiring conformance with conditions set forth in Appendix 1 of this report, Proposed Development Conditions.

APPENDICES

1. Proposed Development Conditions
2. Applicant's Affidavit
3. Applicant's Statement of Justification
4. Approved Resolution and Plat
5. Applicable Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS**SPA 2006-PR-038****June 10, 2008**

If it is the intent of the Board of Zoning Appeals to approve SPA 2006-PR-038 located at Tax Map 49-2 ((1)) 26C for an amendment to SP 2006-PR-038 previously approved to permit reduction in minimum yard requirements based on error in building location, to permit a modification of development conditions pursuant to Section 8-914, of the Fairfax County Zoning Ordinance, staff recommends that the Board condition the approval by requiring conformance with the following development conditions. Those conditions carried forward from the previous special permit are marked with an asterisk. Edits and subsequent revisions are **bolded**.

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 2007~~ **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 (1) year~~ **120 days** 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.

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: May 15, 2008
 (enter date affidavit is notarized)

I, Francis A. McDermott, 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 99155 a

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.	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
Jeannie A. Mathews	1751 Pinnacle Drive, Suite 1700 McLean, VA 22102	Paralegal/Agent 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
(county-assigned application number(s), to be entered by County Staff)

Page 1 of 1

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

DATE: May 15, 2008
(enter date affidavit is notarized)

99155a

(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)
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-030
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: May 15, 2008
(enter date affidavit is notarized)

99155 a

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.

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

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

DATE: May 15, 2008
(enter date affidavit is notarized)

99155 a

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 Hulseley
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
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: May 15, 2008
(enter date affidavit is notarized)

99155a

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
Richard L. Adams
Michael F. Albers
Virginia S. Albrecht
Kenneth J. Alcott
Joseph B. Alexander, Jr.
Fernando C. Alonso
Chris M. Amantea
Thomas E. Anderson
Walter J. Andrews
W. Christopher Arbery
Charles G. Ashton
L. S. Austin
Ian Phillip Band
Jeffery R. Banish
Haywood A. Barnes
Rudene M. Bascomb
Jeffrey P. Bast

Philip M. Battles, III
Sean M. Beard
John J. Beardsworth, Jr.
Steven H. Becker
Kenneth D. Bell
Stephen Bennett (nmi)
Melinda R. Beres
Lucas Bergkamp (nmi)
Lon A. Berk
Douglas M. Berman
Mark B. Bierbower
Jo Ann Biggs
Stephen R. Blacklocks
Jeffrey 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
Brian M. Buroker
Ferdinand A. Calice
Matthew J. Calvert
Daniel M. Campbell
Thomas H. Cantrill
Curtis G. Carlson
Grady K. Carlson
Jean Gordon Carter
Charles D. Case

(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): SPA 2006-PR-038
(county-assigned application number(s), to be entered by County Staff)

Page 1 of 4

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

DATE: May 15, 2008
(enter date affidavit is notarized)

99155a

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)

Thomas J. Cawley
Lawrence Chek (nmi)
James N. Christman
Whittington W. Clement
R. Noel Clinard
Herve' Cogels (nmi)
Myron D. Cohen
Cassandra C. Collins
Stacy M. Colvin
Joseph P. Congleton
Terence G. Connor
Stephen Gregory Cope
Cameron N. Cosby
T. Thomas Cottingham, III
Ted C. Craig
Cyane B. Crump
Ashley Cummings (nmi)
Alexandra B. Cunningham
Sean B. Cunningham
William D. Dannelly
Samuel A. Danon
Barry R. Davidson
John Deacon (nmi)
John A. Decker
John J. Delionado
Stephen P. Demm
Kenneth L. Dobkin
Dee Ann Dorsey
Edward L. Douma
Mark S. Dray
Sean P. Ducharme
Deidre G. Duncan
George C. Dunlap, Jr.
L. Traywick Duffie
Roger Dyer (nmi)
Frederick R. Eames
Maya M. Eckstein
Joseph C. Edwards
W. Jeffery Edwards

John C. Eichman
Whitney C. Ellerman
L. Neal Ellis, Jr.
Edward W. Elmore, Jr.
Charles Elphicke (nmi)
Frank E. Emory, Jr.
Juan C. Enjamio
John D. Epps
Patricia K. Epps
Steven B. Epstein
Kelly L. Faglioni
Susan S. Failla
James E. Farnham
Eric H. Feiler
Chet A. Fenimore
Norman W. Fichthorn
Andrea Bear Field
Robert M. Fillmore
Kevin J. Finto
William M. Flynn
Lauren E. Freeman
David R. Fricke
Edward J. Fuhr
Charles A. Gall
Daniel C. Garner
Douglas M. Garrou
Richard D. Gary
Andrew A. Gerber
John T. Gerhart, Jr.
Jeffrey W. Giese
Neil K. Gilman
C. Christopher Giragosian
Timothy S. Goettel
Peter G. Golden
Allen C. Goolsby
L. Raul Grable
Conan P. Grames
Douglas S. Granger
J. William Gray, Jr.

Charles E. Grief
Robert J. Grey, Jr.
Greta T. Griffith
Bradley W. Grout
Jeffrey W. Gutches
Miles B. Haberer
Virginia H. Hackney
Robert J. Hahn
John F. Haley
Eric J. Hanson
Ronald M. Hanson
Richard L. Harden
Lowell W. Harrison
Ray V. Hartwell, III
James A. Harvey
Robert W. Hawkins
Timothy G. Hayes
Mark S. Hedberg
Douglas J. Heffner
Michael S. Held
Matthew C. Henry
Scott Hershman (nmi)
Gregory G. Hesse
George H. Hettrick
Louanna O. Heuhsen
David A. Higbee
Thomas Y. Hiner
D. Bruce Hoffman
Robert E. Hogfoss
John E. Holloway
John M. Holloway, III
John R. Holzgraefe
Cecelia P. Horner
George C. Howell, III
Robert H. Huey
Thomas M. Hughes
Kevin F. Hull
Donald P. Irwin
Judith H. Itkin

(check if applicable) There is more partnership information and Par. 1(c) is continued further on a
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Application No.(s): SPA 2006-PR-038
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Page 2 of 4

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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**)

Makram B. Jaber	Catherine D. Little	Mark W. Menezes
Lori M. Jarvis	Gregory G. Little	Gary C. Messplay
Matthew D. Jenkins	Robert H. Lockwood	Thomas McN. Millhiser
Andrew E. Jillson	David C. Lonergan	Patrick E. Mitchell
Harry M. Johnson, III	Nash E. Long, III	John E. Moeller
James A. Jones, III	Audrey C. Louison	Jack A. Molenkamp
Kevin W. Jones	Carlos E. Loumiet	Charles R. Monroe, Jr.
Laura E. Jones	David S. Lowman, Jr.	Will S. Montgomery
Dan J. Jordanger	Timothy A. Mack	T. Justin Moore, III
Leslie O. Juan	Tyler Maddry (nmi)	Thurston R. Moore
Thomas R. Julin	Kimberly M. Magee	Bruce W. Moorhead, Jr.
W. Alan Kailer	C. King Mallory, III	Robert J. Morrow
E. Peter Kane	Thomas J. Manley	Ann Marie Mortimer
Thomas F. Kaufman	Alan J. Marcuis	Eric J. Murdock
Geoffrey S. Kay	Brian R. Marek	Frank J. Murphy, Jr.
Joseph C. Kearfott	Fernando Margarit (nmi)	Ted J. Murphy
Michael G. Keeley	Michael F. Marino, III	Thomas P. Murphy
Douglas W. Kenyon	Stephen S. Maris	David A. Mustone
Michael C. Kerrigan	Jeffrey N. Martin	James P. Naughton
Ryan T. Ketchum	John S. Martin	Michael Nedzbala (nmi)
Robert A. King	J. Michael Martinez de Andino	Henry V. Nickel
Robert Klotz (nmi)	Walfrido J. Martinez	Lonnie D. Nunley, III
Sylvia K. Kochler	Christopher M. Mason	E. A. Nye, Jr.
Edward B. Koehler	Michael P. Massad, Jr.	John D. O'Neill, Jr.
John T. Konther	Scott H. Matheson	Pam G. O'Quinn
Dana S. Kull	Joseph C. Mathews	Brian V. Otero
Christopher G. Kulp	Laurie U. Mathews	Randall S. Parks
Christopher Kuner (nmi)	Richard E. May	Peter S. Partee
David Craig Landin	John Gary Maynard, III	R. Hewitt Pate
Christine E. Larkin	William H. McBride	William S. Patterson
David C. Lashway	Michael C. McCann	H. R. Bert Peña
Andrew W. Lawrence	Thomas A. McConnell	Michael P. F. Phelps
Wood W. Lay	Patrick J. McCormick, III	R. Dean Pope
Daniel M. LeBey	Robert G. McCormick	Laurence H. Posorske
David O. Ledbetter	Francis A. McDermott	Kurtis A. Powell
Bradley T. Lennie	Alexander G. McGeoch	Lewis F. Powell, III
L. Steven Leshin	John C. McGranahan, Jr.	Wesley R. Powell
Ronald J. Lieberman	David T. McIndoe	Donna M. Praiss
Thomas F. Lillard	James E. Meadows	J. Waverly Pulley, III

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

Page 3 of 4

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

DATE: May 15, 2008
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99155a

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)

Robert T. Quackenboss
Dearbhla Quigley (nmi)
Arnold H. Quint
William M. Ragland, Jr.
Dionne C. Rainey
Gordon F. Rainey, Jr.
Katherine E. Ramsey
John Jay Range
Stuart A. Raphael
Craig V. Rasile
John M. Ratino
Robert S. Rausch
Keila D. Ravelo
Belynda B. Reck
Baker R. Rector
Shawn P. Regan
Sona Rewari (nmi)
Thomas A. Rice
James M. Rinaca
Michael D. Rist
Jennings G. Ritter, II
Kathy E. B. Robb
Daryl B. Robertson
Gregory B. Robertson
Robert M. Rolfe
Ronald D. Rosener
Michael Rosenthal (nmi)
William L. S. Rowe
Marguerite R. Ruby
D. Alan Rudlin
Mary Nash Rusher
Timothy R. Ryan
D. Kyle Sampson
Karen M. Sanzaro
Stephen M. Sayers
Arthur E. Schmalz
Gregory J. Schmitt
John R. Schneider
Howard E. Schreiber

Robert M. Schulman
Patricia M. Schwarzschild
Jeremy R. Schwer
P. Watson Seaman
James S. SeEVERS, Jr.
Douglass P. Selby
Joel R. Sharp
James W. Shea
Michael R. Shebelskie
Rita A. Sheffey
Michael A. Silva
William P. Silverman
Edmund W. Sim
Jo Anne E. Sirgado
Thomas G. Slater, Jr.
B. Darrell Smelcer
Brooks M. Smith
Caryl Greenberg Smith
John R. Smith
Steven P. Solow
Yisun Song (nmi)
Lisa J. Sotto
Joseph C. Stanko, Jr.
Marty Steinberg (nmi)
John J. Stenger
Catherine B. Stevens
Gregory N. Stillman
Franklin H. Stone
C. Randolph Sullivan
Chanmanu Sumawong (nmi)
R. Michael Sweeney, Jr.
Henry Talavera (nmi)
Madeleine M. Tan
Andrew J. Tapscott
Robert M. Tata
Rodger L. Tate
W. Lake Taylor, Jr.
Wendell L. Taylor
Michael L. Teague

Robin Lyn Teskin
Paul R. Tetlow
John Charles Thomas
Martin K. Thomas
Gary E. Thompson
Paul M. Thompson
B. Cary Tolley, III
Timothy J. Toohey
Randolph F. Totten
Bridget C. Treacy
Thomas B. Trimble
Estelle J. Tsevdos
Melvin E. Tull, III
Julie I. Ungerman
Surasak Vajasis (nmi)
Travis E. Vanderpool
Mark C. Van Deusen
C. Porter Vaughan, III
Enid L. Veron
Stephen R. Voelker
Mark R. Vowell
Linda L. Walsh
William A. Walsh, Jr.
Lynnette R. Warman
Mark R. Wasem
Abigail C. Watts-FitzGerald
William L. Wehrum
Peter G. Weinstock
David B. Weisblat
Malcolm C. Weiss
Mark G. Weisshaar
Hill B. Wellford, Jr.
David E. Wells
G. Thomas West, Jr.
Jerry E. Whitson
Paul O. Wickes
Jonathan M. Wilan
David R. Wiles
Amy McDaniel Williams

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

Page 4 of 4

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

DATE: May 15, 2008
(enter date affidavit is notarized)

99155a

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**)

- Gerry L. Williams
- Matthew J. Williams
- Michael G. Wilson
- Robert K. Wise
- Allison D. Wood
- John W. Woods, Jr.
- David C. Wright
- Scott F. Yarnell
- William F. Young
- Andrew D. Zaron
- Lee B. Zeugin

FORMER PARTNERS:

- A. Neal Barkus
- Ian Cuillerier (nmi)
- Robert H. Edwards, Jr.
- Mark James Fennessy
- Ira L. Freilicher
- Manning Gasch, Jr. (nmi)
- Shahid Ghauri (nmi)
- Edward J. Grass
- Paul E. Janaskie
- James Forrest Miller
- Royce W. Montgomery
- William M. Richardson
- William L. Sladek

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

Page Four

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: May 15, 2008
(enter date affidavit is notarized)

99155a

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.

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: May 15, 2008
(enter date affidavit is notarized)

99155a

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.)

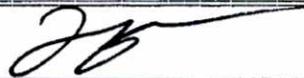
NONE.

(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

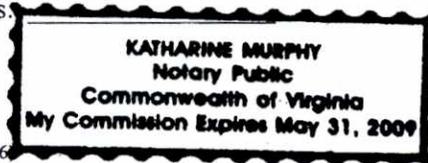
Francis A. McDermott, Attorney Agent for Applicant
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 15TH day of May, 2008, in the State/Comm. of Virginia, County/City of Fairfax.



Notary Public

My commission expires.



(commissioned as Katharine Murphy)

#246666

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

RECEIVED
Department of Planning & Zoning
February 21, 2008
FEB 26 2008
Zoning Evaluation Division

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 located at 8132 Lee Highway. Merrifield Garden Center is located within the northeast quadrant of the Lee Highway and Gallows Road intersection within the Merrifield Commercial Revitalization Area. Merrifield Garden Center 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 to the C-8, I-5, R-3 and H-C Districts 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 states:

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 has been diligently pursuing acquisition of the requisite building permit, modifications to meet Code requirements, and final inspections necessary for the building subject to the approved Special Permit. Due to unanticipated delays, none the fault of the Applicant, it does not appear that final inspections will occur prior to the expiration date of SP 2006-PR-038 per Development Condition No. 3. 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 improvements have occurred, it is not possible to receive final inspections because of difficulties providing a required new waterline connection to the Property. The Virginia Department of Transportation ("VDOT") will soon begin construction on the Lee Highway/Gallows Road improvements (VDOT Project No. 0029-029-119). Part of this project involves utility relocations including the water line owned by the City of Falls Church. It is not possible to provide the necessary waterline connections to the building until VDOT and the City of Falls Church finalize the relocation of this line located within the Gallows Road right-of-way. It is because of this unforeseen delay that the Applicant will be unable to satisfy Development Condition No. 3, which is why this Special Permit Amendment has been filed. No revisions from the previous approval are requested, other than the extension of time to acquire building permit approval and final inspections.

The Special Permit Amendment ("SPA") Plat, dated February 2008, 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 to the C-8 and H-C Districts, 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 SP 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, over a period of nearly thirty years, 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 week-ends during the months of April, May and the first half of 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

RECEIVED
Dep't of Planning & Zoning
FEB 26 2008

February 26, 2008

Zoning Evaluation Division
FRANCIS A. MCDERMOTT
DIRECT DIAL: (703) 714-7422
E-MAIL: FMCDERMOTT@HUNTON.COM
FILE NO.: 47697.9

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
Fairfax County Tax Map Parcels 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 (2 copies; remaining copies and reduction will be submitted upon a determination that the plat is acceptable);
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.

**HUNTON &
WILLIAMS**

Ms. Virginia H. Ruffner
February 26, 2008
Page 2

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 permits and final inspections for the structure be obtained within one year of final approval of the Special Permit. Due to unanticipated 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 is 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,



Francis A. McDermott

Enclosures

cc: Mr. David Watkins

RECEIVED
Department of Planning
FEB 26 2008
Zoning Evaluation Unit

AUTHORIZATION
Tax Map Parcels 49-2-((1))-26C

Merrifield Garden Center Corporation, applicant in a rezoning application on the property identified as Fairfax County Tax Map Parcel No. 49-2-((1))-26C, hereby authorizes the following persons to act as applicant's agent in this application: Hampton C. Williams, III, Robert P. Warhurst, R. Kevin Warhurst, C. David Watkins, Francis A. McDermott, John C. McGranahan, Jr., Aaron L. Shriber, Elaine O'Flaherty Cox, Jeannie A. Mathews and Robert W. Walker, all of whom are listed on the disclosure affidavit.

MERRIFIELD GARDEN CENTER CORPORATION

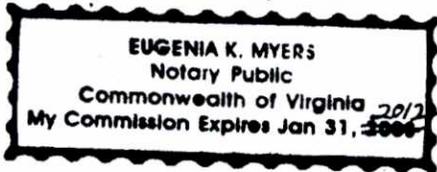
2/21/08
DATE

BY: [Signature]
Robert P. Warhurst
President

STATE OF Virginia
CITY/COUNTY OF Fairfax, to-wit:

I, the undersigned Notary Public in and for the jurisdiction aforesaid, do hereby certify that Robert P. Warhurst, whose name is signed to the foregoing, as President of Merrifield Garden Center Corporation, personally appeared before me, and acknowledged the same to be his act and deed.

Given under my hand and seal this 21 day of February, 2008.



[Signature]
NOTARY PUBLIC

Registration No. 132200

My commission expires: 1-31-2012

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

MERRIFIELD GARDEN CENTER CORPORATION, SP 2006-PR-038 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit building to remain 28.0 ft. from front lot line. 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. (In association with SE 2006-PR-018) (Admin. moved from 12/5/06 at appl. req.) 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 February 27, 2007; and

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

1. The applicant is the owner of the land.

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 2007, 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 (1) 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.

Mr. Beard seconded the motion, which carried by a vote of 7-0.

A Copy Teste:


Paula A. McFarland, Deputy Clerk
Board of Zoning Appeals

MERRIFIELD GARDEN CENTER

SPECIAL PERMIT PLAT SP 2006-PR-038

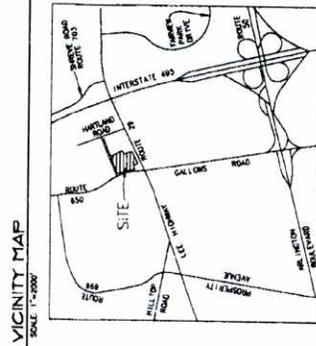
PROVIDENCE DISTRICT - FAIRFAX COUNTY, VIRGINIA
OWNER/APPLICANT
MERRIFIELD GARDEN CENTER CORPORATION
8112 LEE HIGHWAY FALLS CHURCH, VIRGINIA 22042
FEBRUARY 2007

GENERAL NOTES:

1. LOCATION: THE AREA SUBJECT TO THIS SPECIAL PERMIT (SP) IS SITUATED IN THE PROVISIONS OF THE ZONING ORDINANCE OF FAIRFAX COUNTY, VIRGINIA, AND IS ZONED C-2 AND C-3.
2. OWNER: THE SITE IS OWNED BY MERRIFIELD GARDEN CENTER CORPORATION, 8112 LEE HIGHWAY, FALLS CHURCH, VIRGINIA 22042.
3. REQUIREMENTS: THE SITE IS SUBJECT TO THE PROVISIONS OF THE ZONING ORDINANCE OF FAIRFAX COUNTY, VIRGINIA, AND IS ZONED C-2 AND C-3. THE APPLICANT HAS PROVIDED THE NECESSARY INFORMATION TO ALLOW THE BOARD TO MAKE A DETERMINATION AS TO WHETHER THE PROPOSED DEVELOPMENT IS IN THE PUBLIC INTEREST AND TO APPROVE THE SPECIAL PERMIT.
4. UTILITIES: NOTWITHSTANDING THE FACT THAT AN APPROXIMATE LOCATION OF UTILITIES HAS BEEN SHOWN ON THE SITE PLAN, THE APPLICANT HAS BEEN ADVISED BY THE VIRGINIA DEPARTMENT OF TRANSPORTATION (VDOT) THAT THE EXISTING UTILITIES ARE NOT SHOWN ON THE SITE PLAN AND THAT THE APPLICANT SHOULD CONDUCT A UTILITY LOCATIONS SURVEY TO DETERMINE THE EXACT LOCATION OF ALL UTILITIES.
5. SIGNAGE: THE APPLICANT HAS PROVIDED THE NECESSARY INFORMATION TO ALLOW THE BOARD TO MAKE A DETERMINATION AS TO WHETHER THE PROPOSED DEVELOPMENT IS IN THE PUBLIC INTEREST AND TO APPROVE THE SPECIAL PERMIT.
6. ROADWAY: THE PROPOSED DEVELOPMENT IS ADJACENT TO LEE HIGHWAY, ROUTE 28, WHICH IS A FOUR LANE ROAD WITH A FOUR LANE PARKING ALONG THE NORTH SIDE. THE APPLICANT HAS PROVIDED THE NECESSARY INFORMATION TO ALLOW THE BOARD TO MAKE A DETERMINATION AS TO WHETHER THE PROPOSED DEVELOPMENT IS IN THE PUBLIC INTEREST AND TO APPROVE THE SPECIAL PERMIT.
7. UTILITIES: THE APPLICANT HAS PROVIDED THE NECESSARY INFORMATION TO ALLOW THE BOARD TO MAKE A DETERMINATION AS TO WHETHER THE PROPOSED DEVELOPMENT IS IN THE PUBLIC INTEREST AND TO APPROVE THE SPECIAL PERMIT.
8. UTILITIES: THE APPLICANT HAS PROVIDED THE NECESSARY INFORMATION TO ALLOW THE BOARD TO MAKE A DETERMINATION AS TO WHETHER THE PROPOSED DEVELOPMENT IS IN THE PUBLIC INTEREST AND TO APPROVE THE SPECIAL PERMIT.
9. UTILITIES: THE APPLICANT HAS PROVIDED THE NECESSARY INFORMATION TO ALLOW THE BOARD TO MAKE A DETERMINATION AS TO WHETHER THE PROPOSED DEVELOPMENT IS IN THE PUBLIC INTEREST AND TO APPROVE THE SPECIAL PERMIT.
10. UTILITIES: THE APPLICANT HAS PROVIDED THE NECESSARY INFORMATION TO ALLOW THE BOARD TO MAKE A DETERMINATION AS TO WHETHER THE PROPOSED DEVELOPMENT IS IN THE PUBLIC INTEREST AND TO APPROVE THE SPECIAL PERMIT.

11. UTILITIES: THE APPLICANT HAS PROVIDED THE NECESSARY INFORMATION TO ALLOW THE BOARD TO MAKE A DETERMINATION AS TO WHETHER THE PROPOSED DEVELOPMENT IS IN THE PUBLIC INTEREST AND TO APPROVE THE SPECIAL PERMIT.
12. UTILITIES: THE APPLICANT HAS PROVIDED THE NECESSARY INFORMATION TO ALLOW THE BOARD TO MAKE A DETERMINATION AS TO WHETHER THE PROPOSED DEVELOPMENT IS IN THE PUBLIC INTEREST AND TO APPROVE THE SPECIAL PERMIT.
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14. UTILITIES: THE APPLICANT HAS PROVIDED THE NECESSARY INFORMATION TO ALLOW THE BOARD TO MAKE A DETERMINATION AS TO WHETHER THE PROPOSED DEVELOPMENT IS IN THE PUBLIC INTEREST AND TO APPROVE THE SPECIAL PERMIT.
15. UTILITIES: THE APPLICANT HAS PROVIDED THE NECESSARY INFORMATION TO ALLOW THE BOARD TO MAKE A DETERMINATION AS TO WHETHER THE PROPOSED DEVELOPMENT IS IN THE PUBLIC INTEREST AND TO APPROVE THE SPECIAL PERMIT.
16. UTILITIES: THE APPLICANT HAS PROVIDED THE NECESSARY INFORMATION TO ALLOW THE BOARD TO MAKE A DETERMINATION AS TO WHETHER THE PROPOSED DEVELOPMENT IS IN THE PUBLIC INTEREST AND TO APPROVE THE SPECIAL PERMIT.
17. UTILITIES: THE APPLICANT HAS PROVIDED THE NECESSARY INFORMATION TO ALLOW THE BOARD TO MAKE A DETERMINATION AS TO WHETHER THE PROPOSED DEVELOPMENT IS IN THE PUBLIC INTEREST AND TO APPROVE THE SPECIAL PERMIT.
18. UTILITIES: THE APPLICANT HAS PROVIDED THE NECESSARY INFORMATION TO ALLOW THE BOARD TO MAKE A DETERMINATION AS TO WHETHER THE PROPOSED DEVELOPMENT IS IN THE PUBLIC INTEREST AND TO APPROVE THE SPECIAL PERMIT.
19. UTILITIES: THE APPLICANT HAS PROVIDED THE NECESSARY INFORMATION TO ALLOW THE BOARD TO MAKE A DETERMINATION AS TO WHETHER THE PROPOSED DEVELOPMENT IS IN THE PUBLIC INTEREST AND TO APPROVE THE SPECIAL PERMIT.
20. UTILITIES: THE APPLICANT HAS PROVIDED THE NECESSARY INFORMATION TO ALLOW THE BOARD TO MAKE A DETERMINATION AS TO WHETHER THE PROPOSED DEVELOPMENT IS IN THE PUBLIC INTEREST AND TO APPROVE THE SPECIAL PERMIT.

21. UTILITIES: THE APPLICANT HAS PROVIDED THE NECESSARY INFORMATION TO ALLOW THE BOARD TO MAKE A DETERMINATION AS TO WHETHER THE PROPOSED DEVELOPMENT IS IN THE PUBLIC INTEREST AND TO APPROVE THE SPECIAL PERMIT.
22. UTILITIES: THE APPLICANT HAS PROVIDED THE NECESSARY INFORMATION TO ALLOW THE BOARD TO MAKE A DETERMINATION AS TO WHETHER THE PROPOSED DEVELOPMENT IS IN THE PUBLIC INTEREST AND TO APPROVE THE SPECIAL PERMIT.
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LIST OF DRAWINGS

1. COVER SHEET
2. SPECIAL PERMIT PLAT
3. EXISTING CONDITIONS
4. STORMWATER MANAGEMENT ANALYSIS
5. ADEQUATE OUTFALL ANALYSIS



William H. Gordon Associates, Inc.
Engineers-Land Planners-Landscape Architects-Surveyors
4301 DALY DRIVE FALLS CHURCH, VIRGINIA 22042
REV. FEBRUARY 2007

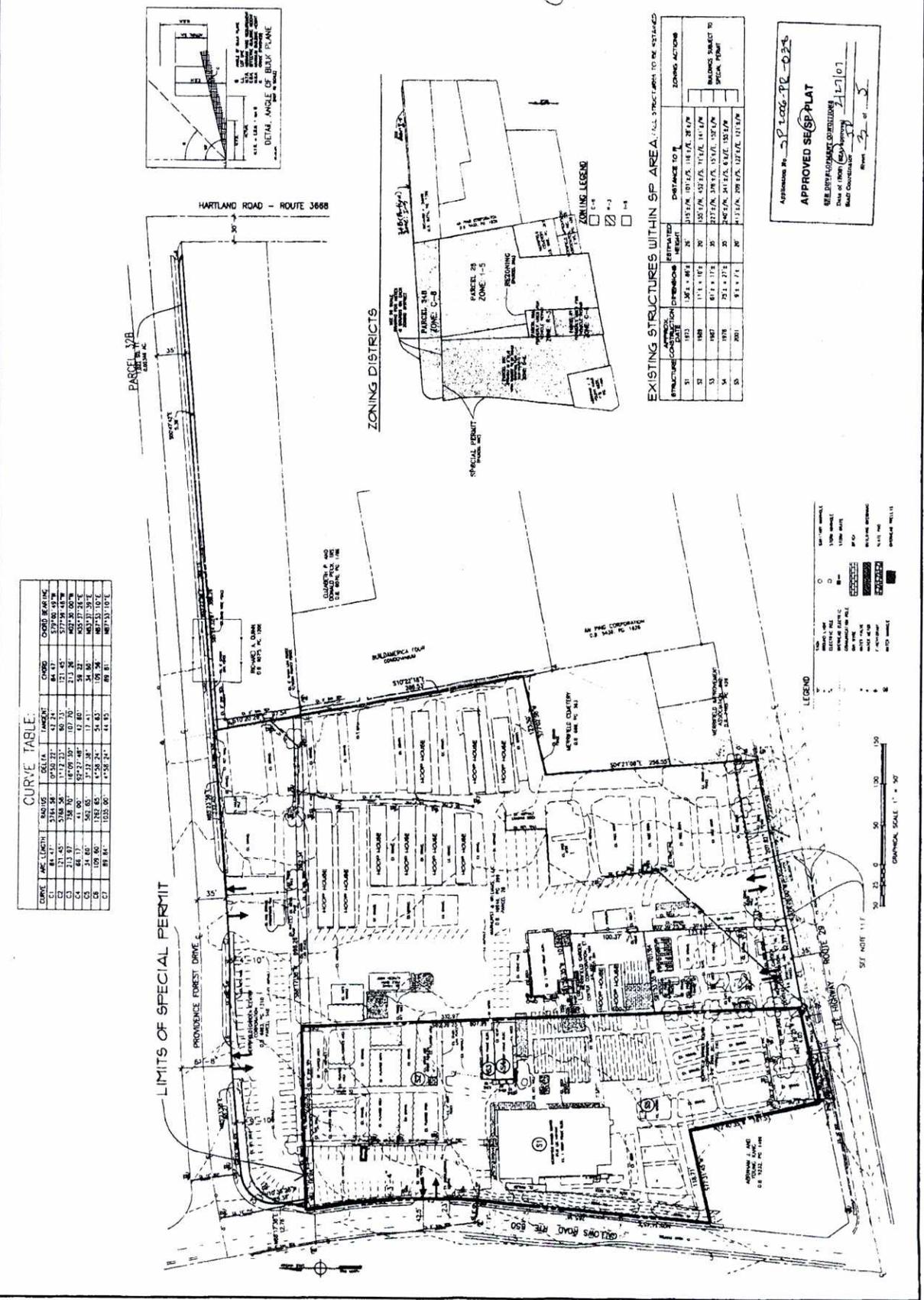


REV. OCT. 2004
 REV. JAN. 2005
 REV. MARCH 14, 2006
 REV. APRIL 2006
 REV. FEB. 2007

PROJECT: MERRIFIELD GARDEN CENTER
 EXISTING CONDITIONS - SPECIAL PERMIT

DATE: MARCH 2008
 SCALE: 1" = 50'
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]
 PROJECT ENGINEER: [Signature]

PROVINCE COUNTY, VIRGINIA
 MERRIFIELD GARDEN CENTER
 EXISTING CONDITIONS - SPECIAL PERMIT



CURVE TABLE:

CURVE	ARC LENGTH	RADIUS	DELTA	TANGENT	CHORD	CHORD BEARING
C1	131.45'	5168.58'	1°12'23"	46.31'	131.45'	37°56'48"
C2	212.87'	158.70'	8°09'59"	107.70'	212.87'	40°52'00"
C3	44.12'	100.00'	1°00'00"	22.06'	44.12'	30°00'00"
C4	109.80'	1382.65'	4°28'24"	54.90'	109.80'	48°51'10"
C5	89.84'	1225.00'	4°18'24"	44.92'	89.84'	48°51'10"

EXISTING STRUCTURES WITHIN SP AREA - ALL STRUCTURES TO BE RETAINED

STRUCTURE LOCATION	DATE	ESTIMATED HEIGHT	ZONING ACTIONS
1	1981	10' x 10' x 10'	10' x 10' x 10' (R) (E) (S) (W) (N)
2	1989	11' x 11' x 11'	10' x 10' x 10' (R) (E) (S) (W) (N)
3	1987	8' x 8' x 8'	10' x 10' x 10' (R) (E) (S) (W) (N)
4	1978	20' x 20' x 20'	10' x 10' x 10' (R) (E) (S) (W) (N)
5	2001	8' x 8' x 8'	10' x 10' x 10' (R) (E) (S) (W) (N)

APPROVED BY: [Signature]
APPROVED SPECIAL PERMIT
 DATE OF ISSUE: 03/17/07
 MADE CONDITIONAL TO: [Signature]

LEGEND

- EXISTING STRUCTURE
- EXISTING DRIVE
- EXISTING SIDEWALK
- EXISTING CURB
- EXISTING UTILITY
- EXISTING FENCE
- EXISTING WALL
- EXISTING POLE
- EXISTING SIGN
- EXISTING LIGHT
- EXISTING TREE
- EXISTING PLANT
- EXISTING LANDSCAPE
- EXISTING PAVEMENT
- EXISTING ASPHALT
- EXISTING CONCRETE
- EXISTING BRICK
- EXISTING STONE
- EXISTING METAL
- EXISTING WOOD
- EXISTING PLASTER
- EXISTING GYPSUM
- EXISTING STUCCO
- EXISTING PAINT
- EXISTING GLASS
- EXISTING CERAMIC
- EXISTING MARBLE
- EXISTING GRANITE
- EXISTING SLATE
- EXISTING SHALE
- EXISTING SANDSTONE
- EXISTING LIMESTONE
- EXISTING GNEISS
- EXISTING QUARTZITE
- EXISTING SCHIST
- EXISTING METAMORPHIC
- EXISTING IGGNEOUS
- EXISTING SEDIMENTARY
- EXISTING METAMORPHIC
- EXISTING IGGNEOUS
- EXISTING SEDIMENTARY

GRAPHICAL SCALE: 1" = 50'

APRAL PHOTOGRAPH OF MERRIFIELD GARDEN CENTER 1970

1970 DRAINAGE ANALYSIS FOR NORTH/EAST PARCEL

FROM THE EXISTING, THE FOLLOWING CONDITIONS WERE OBSERVED:
 THE EXISTING DRAINAGE SYSTEM IS A GRADE SEWER SYSTEM WHICH SERVES THE NORTH/EAST PARCEL AND THE SOUTH/WEST PARCEL. THE SOUTH/WEST PARCEL IS SERVED BY A 12" DIA. GRADE SEWER WHICH IS LOCATED UNDER THE EXISTING DRIVEWAY. THE NORTH/EAST PARCEL IS SERVED BY A 12" DIA. GRADE SEWER WHICH IS LOCATED UNDER THE EXISTING DRIVEWAY. THE EXISTING DRAINAGE SYSTEM IS A GRADE SEWER SYSTEM WHICH SERVES THE NORTH/EAST PARCEL AND THE SOUTH/WEST PARCEL. THE SOUTH/WEST PARCEL IS SERVED BY A 12" DIA. GRADE SEWER WHICH IS LOCATED UNDER THE EXISTING DRIVEWAY. THE NORTH/EAST PARCEL IS SERVED BY A 12" DIA. GRADE SEWER WHICH IS LOCATED UNDER THE EXISTING DRIVEWAY.

ZOOLOGICAL DRAINAGE ANALYSIS FOR NORTH/EAST PARCEL

PERMITTED/PROPOSED: 157,960 SF OR 3.5 AC
 TOTAL DRAINAGE AREA: 157,960 SF OR 3.5 AC
 TOTAL WEIGHTED C.V. VALUE FOR THE SITE: 1.1 AC * 0.80 = 0.88
 1.9 AC * 0.30 = 0.57
 3.8793 = 0.53

PERMITTED/PROPOSED: 50,000 SF OR 1.1 AC
 TOTAL DRAINAGE AREA: 50,000 SF OR 1.1 AC
 TOTAL WEIGHTED C.V. VALUE FOR THE SITE: 1.1 AC * 0.80 = 0.88
 1.1 AC * 0.30 = 0.33
 1.2 = 0.55

PERMITTED/PROPOSED: 200,000 SF OR 4.5 AC
 TOTAL DRAINAGE AREA: 200,000 SF OR 4.5 AC
 TOTAL WEIGHTED C.V. VALUE FOR THE SITE: 1.1 AC * 0.80 = 0.88
 1.1 AC * 0.30 = 0.33
 1.4 = 0.55

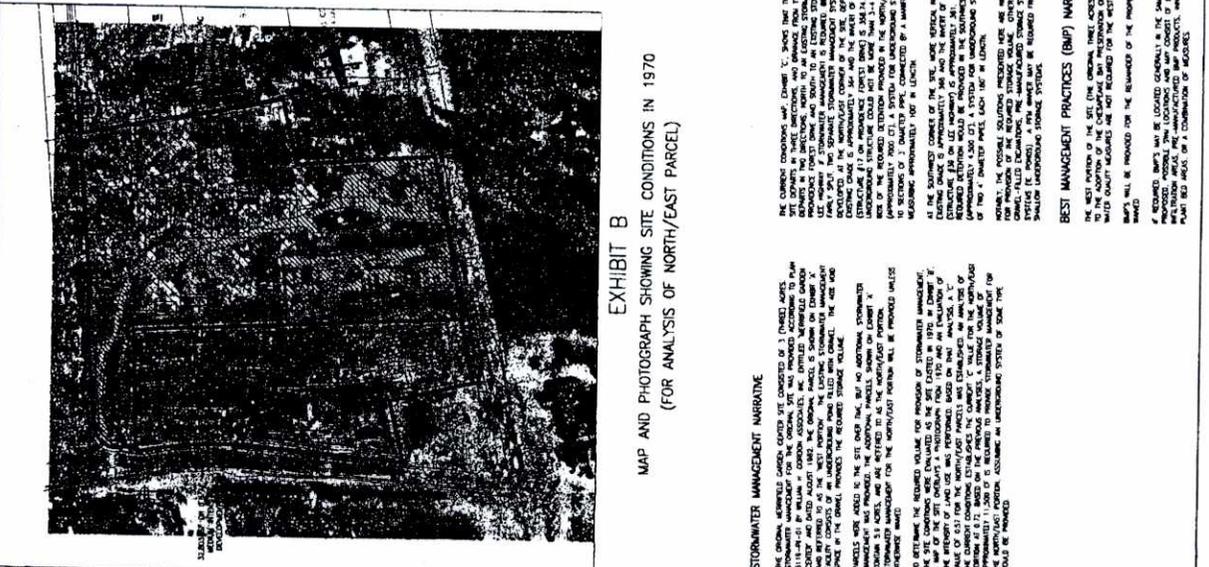


EXHIBIT B
 MAP AND PHOTOGRAPH SHOWING SITE CONDITIONS IN 1970
 (FOR ANALYSIS OF NORTH/EAST PARCEL)

STORMWATER MANAGEMENT NARRATIVE

THE EXISTING DRAINAGE SYSTEM FOR THE NORTH/EAST PARCEL IS A GRADE SEWER SYSTEM WHICH SERVES THE NORTH/EAST PARCEL AND THE SOUTH/WEST PARCEL. THE SOUTH/WEST PARCEL IS SERVED BY A 12" DIA. GRADE SEWER WHICH IS LOCATED UNDER THE EXISTING DRIVEWAY. THE NORTH/EAST PARCEL IS SERVED BY A 12" DIA. GRADE SEWER WHICH IS LOCATED UNDER THE EXISTING DRIVEWAY. THE EXISTING DRAINAGE SYSTEM IS A GRADE SEWER SYSTEM WHICH SERVES THE NORTH/EAST PARCEL AND THE SOUTH/WEST PARCEL. THE SOUTH/WEST PARCEL IS SERVED BY A 12" DIA. GRADE SEWER WHICH IS LOCATED UNDER THE EXISTING DRIVEWAY. THE NORTH/EAST PARCEL IS SERVED BY A 12" DIA. GRADE SEWER WHICH IS LOCATED UNDER THE EXISTING DRIVEWAY.



EXHIBIT A
 MAP SHOWING EXISTING SITE (FOR WHICH SWM IS PROVIDED) AND ADDITIONAL PARCELS (FOR WHICH SWM HAS NOT YET BEEN PROVIDED)

EXHIBIT C
 MAP SHOWING SITE CONDITIONS IN 2004

STORMWATER MANAGEMENT NARRATIVE

THE EXISTING DRAINAGE SYSTEM FOR THE NORTH/EAST PARCEL IS A GRADE SEWER SYSTEM WHICH SERVES THE NORTH/EAST PARCEL AND THE SOUTH/WEST PARCEL. THE SOUTH/WEST PARCEL IS SERVED BY A 12" DIA. GRADE SEWER WHICH IS LOCATED UNDER THE EXISTING DRIVEWAY. THE NORTH/EAST PARCEL IS SERVED BY A 12" DIA. GRADE SEWER WHICH IS LOCATED UNDER THE EXISTING DRIVEWAY. THE EXISTING DRAINAGE SYSTEM IS A GRADE SEWER SYSTEM WHICH SERVES THE NORTH/EAST PARCEL AND THE SOUTH/WEST PARCEL. THE SOUTH/WEST PARCEL IS SERVED BY A 12" DIA. GRADE SEWER WHICH IS LOCATED UNDER THE EXISTING DRIVEWAY. THE NORTH/EAST PARCEL IS SERVED BY A 12" DIA. GRADE SEWER WHICH IS LOCATED UNDER THE EXISTING DRIVEWAY.

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.