



APPLICATION ACCEPTED: December 11, 2012  
DATE OF PUBLIC HEARING: March 6, 2013  
TIME: 9:00 a.m.

# County of Fairfax, Virginia

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February 27, 2013

## STAFF REPORT

SPECIAL PERMIT APPLICATION NO. SP 2012-LE-084

### LEE DISTRICT

**APPLICANTS/OWNERS:** Anthony and Deanna DeSante

**LOCATION:** 5508 Layne Estates Court, Alexandria, 22310

**SUBDIVISION:** Layne Estates

**TAX MAP:** 81-4 ((36)) 5

**LOT SIZE:** 10,500 square feet

**ZONING:** R-3

**ZONING ORDINANCE PROVISION:** 8-914

**SPECIAL PERMIT PROPOSALS:** To permit reduction to the minimum yard requirements based on errors in building locations to permit additions to remain 21.0 feet and 13.0 feet from the rear lot line.

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

The approval of this 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.

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*Rebecca Homer*

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 48 hours advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).



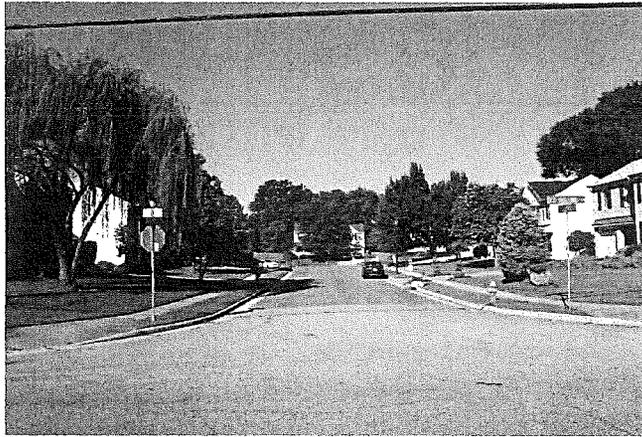
**Special Permit**  
**SP 2012-LE-084**  
**ANTHONY AND DEANNA DE SANTE**



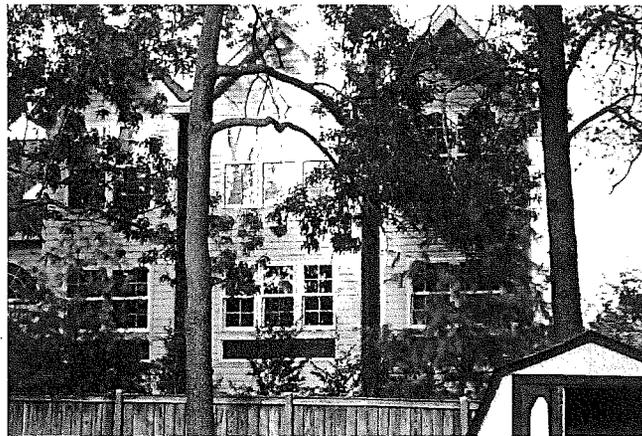




1) Front of Property (Eastside of House)  
(Property Line)

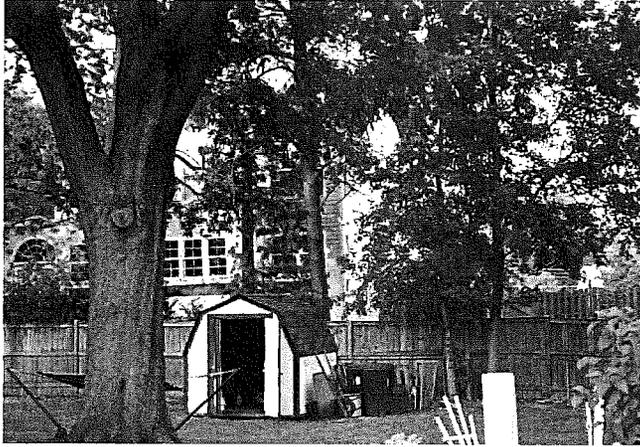


2) Front of Property (Eastside of House)  
(View from Old Rolling Rd.)



3) Back of Property (Westside of House)  
(Property Line)

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SEP 24 2012  
Zoning Evaluation Division



4) Back of Property (Westside of House)  
(Includes neighbor's shed; tree)



5) Back of Property (Southwest side) (Brookview  
Street Line; Neighbor's house in foreground)



6) Back of Property (Westside of House) (Brookview  
Street Line; Neighbors' houses in foreground)

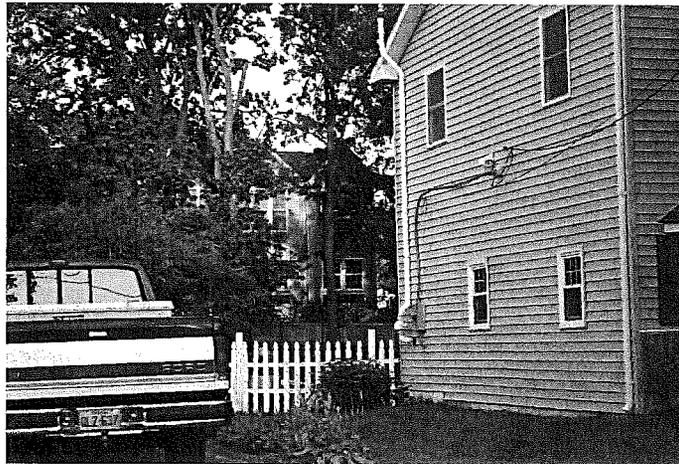
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7) Back of Property (Northwest side House)  
(Brookview Street Line; Neighbor's house in foreground)



8) Back of Property (Westside of House)  
(Property Line)



9) Back of Property (Westside of House)  
Brookview Street Line

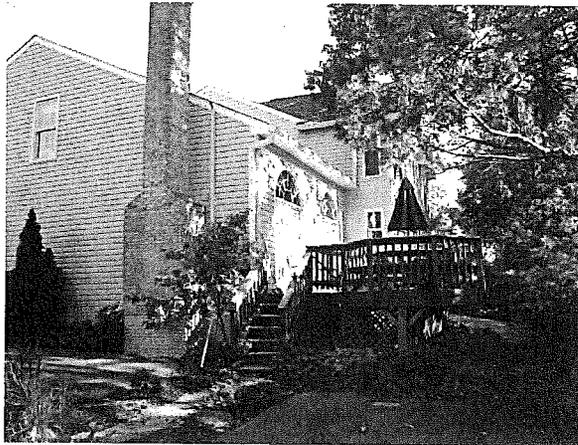
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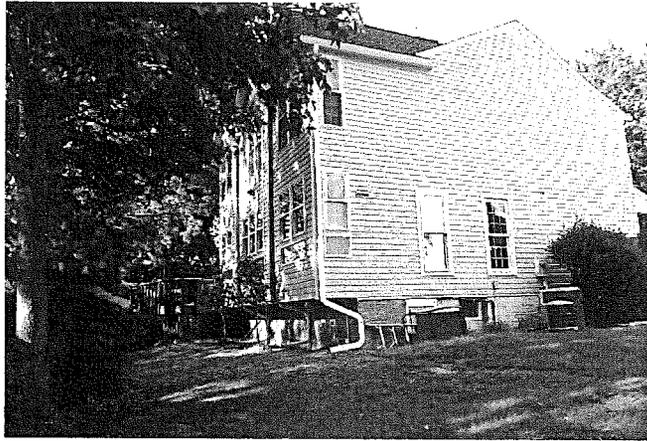
10) Back of Property (Northwest side of House)  
(Property Line; View from Neighbor's Yard)



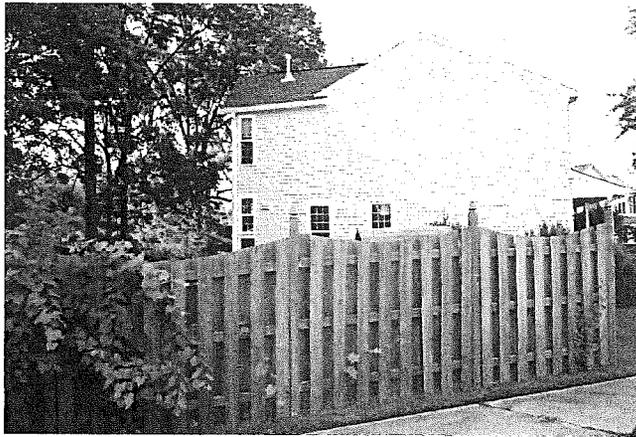
11) Back of Property (Northwest side of House)  
(Property Line; View from Neighbor's yard)



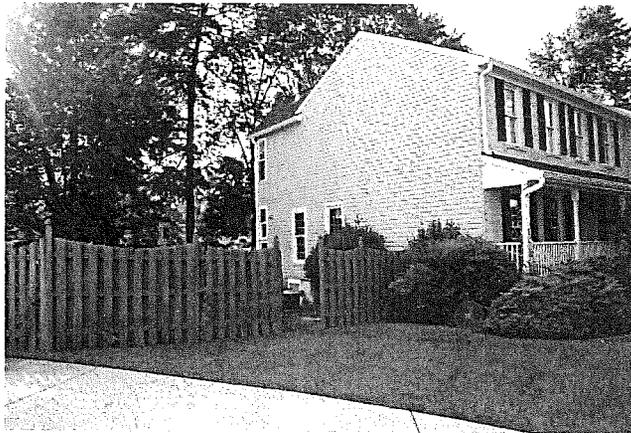
12) Side Yard (Northside of House) (Property Line)



13) Side Yard (Southside of House) (Property Line)

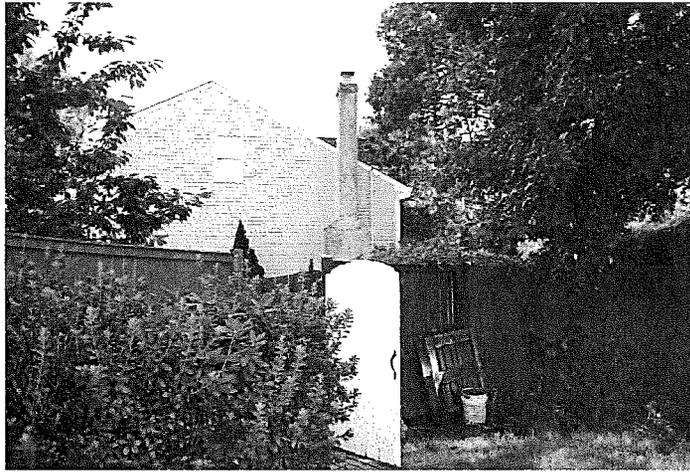


14) Side Yard (Southside of House) (View from Neighbor's Driveway)



15) Side Yard (Southeast of House) (View from Neighbor's Driveway)

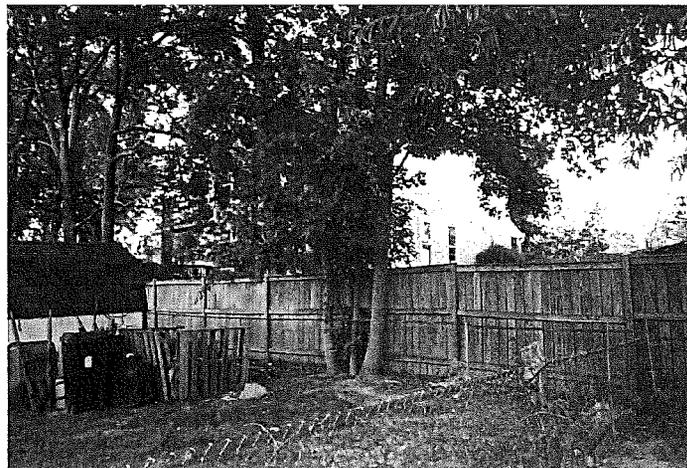
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16) Side Yard (Northside of Property) (View from Neighbor's Yard)

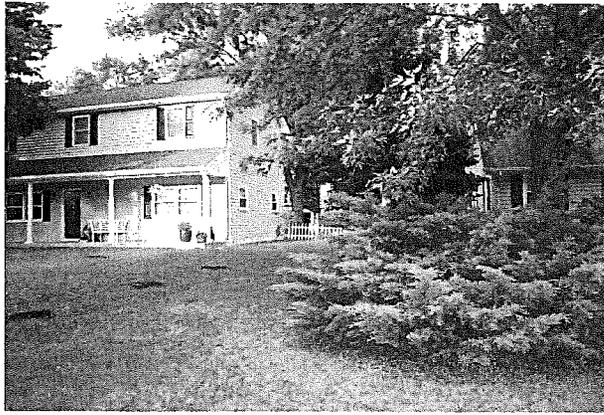


17) Back of Property (Southwest Side of House)  
(View from Neighbor's Property Line)

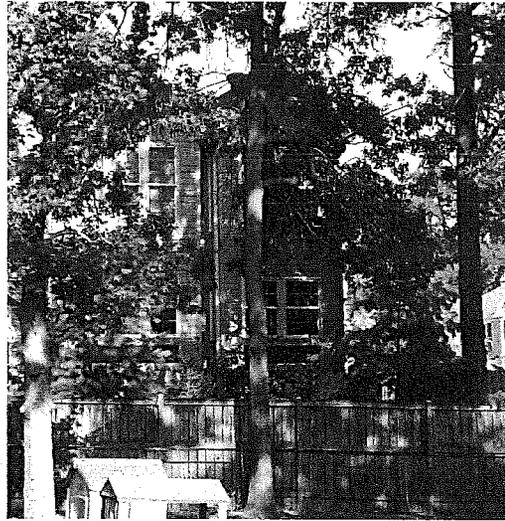


18) Back of Property (Southwest Side of House)  
(View from Neighbor's Yard)

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19) Back of Property (Westside of Property Obscured by Neighbor's House) (Brookview Street Line)



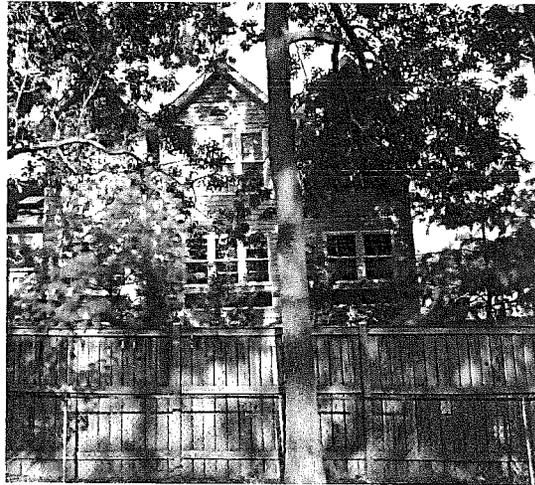
20) Back of Property (Westside of Property) (View from Neighbor's Yard)



21) Back of House (Northwest Side of House) (View from Neighbor's Property Line)



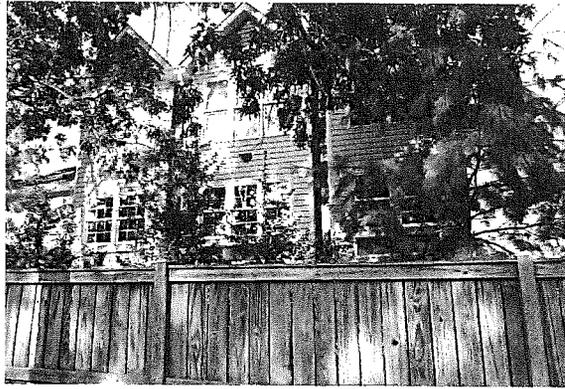
22) Back of House (Northwest side of House) (View from Neighbor's Backyard)



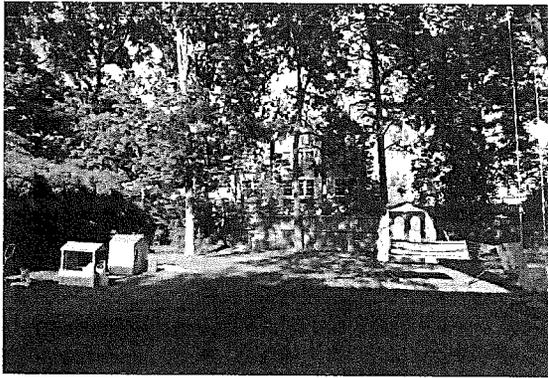
23) Back of Property (Westside of House) (View from Neighbor's Backyard)



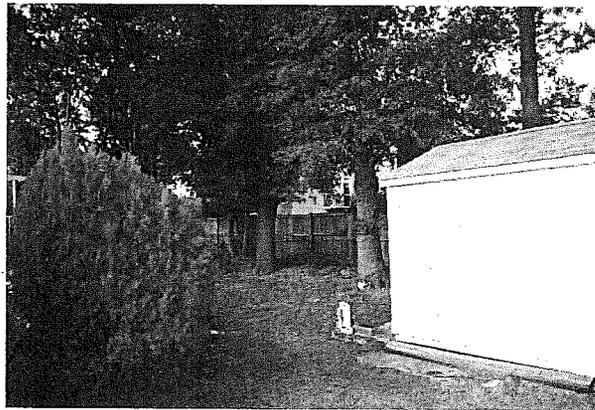
24) Back of Property (Westside of House) (View from Neighbor's Backyard)



25) Back of Property (Westside of House) (View from Neighbor's Yard)

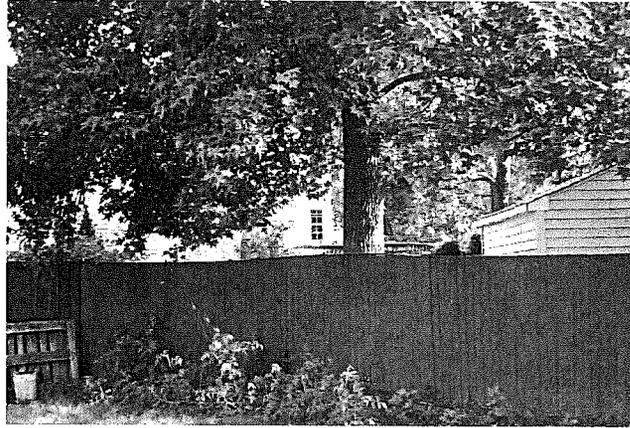


26) Back of Property (Westside of House) (View from Neighbor's House)

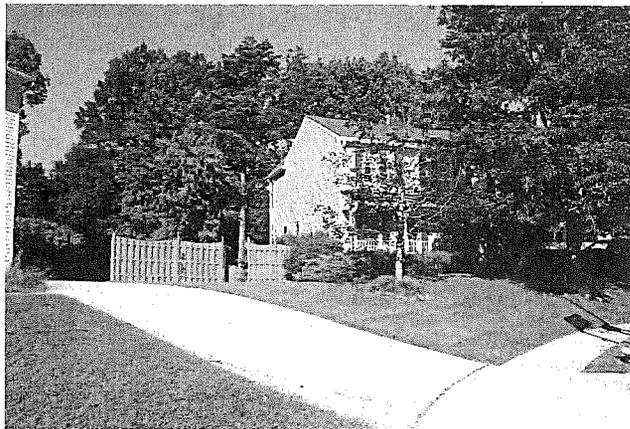


27) Back of Property (Southwest side of House)  
(View from Neighbor's Yard)

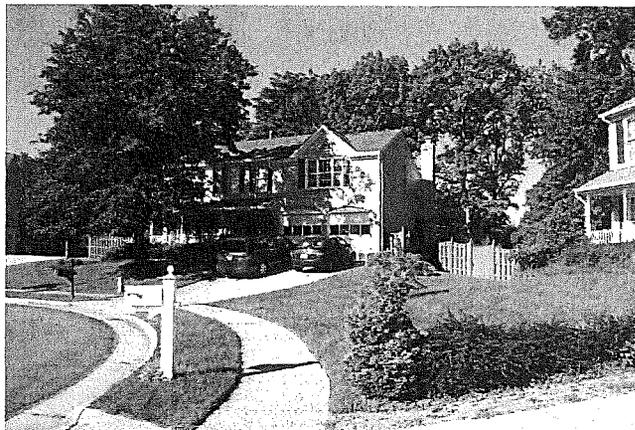
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28) Northside of Property (View from Neighbor's property line)



29) Side Yard (Southeast of House) (View from Layne Estates Ct.)



30) Side Yard (Northeast of House) (View from Neighbor's House)

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SEP 24 2012  
Zoning Evaluation Division



**DESCRIPTION OF THE APPLICATIONS**

The applicants are requesting approval for a reduction to the minimum yard requirements based on errors in building locations to permit 1) a bay window addition to remain 21.0 feet from the rear lot line and 2) a deck with lattice below to remain 13.0 feet from the rear lot line.

	<b>Structure</b>	<b>Yard</b>	<b>Min. Yard Req.*</b>	<b>Structure Location</b>	<b>Amount of Error</b>	<b>Percent of Error</b>
<b>Special Permit #1</b>	Addition (Bay Window)	Rear	25.0 feet	21.0 feet	4.0 feet	16%
<b>Special Permit #2</b>	Addition (deck enclosed below)	Rear	25.0 feet	13.0 feet	12.0 feet	48%

\* Minimum yard requirement per Section 3-307.

**EXISTING SITE DESCRIPTION**

The 10,500 square-foot property is on a cul-de-sac. Access to the site is provided from Layne Estates Court to an attached garage. The yard contains existing mature trees and foundation plantings. The rear yard contains an existing open deck which is attached to the dwelling. A portion of the deck was enclosed with lattice below, making it an addition to the primary dwelling. An 8.4 foot tall accessory storage structure is located in the northwestern corner of the site.

A six foot high fence encloses the rear yard and attaches to the northern and southern sides of the dwelling.

**CHARACTER OF THE AREA**

	<b>Zoning</b>	<b>Use</b>
<b>North</b>	R-3	Single Family Detached Dwellings
<b>South</b>	R-3	Single Family Detached Dwellings
<b>East</b>	R-3	Single Family Detached Dwellings
<b>West</b>	R-3	Single Family Detached Dwellings

## **BACKGROUND**

The dwelling was constructed in 1991. The applicant received a building permit for a two-story addition to the rear of the dwelling in January 2012. A copy of the permit is contained in Appendix 4. On July 31, 2012, the applicant was notified that the setback certification failed. A copy of the email from Zoning Administration is contained in Appendix 5.

During the review process, staff found that the lower portion of the deck is enclosed with lattice. Zoning Administration indicated that when portions below an open deck are enclosed, they then become an addition to the primary dwelling. The open deck was originally permitted as a deck extension, however, when the lower portion was enclosed the deck no longer qualified for the permitted deck extension and the structure is now viewed as part of the main dwelling and must meet minimum rear yard setback requirements.

A copy of the special permit plat entitled "Plat Showing the Improvements on Lot 5, Layne Estates" prepared by Dominion Surveyors, Inc., dated November 9, 2012, as revised through February 12, 2013, is included at the front of the staff report.

There are no other special permit applications in the vicinity of the application parcel:

## **ZONING ORDINANCE REQUIREMENTS (See Appendix 6)**

- General Special Permit Standards (Sect. 8-006)
- Group 9 Standards (Sect. 8-903)
- Sect. 8-914 Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location
- Sect. 10-104 Location Regulations

This special permit is subject to Sects. 8-006, 8-903, and 8-914 of the Zoning Ordinance as referenced above, a copy of which is included in Appendix 4. Subject to development conditions, the special permit must meet these standards.

## **CONCLUSION**

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

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

**APPENDICES**

1. Proposed Development Conditions
2. Applicant's Affidavit
3. Applicant's Statement of Justification and attachments
4. January 23, 2012 Building Permit
5. July 31, 2012 Setback Certification Email
6. Zoning Ordinance Provisions

**PROPOSED DEVELOPMENT CONDITIONS**

**SP 2012-LE-084**

**February 27, 2013**

1. This special permit is approved for the location of the additions as shown on the special permit plat prepared by Dominion Surveyors, Inc., dated November 9, 2012, as revised through February 12, 2013, as submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

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

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 9/20/2012  
 (enter date affidavit is notarized)

I, Anthony DeSante / Deanna DeSante, 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

118046

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 <b>BOLD</b> above)
Anthony F. DeSante Deanna L. DeSante	5508 Layne Estates Ct Alexandria, VA 22310	applicants
LUIS A. GUTIERREZ	3358 BROKEN KNIFE CT ANNANDALE VA 22003	AGENT
Franklin M. Andrade	6718 Westcott Rd. Falls Church VA 22042	Agent

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

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 9/20/12  
(enter date affidavit is notarized)

118046

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

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

**CORPORATION INFORMATION**

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

**DESCRIPTION OF CORPORATION:** (check one statement)

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

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

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

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

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

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 9/20/12  
(enter date affidavit is notarized)

118046

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

**PARTNERSHIP INFORMATION**

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

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

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

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

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

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

Page Four

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 9/20/12  
(enter date affidavit is notarized)

118046

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

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 9/20/12  
(enter date affidavit is notarized)

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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.

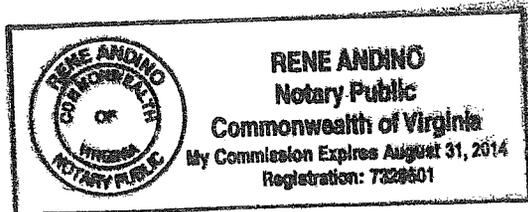
WITNESS the following signature:

[Signature] (check one)  Applicant  Applicant's Authorized Agent  
FRANLIN M. ANDRUE  
[Signature] Luis A. Gutierrez  
Anthony F. DeSante / Deanna L. DeSante  
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 20 day of SEPTEMBER 2012, in the State/Comm. of VIRGINIA, County/City of FAIRFAX.

[Signature]  
Notary Public

My commission expires: 08/31/2014



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Department of Planning & Zoning  
NOV 26 2012  
Zoning Evaluation Division

**Written Statement of Justification**  
*(Amended to Reflect Revised Survey Conducted  
by Dominion Surveyors, Inc.)*

The following explains how the error in building location occurred. The format follows that outlined under zoning regulation 8-914 (see page 8-63) entitled, "Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location."

A. The error exceeds 10 percent of the measurement involved.

*Dominion Surveyors, Inc. has drafted a plat of the current existing structure, which has determined the house is approximately 2.8 feet into the 25 foot set back, which is approximately an 11% error. The reason for the error is due to the fact that the owners believed they were complying with Fairfax County regulations by creating cantilevers with bay windows which constituted 50% of the surface area. However, the 50% glass surface requirement was not achieved, which resulted in the cantilevers being deemed as "extensions." The reason for the noncompliance in window to surface percentage is further described in Part B (below).*

B. The noncompliance was done in good faith, or through no fault of the property owner.

***There are two areas of noncompliance to be addressed.***

- *The first is the three cantilevers (bays) on the rear of the house are not considered bay windows according to Fairfax County because they do not have 50% glass surface, which means they are considered "building extensions." Fairfax County has a 25 setback requirement for such building extensions. These extensions encroach approximately 2.8 feet into the 25 foot rear setback area.*
- *The second area of noncompliance is the eaves on the rear of the house overhang an additional six inches into the 25 foot rear setback area.*

***The two areas of noncompliance described above were done in good faith and through no fault of the property owner.***

1) *There were three factors that led to the first area of noncompliance:*

- *A misunderstanding on the part of the builder of the methodology for measuring the windows to meet County requirements;*
- *A change required by the County, after the approval of the original plans, in the window dimensions on each bay for structural integrity/safety reasons; and*

- *A misunderstanding/miscommunication on the part of the builder of the methodology for measuring the bay façade surface area to achieve the 50% window to surface area ratio.*

### Chronology

*The architect consulted both Fairfax County zoning officials and the applicable zoning regulations during the addition's design phase and prior to finalizing the original construction plans. On 27 January 2012, plans were approved by the County to construct an addition with three bay windows. However, at this time, the architect did not receive from the County formal written instructions on how to calculate the windows (glass) versus surface area ratio.*

*Upon proceeding with the construction, the builder incorrectly assumed that the window measurement was based on the rough opening of the window, not the glass itself, and he developed the window order with that in mind. The owners had no reason to question this and signed the window contract based on the original approved design and the builder's calculation of the windows per the rough openings. The window order included four sets of two conjoined double hung windows, two giant picture windows and three large half moon windows (in the attics) on the front facades of the three bays; and four double hung windows and eight small fixed windows on the sides of the bays. The width of the windows on each bay façade extended to within one foot of each façade edge.*

*During the first phase of construction, the builder sought inspection of the footing and foundation and crawl space/floor joisting (in late February/mid-March). He asked the County inspector (Mr. Jack Pendleton) to look at the drawings to make sure that he saw no problems with the design. The builder informed the owners that the inspector expressed concerns that the windows were too wide and that the width needed to be reduced or that mechanical bracing needed to be applied to ensure that the bays would be structurally sound. The owners were concerned about the cost of bracing (and whether it would be sufficient) and asked the architect to rework the plans to address the inspector's concerns while maintaining the 50% window area required to meet County requirements. The owner also asked the Architect to modify the large half round windows in the attics, which had proven to be specialty windows that were difficult to order and very expensive.*

*The Architect reworked the plans, reducing the width of the windows and adding nine transom windows underneath the original double hung/picture windows to make up for the lost window width. The Architect also replaced the half moon windows with square picture windows. These revised plans were approved by the County on 27 March 2012.*

*Before placing the revised window order, the builder called the County zoning ordinance department to confirm the methodology for calculating the square footage of wall. He was concerned that under the revised plans with the addition of the transom windows, there would be virtually no wall space inside the finished structure. The builder said that*

he was informed by [the planner of the day] at the Zoning Ordinance office that area was measured from the floor (from the top of the joists) to the finished ceiling of each story. The contractor understood this to mean the floor joists under the first floor window, and in between the floors, did not count nor did the attic/peaks on the bay facade. As such, the builder concluded and informed the owners that the big half moons/picture windows in the attic were not needed, after all.

The owners cancelled the original window order and directed the builder to reorder the windows based on the new specifications and information gleaned from the builder's discussion with County Zoning Ordinance office. During the reorder process the window vendor expressed concern about possible window shear and the strength of the extra large picture windows; the vendor advised to either use tempered glass or make the windows double hung. The owner decided to replace the picture windows with two sets of three conjoined double hung windows, not understanding that this would further minimize the glass area versus the surface area calculation. Since the owners no longer believed that the large windows in the attic were needed, two of them were removed from the order. One smaller half round window was ordered for the center bay for aesthetic reasons. In total the revised order included 18 double hung windows, eight fixed windows, nine transom windows, and one half round.

In April, after the framing was complete, the inspector (Mr. Gary Williams) approved the framing, electrical, and plumbing and noted the huge openings for the windows. The builder and the owners assumed everything was fine. The builder then proceeded with the installation of the windows and completed the construction. In July, after all of the construction was complete, our builder sought final inspection. He was informed that the County required submission of a new survey and the calculations for the windows. It was at that time that the County (Mr. Brian Parsons) informed us that 1) the window calculation was based on the window pane, not the window frame, and that the calculation also excludes the frames around the double hung panes and between the conjoined windows and, 2) the measurement of the façade area, was from right under the window sill to the top of the structure including the peak.

This is still confusing, as it is different from what the builder says that the Zoning Ordinance office told him and also different from what we would logically expect. With these three revelations we determined that the glass to surface area ratio fell short of the 50% requirement. On July 31, the County informed us that we were in non-compliance.

2) The second area of noncompliance resulted from two factors:

- A discrepancy regarding the information the architect received from the County regarding the amount of setback area available for extensions (based on the May 1998 survey plat), and the area that appears available for setback in the July 2012 survey plat; and
- A decision by the builder to modify the design to correct a leakage problem with the roof.

## Chronology

*On 27 January 2012 (the same day the original plans were approved), the architect was told by the zoning ordinance department that, based on the construction design with bay windows, the original survey plat (which he measured with a scale) allowed for an additional one foot of construction space, should the owners wish to modify the plans. The architect stated that the County planner hand-wrote on the original survey plat that there was 23 feet between the outside wall of the proposed addition and the property line. The architect conveyed this information to the owner, but also informed the owner that any modifications to the plan would require an amendment and resubmission of the plans to the County for re-approval. The owners were satisfied with design as it was, decided not to amend the plans.*

*The original design did not include eaves above the bay windows. However, following several heavy rains that resulted in significant leakage through the windows into the walls on the sides of bays, the builder determined that the pitch of the roof was causing the water to rush too fast where the peaks met. The builder decided to close up the space between the peaks and add eaves to protect the windows from the elements. If this had not been done, the owner would continue to have problems which could result in irreversible damage, mold, etc. The owner and the builder believed they were acting in good faith and that we would not encroach on the setback because the zoning office had told our architect in January 2012 that we had an extra one foot of space to work with.*

*The Dominion Surveyor, Inc. survey shows a range of 22.0 to 22.3 feet between the property line and the bay, which is approximately 8-12 inches shorter than the 23 feet noted on the original survey plat (see attached copy of original plat); the eaves extend 1 foot further. The County has determined the eaves to be .6 feet beyond the required set back (reference attached 31 July 2012 email from Mr. Brian Parsons, AICP, Dept. of Planning & Zoning, Zoning Administration Division to owners). If the original 23 foot figure remained the same, the eaves would have been within the setback.*

### **C. Such reduction will not impair the purpose and intent of this Ordinance.**

*A reduction in set back will not impair the purpose or intent of the County's Ordinance since the construction does not change the use of the property or significantly change the property's overall design or style from the rest of the neighborhood.*

*The construction added approximately 600 square feet (300 square feet to each floor) to a house that was originally 2294 square feet in above grade living area, making the total new square footage approximately 2894 square feet. This house was originally the smallest model of nine houses on Layne Estates Ct. and was built on a pie-shaped 10,500 square-foot lot at the back of the cul-de-sac. Even with the additional square footage resulting from construction, this house is still significantly smaller than the largest house on the cul-de-sac, which is 3727 square feet on a 10,454 square foot lot. As a further point of comparison, since 2008, two new cul-de-sacs (Anne Ly Lane) have been built in close proximity to Layne Estates Ct. (next street over). A total of 14 homes were built,*

ranging from 3,449 square feet to 6,038 square feet in structure area on lots ranging from 10,757 square feet to 12,094 square feet.

*Additionally, the construction does not change the style of the house in comparison to the other houses in the cul-de-sac, since the addition cannot be seen from the street. The addition was designed to seamlessly blend into the original construction of the house so as to minimize the perception that additional living area had been added. To carry this through, the owners completely replaced the siding and roof of the house.*

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity.

*The reduction in setback will not be detrimental to the use and enjoyment of other properties in the immediate vicinity. As previously noted, the new construction cannot be seen from the street, nor can it be seen easily by the neighbors to the right of the house. The neighbor to the immediate left has a side view of the addition, which does not protrude any further out than the original house on their side. There are three neighbors behind whose property borders the applicant's property. Two of these neighbors can see the addition, though it is obscured by trees and foliage; the third neighbor can barely see it at all due to bamboo screening which obscures the view. All three neighbors behind have square shaped lots in which their homes sit at the front of the lot, providing ample distance between their home and the applicants' house.*

*The applicants have spoken with the neighbors who would be most affected by the addition. At no time before, during or after the construction of the addition did these neighbors express concerns or complaints regarding the design or setback. Two of the neighbors behind the applicant's house used the same contractor for construction of their own additions and were aware of the applicant's plans prior to the commencement of construction. The neighbors to the left who have the side view have been consulted and have raised no issues or concerns regarding detrimental use and enjoyment of their property as a result of the setback issue. Two signed letters from neighbors who live directly behind and adjacent to the property are enclosed to the application in support of these claims.*

E. It will not create an unsafe condition with respect to both other property and public streets.

*The modification to the applicant's house added living space to the back of the current structure and is not in proximity to any public street. The house directly behind the applicant's property sits on the front of a 12,618 sq ft. lot, providing ample distance between this neighbor's structure and the applicant's structure and thus does not create an unsafe condition in relation to that property. The property of the other two neighbors behind the construction only overlaps the applicant's property on the corners. The construction has passed all Fairfax County structural inspections to date.*

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.

*Because the renovation involved the installation of plumbing, electrical, heating, wood flooring and ceramic tile in the area that encroaches on the setback, and we designed our kitchen (with the installation of expensive cabinets and granite countertops) taking into consideration the extra space afforded by the bays, structural modification of the addition to meet the setback requirement would be extremely impractical, wasteful and cause unreasonable financial hardship. The owners spent approximately \$200,000 on the addition, which was financed by home equity from a mortgage refinance, a second mortgage and a line of credit. Given the limitations of the owners' salaries, the applicants do not have additional funds available to pay for the costly structural changes that would be required to meet the setback requirement.*

*The applicants also do not believe it would be prudent to remove the eaves from three bay windows, given the water damage that was experienced during the construction phase. Removing the eaves would cause future financial hardship and possible risks to the structural integrity of the bays, since water would continually seep into the walls and joists causing rot and mold.*

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

*The reduction in setback does not increase the floor area ratio to exceed that which is authorized under existing zoning district regulations (R-3/Residential 3 DU/AC) for the neighborhood. As stated previously, even with the additional 600 square feet added (300 square feet on each level), the total new square footage of the house is still less than that of other houses in the same cul-de-sac. The modified house will remain inhabited by only one single family of four people and two cats.*

Addendum 1:

Section 5.08: The owners affirmatively state that there are no hazardous or toxic substances as set forth in Title 40, code of Federal regulations parts 116.4, 302.4, and 355 on the site now, or to be proposed for the site in the future.

There is no hazardous waste as set forth in commonwealth of Virginia/Department of waste management regulations VR 672-10-1-Virginia Hazardous waste management regulations; and/or petroleum products as defined in title 40, code of Federal regulations part 280; generated, utilized, stored, treated, and/or disposed of on the site, or to be generated, utilized, stored, treated, and/or disposed of on the site in the future.

There is no size or contents to report of any existing or proposed storage tanks or containers, because none exist or will exist in the future on the site.

Addendum 2:

Section 5.09: The owners affirmatively state that the development conforms to the provisions of all applicable ordinances, regulations and adopted standards, except for the error in building location for which this special permit application requests permission from the County to remain 21.0 feet from the rear lot line.

**Horner, Rebecca D.**

---

**From:** Tony and Deanna DeSante <desante1@verizon.net>  
**Sent:** Tuesday, February 12, 2013 10:58 PM  
**To:** Horner, Rebecca D.  
**Subject:** Justification for Lattice/Enclosure Under Deck

Ms. Horner,

Please find below our justification for retaining the lattice on our deck. Please let us know if this is sufficient or if you need anything else.

Regards,

Deanna DeSante

Justification for Lattice/Enclosure Under Deck  
5508 Layne Estates Ct., Alexandria, VA 22310

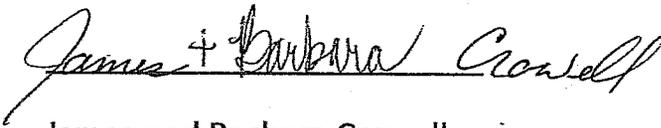
The owners were unaware that the lattice that partially encloses the lower part of their deck constitutes an "enclosed structure" that is non-compliant with Fairfax County Zoning regulations related to setback. The lattice was attached to the deck prior to the current owners' purchase of the home (and likely was attached at the time of the deck's construction). The house was built in 1991, and the owners assume that the deck was built at that time. The owners would like to retain the lattice in order to keep animals from nesting under the deck. The owners have had issues with raccoons and foxes, who have nested in adjacent properties. Several years ago, a mother racoon was found to have entered the owners' house through a door that was ajar off the deck and was eating the owners' pet food. Upon discovering the mother racoon, the owners also observed her kits (babies) outside on the deck. Also, more recently, a skulk of foxes (vixen and four kits) took up residence in the owners' next door neighbor's yard. Though the owners have not seen the skulk for several months, they are concerned about animals with rabies nesting under their deck because they have pets and young children.

09/12/2012

Dear Sir/Madam of the Zoning Board Commission,

My name is James Crowell. My wife (Barbara) and I reside at 5927 Brookview Dr., Alexandria, VA , which is behind the DeSante house located at 5508 Layne Estates CT, Alexandria, VA 22310. I am writing to affirm the fact that the recent addition to their house will not be detrimental to the use and enjoyment of our property.

Sincerely,

A handwritten signature in cursive script that reads "James + Barbara Crowell". The signature is written in black ink and is positioned above the printed name.

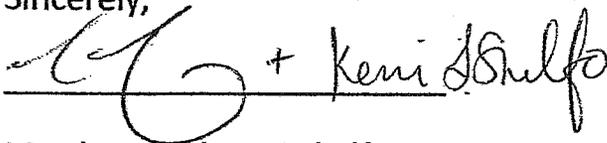
James and Barbara Crowell

09/17/2012

Dear Sir/Madam of the Zoning Board Commission,

My name is Matthew. My wife (Kerri) and I reside at 5929 Brookview Dr., Alexandria, VA , which is directly behind the DeSante house located at 5508 Layne Estates CT, Alexandria, VA 22310. I am writing to affirm the fact that the recent addition to their house will not be detrimental to the use and enjoyment of our property.

Sincerely,

 + Kerri Shelfo

Matthew and Kerri Shelfo

RECEIVED  
Department of Planning & Zoning  
NOV 26 2012  
Zoning Evaluation Division

NOTES

- 1. FENCES ARE FRAME UNLESS NOTED
- 2. UTILITIES ARE UNDERGROUND

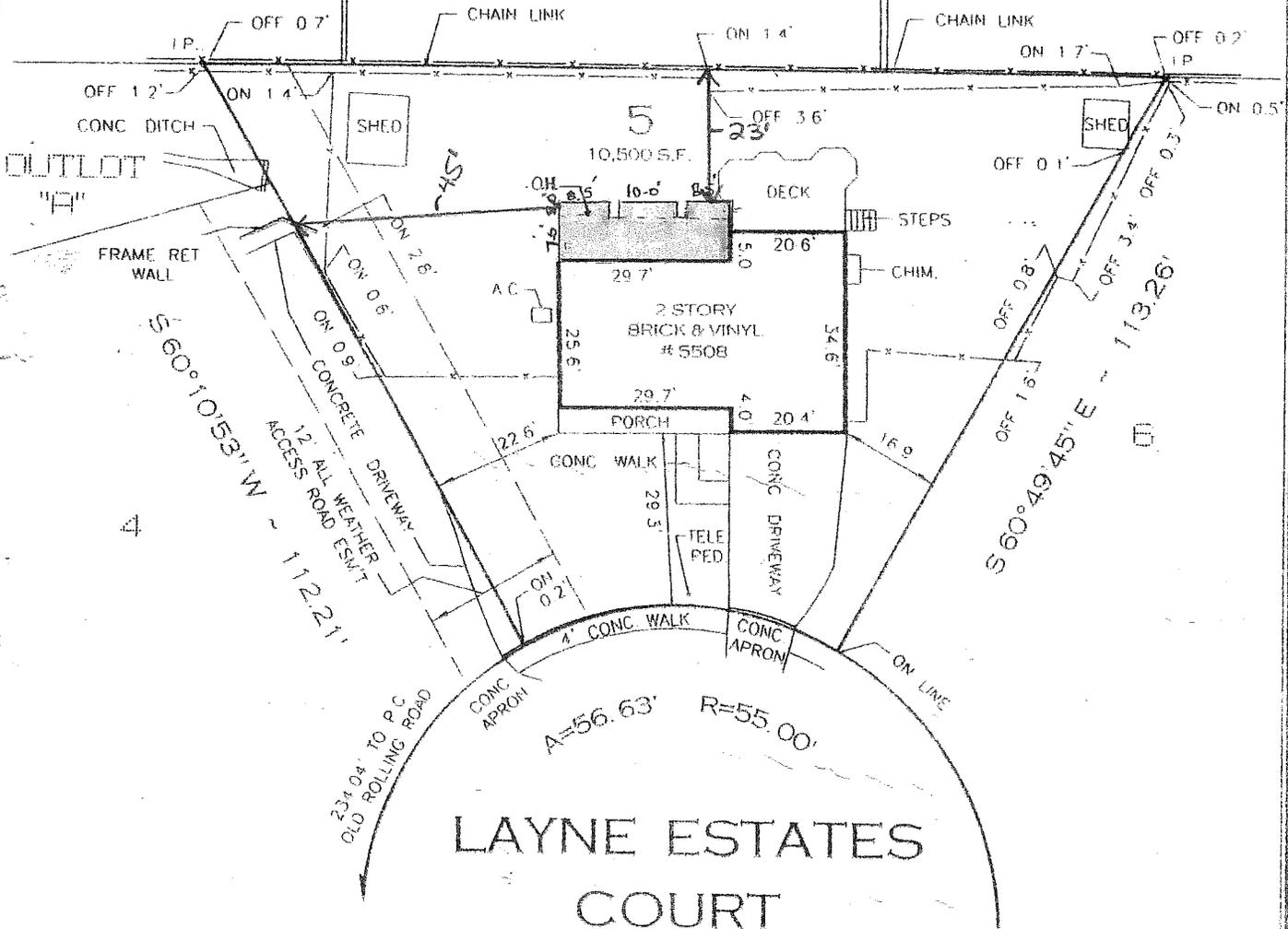
This Plat depicts the location, height and distances of all existing and proposed structures to respective lot lines.

12

10

*Liz Melone* 1/23/12  
 Owner/Agent Date

N 00°38'30" W ~ 165.17'



LAYNE ESTATES  
 COURT  
 50' R/W

APPROVED  
 1-23-12  
*Liz Melone*  
 Zoning Administrator  
 2nd story addition

PLAT

SHOWING HOUSE LOCATION ON  
 LOT 5

LAYNE ESTATES  
 FAIRFAX COUNTY, VIRGINIA

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**Subject:** Fw: Special Permit Application  
**From:** Tony and Deanna DeSante (desante1@verizon.net)  
**To:** desante1@verizon.net;  
**Date:** Saturday, November 17, 2012 3:57 PM

----- Forwarded Message -----

**From:** "Parsons, Brian S." <Brian.Parsons@fairfaxcounty.gov>  
**To:** 'Tony and Deanna DeSante' <desante1@verizon.net>  
**Sent:** Tuesday, July 31, 2012 9:29 AM  
**Subject:** RE: Special Permit Application

Ms. DeSante:

To recap, the setback certification failed because:

1. The roof on the rear of the house overhangs 3.6 feet into the 25 foot rear setback area (it is only allowed to overhang 3.0 feet into the setback and only if the eave is greater than 10 feet above finished ground elevation);
2. The 3 extensions (bays) on the rear of the house are not considered bay windows because they do not have 50 % glass surface. Therefore, these extensions are considered building extensions. The setback certification plat indicates that they are located 22.2 feet from the rear lot line and that they encroach 2.8 feet into the 25 foot rear setback area. These extensions are not permitted to encroach at all into the rear 25 foot setback area.

To initiate the special permit process for an error in building location, please contact the Zoning Evaluation Division (ZED) at 703-324-1290 to speak to the planner of the day about setting up a pre-application meeting for the special permit (SP) process. The SP application form is located on the Internet at [www.fairfaxcounty.gov](http://www.fairfaxcounty.gov), then click on Land Use & Development, then scroll to Zoning & then click on applications and then forms. Special permits are subject to standards which must be met to the satisfaction of the BZA before the BZA can approve such applications.

All special permits require the submission of an application, plat and fees; notification of adjacent property owners; posting of a sign on the referenced property and a public hearing before the BZA. Please call ZED for additional information. Thank you,

Brian S. Parsons, AICP  
County of Fairfax  
Dept. of Planning & Zoning  
Zoning Administration Division  
703-324-1314

**From:** Tony and Deanna DeSante [mailto:desante1@verizon.net]  
**Sent:** Monday, July 30, 2012 4:49 PM  
**To:** Parsons, Brian S.  
**Subject:** Special Permit Application

Mr. Parsons,

**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.