



APPLICATION ACCEPTED: January 24, 2013

DATE OF PUBLIC HEARING: April 17, 2013

TIME: 9:00 a.m.

County of Fairfax, Virginia

April 10, 2013

STAFF REPORT

SPECIAL PERMIT APPLICATION NO. SP 2013-DR-008

DRANESVILLE DISTRICT

APPLICANTS/OWNERS: Thomas D. Davis
Christina U. Davis

LOCATION: 1859 Patton Terrace, McLean, 22101

SUBDIVISION: Chesterbrook

TAX MAP: 41-1 ((11)) 24

LOT SIZE: 11,113 square feet

ZONING: R-2

ZONING ORDINANCE PROVISION: 8-914

SPECIAL PERMIT PROPOSALS: To permit reduction to the minimum yard requirements based on error in building location to permit roofed deck to remain 9.7 ft. from side lot line.

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

The approval of this 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.

O:\rhomer\Special Permits\Davis (Error)\staff report.doc

Rebecca Homer

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

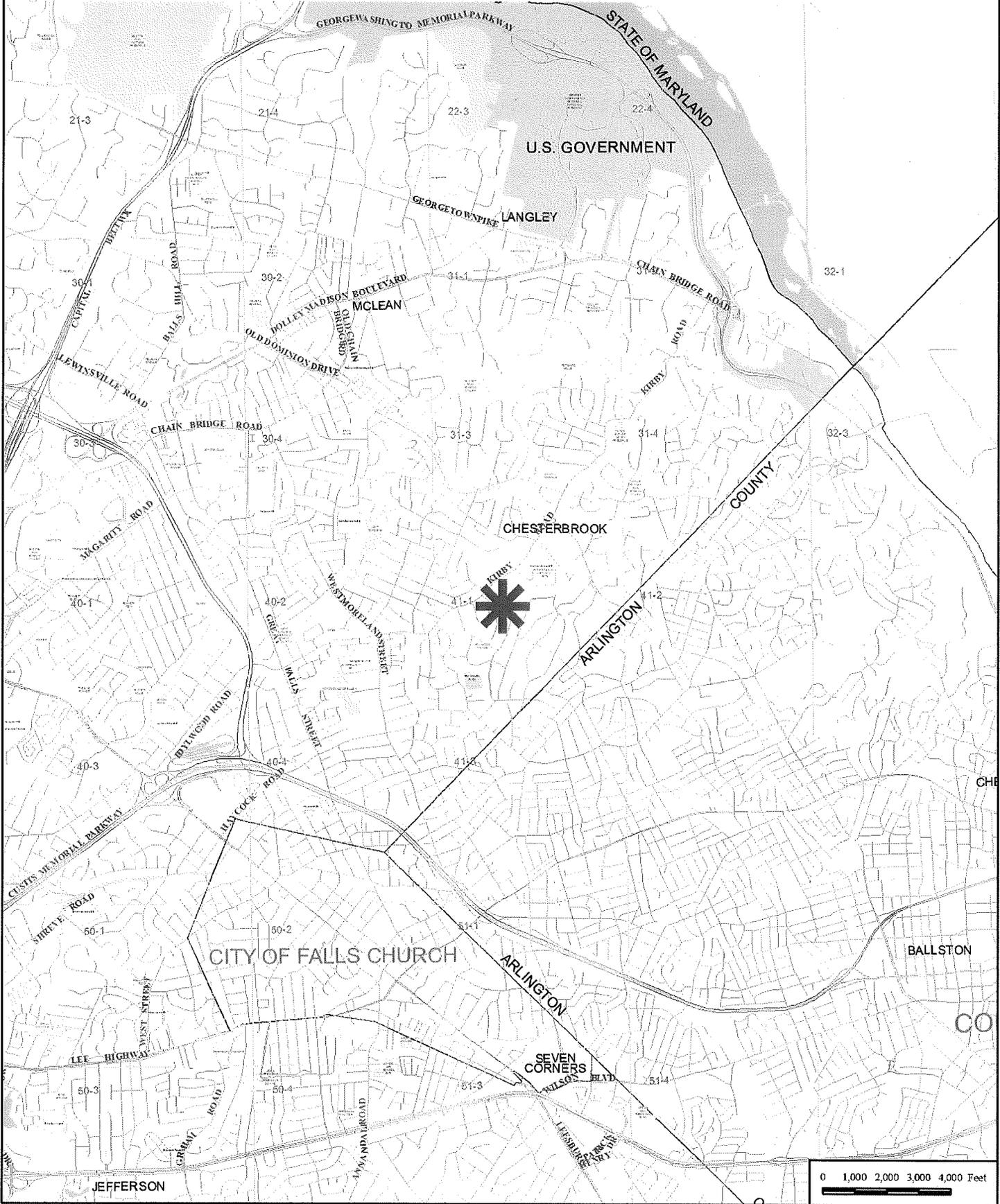


For additional information, call Zoning Evaluation Division, Department of Planning and Zoning at 703-324-1280, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035. **Board of Zoning Appeals' meetings are held in the Board Room, Ground Level, Government Center Building, 12000 Government 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).

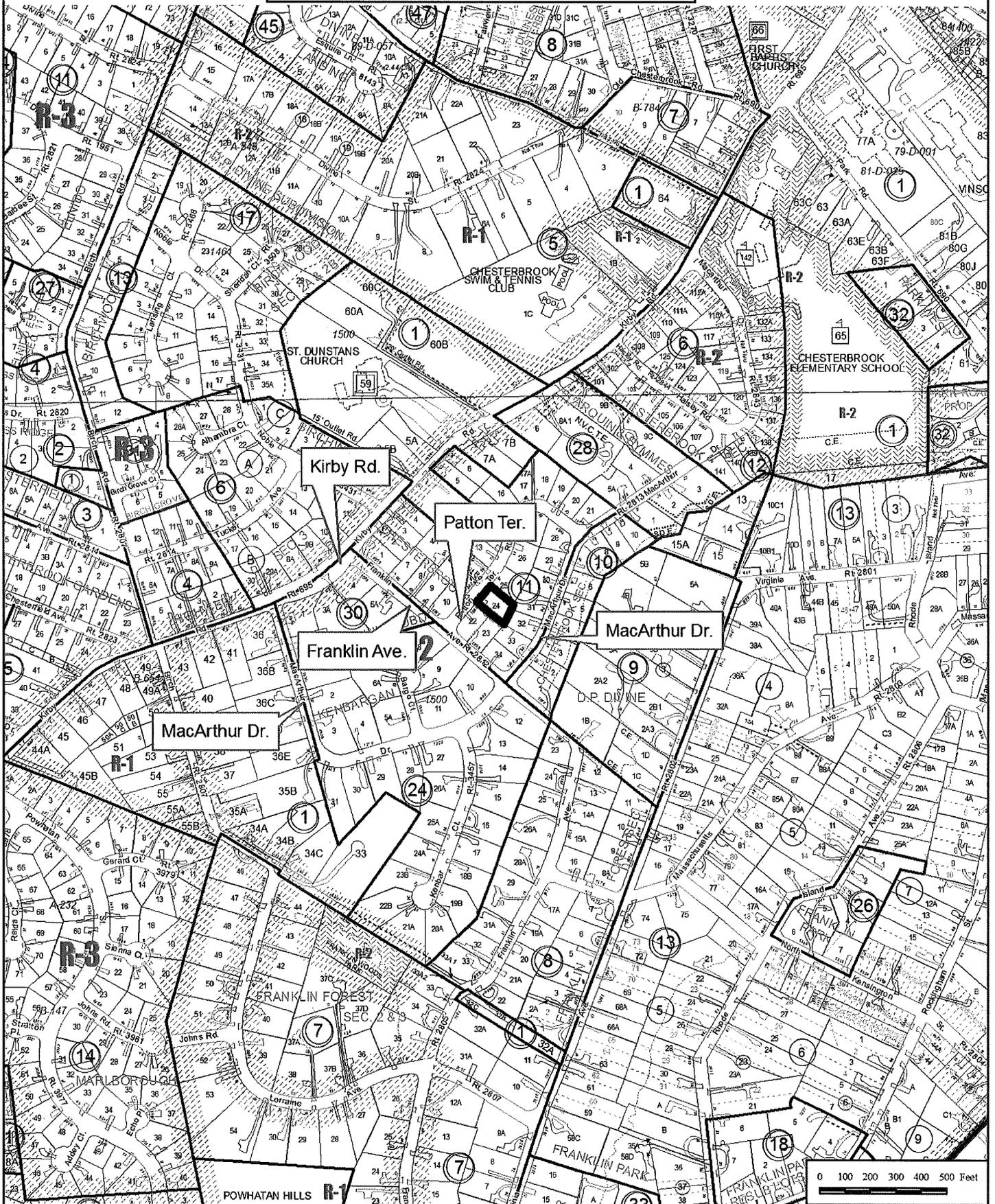
Special Permit
SP 2013-DR-008
THOMAS D. AND CHRISTINA U. DAVIS



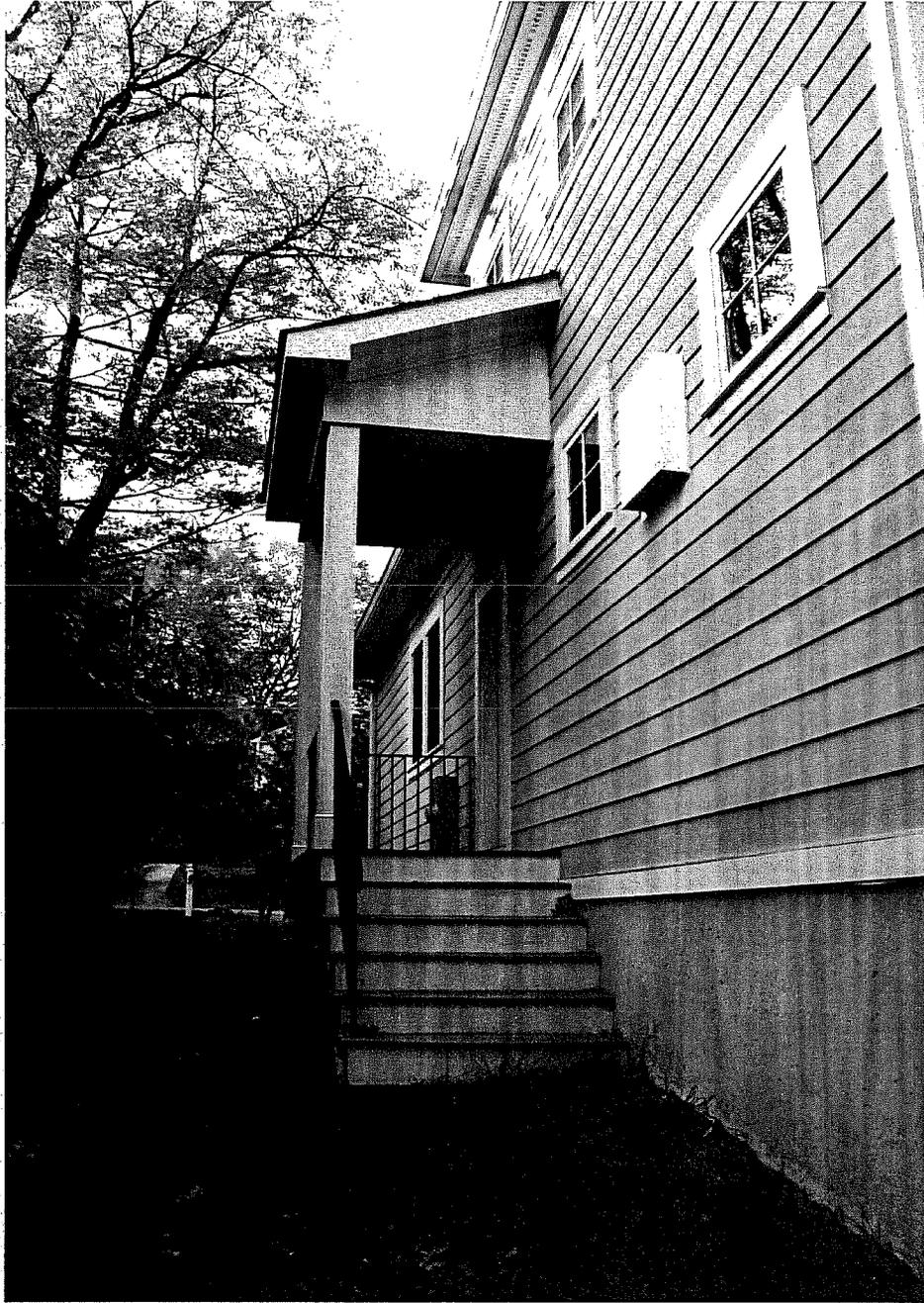
Special Permit

SP 2013-DR-008

THOMAS D. AND CHRISTINA U. DAVIS



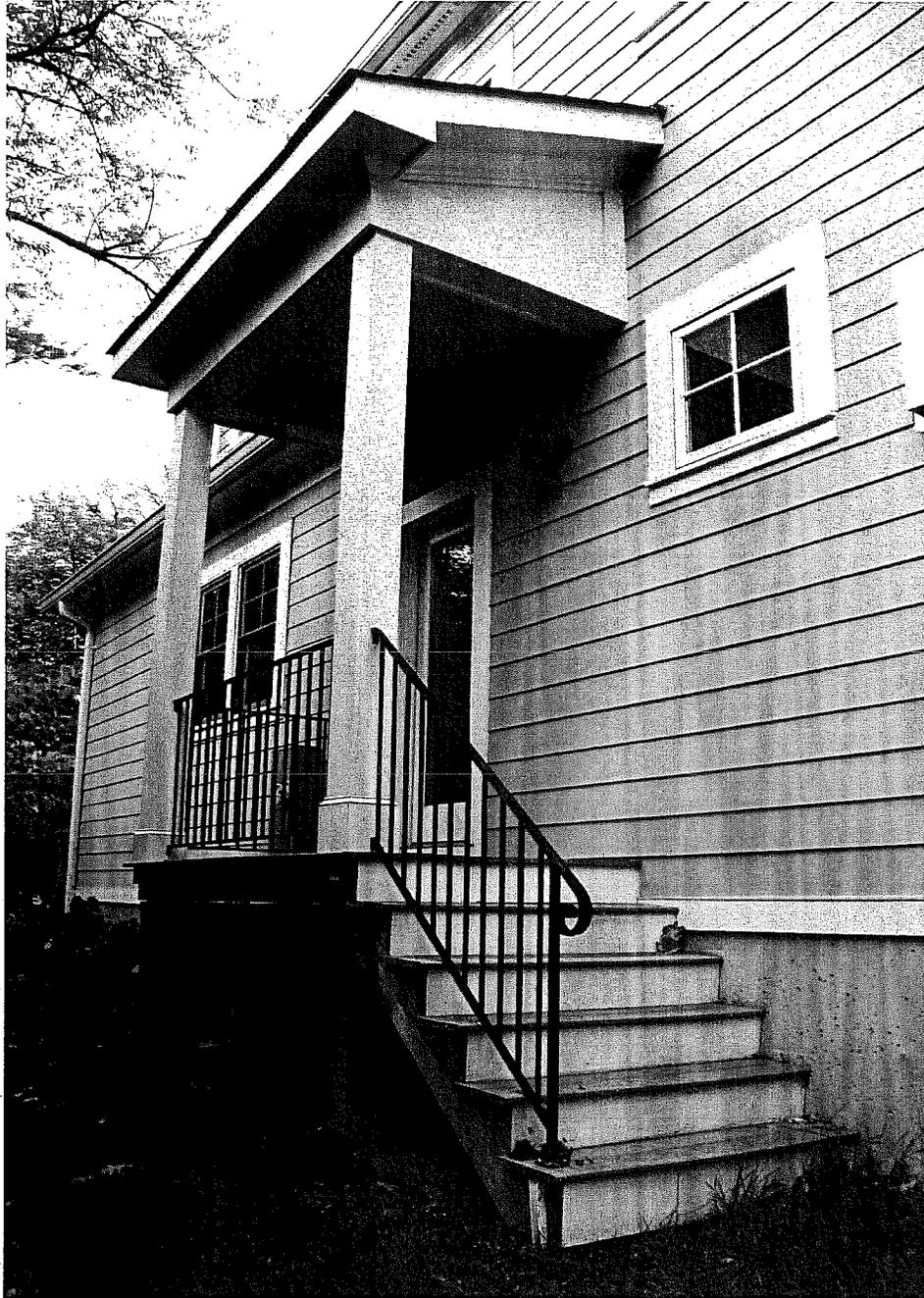
Special Permit Application: 1859 Patton Terrace



View of deck in side yard on southwest side of the property, taken from rear side yard facing northwest.



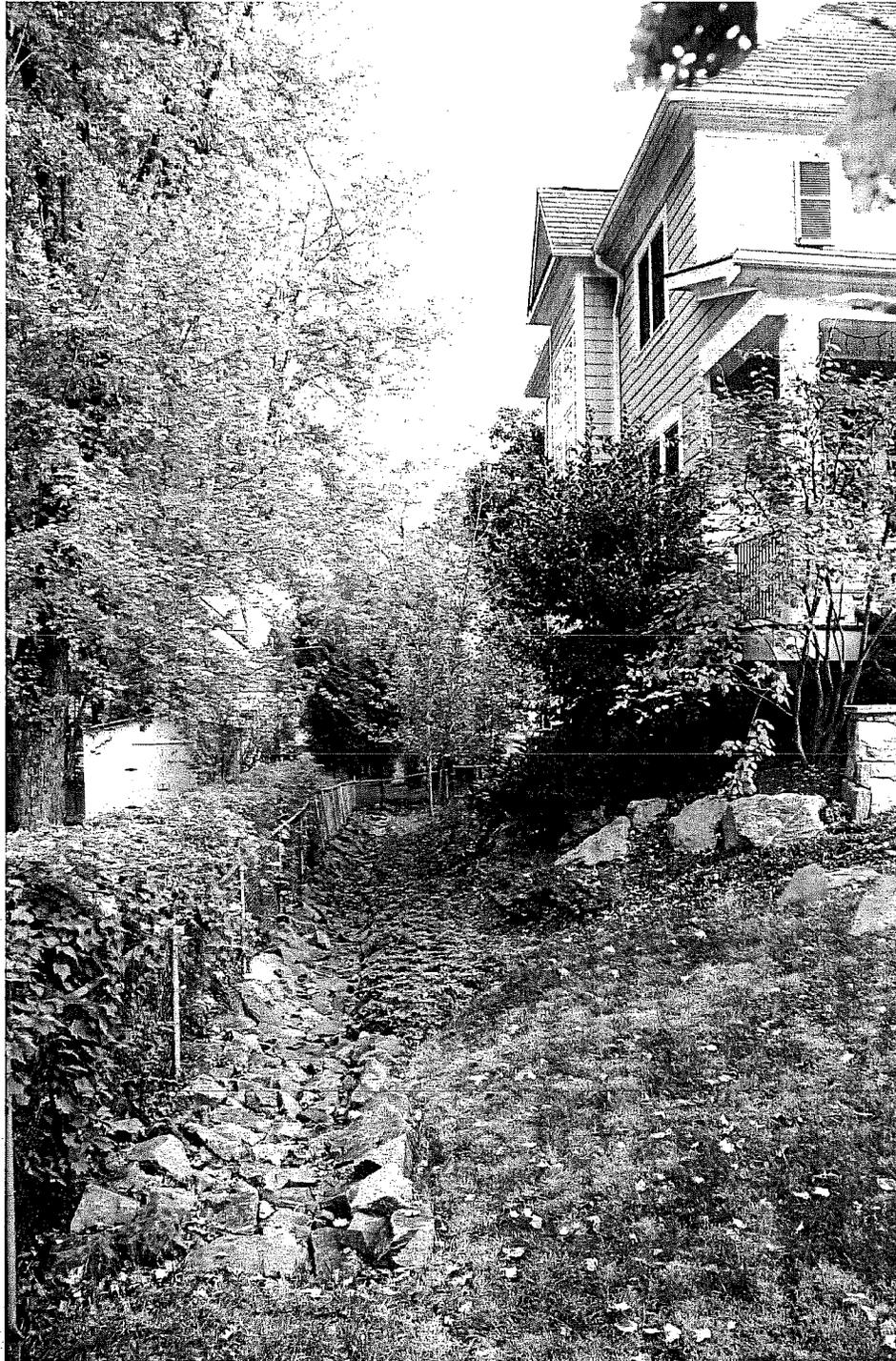
View of deck in side yard on southwest side of the property, taken from side yard facing southeast.



View of deck in side yard on southwest side of the property.



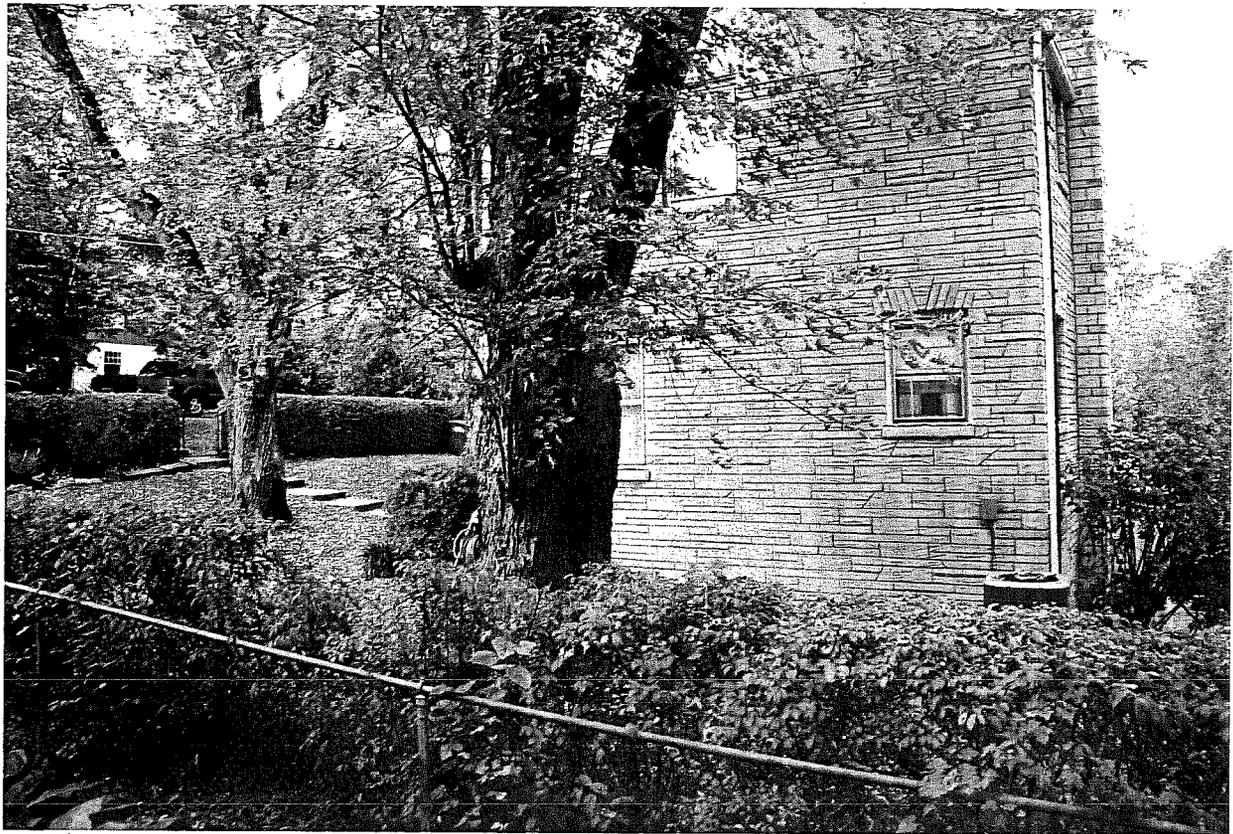
View of front of dwelling taken from Patton Terrace (front property line).



View of side yard on northeast side of the dwelling taken from front property line.



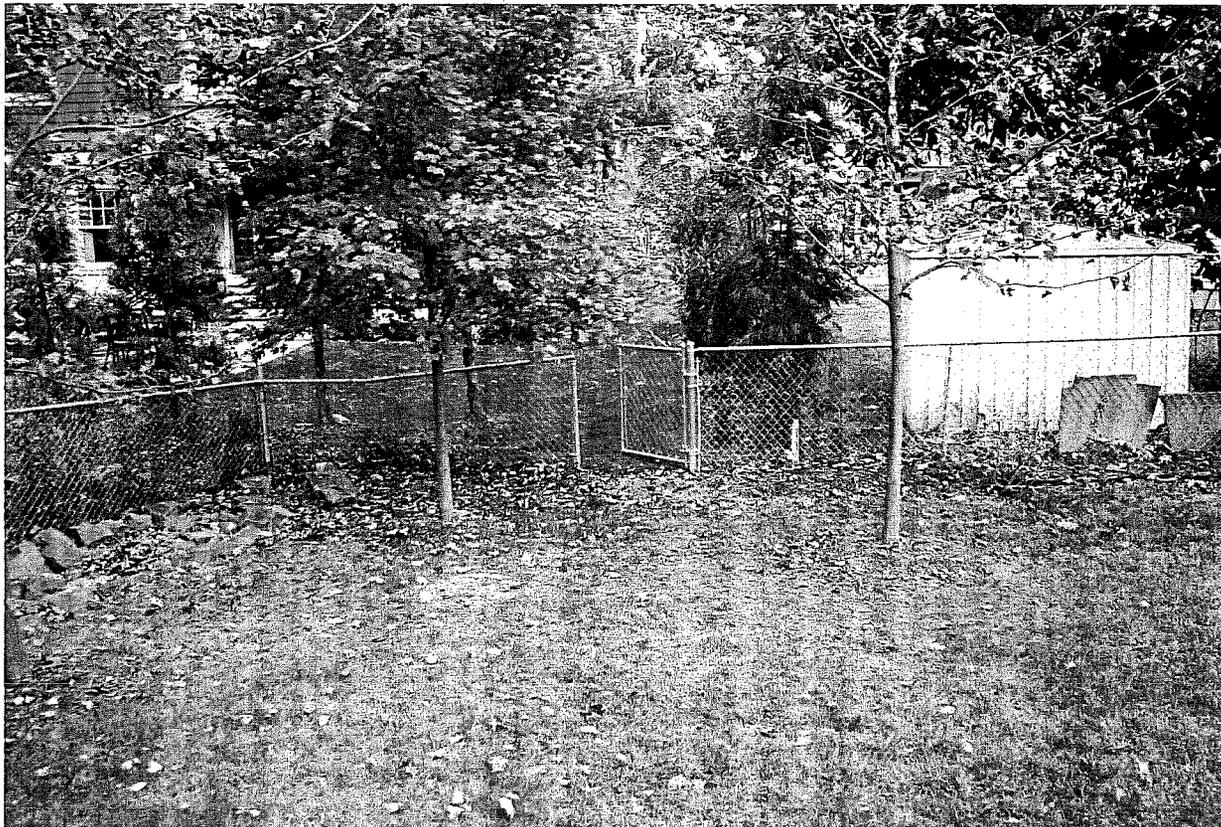
View of adjacent property to the northeast, taken from property line.



View of adjacent property, taken from side yard facing northeast.



View of eastern rear corner of the property, taken from side yard.



View of rear property line, taken from rear yard.



View of southern rear corner of the property taken from rear yard.



View of southwest property line, taken from rear yard.



View of side yard taken from western front corner of the property.



View of adjacent property, taken from side yard facing southwest.

DESCRIPTION OF THE APPLICATIONS

The applicants are requesting approval for a reduction to the minimum yard requirements based on error in building location to permit an existing roofed deck to remain 9.7 ft. from a side lot line.

	Structure	Yard	Min. Yard Req.*	Structure Location	Amount of Error	Percent of Error
Special Permit	Roofed Deck	Side	15.0 feet	9.7 feet	5.3 feet	35.3%

* Minimum yard requirement per Section 3-207.

EXISTING SITE DESCRIPTION

The 11,113 square-foot property is currently zoned R-3 and developed with a single family dwelling. The rear yard contains an existing deck which is attached to the dwelling. An existing 16.5 foot high roofed deck is located on the southwestern side of the dwelling, 9.7 feet from the side lot line.

A 3.5 foot high chain link fence is located along both side property lines and the rear property line. The property slopes toward the rear of the lot. The yard contains existing mature trees and foundation plantings.

Access is provided to Patton Terrace via a paved driveway which terminates at an existing attached garage.

CHARACTER OF THE AREA

	Zoning	Use
North	R-2	Single Family Detached Dwellings
South	R-2	Single Family Detached Dwellings
East	R-2	Single Family Detached Dwellings
West	R-2	Single Family Detached Dwellings

BACKGROUND

On October 30, 2007, a determination from the Zoning Administrator indicated that the property was part of a subdivision in 1946 and the lot is a legal lot of record. The Zoning Administrator determined that the lot was buildable, under the provisions for lots of record and that all ordinance provisions, except for lot area and lot width, must be met. A copy of this determination is contained in Appendix 4.

The applicant received a grading plan to construct a new house in 2007. The dwelling was constructed in 2008. The grading plan showed handicap accessible improvements in the area of the existing roofed deck. The Department of Code Compliance inspected the property on August 21, 2012, to verify whether accessible improvements shown on the grading plan remain installed on site. A Notice of Violation (NOV) was issued on August 27, 2012, indicating that no handicap ramp exists and that the existing roofed deck is in violation of Zoning Ordinance provisions. A copy of the NOV is contained in Appendix 5.

A copy of the special permit plat entitled "Plat Showing the Improvements on Lot 24, Section One, Chesterbrook" prepared by Dominion Surveyors, Inc., dated October 23, 2012, as revised through December 26, 2012, is included at the front of the staff report.

Following the adoption of the current Ordinance, the BZA has heard the following special permit and variance requests in the vicinity of the application parcel:

Special Permit SP 00-D-015 was approved on June 21, 2000 for tax map 41-1 ((13)) (05) 8, zoned R-2, at 1924 Rhode Island Avenue to permit modification of the minimum yard requirements based on error in building location to permit stoop to remain 7.7 feet from side lot line.

Variance VC 01-D-049 was approved on June 27, 2001 for tax map 41-1 ((17)) 18, zoned R-4, at 2128 Powhatan Street to permit construction of a roofed deck 20.8 feet from the front lot line of a corner lot and 4.9 feet from side lot line.

Variance Amendment VCA 79-D-304 was approved on August 5, 2003 for tax map 41-1 ((13)) 1D, zoned R-2, at 1855 Massachusetts Avenue to permit construction of additions 8.0 feet with eave, 6.0 feet from side lot line and 7.9 feet with eave 5.9 feet from other side lot line, roofed deck 7.9 feet from side lot line and dwelling to remain 7.9 feet with eave 5.9 feet from side lot line.

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

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 6. 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. Zoning Administrator Determination
5. Notice of Violation and attached grading permit
6. Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS

SP 2013-DR-008

April 10, 2013

1. This special permit is approved for the location of the roofed deck addition as shown on the special permit plat prepared by Dominion Surveyors, Inc., dated October 23, 2012, as revised through December 26, 2012, as submitted with this application and is not transferable to other land.
2. All applicable permits and final inspections shall be obtained for the roofed deck within six months of this special permit approval.

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): SP 2013-DR-008
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 11/20/2012
(enter date affidavit is notarized)

I, Lona Saccomando, 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

118873

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)
Lona C. Saccomando	5935 Pocol Drive, Clifton, VA 20124	Applicant / Owner
John D. Saccomando	5935 Pocol Drive, Clifton, VA 20124	Applicant/Owner
Steve E. Bowes	9141 Schoolcraft Lane, Burke, VA 22015	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)

Page Three

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 11/20/2012
(enter date affidavit is notarized)

118873

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)
NONE

(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**)

N/A

N/A

N/A

(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: 11/20/2012
(enter date affidavit is notarized)

118873

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: 11/20/2012
(enter date affidavit is notarized)

118873

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

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

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

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

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

WITNESS the following signature:

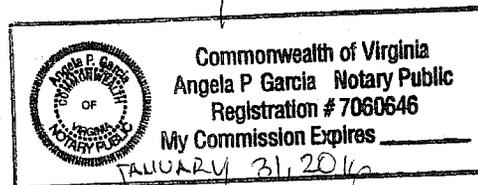
(check one) [] Applicant [] Applicant's Authorized Agent
[Signature]

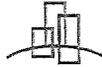
Lona C. Saccomando (Applicant / Owner)
(type or print first name, middle initial, last name, and title of signee)

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

[Signature]
Notary Public

My commission expires: JANUARY 31, 2016





Jonathan D. Puvak
 (703) 528-4700 Ext. 5455
 jpuvak@arl.thelandlawyers.com

WALSH COLUCCI
 LUBELEY EMRICH
 & WALSH PC

RECEIVED
 Department of Planning & Zoning

JAN 10 2013

Zoning Evaluation Division

January 9, 2013

Via Hand Delivery

Barbara C. Berlin
 Fairfax County Department of Planning & Zoning
 Zoning Evaluation Division
 12055 Government Center Parkway, Suite 801
 Fairfax, Virginia 22035

Re: Proposed Special Permit Application
 Applicants: Thomas D. and Christina U. Davis

Dear Ms. Berlin:

Please accept the following as a statement of justification for a special permit on property identified among the Fairfax County tax map records as 41-1 ((11)) 24 (the "Subject Property").

The Subject Property contains approximately 11,113 square feet and is located in the Chesterbrook subdivision in the Dranesville Magisterial District. Zoned to the R-2 District, the Subject Property is not subject to any proffers or development conditions and is currently developed with a single family detached dwelling. The Subject Property is located in the McLean Planning District in the Kirby Community Planning Sector (M3) of the Fairfax County Comprehensive Plan (the "Plan"). The Subject Property is planned for residential use at 1-2 dwelling units per acre. The purpose of this application is to correct an outstanding zoning violation and error in building location to permit a roofed deck to remain 9.7 feet from the side lot line.

In the way of background, Fairfax County issued a building permit for the existing dwelling to Chartwell, Inc. in March 2008. On October 21, 2008 Fairfax County approved a grading plan. The grading plan depicted a wood deck and wood ramp on the west side of the dwelling. The grading plan noted that the deck and wood ramp were proposed pursuant to Fairfax County Zoning Ordinance (the "Zoning Ordinance") Section 2-412, which permits an accessibility improvement to extend into any minimum side yard. A Residential Use Permit ("RUP") #217918 was issued for the occupancy of the dwelling on December 2, 2008.

Subsequent to receipt of all necessary building permits, grading plan approvals, and the issuance of a RUP, the Applicants acquired the Subject Property on April 7, 2009 from Chartwell, Inc. According to the Fairfax County Building Permit application, Chartwell, Inc. constructed the existing dwelling. The Applicants purchased the Subject Property in good faith. Given that a RUP was issued for the Subject Property, the Applicants reasonably believed that the house conformed to all relevant County ordinances and all necessary approvals and permits had been obtained.

PHONE 703 528 4700 | FAX 703 525 3197 | WWW.THELANDLAWYERS.COM
 COURTHOUSE PLAZA | 2200 CLARENDON BLVD., THIRTEENTH FLOOR | ARLINGTON, VA 22201-3359

LOUDOUN OFFICE 703 737 3633 | PRINCE WILLIAM OFFICE 703 680 4664

ATTORNEYS AT LAW

On August 27, 2012, the Applicants received a Notice of Violation (the "Notice"), issued by Joseph A. Bakos, Chief Zoning Inspector. The Notice stated that the wood deck extends into the minimum side yard of the Subject Property and that a roof over the deck was not authorized by a Building Permit application. Finally, the Notice stated that no as-built house location survey plat was submitted after issuance of the RUP as required under the Zoning Ordinance. Prior to the receipt of the Notice, the Applicants were unaware of any violation on the Subject Property. Based on Fairfax County records, a complaint regarding the deck was opened on April 17, 2009 and no action was taken on the complaint for three and one-half years (3-1/2), during which time the Applicants utilized the deck without issue. Prior to the Applicants' purchase, Chartwell, Inc. told the Applicants that the ramp was attached to the deck to provide construction access. When the Applicants took title to the Subject Property, the roofed deck was already constructed and there was no evidence of the ramp. Given the time lapse between construction of the dwelling and issuance of the Notice, the Applicants no longer have the contractual right to require the builder to modify the roofed deck.

As shown on the attached plat, the deck and the roof of the deck extend into the minimum side yard. Specifically, the eave of the roof extends 5.3 feet into the minimum side yard. The Applicants filed an appeal of the Notice on September 25, 2012 to preserve all rights, stay enforcement of the notice, and allow time to pursue remedial action. The Applicants now file this application to remedy the violation, and allow the roofed deck to remain in its existing location, and bring the Subject Property into compliance with the Zoning Ordinance.

In accordance with the requirements of Section 8-914 of the Zoning Ordinance, please accept the following information regarding the error in building location and the Applicants' proposed use of the Subject Property:

- The roofed deck extends into the required fifteen (15) feet side yard by 5.3 feet, which amounts to an error of approximately thirty-five percent (35%). Thus, the error exceeds ten (10) percent of the measurement involved.
- As noted above, the noncompliance was done in good faith and through no fault of the property owner. The error occurred prior to the Applicants' purchase of the Subject Property.
- The roofed deck is in keeping with the character of the existing on-site development in terms of location, height, bulk, scale and surrounding structures and will not impair the purpose and intent of this Zoning Ordinance.
- The roofed deck is not detrimental to the use and enjoyment to adjacent properties and is harmonious with the surrounding residential neighborhood in the context of the location, height, bulk and scale of surrounding houses, topography, existing vegetation, the preservation of significant trees. A reduction in the minimum side yard requirement by 5.3 feet will not change the relationship of the home to the neighborhood.

- The roofed deck and reduction in the side yard requirement will not create an unsafe condition to other property and will only allow a roofed deck, constructed over three (3) years ago, to remain on the Subject Property.
- As the roofed deck was constructed over three (3) years ago by an entity other than the Applicants, removal of the roofed deck and compliance with the minimum yard requirements would cause unreasonable hardship upon the Applicants and require disruption of the ground cover and alteration to the architecture of the home.
- The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations. No new construction is proposed with this application and no additional structures will be constructed in the minimum side yard.

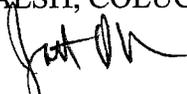
Except as otherwise noted, the roofed deck conforms to the provisions of all applicable ordinances, regulations and adopted standards. To the best of the Applicants' knowledge the Subject Property contains no hazardous or toxic substances.

The Applicants simply propose this application to reduce the side yard requirements to correct the Notice and bring the Subject Property into compliance with the Zoning Ordinance. The proposed reduction will allow continued use of a small roofed deck that was constructed over three (3) years ago, prior to the Applicants' purchase of the Subject Property, which the Applicants reasonably thought to be in compliance with all zoning regulations. The roofed deck is in keeping with the neighborhood and will not adversely impact adjoining property owners.

Should you have any questions regarding the above, or require additional information, please do not hesitate to give me a call. As always, I appreciate your cooperation and assistance.

Very truly yours,

WALSH, COLUCCI, LUBELEY, EMRICH & WALSH, P.C.


Jonathan D. Puvak

cc: Tom Davis
John Rinaldi

Sara V. Mariska



County of Fairfax, Virginia

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

October 30, 2007

Via Facsimile to Ms. Erika L. Byrd at (703)-821-8949 and Regular Mail

Ms. Erika L. Byrd
8010 Towers Crescent Drive, Suite 300
Vienna, Virginia 22182-2707

RE: Chesterbrook Subdivision, Section 1, Lot 24
1859 Patton Terrace
Tax Map Ref.: 041-1 ((11)) 24
Zoning District: R-2

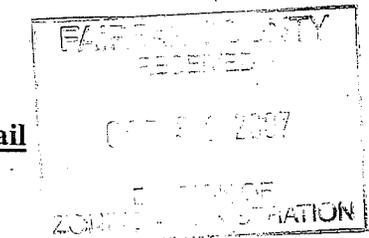
Dear Ms. Byrd:

This is in response to your letter to Eileen M. McLane, dated October 9, 2007, in which you asked for a confirmation of zoning for the above referenced property.

The property is currently zoned R-2 Residential District, Two Dwelling Units / Acre. According to Fairfax County Tax Assessment records, the property is developed with a single family detached residence constructed in 1948. Our records indicate that the property was created in its current configuration of 11,113 square feet of land area and 83 feet of lot width as part of the Chesterfield Subdivision, Section 1, which was approved by Fairfax County on April 12, 1946 and recorded in Deed Book 488, Page 51 in the Fairfax County land records on May 8, 1946. The parcel does not meet the current minimum lot area or lot width requirements for the R-2 District, which has a minimum lot area requirement of 15,000 square feet and a minimum lot width requirement of 100 feet for an interior lot.

In order for a lot to be buildable from a zoning perspective, a lot must either meet the current Zoning Ordinance requirements or be in accordance with Sect. 2-405 of the Zoning Ordinance, among other items, must either have been recorded prior to the effective date of the first Zoning Ordinance on March 1, 1941 or have met the zoning regulations in effect when the lot was recorded and not have been subsequently rezoned or subdivided at the request of the owner or the owner's agent. In addition, under Par. 1 of Sect. 18-603 of the Zoning Ordinance, in order to be issued building permits for the construction of a dwelling, a lot must also be in compliance with the applicable subdivision regulations.

The referenced property met the minimum lot area and lot width requirements in effect at the time the lot was recorded (property was zoned Suburban Residence District which had a minimum lot area requirement of 10,000 square feet, and a minimum lot width requirement of



Department of Planning and Zoning
Zoning Administration Division
Ordinance Administration Branch
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035-5505
Phone 703-324-1314 FAX 703-803-6372
www.fairfaxcounty.gov/dpz/

Ms. Erika L. Byrd

October 29, 2007

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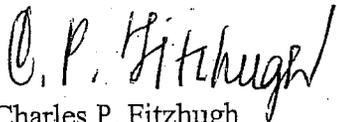
65 feet). Therefore, Sect. 2-405 is applicable. Accordingly, if the current residence on the property was to be demolished, a new single family detached dwelling would be permitted provided that all other applicable provisions of the current Zoning Ordinance and County regulations can be met. Except for minimum lot area and lot width, the new residence would be required to meet the R-2 District regulations, including setbacks and height limitations. The R-2 District has a minimum front yard requirement of 35 feet, a minimum side yard requirement of 15 feet, and a minimum rear yard of 25 feet. The maximum building height for a single family dwelling in the R-2 District is 35 feet.

According to our records, there are no pending rezoning, special exception, special permit or variance applications with regard to the referenced property. Our records further indicate that there are no zoning violations or other zoning enforcement actions associated with the referenced property.

Enclosed for your records is Receipt #2007-0760 for the Zoning Compliance letter fee.

I trust this correspondence adequately responds to your request. Questions regarding subdivision issues or the lot validation determination should be directed to DPWES at (703) 324-1720. If you have any additional questions, please feel free to contact me at (703) 324-1397.

Sincerely,



Charles P. Fitzhugh

Assistant to the Zoning Administrator

cc: Joan DuBois, Supervisor, Dranesville District
Lorrie Kirst, Deputy Zoning Administrator, Ordinance Administration
Diane Johnson-Quinn, Deputy Zoning Administrator, Zoning Permit Review

Erika L. Byrd

703-760-1689

elbyrd@venable.com

October 9, 2007

RECEIVED
Dept. of Planning & Zoning

OCT 12 2007

Zoning Administration Div.

2007-0760

Eileen M. McLane
Zoning Administrator
Department of Planning and Zoning,
Suite 800
12055 Government Center Parkway
Fairfax, VA 22035

Re: Request for a Zoning Compliance Letter
Re-1859 Patton Terrace, Tax Map Number 041-1 ((11)) 0024

Dear Eileen:

We would like to confirm certain zoning information pertaining to the above Property. Please confirm that the Property is zoned R-2 / (Residential 2 DU/AC) developed with Single Family Detached, and is subject to the use regulations as set forth in the Fairfax County Zoning Ordinance.

Please confirm that there are no outstanding zoning violations of record and to the best of your knowledge the Property is in conformance with the Fairfax County Zoning Ordinance.

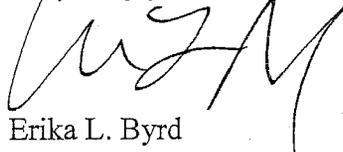
We specifically ask that you confirm and state categorically that the existing single family dwelling unit on the property can be torn down and replaced based on the current zoning guidelines and the extent of its limitations regarding redevelopment, setbacks, height limitations and the limits of disturbance.

Enclosed please find a check of \$90.00 for the payment of the Zoning Compliance Fees. Should you have any questions concerning this request, please feel free to contact the undersigned.

We are under a very tight time constraint in this matter and we appreciate any consideration you can extend in expediting our request.

Thank you for your kind attention to this matter.

Very truly yours,



Erika L. Byrd

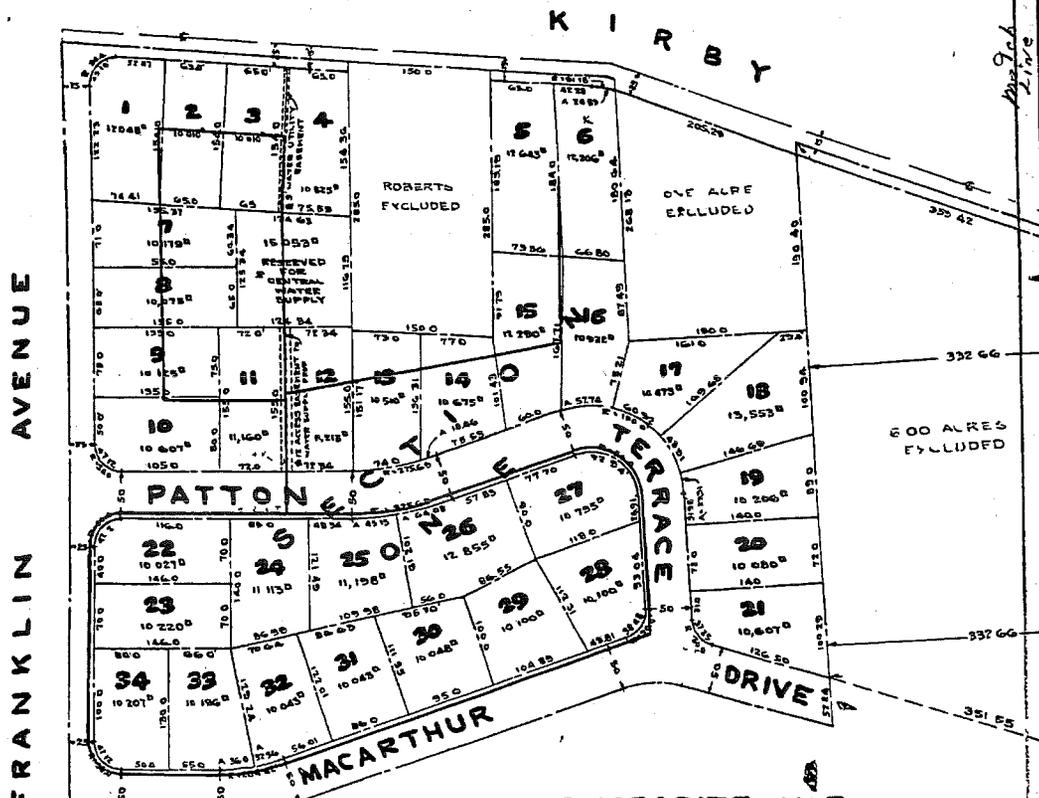
ELB/kb

October 9, 2007

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Enclosure

cc: Russ Whitworth



COMPOSITE MAP
 of
 SECTIONS ONE & TWO
CHESTERBROOK,
 FAIRFAX COUNTY, VIRGINIA
 SCALE 1"=100', MAY 23, 1946
 PR RUPERT, CERTIFIED SURVEYOR
 ARLINGTON VIRGINIA

* NOTE ON SECTION ONE
 WELLS PROHIBITED ON INDIVIDUAL LOTS
 WATER TO BE FURNISHED BY CENTRAL
 WATER SUPPLY PROPERTY

FRANKLIN
 FOREST

Proposed Line



County of Fairfax, Virginia

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

NOTICE OF VIOLATION

August 27, 2012

SHERIFF'S LETTER

Mr. and Mrs. Thomas D. and Christina Davis
1859 Patton Terrace
McLean, VA 22101

Re: 1859 Patton Terrace
Legal Desc.: Chesterbrook Subd. Lt 24 SEC 1
Tax Map Ref: 0411 11 0024
Zoning District: R-2
Case: SR46124

Dear Mr. and Mrs. Davis:

An inspection of the above referenced property was conducted on August 21, 2012 to verify whether accessible improvements (handicap ramp and an open deck), as are detailed on the grading plan 2117-INF-002-2, dated December 2007, and prepared by GeoEnv Engineers, 10875 Main Street, Suite 213, Fairfax VA 22030, remain installed on-site in the minimum required side yard of 1859 Patton Terrace.

The approved design as illustrated on the aforementioned plan specified a handicap ramp, and an open deck. The leading edge of the open deck was to be positioned on-site and attached to the building, per this same plan, a distance of but no closer than 10' 3" from the side lot line. (See Attachment)

The inspection confirmed that no handicap access ramp exists, but a deck is located in the side yard of this property.

Additionally, rather than an open deck as illustrated on the aforementioned approved plan, a roof has been constructed over the deck. This roof with eaves extends into the minimum required side yard of this property.

Per Part 3 of Article 20 of the Fairfax County Zoning Ordinance bulk regulations are defined

as... Regulations controlling the size of structures and the relationship of structures and uses to each other and to open areas and lot lines. Bulk regulations include provisions controlling (a) maximum building height, (b) maximum floor area ratio, (c) minimum yard requirement and (d) minimum angle of bulk plane. (Underlining added)

The minimum required side yard requirement, in the R-2 District is per Par. 2A (1)(b) of Sect. 3-207 of the Fairfax County Zoning Ordinance, is 15 feet.

Extensions into this minimum required side yard for any roofed deck, with no part of its floor higher than four (4) feet above finish ground level, are not allowed. This is specified in Par2C(2) of Sect. 2-412 which requires that:

The following shall apply to any deck attached to a single family detached dwelling:

Any roofed deck with no part of its floor higher than four (4) feet above finished ground level may extend into minimum required yards as follows:

- (1) Front yard: No extension,
- (2) Side yard: No extension,** and
- (3) Rear yard: 12 feet, but not closer than 5 feet to any rear lot line and not closer than a distance equal to the minimum required side yard to the side lot line.

Also, after a review of the records maintained by the Departments of Public Works and Environmental Services (DPWES) and Planning and Zoning (DPZ) associated with the construction of the new single family dwelling on this property, it was determined that no approved building permit application was obtained to construct the separate roof and eave system existing above the deck and extending into the minimum required side yard of this property.

As is, the construction of the roof and eaves over this side yard deck is not in accordance with the approved plan for this property and is a violation of Par. 1 of Sect. 18-901 which requires that:

Any building erected or improvements constructed contrary to any of the provisions of this Ordinance and any use of any building or land which is conducted, operated or maintained contrary to any of the provisions of this Ordinance or contrary to any detailed statement or plan approved under the provisions of this Ordinance shall be and the same is hereby declared to be unlawful.

The construction of roof and eaves over the deck located in a side yard was not authorized by the Zoning Administrator's endorsement of a Building Permit application and is a separate violation of Sect. 18-601 of the Zoning Ordinance which requires that:

The erection of all buildings and all structures, as well as additions, deletions and modifications thereto, shall be subject to the provisions of Chapter 61 of The Code, Buildings. No building or structure which is required to have a Building Permit pursuant to Chapter 61 of The Code shall be erected until a Building Permit application has been approved by the Zoning Administrator.

Mr and Mrs Thomas and Christina Davis

August 27, 2012

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Additionally, the roof deck extends significantly into the minimum required side yard, when no extension is allowed per the aforementioned Par. 2C(2) of Sect. 2-412 of the Ordinance.

This roofed deck construction does not satisfy the requirements of Sect. 2-412 and extends into the 15 foot minimum required side yard. This assemblage is also in violation of Par. 1 of Sect. 2-307 which requires that:

Except as may be qualified by the provisions of this Ordinance, no structure or part thereof shall hereafter be built or moved on a lot which does not meet all of the minimum bulk regulations presented for the zoning district in which the structure is located, and no structure shall hereafter be used, occupied or arranged for use on a lot which does not meet all of the minimum bulk regulations presented for the zoning district in which such structure is located.

The construction of the new single family dwelling at this property was finalized on December 2, 2008 by staff of the Environmental Facilities Inspections Division (EFID), DPWES and a Residential Use Permit #217918 was issued for the occupancy of the detached dwelling unit at 1859 Patton Terrace.

However, four (4) years after construction was completed, it has been confirmed that no as-built house location survey plats were submitted to the Zoning Administrator as is required. Par. 13 of Sect. 17-704 of the Zoning Ordinance. requires that:

For single family detached dwelling units, five (5) copies of an as-built house location survey plat shall be submitted to the Zoning Administrator for review and approval within thirty (30) days of the issuance of the Residential Use Permit. Such plat shall be presented on a sheet having a maximum size of 8 ½" by 14", drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), or a metric scale of 1:500 or larger, unless a smaller scale is required to accommodate the development, with the scale clearly indicated. In all cases, the scale used on the as-built house location plat shall be the same as the scale of the approved house grading plan. Such plat, regardless of the area of the lot, shall be prepared in accordance with the rules and regulations adopted by the Commonwealth of Virginia, Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects (APELSLA), and shall also show the following:

- A. The distance from all structures including any extensions from the vertical plane of the building, structure, or addition shown to the nearest one-tenth of a foot to all lot lines and any floodplain. If metric units are used, their English equivalents shall be provided, with English measurements shown in parentheses. For features which extend into the minimum required yard pursuant to Sect. 2-412, in addition to showing the distance of the feature to all lot lines, the plat shall also include the specific dimension which qualifies the feature for the permitted extension.
- B. For pipestem lots and lots abutting a pipestem driveway, the location of the pipestem driveway.

- C. The deed book and page number(s) for the easements and conveyances shown on the plat.
- D. Delineation of any mapped floodplain.
- E. Delineation of any Resource Protection Area and Resource Management Area.
- F. Delineation of any access easement to contiguous properties.
- G. Delineation of any conservation, restrictive planting or vegetative buffer easement.
- H. Delineation of any major underground utility easements and the location of any water, storm and sanitary sewer easements and all conveyances and easements dedicated to Fairfax County, the State of Virginia and the Virginia Department of Transportation.

Failure to submit the necessary copies of the as-built house location survey plat to the Zoning Administrator for review and approval within 30 days of the issuance of the Residential Use Permit is a separate violation of Par. 13 of Sect. 17-704 of the Zoning Ordinance.

Therefore, as the owners of this property, you are in violation of the aforementioned Zoning Ordinance provisions.

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

- Removing the roof assembly over the side yard deck and all construction debris from this property, or
- Applying for and diligently pursuing approval by the Board of Zoning Appeals (BZA) of a Group 9 Special Permit for an error in building location to allow this roofed deck to remain where positioned on-site, and
- If a Special Permit application is approved by the BZA, applying for and obtaining approval of a building permit application and or modifying this roof and deck as specified by the BZA, and
- Submitting five (5) copies of an as-built house location survey plat for this property for review and approval.

For information and answers to any questions regarding this Special Permit application process, you may contact the Zoning Evaluation Division at 703-324-1290.

A follow-up inspection will be made at the expiration of the 30 day time period. Failure to comply with the Notice will result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance.

Mr and Mrs Thomas and Christina Davis

August 27, 2012

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You may have the right to appeal this Notice of Zoning Violation within thirty (30) days of the date of this letter in accordance with Sect. 15.2-2311 of the Code of Virginia. This decision shall be final and unappealable if it is not appealed within such thirty (30) days. Should you choose to appeal, the appeal must be filed with the Zoning Administrator and the Board of Zoning Appeals (BZA) in accordance with Part 3 of Article 18 of the Fairfax County Zoning Ordinance. Those provisions require the submission of an application form, a written statement setting forth the decision being appealed, the date of decision, the grounds for the appeal, how the appellant is an aggrieved party and any other information that you may wish to submit and a \$600.00 filing fee. Once an appeal application is accepted, it will be scheduled for public hearing and decision before the BZA.

Should you have any questions or need additional information, please do not hesitate to contact me at (703) 324-1341.

Sincerely,



Joseph A. Bakos
Chief Zoning Inspector

JAB/ss

Attachment A/S

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.