



APPLICATION ACCEPTED: March 5, 2013
BOARD OF ZONING APPEALS: June 5, 2013
TIME: 9:00 a.m.

County of Fairfax, Virginia

May 29, 2013

STAFF REPORT

**SPECIAL PERMIT APPLICATION NO. SP 2013-PR-023
CONCURRENT WITH VC 2013-PR-003**

PROVIDENCE DISTRICT

APPLICANT: Mary Jane Lee

OWNERS: Harlan Y. M. Lee
Mary Jane Lee

SUBDIVISION: The Briars at Westchester

STREET ADDRESS: 9207 Briary Lane, Fairfax, 22031

TAX MAP REFERENCE: 58-4 ((33)) 38

LOT SIZE: 10,765 square feet

ZONING DISTRICT: R-3

ZONING ORDINANCE PROVISIONS: 8-914, 8-919 & 18-401

SPECIAL PERMIT PROPOSAL: To permit a reduction in minimum yard requirements based on error in building location to permit accessory structure to remain 6.1 feet from rear lot line and deck 2.7 feet from rear and 2.4 feet from side lot lines and to permit a noise barrier.

VARIANCE PROPOSAL: To permit greater than 30 percent minimum rear yard coverage.

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

O:\rhorner\Special Permits\Mary Jane Lee SP and VC\Lee Staff Report.doc

Rebecca Horner

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

For additional information, call Zoning Evaluation Division, Department of Planning and Zoning at 703-324-1280, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035. **Board of Zoning Appeals' meetings are held in the Board Room, Ground Level, Government Center Building, 12000 Government Center Parkway, Fairfax, Virginia 22035-5505.**



Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 48 hours advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

Variance Application

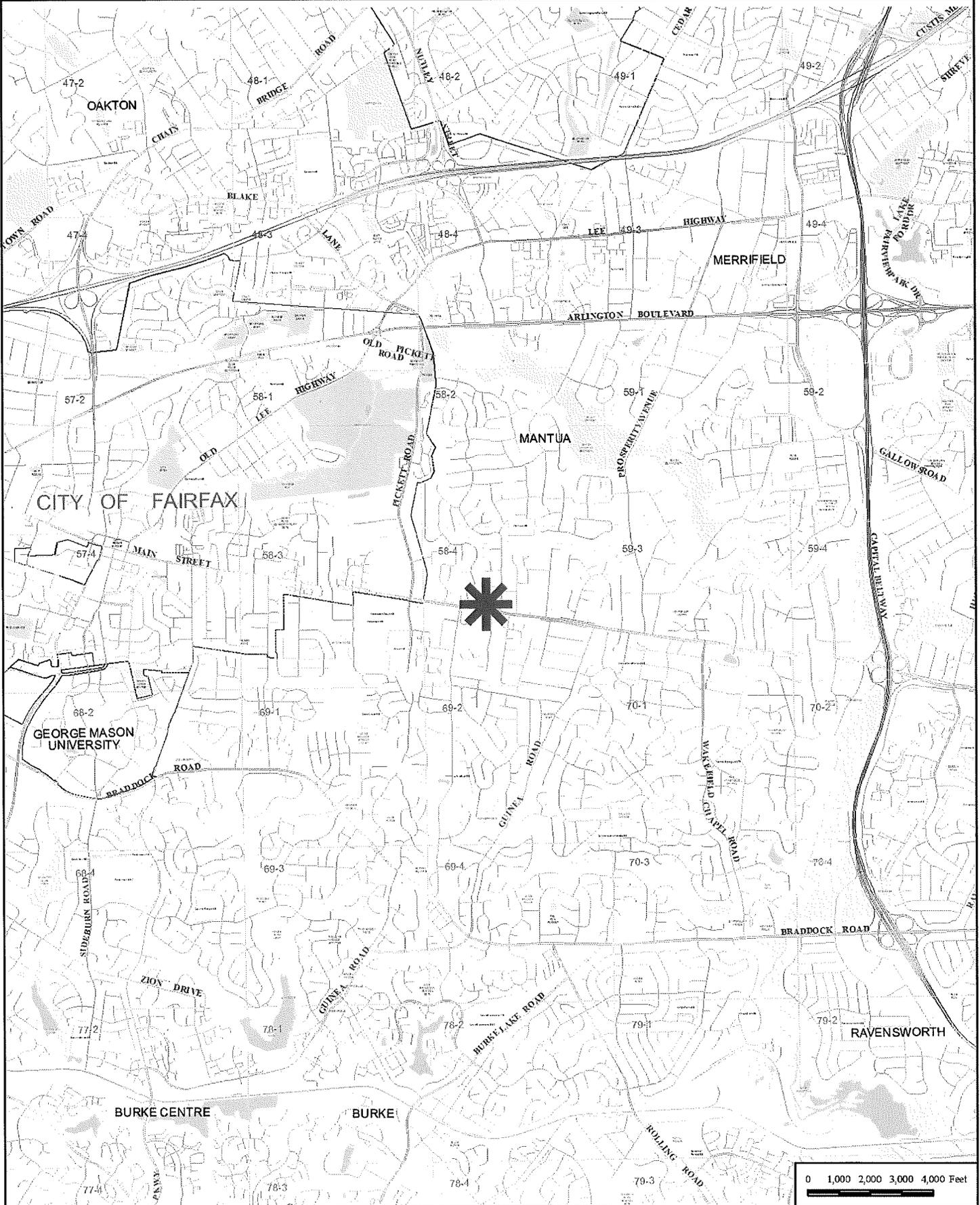
VC 2013-PR-003

MARY JANE LEE

Special Permit

SP 2013-PR-023

MARY JANE LEE



Variance Application

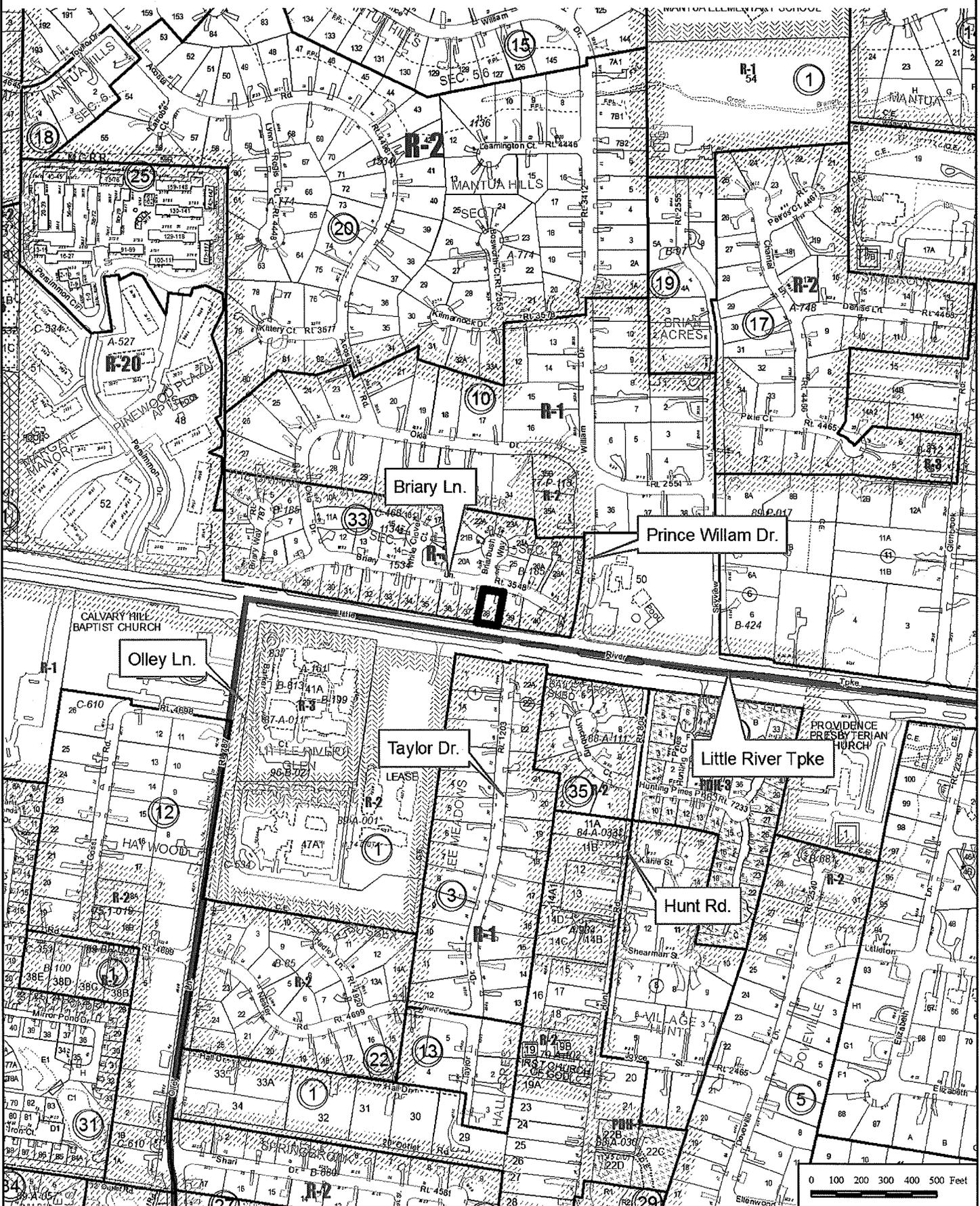
VC 2013-PR-003

MARY JANE LEE

Special Permit

SP 2013-PR-023

MARY JANE LEE



NOTES:

1. PROPERTY IS LOCATED ON TAX MAP NO. 58-4-33-0038 AND IS PRESENTLY ZONED R-3.

2. R-3 B.R.L.'s: FRONT: 30'
SIDE: 12'
REAR: 25'

3. NO TITLE REPORT FURNISHED.

4. PROPERTY IS SERVED BY PUBLIC WATER AND SEWER.

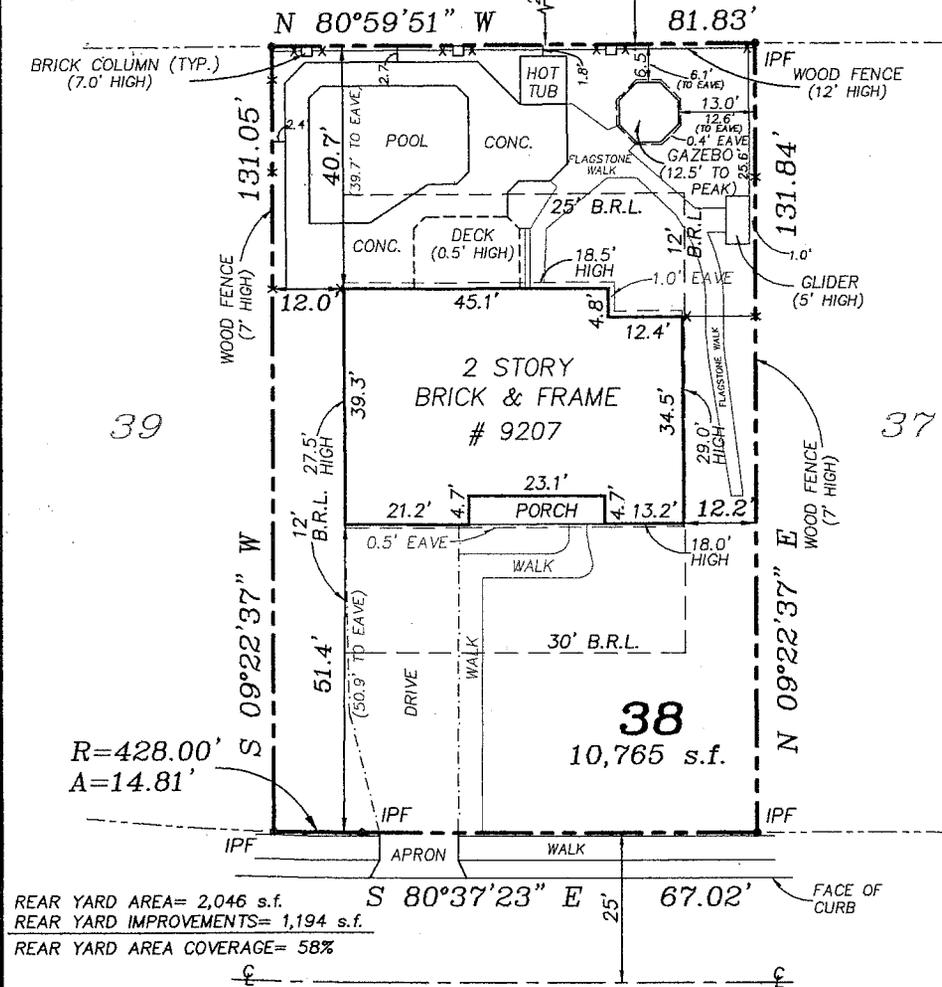
5. THERE IS NO EVIDENCE OF GRAVESITES ON THIS PROP.

6. AS PER PLAT OF RECORD AND INFORMATION PROVIDED BY OWNER, THERE ARE NO EASEMENTS ON THIS PROPERTY.

7. NO ACCESS TO LITTLE RIVER TURNPIKE.

LITTLE RIVER TURNPIKE
ROUTE 236
(WIDTH VARIES)

C/L WESTBOUND LANE



REAR YARD AREA= 2,046 s.f.
REAR YARD IMPROVEMENTS= 1,194 s.f.
REAR YARD AREA COVERAGE= 58%

BRIARY LANE

ROUTE 3548
(50' WIDE)

SPECIAL PERMIT
LOT 38
SECTION TWO

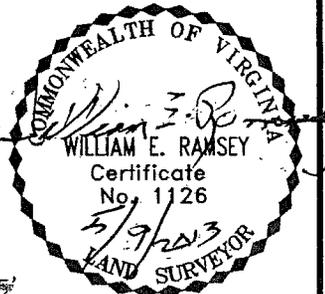
THE BRIARS AT WESTCHESTER

PROVIDENCE DISTRICT
FAIRFAX COUNTY, VIRGINIA

REVISED: MAY 9, 2013
REVISED: OCTOBER 12, 2012
DATE : JUNE 27, 2012.

NOTE: ACCORDING TO HUD-FIA MAP FOR FAIRFAX COUNTY, THIS PROPERTY IS SHOWN TO BE IN ZONE C, AN AREA OF MINIMAL FLOOD HAZARD.

SCALE 1"=25'



TITLE REPORT NOT FURNISHED.
FENCES, IF SHOWN, ARE APPROXIMATE ONLY AND DO NOT CERTIFY AS TO OWNERSHIP.
IPF-DENOTES IRON PIPE FOUND.

WILLIAM E. RAMSEY, P.C.
LAND SURVEYOR
FAIRFAX, VIRGINIA
703-385-4499

SP 2012-0160

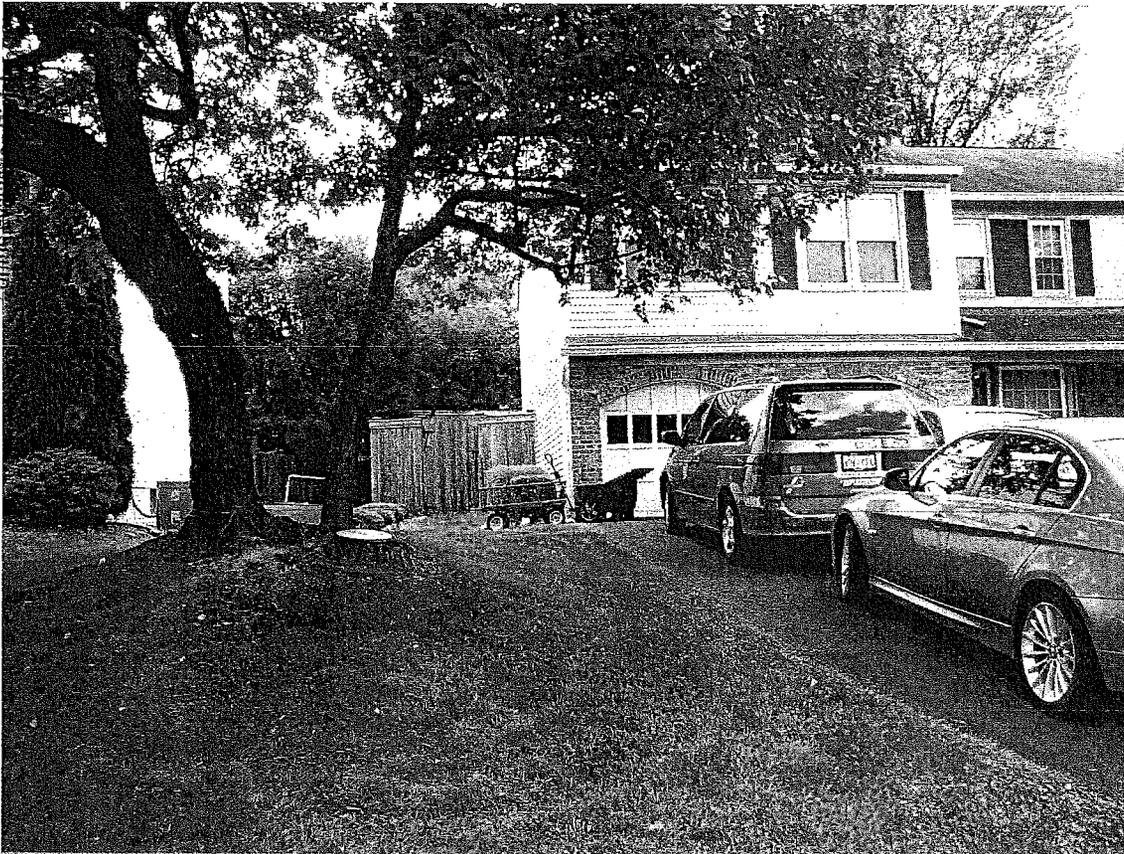
9207 BRIARY LANE



9207 Briary Lane on left; 9209 Briary Lane on right. (53) (8/12/2012)

RECEIVED
Department of Planning & Zoning

OCT 9 2012



9207 Briary Lane on right; 9205 Briary Lane on left (52) (8/12/2012)

SP 2012-0160



Rear view: 9207 Briary Lane property on left; 9205 Briary Lane property on right. (45)
8/12/2012



Rear view from Route 236: 9207 Briary on left; 9205 Briary Lane property on right. (42)
8/12/2012

RECEIVED
Department of Planning & Zoning

061 - 9 2012

Zoning Evaluation

SP 2012-0160



Rear view: 9207 Briary Lane on right; 9209 Briary Lane on left. (51) (8/12/2012)



Closer rear view of 9207 Briary Lane property from Route 236. (46) (8/12/2012)

SP 2012-0160



Rear of 9207 Briary Lane Property. (48)

8/12/2012



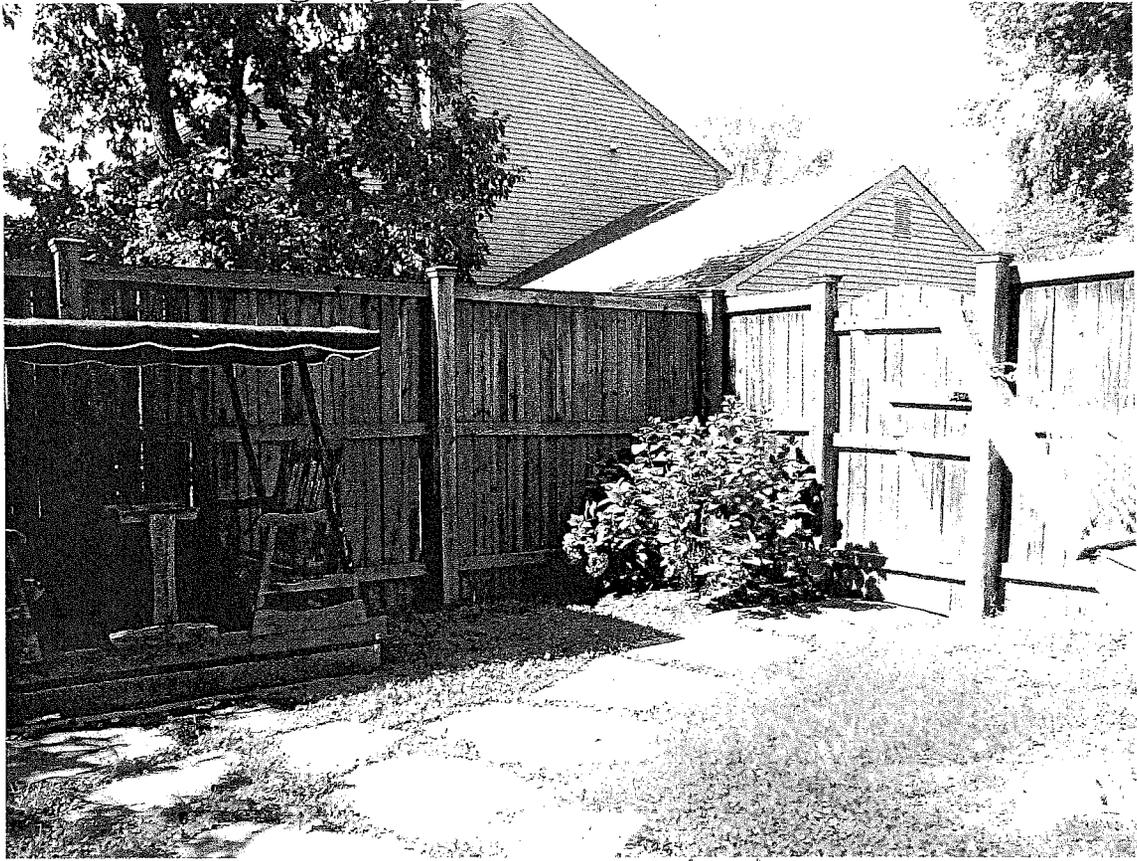
Back of house and west side of 9207 Briary Lane property. (57)

8/30/12

Zoning Evaluation Division

PLANNING
Department of Planning & Zoning
OCT 19 2012

SP 2012-D160



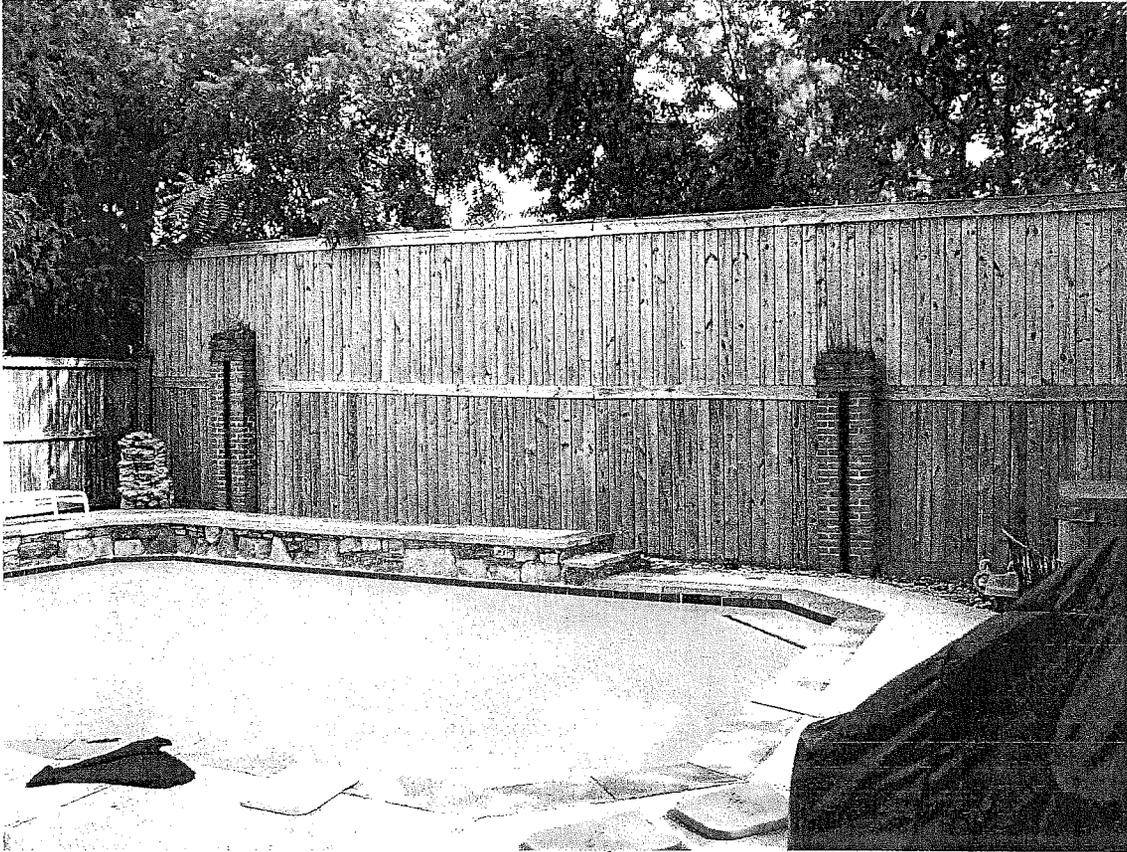
West side of 9207 Briary Lane property. (60)

9/30/12



9207 Briary Lane back yard north property line. (39) (7/15/2012)

SP 2012-0160



9207 Briary Lane backyard. (41) (7/15/2012)



Back of 9207 Briary Lane backyard. (69) 10/6/12

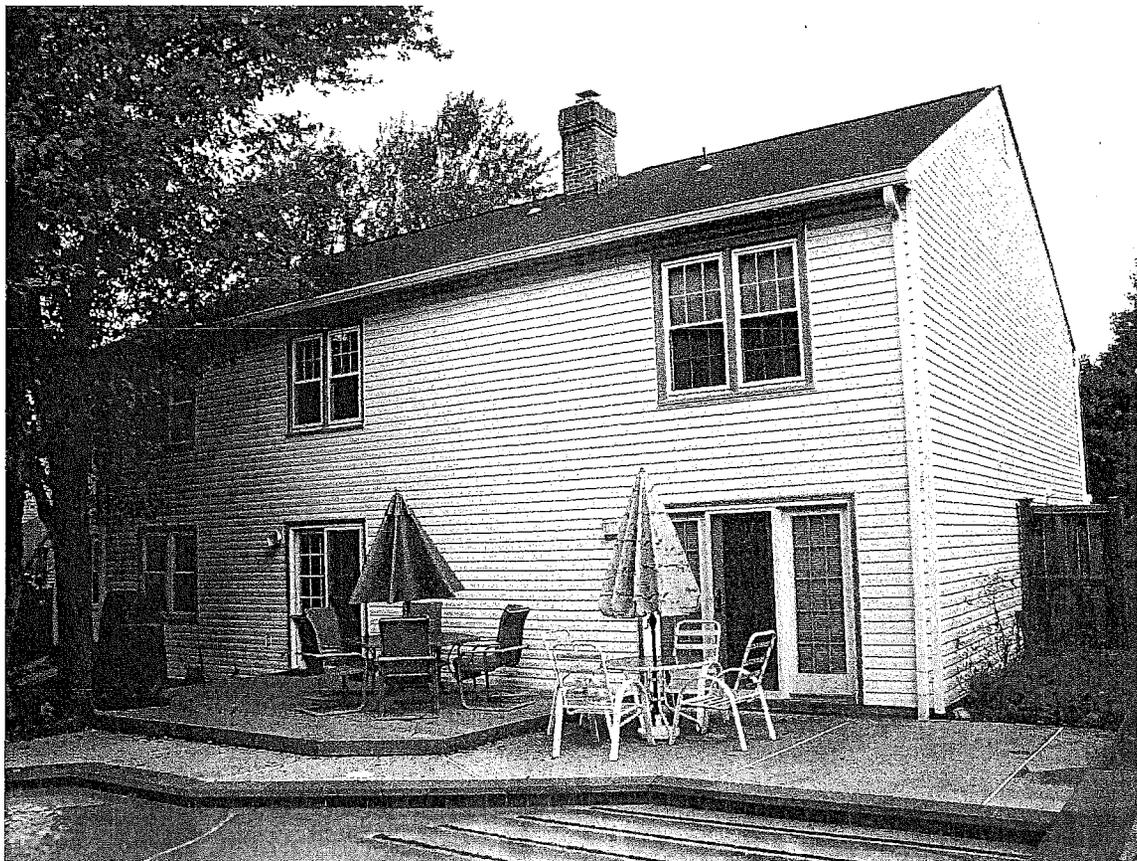
Zoning Evaluation Division

RECEIVED
Department of Planning & Zoning
OCT 19 2012

SP 2012-0160



Deck and back of house 9207 Briary Lane (65) 10/6/12

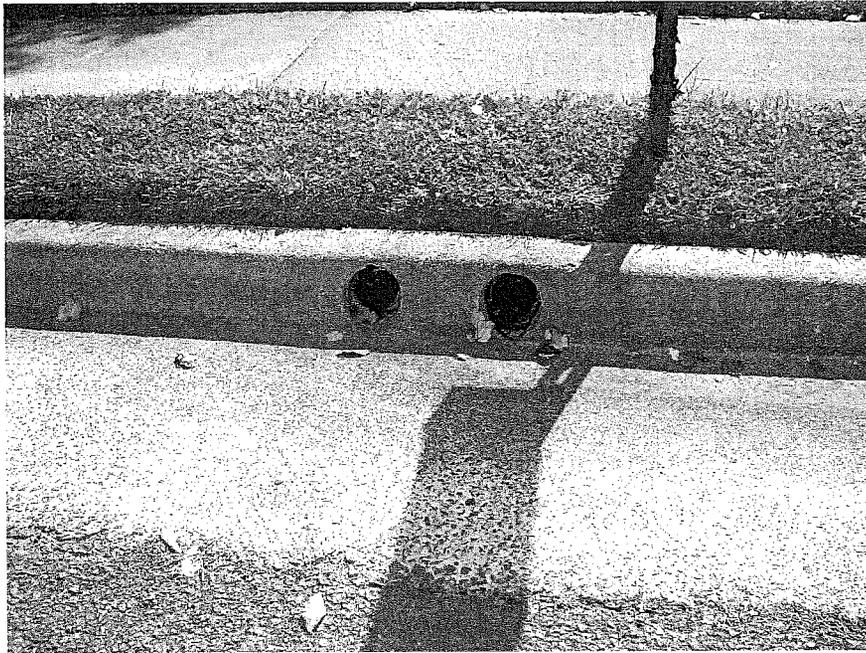


Deck and back of house 9207 Briary Lane (65) (72) 10/6/12

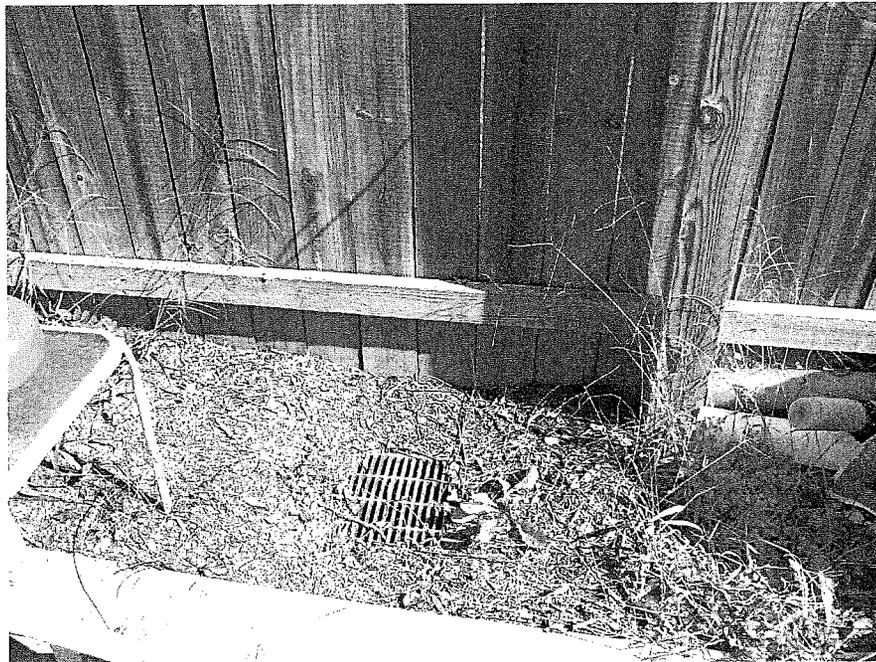
Zoning Evaluation Division

OCT 19 2012

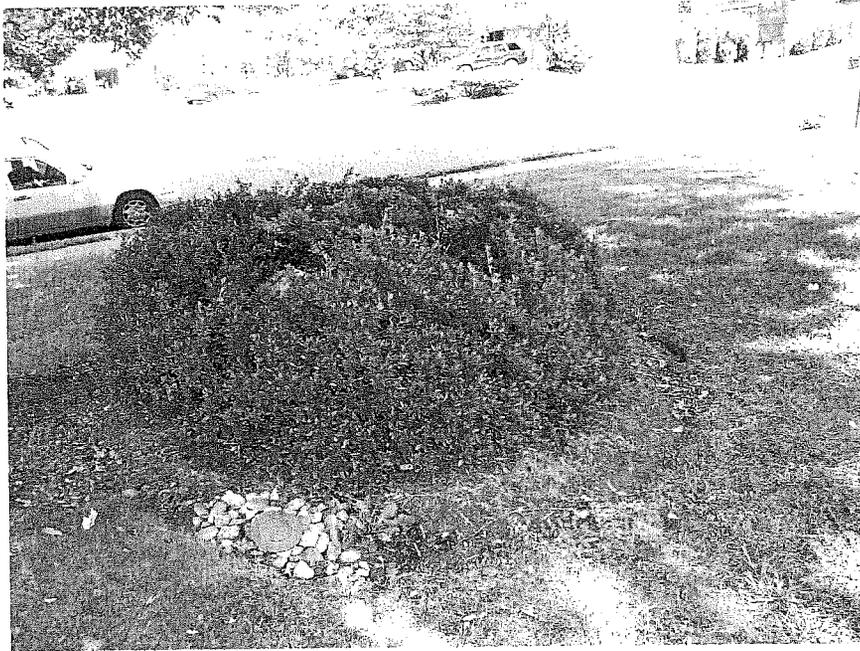
Department of Planning & Zoning



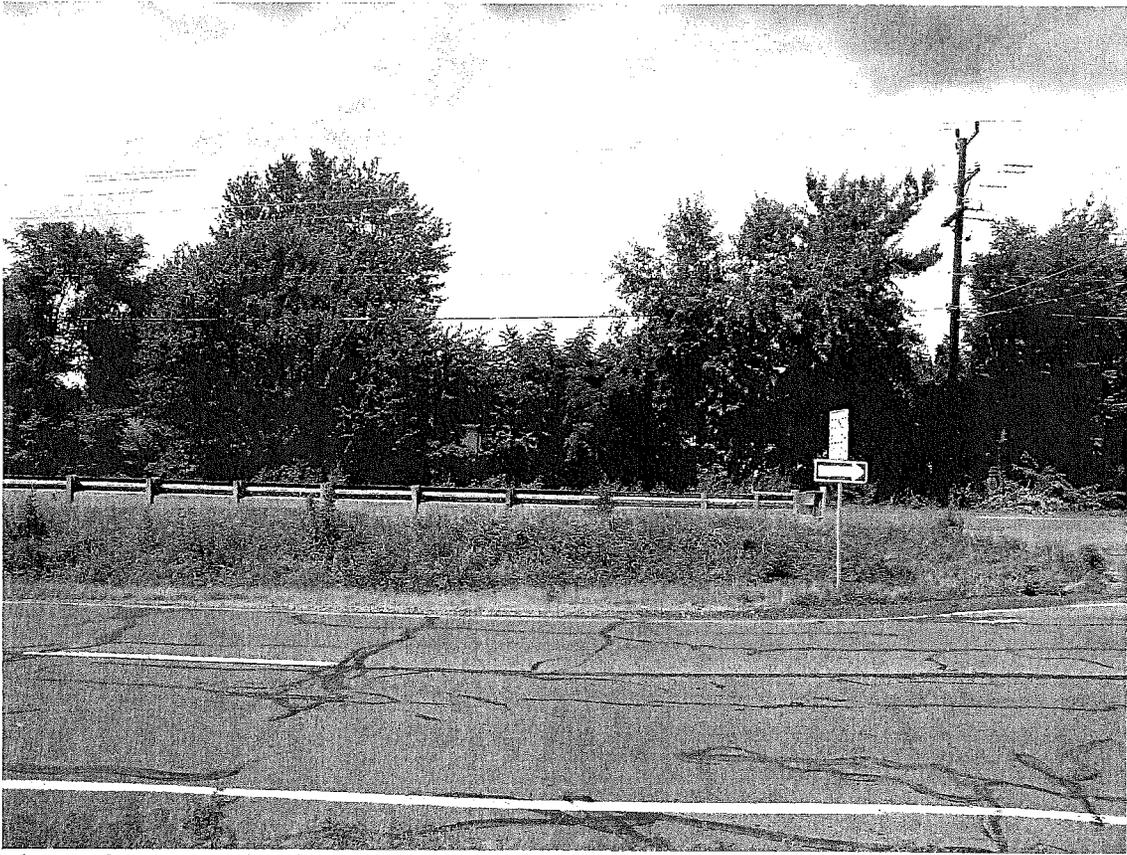
Outlet of original drainage system installed in 1995. One opening received water from a French drain installed under the soil. The other received water from the downspout at the eastern edge of the front of the house.



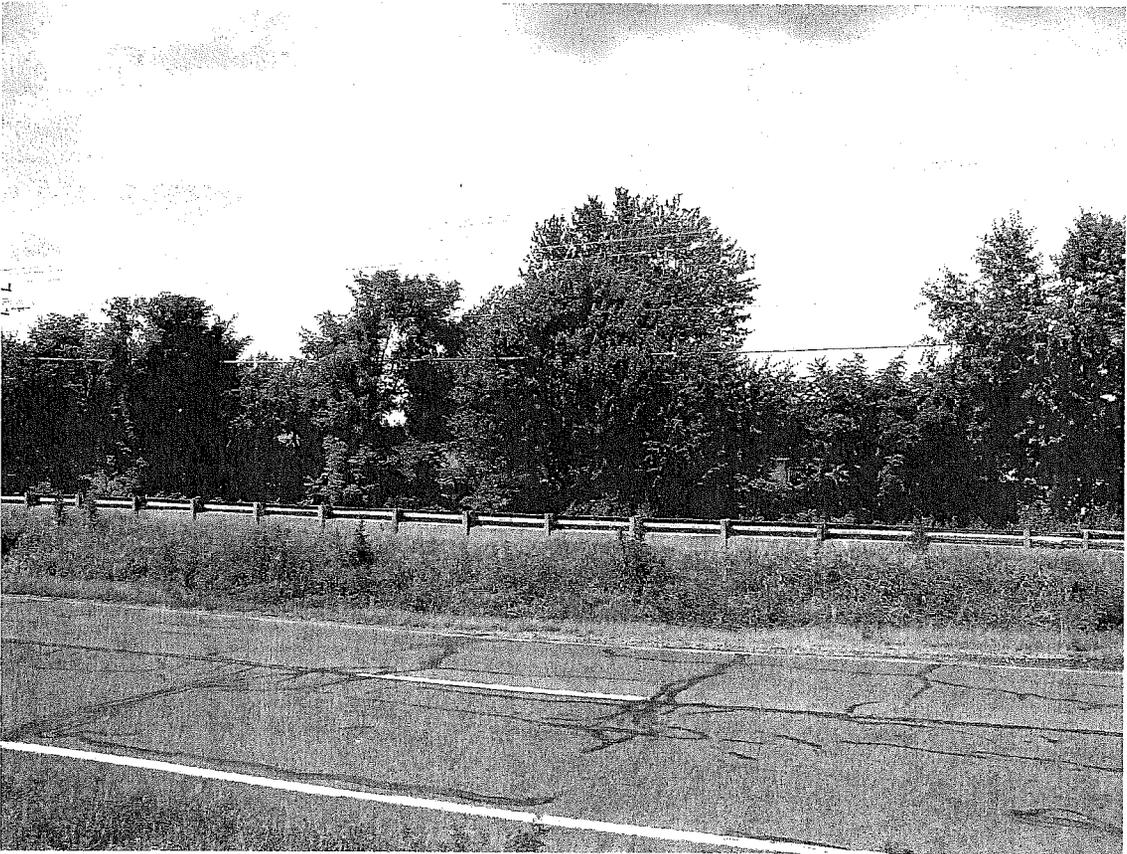
Drainage system extended to backyard on east side after pool was built. The connects with original system.



After pool completed we installed an additional drainage system on the west side of the rear yard and down the west side of our property consisting of piping and a French drain underground to carry runoff from the yard and the downspout on the west side of the front of the house to terminate in the bushes on our front lawn.



Picture from opposite side of Route 236 showing back of 9207 Briary Lane property.



Picture from opposite side of Route 236 showing back of 9207 Briary Lane property.



Picture from median of Route 236 showing back of 9207 Briary Lane property.



Picture from median of Route 236 showing back of 9207 Briary Lane property.



Picture from edge of Route 236 behind 9207 Briary Lane property.



Picture from edge of Route 236 behind 9207 Briary Lane property with camera pointing Down to location of property line.



Back of property to east of 9207 Briary Lane (9205). Property line almost level with 236 roadbed at east end and then starts to dip into the ditch to the west



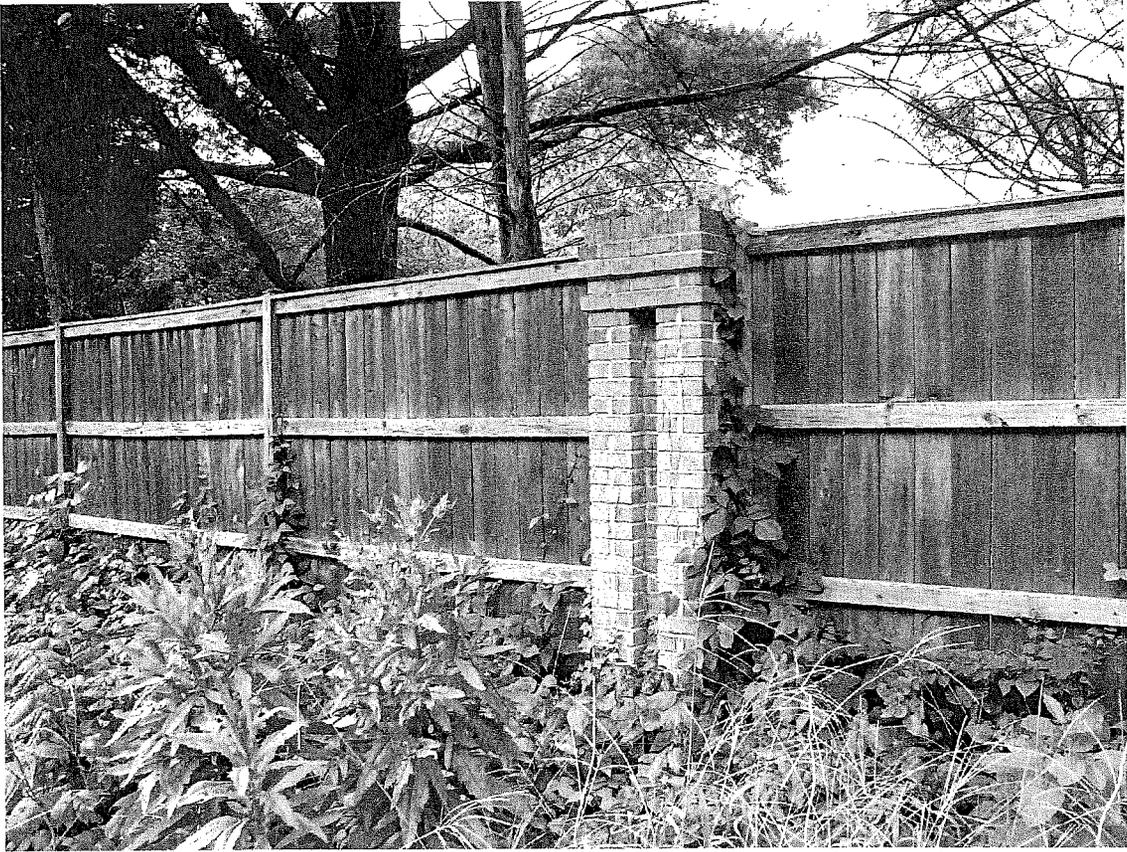
View from 9207 Briary Lane rear property line.



Another view from 9207 Briary Lane rear property line.



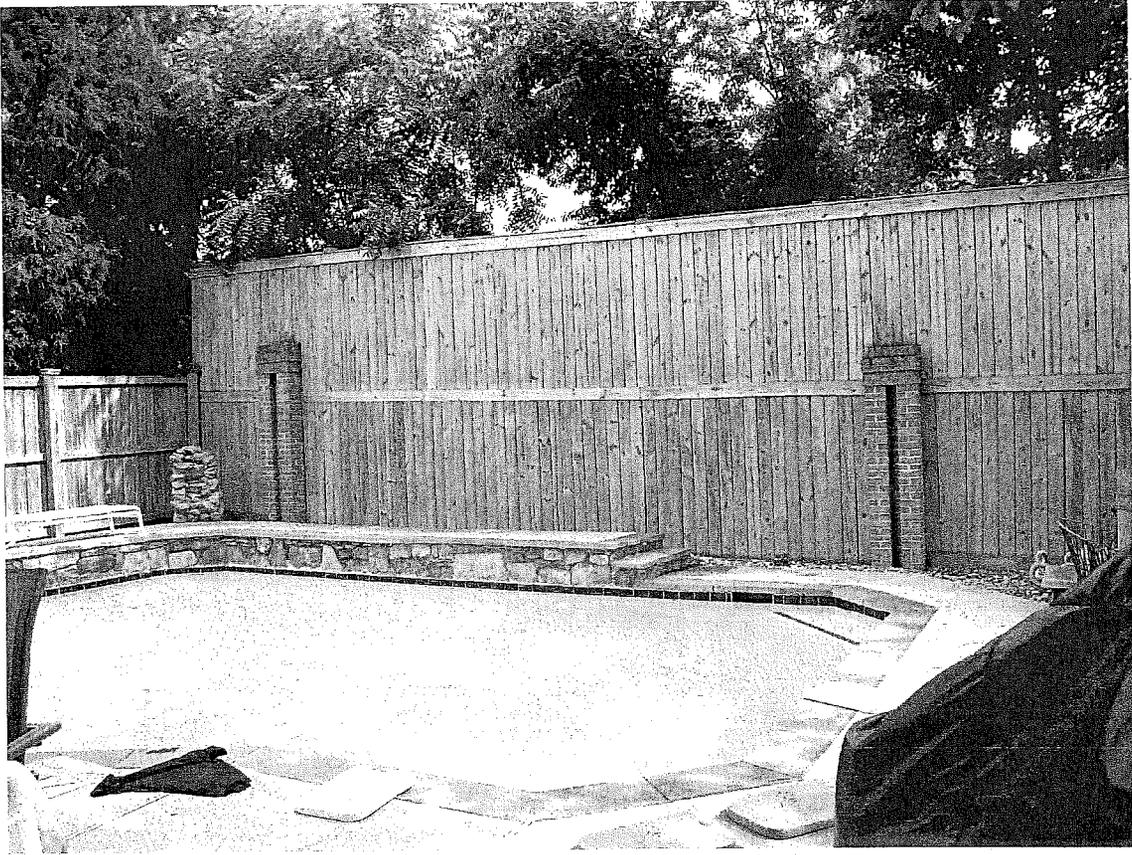
View of fence behind 9207 Briary Lane property with camera level with Route 236 road bed.



View of back of property on Briary Lane west of 9207. Property lines to the west are slightly below or level with Route 236 roadbed.



Back yard of 9207 Briary Lane.



Back yard of 9207 Briary Lane.



DESCRIPTION OF THE APPLICATIONS

The applicant requests three separate special permits. The first request is for a reduction of minimum yard requirements based on an error in building location to permit an accessory structure (gazebo) to remain 6.1 feet from the rear lot line. The second request is to allow an existing open concrete deck, which surrounds the existing pool, to remain 2.7 feet from the rear lot line and 2.4 feet from the side lot line.

	Structure	Yard	Min. Yard Req.*	Structure Location	Proposed Reduction	Percent of Reduction
Special Permit #1	Accessory Structure (Gazebo)	Rear	12.5 feet	6.1 feet	6.4 feet	51.2%
Special Permit #2	Deck	Rear	5 feet	2.7 feet	2.3 feet	46.0%
		Side	5 feet	2.4 feet	2.6 feet	52.0%

* According to Sect. 10-104 and 2-412. Accessory structures over 7 feet in height shall be set back from the rear lot line a distance equal to their height.

The third request is to allow a noise barrier, a 12 foot tall fence, to remain along the rear lot line.

	Structure	Yard	Maximum Height of Fence Permitted*	Existing Fence Height	Proposed Increase
Special Permit #3	Noise Barrier	Rear	7 feet	12 feet	5 feet

*According to Sect. 10-104.

The applicant provided a noise analysis, completed by Hush Acoustics, LLC. The analysis concludes that there would have been noise impact in the rear yard if the noise wall was not present and the wall significantly reduces noise levels. The noise study indicates the normal dB (decibel) limit in a rear yard is 65 dB.

The report indicates the sound level meter was installed in the rear yard of the subject parcel at a height of approximately 4.5 feet. Nighttime construction noise appears to be the most significant noise contributor. The study appears to account for the construction noise and sirens, to find average sound levels, which varied from 59.6 to 62.3. The noise study is included in Appendix 5.

The Comprehensive Plan indicates new development should not expose people in their

homes, or other noise sensitive environment to noise in excess of...65 dBA Ldn (DNL) in the outdoor recreation areas of homes.

Description of Variance Request

The applicant also requests approval of a variance to permit coverage of the minimum required rear yard to exceed 30%, thus allowing coverage of 58%. The minimum required rear yard is 2,046 square feet. The maximum coverage permitted is 613.8 square feet (30%). The existing coverage is 1,194 square feet, representing 58% coverage in the minimum required rear yard.

EXISTING SITE DESCRIPTION

The application property is developed with a two story, single-family detached dwelling.

Access to the lot is provided via a hard surfaced driveway from Briary Lane. A hard surfaced walk extends from the sidewalk along Briary Lane to the front of the dwelling. The lot is reverse frontage and backs on to Little River Turnpike (Route 236). As such, the yard along Little River Turnpike is a rear yard.

An existing deck is located off the rear of the structure and includes a walkway to an existing accessory structure (gazebo). The 12.5 foot tall gazebo is located 6.1 feet from the rear lot line and 12.6 feet from the side lot line, as measured from the eave. An in-ground swimming pool is located within the rear yard and is surrounded by a concrete patio. The patio is located 2.7 feet from the rear lot line and 2.4 feet from the eastern side lot line. The rear yard also contains a freestanding hot tub and glider, neither of which exceeds 7.0 feet in height. The coverage of accessory structures in the required minimum rear yard is 58%.

The lot is fairly level and contains several mature trees, shrubs and foundation plantings. At the rear lot line, the grade increases, approximately seven feet, toward Route 236 (Little River Turnpike) so that the subject parcel is located below the grade of Little River Turnpike.

A 7 foot high wood fence is located along both side yards enclosing the rear yard. A 12 foot high wood fence is located along the rear lot line.

CHARACTER OF THE AREA

	Zoning	Use
North	R-3	Single family detached dwellings
South	R-1	Little River Turnpike, Single family detached dwellings
East	R-3	Single family detached dwellings
West	R-3	Single family detached dwellings

BACKGROUND

The existing dwelling was constructed in 1982. The applicant purchased the property in 1995. The applicant received a building permit to construct the deck which extends off the rear of the dwelling in 2001. A copy of the building permit is included in Appendix 6.

In 2005, the applicant indicates they constructed the 12 foot tall wood fence along the rear lot line. Also in 2005, the applicant received a building permit to construct an in-ground swimming pool. The building permit did not indicate a patio to surround the pool. A copy of the building permit is attached in Appendix 7. The applicant indicates the gazebo was constructed around the same time as the pool.

There are no records of building permits for either the open patio surrounding the pool or the gazebo.

On April 4, 2012, a Notice of Violation (NOV) was issued indicating the fence in the rear yard exceeded the maximum allowed. A copy of the NOV is attached in Appendix 8.

The Zoning Administrator made a determination relating to the gazebo and swimming pool and deck on December 11, 2012, a copy of which is included in Appendix 9.

A copy of the special permit plat titled "Special Permit, Lot 38, Section Two, The Briars at Westchester", prepared by William E. Ramsey, P.C., dated June 27, 2012, as revised through May 9, 2013, signed by William E. Ramsey, Land Surveyor, is included at the front of the staff report.

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

Special Permit SP 86-P-031 was approved on October 14, 1986, for tax map 58-4 ((10)) 7, zoned R-1 located at 3837 Prince William Drive, to allow reduction to minimum yard requirements based on error in building location to allow 12 foot high shed to remain 8.7 feet from side lot line and 5.4 feet from rear lot line.

Special Permit SP 2003-PR-006 was approved on June 4, 2003, at tax map 58-4 ((10)) 28, zoned R-1, located at 9233 Okla Drive, to allow reduction to minimum yard requirements based on error in building location to permit accessory structures to remain 0.8 feet, with eave 0.5 feet, and 1.0 feet from side lot line.

Special Permit SP 2007-PR-028 was approved on June 5, 2007, for tax map 58-4 ((17)) 20, zoned R-2, located at 9101 Petros Court, to permit reduction to minimum yard requirements based on error in building location to permit accessory structure (deck) to remain 4.3 feet and addition (wood shed) 19.1 feet from rear lot line.

ZONING ORDINANCE REQUIREMENTS (See Appendix 10)

- Sect. 8-006 General Special Permit Standards
- Group Standards for All Group 9 Uses (Sect. 8-903)
- Sect. 8-914 Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location
- Sect. 8-919 Noise barriers
- Sect. 18-401 Required Standards for Variances

Summary of Zoning Ordinance Provisions

This special permit is subject to Sects. 8-006, 8-903, 8-914, 8-919 and 18-401 of the Zoning Ordinance as referenced above, a copy of which is included in Appendix 9. 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 and Appendix 2 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 Special Permit Development Conditions
2. Proposed Variance Development Conditions
3. Applicant's Affidavits
4. Applicant's Statements of Justification
5. Noise study
6. Building permit (deck) dated July 24, 2001
7. Building permit (pool) dated October 10, 2005
8. Notice of Violation (NOV) dated April 2, 2012
9. Zoning Administrator Determination dated December 11, 2012
10. Applicable Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS

SP 2013-PR-023

May 29, 2013

If it is the intent of the Board of Zoning Appeals to approve SP 2013-PR-023 located at Tax Map 58-4 ((33)) 38 to permit a gazebo, open deck and noise barrier pursuant to Sect. 8-919 and Sect. 8-914 of the Fairfax County Zoning Ordinance, staff recommends that the Board condition the approval by requiring conformance with the following development conditions.

1. This approval is granted to the applicant only, Mary Jane Lee, and is not transferable without further action of this Board, and is for the location indicated on the application, 9207 Briary Lane, (10,765 square feet), and is not transferable to other land.
2. This special permit is granted only for the purposes, structures and/or uses indicated on the plat prepared by William E. Ramsey, P.C., dated June 27, 2012, revised through May 9, 2013, as signed and sealed by William E. Ramsey, Land Surveyor, and approved with this application, as qualified by these development conditions.
3. All applicable permits and final inspections shall be obtained for the noise barrier and accessory structure (gazebo) within six months of 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.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval unless the use has been established as noted above. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

PROPOSED DEVELOPMENT CONDITIONS

VC 2013-PR-003

May 29, 2013

1. This variance is approved for the rear yard coverage (58%) on the property as shown on the plat prepared by William E. Ramsey, June 27, 2012, revised through May 9, 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 including requirements for building permits.

Application No.(s): SP 2013-PR-023
(county-assigned application number(s), to be entered by County Staff)

Zoning

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: July 6, 2012
(enter date affidavit is notarized)

I, Mary Jane Lee, 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

117113

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)
Harlan Lee	9207 Briary Lane, Fairfax, VA 22031	Title Owner
Mary Jane Lee	9207 Briary Lane, Fairfax, VA 22031	Title Owner/Applicant

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

* In the case of a condominium, the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium.
** List as follows: Name of trustee, Trustee for (name of trust, if applicable), for the benefit of: (state name of each beneficiary).

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

Page Two

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: July 6, 2012
(enter date affidavit is notarized)

117113

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)

NA

DESCRIPTION OF CORPORATION: (check one statement)

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

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

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

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

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

Page Three

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: July 6, 2012
(enter date affidavit is notarized)

117113

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)

NA

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

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

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

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

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

Page Four

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: July 6, 2012
(enter date affidavit is notarized)

117113

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 MJK

(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: July 6, 2012
(enter date affidavit is notarized)

117113

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 MJR

(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:

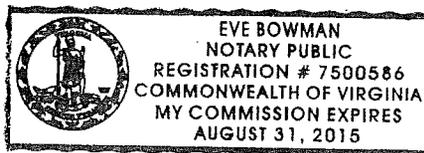
(check one) Applicant Mary Jane Lee Applicant's Authorized Agent

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

Subscribed and sworn to before me this 6th day of July, 2012, in the State/Comm. of Virginia, County/City of Vienna.

Eve Bowman
Notary Public

My commission expires: Aug. 31, 2015



Application No.(s): VC 2013-PR-003
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: March 1, 2013
(enter date affidavit is notarized)

I, Mary Jane Lee, do hereby state that I am an
(enter name of applicant or authorized agent)

(check one) applicant 120086
 applicant's authorized agent listed in Par. 1(a) below

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)
Harlan Y. M. Lee	9207 Briary Lane, Fairfax, VA 22031	Owner
Mary Jane Lee	9207 Briary Lane, Fairfax, VA 22031	Owner

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

* 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 Two

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: March 1, 2013
(enter date affidavit is notarized)

120086

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)

NA

DESCRIPTION OF CORPORATION: (check one statement)

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

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

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

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

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

Page Three

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: March 1, 2013
(enter date affidavit is notarized)

120086

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)

NA

(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: March 1, 2013
(enter date affidavit is notarized)

120086

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: March 1, 2013
(enter date affidavit is notarized)

120084

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:

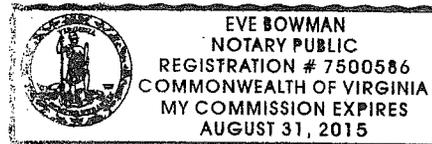
(check one) [] Applicant Mary Jane Lee [] Applicant's Authorized Agent

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

Subscribed and sworn to before me this 1st day of March, 2013, in the State/Comm. of Virginia, County/City of Fairfax.

Eve Bowman
Notary Public

My commission expires: August 31, 2015



Special Permit SP 2012-0160 Additional Request Page 1
 Lee 9207 Briary Lane, Fairfax 22031

SPECIAL PERMIT STATEMENT OF JUSTIFICATION

A written statement from the applicant describing the proposed use, and pertinent data, including specifically:

A. Type of operation(s).

Residential back yard

B. Hours of operation.

NA

C. Estimated number of patrons/clients/patients/pupils/etc.

NA

D. Proposed number of employees/attendants/teachers/etc.

NA

E. Estimate of traffic impact of the proposed use, including the maximum expected trip generation and the distribution of such trips by mode and time of day.

NA

F. Vicinity or general area to be served by the use.

Back yard of 9207 Briary Lane, Fairfax 22031

G. Description of building facade and architecture of proposed new building or additions.

Application is to keep existing structure due to an error in building location. No new building or addition is involved.

H. A listing, if known, of all hazardous or toxic substances as set forth in Title 40, Code of Federal Regulations Parts 116.4, 302.4 and 355; all hazardous waste as set forth in Virginia Department of Environmental Quality Hazardous Waste Management Regulations; and/or petroleum products as defined in Title 40, Code of Federal Regulations Part 280; to be generated, utilized, stored, treated, and/or disposed of on site and the size and contents of any existing or proposed storage tanks or containers.

There is a swimming pool with a chlorine-based sanitation system. Chlorine tablets for the swimming pool are stored on the property. They are not stored in the back yard.

I. A statement of how the proposed use conforms to the provisions of all applicable ordinances, regulations, adopted standards and any applicable conditions, or, if any waiver, exception or variance is sought by the applicant from such ordinances, regulations, standards and conditions, such shall be specifically noted with the justification for any such modification.

We are requesting a reduction in the minimum yard requirement due to an error in building location for the pool patio and gazebo in our backyard.

In 2005 we hired a Fairfax-based Virginia-licensed contractor to build a swimming pool in our back yard after receiving three bids for the project. The pool that he designed and we expected to be built matched the topography of the property in that the pool had a high wall on the eastern and south eastern sides and as the property sloped down to the west the height of the southern pool wall decreased. Steps on the southern and eastern sides allowed easy access to the pool perimeter. Steps on the western side led to a small seating area next to the

RECEIVED
 Department of Planning & Zoning
 FEB 27 2013
 Zoning Evaluation Division

pool. The plan that he presented to secure a permit from Fairfax County was apparently quite different—it specified “no deck”—and most likely was not something we would have paid to build. Eight years later we find we are in violation of the rule that limits improvements to 30% of the minimum rear yard area. Since the pool was built with a permit and passed all inspections it is deemed allowable under Virginia Section 15.2-230. Since the builder -obtained permit did not allow for any deck that area is not included in the ruling on the pool. We also built a gazebo. Since it is 77.25 sq.ft in area it did not require a permit. Since it didn't require a permit we did not get one, but since we did not get a permit the gazebo cannot be deemed allowable under Virginia Section 15.2-2307. It together with the concrete area surrounding the pool, causes us to exceed the allowable rear yard coverage.

All of the pool plumbing and electrical lines are buried in the concrete on the west side of the pool. Demolishing that would destroy the pool. It would not be possible to move the gazebo to the area outside of the rear yard calculation because that would put it within five feet of the house or blocking the rear exit from the basement. Because the area the gazebo occupies has to be level placing it so close to the house would interfere with the drainage and eventually lead to water in the basement and quite possibly mold problems.

Statement of Justification re: SP 2012-0160

Noise barrier application for 9207 Briary Lane, Fairfax 22031

- A. The noise barrier is for our home address. The type of operation is home life in which it is possible to hold a conversation in the backyard.
- B. N/A
- C. N/A
- D. N/A.
- E. N/A
- F. N/A
- G. N/A
- H. There are no hazardous or toxic substances generated, utilized, stored, treated or disposed of in our backyard other than the chlorine tablets that are used in the chlorine feeder for the pool. The tablets are not stored in the backyard.
- I. The proposed use is reduction of noise from the adjacent major thoroughfare. The height of the noise barrier is the only question of which I am aware.



Mary Jane Lee

RECEIVED
Department of Planning & Zoning
OCT 19 2012
Zoning Evaluation Division

Statement of Justification re: SP 2012-0160

Noise barrier application for 9207 Briary Lane, Fairfax 22031

- A. The noise barrier is for our home address. The type of operation is home life in which it is possible to hold a conversation in the backyard.
- B. N/A
- C. N/A
- D. N/A.
- E. N/A
- F. N/A
- G. N/A
- H. There are no hazardous or toxic substances generated, utilized, stored, treated or disposed of in our backyard other than the chlorine tablets that are used in the chlorine feeder for the pool. The tablets are not stored in the backyard.
- I. The proposed use is reduction of noise from the adjacent major thoroughfare. The height of the noise barrier is the only question of which I am aware.


Mary Jane Lee

RECEIVED
Department of Planning & Zoning
OCT 19 2012
Zoning Evaluation Division

RECEIVED
Department of Planning & Zoning
JUL 16 2012
Zoning Evaluation Division

July 15, 2012

Zoning Evaluation Division
Fairfax County
Department of Planning and Zoning
12055 Government Center Parkway
Suite 801
Fairfax, VA 22035

To whom it may concern:

In early 2005 our back yard trees were dead and gone or dying and the developer's inadequate fence was decrepit and ugly. Our back property line is in a ditch—it is 5 to 7 feet below the roadbed of Route 236. We had no privacy, a car that careened off the road was very likely to end up in the yard and the road noise was horrible. We wanted to put in a new fence and were trying to find out what was possible. The Fairfax County website contained the following information:

Are there any regulations regarding the location and height of fences and walls?

The County's Zoning Ordinance regulates the location of fences and walls on a lot based on the height of the fence or wall. On most residential lots, the Zoning Ordinance only allows a fence or wall of 4 feet or less on those areas of the lot that are nearer to any street or front lot line than the house. In a side or rear yard, a fence or wall of not more than 7 feet is generally allowed. There are some limited exceptions to these rules for particular types of lots that abut or are in close proximity to major thoroughfares. For specific information regarding your property and designation of the yards on your lot, please contact the Zoning Permit Review Branch of the Department of Planning and Zoning at 703-222-1082, TTY 711. In many instances, a Building Permit is not required for a fence. However, masonry fences and walls do require the approval of a Building Permit prior to construction. For information regarding Building Permit requirements, please contact the Permit Application Center of the Department of Public Works and Environmental Services at 703-222-0801, TTY 711.

(Highlighting is mine.)

I called and what great news I received! After providing our address I was told that for our particular property there was no fence height restriction. "Can it be 12 feet high? Our property line is in a ditch so a 12-foot fence will look like it is 5 feet high from the road behind us." The answer: "Any height."

It made sense. I had seen properties in western areas of Fairfax County with 10 to 12-foot high walls and fences. Why not here? Especially when your property line is in a ditch. I was so thrilled I shared the information with our neighbors (letter attached). You will notice that the information said to contact the Planning and Zoning Office and gave a phone number. It didn't say make sure you get whatever information you are

doing a noise study recommended having a second layer of boards put on the back of the fence offset from the original boards. He said it would help considerably with the noise. As it turns out that is what will make the fence non-climbable as well.

The fence is at the bottom of a seven-foot deep ditch. It is eight to ten feet from the road edge. Three seasons of the year it is barely visible. It blends into the environment. From the road it looks like a five or six foot tall fence. I have included pictures of the fences and lot lines of many of our neighbors.

If we had been told seven years ago that the maximum height fence we could build was eight feet we would have put up an eight-foot fence and planted dense, fast growing bushes that hopefully would have reached 12 to 14 feet by now. We wouldn't have a pool or a gazebo. Like most of our neighbors we wouldn't use the yard very much. But that's not what happened. We were told we could build a 12-foot fence and because of the noise abatement and privacy that it afforded we built a pool and a gazebo.

The Code Compliance Inspector has told me twice to "give up." According to him we are going to spend thousands of dollars and "are going to lose anyway." His advice is to cut the fence down to seven feet (He still balks at eight feet.) and plant Leyland Cypress. I have included pictures of the yard to show that we can't plant much of anything alongside the pool. If we have to reduce the fence height to eight feet it will be one foot above the roadbed of Route 236 for most of the length of our property. Conversation-killing noise levels will return and privacy will end.

The applicant is a co-owner and occupier and my husband—the other co-owner and occupier—supports this application. Our intent was to create an environment that would allow enjoyable use of our entire property.

Sincerely,



Mary Jane Lee
9207 Briary Lane
Fairfax, VA 22031

RECEIVED
Department of Planning & Zoning
FEB 27 2013
Zoning Evaluation Division

ZONING ORDINANCE STANDARDS FOR A VARIANCE

1. The property was acquired in good faith.

The property was purchased in 1995 as our family home.

2. That the subject property has at least one of the following characteristics (note: "the effective date of the Ordinance" is August 14, 1978):

A. Exceptional narrowness at the time of the effective date of the Ordinance;

B. Exceptional shallowness at the time of the effective date of the Ordinance;

C. Exceptional size at the time of the effective date of the Ordinance;

D. Exceptional shape at the time of the effective date of the Ordinance;

E. Exceptional topographic conditions;

The rear property line is in a ditch that is six to seven feet below the roadbed of the major thoroughfare that is adjacent to the property.

F. An extraordinary situation or condition of the subject property; or

In early 2005 our back yard trees were dead and gone or dying and the developer's inadequate fence was decrepit and ugly. Our back property line is in a ditch—it is 6 to 7 feet below the roadbed of Route 236.

Since it seemed to me that our property might fit the "...limited exceptions to these rules for particular types of lots that abut or are in close proximity to major thoroughfares." I called the Zoning Permit Review Branch of the Department of Planning and Zoning as instructed on the county website. After providing our address I was told that for our particular property there was no fence height restriction. "Can it be 12 feet high? Our property line is in a ditch so a 12-foot fence will look like it is 5 feet high from the road behind us," I asked. The answer: "Any height."

It made sense. I had seen properties in western areas of Fairfax County with 10 to 12-foot high walls and fences. Why not here? Especially when your property line is in a ditch. During this current process I was told that if I had that response in writing the employee "would fold right now." I called as instructed and I accepted what I was told over the phone so I have nothing in writing.

That call had many consequences: We had a 12-foot high wooden structure built. It definitely helped with the noise; it certainly made it more pleasant to sit in the yard. We started using the deck. We decided to put in a swimming pool. We had a gazebo built.

If I had been told (erroneously) that a seven foot or (correctly) eight foot fence was all we could construct without a variance we would have done that and nothing more. Since our youngest child was in college by then we might have moved. (We bought that house because of the school district.)

G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

We hired a Fairfax-based Virginia-licensed contractor to build a swimming pool in our back yard after receiving three bids for the project. The pool that he designed and we expected to be built matched the topography of the property in that the pool had a high wall on the eastern and south eastern sides and as the property sloped down to the west the height of the southern pool wall decreased. Steps on the southern and eastern sides allowed easy access to the pool perimeter. Steps on the western side led to a small seating area next to the pool.

The plan that he presented to secure a permit from Fairfax County was apparently quite different—it specified “no deck”—and most likely was not something we would have paid to build. Eight years later we find we are in violation of the rule that limits improvements to 30% of the minimum rear yard area. Since the pool was built with a permit and passed all inspections it is deemed allowable under Virginia Section 15.2-2307. Since the builder -obtained permit did not allow for any deck that area is not included in the ruling on the pool. We also built a gazebo. Since it is 77.25 sq.ft in area it did not require a permit. Since it didn't require a permit we did not get one, but since we did not get a permit the gazebo cannot be deemed allowable under Virginia Section 15.2-2307. It together with the concrete area surrounding the pool, causes us to exceed the allowable rear yard coverage.

4. That the strict application of this Ordinance would produce undue hardship.

All of the pool plumbing and electrical lines are buried in the concrete on the west side of the pool. Demolishing that would destroy the pool. Demolishing the areas to the east and south would create an unsafe access and egress situation and destroy the drainage system for water runoff from the elements, our neighbors to the east and Route 236. On the north side we would have a ditch between the pool and the deck or have to create a slope which would force water towards the foundation of our house leading to water in the basement and quite likely a mold problem with a short time.

If we have to remove the gazebo it would be necessary to completely disassemble it and move it piece by piece which would cost thousands of dollars. It would not be possible

to move it to the area outside of the rear yard calculation because that would put the gazebo within five feet of the house or blocking the rear exit from the basement. Because the area the gazebo occupies has to be level placing it so close to the house would interfere with the drainage and eventually lead to water in the basement and quite possibly mold problems.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

No one else with property on the south side of Briary Lane has added improvements equal to what we have done.

6. A. That the strict application of the Zoning Ordinance would *effectively prohibit or unreasonably restrict all reasonable use* (emphasis added) of the subject property, or B. That the granting of a variance will alleviate a clearly demonstrable hardship *approaching confiscation* (emphasis added) as distinguished from a special privilege or convenience sought by the applicant.

A variance is the only remedy for an in ground pool that was located incorrectly by the builder. Without a variance allowing the existing rear yard coverage to remain the consequences would be dire.

The soil in this area is mostly clay. When we bought our house the backyard was like a swamp. The sewer cleanout pipe shown on a drawing given to the original owner in 1983 as being 4 inches below the soil in the front yard was four inches above the soil in 1995 when we bought the house. VDOT has replaced the driveway apron twice since 1995 because there was no soil under it; it rocked when you walked on it. A drainage system was installed by the previous owner as a condition of our purchase. We have updated and extended that system, added topsoil and promoted vegetation so the situation with regard to drainage is better than when the backyard was a field of dirt, weeds and dying trees. Interfering with the slope and landscaping will inevitably lead to water and most likely mold problems we do not currently have. Moving the gazebo within five feet of the house (allowable we have been told) would create the same kinds of problems.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

Authorizing the variance will allow a situation which has existed for eight years to continue and would have no detrimental effect on adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

There are many homes in our zoning district with swimming pools.

Lee 9207 Briary Lane, Fairfax 22031
Variance Application Responses Page 4

9. That the variance will be in harmony with the intended spirit and purposes of this Ordinance and will not be contrary to the public interest.

Allowing the current situation—in existence since 2005— to continue would be in harmony with the intended spirit and purposes of this Ordinance and will not be contrary to the public interest.



9109 CORONADO TERRACE, FAIRFAX, VA 22031
 T (703) 534.2790 F (703) 286.7955

RECEIVED
 Department of Planning & Zoning

OCT 19 2012

Zoning Evaluation Division

September 11, 2012

Mary Jane Lee
 9207 Briary Lane
 Fairfax, 22031

Re: Traffic Noise Analysis

Ms. Lee:

This report summarizes a traffic noise analysis completed for your house at 9207 Briary Lane. The house is located along the north side of Little River Turnpike (Route 236). A bird's eye view of the site (looking from the north) is included as Figure 1.

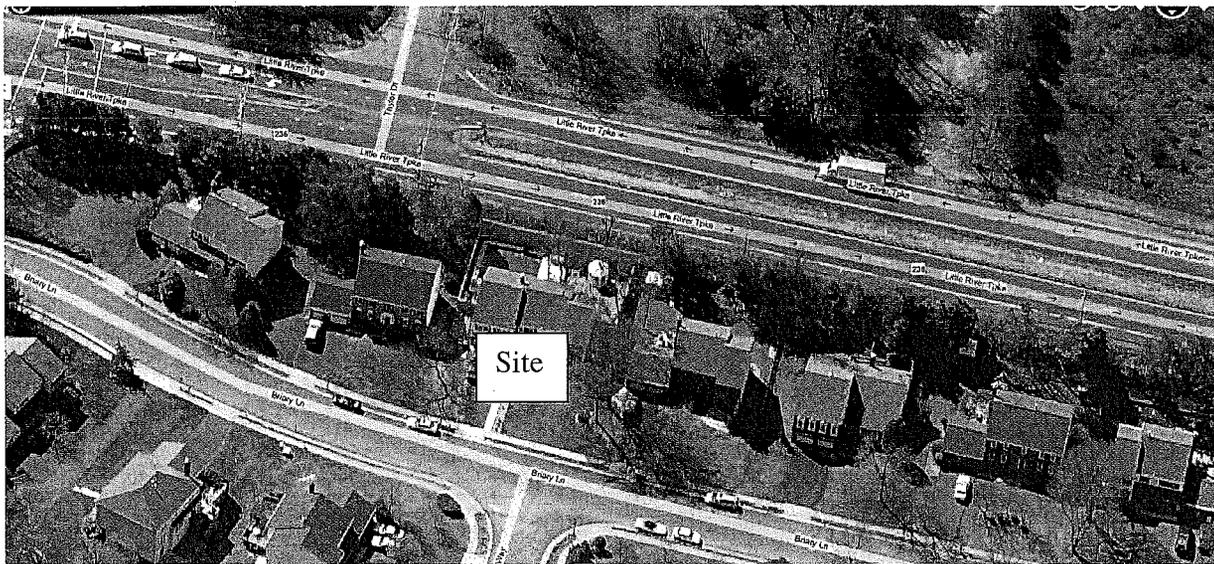


Figure 1. Birds Eye View of Site Looking From North

The Fairfax County Policy Plan states “New development should not expose people in their homes, or other noise sensitive environments to noise in excess of... 65 dBA Ldn [DNL] in the outdoor recreation areas of homes...” The 65 dB limit is normally evaluated in rear yards and specifically designated outdoor recreation areas. The rear yard of 9207 Briary Lane has many existing outdoor recreation areas including a pool, a pool deck, a hot tub, and a gazebo.

A Larson Davis model 831 sound level meter was installed in the rear yard of 9207 Briary Lane as shown in Figure 2. The rear yard of 9207 Briary Lane is at an elevation approximately 7 feet below Route 236. The existing noise wall at 9207 Briary Lane is approximately 11'-9" tall, and is composed of 1x6 wood boards and wood battens. It extends along the entire rear yard; the east and west sides of the rear yard have more typical wood fences (i.e., approximately 6 feet tall). The noise wall is largely

LEE-9207-1 2-594-2B

obscured from view from Route 236 due to the tall dense foliage between the lot and road. The noise wall is not visible from Briary Lane.



Figure 2. Rear Yard and Sound Level Meter

Sound levels were measured approximately 4-1/2' high on a tripod starting on Monday August 20, 2012. After the sound level meter was installed it was noticed that milling and re-paving had begun on Route 236. Some of the road had been milled previously but had not yet been re-paved. We were concerned that the milled pavement would produce atypical (i.e., slightly elevated) sound levels. To avoid this effect, we reset and re-started the sound level meter starting at 2:30 pm on Monday August 27, 2012, and left it to run through 4 pm on Saturday September 1, 2012. The meter was programmed to log average sound levels each minute as well as to record actual audio files each time the sound level exceeded a set a threshold.

Per the street signs, re-paving was occurring between approximately 8:30 pm and 5 am. Prior to re-starting the meter on Monday August 27, one lane each direction had been re-paved. On Tuesday night (August 28) into Wednesday morning the second through-lane each direction had been re-paved (although the turning lanes had not been re-paved). On Thursday night (August 30) into Friday morning the turning lanes were re-paved. Based on this information, we believe the daytime sound levels were representative of typical conditions starting Wednesday morning, and possibly elevated prior to that time. However, by listening to the recorded audio files we determined that nighttime construction noise was significant. As such, nighttime sound levels were not representative of typical conditions due to noise from the actual construction work. We also noted a few sirens passing the site on Monday afternoon, Friday morning, and Saturday morning.

Five-minute average sound levels were calculated based on the measured one-minute average sound levels. Figure 3 presents the measured 5-minute average sound levels. This shows how the loudest noise events were due to construction at night.

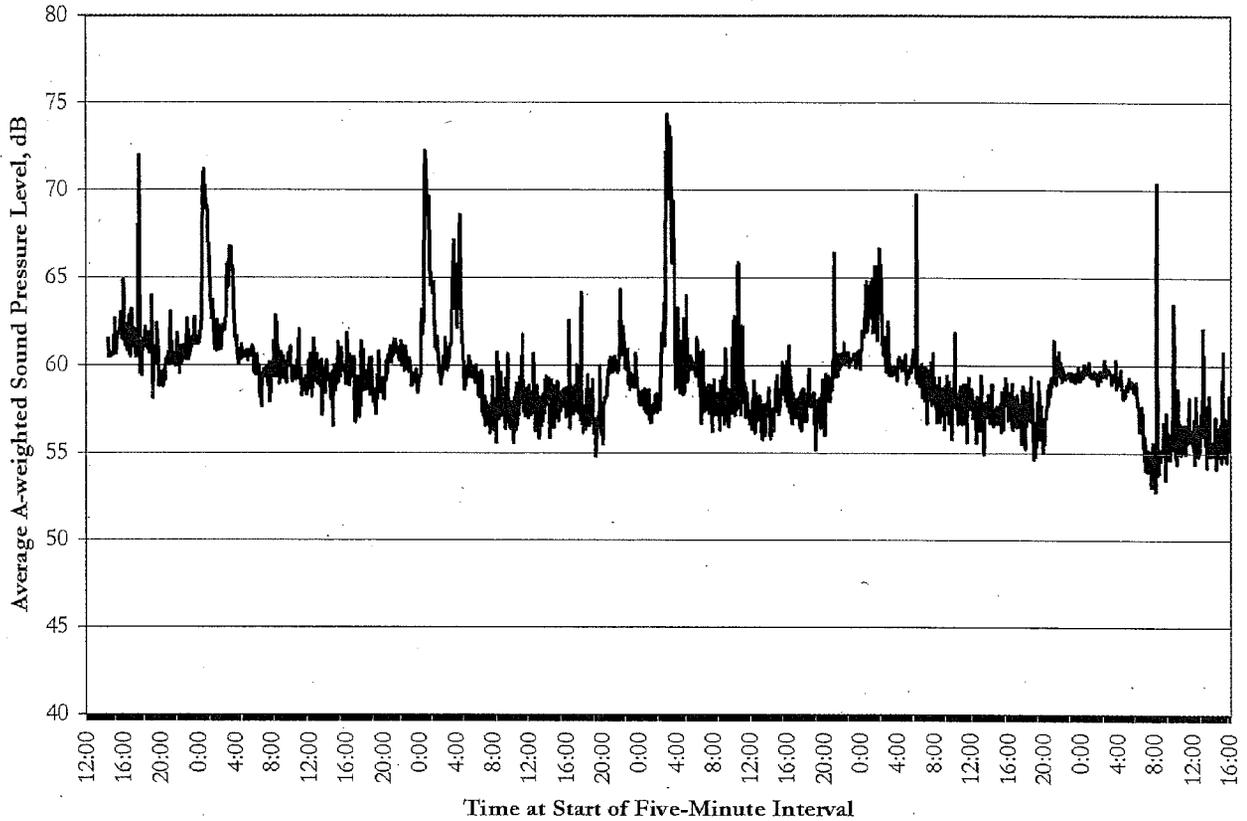


Figure 3. Measured Average Sound Levels, dB

Table 1 presents the loudest-hour average sound levels when there was no construction noise (i.e., from 5 am to 8:30 pm), and not including the few sirens which were noted. Table 1 shows that the loudest-hour average sound levels for the re-paved condition were 59.6 to 60.8 dB.

**Table 1. Summary of Loudest-Hour Average Sound Levels
(not counting construction and sirens)**

Day, Date	Loudest-Hour Average Sound Levels
Monday, August 27, 2012	62.3 (one through lane re-paved)
Tuesday, August 28, 2012	60.7 (one through lane re-paved)
Wednesday, August 29, 2012	59.6
Thursday, August 30, 2012	60.8
Friday, August 31, 2012	59.9

Fortunately, there is a way to estimate the DNL without having valid sound level data at night. For a road such as Route 236 in this area, we would expect that the DNL would be approximately 2 to 3 dB higher than the loudest-hour average sound level based on our prior experience with sound level measurements. This would mean that the DNL with the re-paved condition would be approximately 61.6 to 63.8 dB. This shows that the DNL is currently clearly below the county goal of 65 dB.

In order to provide additional information, computer modeling was used. The Traffic Noise Model (TNM) version 2.5 was used to model noise levels on the site. Approximate coordinates were obtained using the program Google Earth. Traffic volumes were counted briefly on August 20 and September 1. Table 2 presents the extrapolated hourly traffic volumes. Automobiles include pickup trucks, passenger cars hauling trailers, and vans. Medium trucks are six-wheeled cargo vehicles with two axles. Heavy trucks are cargo vehicles with three or more axles. Speeds were determined using a hand-held radar gun for the westbound lanes. The median speeds for dozens of vehicles are listed in Table 2.

Table 2. Traffic Volume Counts and Speeds

Monday 8-20-12	Autos	Medium Trucks	Heavy Trucks	Buses	Motor-cycles	Speed
Eastbound Rt. 236	1,400	12	24	4	0	-
Westbound Rt. 236	1,176	0	12	4	0	33 mph
Saturday 9-1-12						
Eastbound Rt. 236	1,122	0	12	0	0	-
Westbound Rt. 236	1,062	6	6	6	0	-

While on site we determined that the traffic signal for westbound Route 236 is red approximately 33% of the time. In modeling traffic noise in TNM, we assumed that 33% of traffic westbound accelerates from a stop at the traffic signal.

The traffic volumes and speeds from the end of the survey on Saturday were input into TNM. The output sound level from TNM for these conditions was 55.7 dB. The average measured sound level during the sound level measurements was 57.0 dB. Per Federal Highway Administration (FHWA) guidance, when the computer model prediction is within 3 dB of the measured sound level, the model is considered reasonably accurate and validated.

Next, we used TNM to determine what change in sound level would result if the noise wall were not present. The TNM prediction is an increase of 5 dB. This reduction is considered significant.

The DNL which would have been measured if the wall were not present can be estimated by adding 5 dB to the estimated DNL of 61.6 to 63.8 dB. The result is a DNL in the range of 66.6 to 68.8 dB for the re-paved condition. Since the DNL clearly exceeds the county goal of 65 dB, there would have been a noise impact if the noise wall were not present.

In summary, the rear yard of 9207 Briary Lane has outdoor recreation areas, there is an existing wood noise wall approximately 11'-9" tall, there would have been a noise impact in the rear yard if the wall were not present, and the wall significantly reduces noise levels to below the county goal.

If you have any questions, please contact me at 703/534-2790 or via e-mail at Gary@HushAcoustics.com.

Sincerely,



Gary Ehrlich, P.E.
Principal

BUILDING PERMIT APPLICATION

FAIRFAX COUNTY OFFICE OF BUILDING CODE SERVICES
 PERMIT APPLICATION CENTER
 12055 Government Center Parkway, 2nd Floor Telephone: 703-222-0801
 Fairfax, Virginia 22035-5504 Web site: http://www.co.fairfax.va.us/dpwes

PERMIT # 01205B0680

APPENDIX 6

FOR INSPECTIONS CALL 703-222-0455 (see back for more information)

DO NOT WRITE IN GRAY SPACES - COUNTY USE ONLY
 PLAN # W-01-05305
 TAX MAP # 05B-4-1531 10038

ROUTING	DATE	APPROVED BY
LICENSING		
ZONING	<u>11/24/01</u>	<u>SP</u>
SITE PERMITS	<u>7/24/01</u>	<u>KS</u>
HEALTH DEPT.		
BUILDING REVIEW	<u>7-24-01</u>	<u>SRV</u>
SANITATION		
FIRE MARSHAL		
ASBESTOS		
PROFFERS		

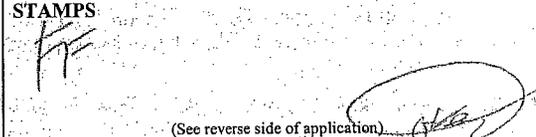
FEE \$ _____
 FILING FEE - \$ _____
 AMOUNT DUE = \$ 50.00

BUILDING PLAN REVIEW
 REVIEWER _____ # OF HOURS _____
 REVISION FEES \$ _____
 FIRE MARSHAL FEES \$ _____
 FIXTURE UNITS _____ PLAN LOC: J R

APPROVED FOR ISSUANCE OF BUILDING PERMIT
 (LOG OUT)
 BY _____ DATE 7/24

ZONING REVIEW
 USE SD-2
 ZONING DISTRICT _____ HISTORICAL DISTRICT _____
 ZONING CASE # R-3
 GROSS FLOOR AREA OF TENANT SPACE _____
 YARDS: FRONT NC GARAGE 1 2 3
 FRONT NC OPTIONS YES NO
 L SIDE 23' REMARKS Open Deck w/ Stairs
 R SIDE 36'
 REAR 24'

GRADING AND DRAINAGE REVIEW
 SOILS # _____ A B C
 AREA TO BE DISTURBED (TOTAL SQ FT THIS PERMIT) _____
 IMPERVIOUS AREA (TOTAL SQ FT THIS PERMIT) _____
 PLAN # _____ APPR. DATE _____

STAMPS

 (See reverse side of application)

REMARKS
Plot Attached

FILL IN ALL APPROPRIATE INFORMATION IN THIS COLUMN
 (PLEASE PRINT OR TYPE)

JOB LOCATION
 ADDRESS 9207 BRIMLEY LANE
 LOT # 38 BUILDING _____
 FLOOR _____ SUITE _____
 SUBDIVISION Briars at Westchester
 TENANT'S NAME Sec 2

OWNER INFORMATION OWNER TENANT
 NAME HARLAN + MARY JANE LEE
 ADDRESS 9207 BRIMLEY LANE
 CITY FAIRFAX STATE VA ZIP 22031
 TELEPHONE 703-503-5751

CONTRACTOR INFORMATION SAME AS OWNER
 CONTRACTORS MUST PROVIDE THE FOLLOWING:
 COMPANY NAME _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP _____
 TELEPHONE _____
 STATE CONTRACTORS LICENSE # _____
 COUNTY BPOL # _____

APPLICANT

DESCRIPTION OF WORK
BUILD DECK PER COUNTY DETAIL WITH 2 STEPS.

HOUSE TYPE _____
 ESTIMATED COST OF CONSTRUCTION \$11000
 BLDG AREA (SQ FT OF FOOTPRINT) 12x18
 USE GROUP OF BUILDING _____
 TYPE OF CONSTRUCTION _____
 SEWER SERVICE PUBLIC SEPTIC OTHER
 WATER SERVICE PUBLIC WELL OTHER
 OTHER PLEASE SPECIFY _____

DESIGNATED MECHANICS' LIEN AGENT
 (Residential Construction Only)
 NAME _____
 ADDRESS _____
 NONE DESIGNATED PHONE _____

CHARACTERISTICS FOR NEW SFD, TH, APT & CONDOS

# KITCHENS _____	EXTER. WALLS _____
# BATHS _____	INTER. WALLS _____
# HALF BATHS _____	ROOF MATERIAL _____
# BEDROOMS _____	FLOOR MATERIAL _____
# OF ROOMS _____	FIN. BASEMENT _____ %
# STORIES _____	HEATING FUEL _____
BUILDING HEIGHT _____	HEATING SYSTEM _____
BUILDING AREA _____	# FIREPLACES _____
BASEMENT _____	

Any and all information and/or stamps on the reverse side of this form are a part of this application and must be complied with. I hereby certify that I have authority of the owner to make this application, that the information is complete and correct, and that the construction and/or use will conform to the building code, the zoning ordinance and other applicable laws and regulations which relate to the property.

Mary Jane Lee 7/24/01
 Signature of Owner or Agent Date

MARY JANE LEE
 Printed Name and Title

(Notarization of signature is required if owner is listed as the contractor and is not present at time of application)

NOTARIZATION (if required)
 State (or territory or district) of _____
 County (or city) of _____, to wit:
 I, _____
 a Notary Public in the State and County aforesaid, do certify that
 whose name is signed to this application, appeared before me in the State and County aforesaid and executed this affidavit.
 Given under my hand this _____ day of _____, 20____.
 My commission expires the _____ day of _____, 20____.

 (Notary Signature)

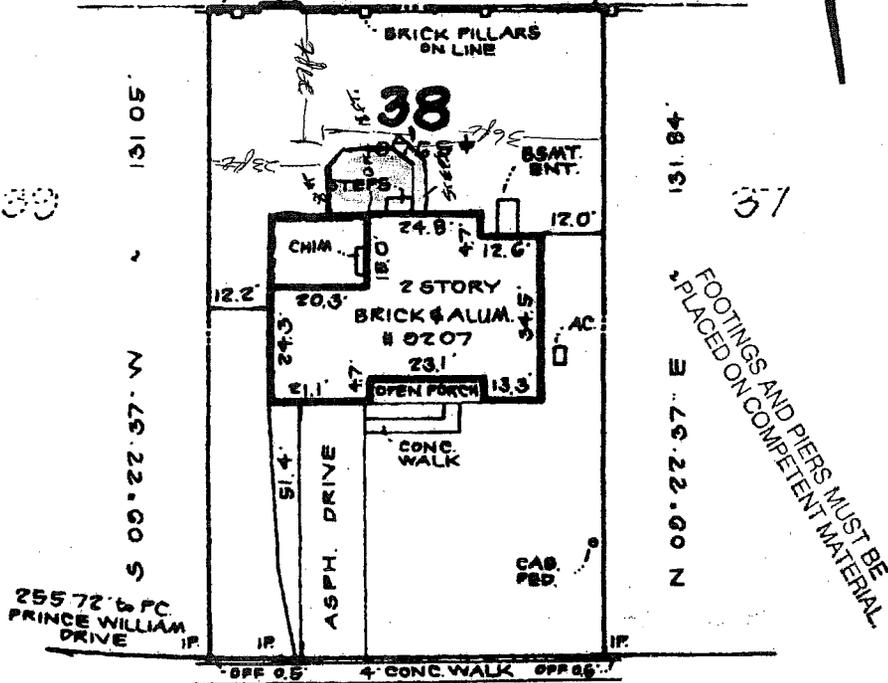
NOTES: 1 UTILITIES UNDERGROUND
2 FRAME FENCES.

APPROVED

7/24/01

LITTLE RIVER TURNPIKE

RTE. 23G
N 80° 59' 51" W ~ 81.83
Zoning Administrator



R. 416.00' S 80° 37' 23" E 67.02'
A. 14.81'

BRIARY LANE

50' R/W

DPW&ES
Office of Building
Code Services
Approved for

By *Deek Ustey*
Date 7/24/01

PLAT

SHOWING HOUSE LOCATION ON
LOT 38 SECTION 2

THE BRIARS AT WESTCHESTER

FAIRFAX COUNTY VIRGINIA

SCALE: 1" = 30'

OCTOBER 20, 1994

Scheduling and Canceling Inspections. Inspections can be scheduled or cancelled by using the internet, the Automated Inspection Requests System, or by speaking directly with County staff. To schedule or cancel an inspection via the internet, go to <http://www.co.fairfax.va.us/dpwes>, click on "Schedule Inspection", and follow directions on the screen. To schedule or cancel an inspection using the 24 hour Automated Inspection Request System (AIRS), touchtone telephone users can call 703-222-2474 and Rotary telephone users and persons who prefer to speak with County staff may call 703-222-0455 during normal Permits Division office hours Monday through Friday.

After-Hours Inspections. It is occasionally necessary for inspections to be performed outside of regular County business hours. After-hour building inspections can be arranged with prior approval and prepayment of inspection fees. A fee as outlined in the Office of Building Code Services Fee Schedule shall be charged for each 30 minute period, or fraction thereof, of inspection time performed outside of regular County business hours. This fee is in addition to the fee for the building permit which authorizes the performance of the work.

Right of Appeal. Decisions of the Building Official may be appealed to the Fairfax County Board of Building Code Appeals in accordance with the Virginia Uniform Statewide Building Code, the Code of the County of Fairfax and the Board's current procedures.

BUILDING PERMIT AMENDMENT APPLICATION

FAIRFAX COUNTY OFFICE OF BUILDING CODE SERVICES
PERMIT APPLICATION CENTER

2055 Government Center Parkway, 2nd Floor
Fairfax, Virginia 22035-5504
Telephone: 703-222-0801
Web site: http://www.co.fairfax.va.us/dpvs

FILL IN ALL APPROPRIATE INFORMATION IN THIS COLUMN
(PLEASE PRINT OR TYPE)

JOB LOCATION PERMIT # 01205 B0680
ADDRESS 9207 BRIARY LAKE
LOT # 38 BUILDING NA
FLOOR NA SUITE NA
SUBDIVISION BRIARS AT WESTCHESTER
TENANT'S NAME See 7

OWNER INFORMATION OWNER TENANT
NAME HARLAD & MARY JANE LEE
ADDRESS 9207 BRIARY LAKE
CITY FAIRFAX STATE VA ZIP 22031
TELEPHONE 703-503-5751

APPLICANT Mary Jane Lee

ESTIMATED COST OF CONSTRUCTION \$ 0.00
(Cost of change, not total construction costs)

AMENDMENT REQUESTED
 CHANGE HOUSE TYPE
FROM _____ TO _____
 RELOCATE HOUSE ON LOT
 FINISH BASEMENT
 ADD DECK/PORCH/SUNROOM
 ADD GARAGE
 ADD CARPORT
 DELETE STAIRS FROM DECK
 CHANGE MECHANICS' LIEN INFORMATION
DESIGNATED MECHANICS' LIEN AGENT:
NAME _____
ADDRESS _____
NONE DESIGNATED PHONE _____
 OTHER (PLEASE SPECIFY) _____

AMENDED PERMIT # 01205 B0680

FOR INSPECTIONS CALL 703-222-0455 (see back for more information)

DO NOT WRITE IN GRAY SPACES - COUNTY USE ONLY
PLAN # W-01-05305
TAX MAP # 058-41331A039

ROUTING	DATE	APPROVED BY
ZONING - (1)	9-27-01	[Signature]
SITE PERMITS - (2)	9/27/01	[Signature]
SANITATION		
HEALTH DEPT.		
BUILDING REVIEW	9-27-01	NRQ

AMOUNT DUE = \$ 20.00

APPROVED FOR ISSUANCE OF AMENDMENT
(LOG OUT)
BY: _____ DATE 9/27/01

ZONING REVIEW ZONING CLASS R3

YARDS:	REMARKS
FRONT	<u>Delete stairs from original permit</u>
FRONT	
L SIDE	
R SIDE	
REAR	

GRADING AND DRAINAGE REVIEW
SOILS # _____ A B C
HISTORICAL DISTRICT
AREA TO BE DISTURBED (SQ FT ADDED THIS AMEND) _____
IMPERVIOUS AREA (SQ FT ADDED THIS AMEND) _____
PLAN # _____ APPR. DATE _____

STAMPS
over
(See reverse side of application)

REMARKS _____

Any and all information and/or stamps on the reverse side of this form are a part of this application and must be complied with. I hereby certify that I have authority of the owner to make this application, that the information is complete and correct, and that the construction and/or use will conform to the building code, the zoning ordinance and other applicable laws and regulations which relate to the property.

Mary Jane Lee 9/27/01
Signature of Owner or Agent Date
MARY JANE LEE OWNER
Printed Name and Title

(Notarization of signature is required if owner is listed as the contractor and is not present at time of application)

NOTARIZATION (if required)
State (or territory or district) of _____
County (or city) of _____ to wit:
I, _____
a Notary Public in the State and County aforesaid, do certify that
whose name is signed to this application, appeared before me in the State and County aforesaid and executed this affidavit.
Given under my hand this _____ day of _____, 20____
My commission expires the _____ day of _____, 20____
(Notary Signature)

BUILDING PERMIT APPLICATION

FAIRFAX COUNTY OFFICE OF BUILDING CODE SERVICES
 PERMIT APPLICATION CENTER

12055 Government Center Parkway, 2nd Floor Telephone: 703-222-0801
 Fairfax, Virginia 22035-5504 Web site: www.fairfaxcounty.gov/dpw

PERMIT # 05286 B 0490

APPENDIX 7

FOR INSPECTIONS CALL 703-222-0455 (see back for more information)

FILL IN ALL APPROPRIATE INFORMATION IN THIS COLUMN
 (PLEASE PRINT OR TYPE)

JOB LOCATION
 ADDRESS 9207 BRIARY LANE
 LOT # #38 BUILDING _____
 FLOOR _____ SUITE 1 Sec 2
 SUBDIVISION THE BARRIERS AT WESTCHESTER
 TENANT'S NAME _____

OWNER INFORMATION OWNER TENANT
 NAME Mrs & Mrs LEE
 ADDRESS 9207 BRIARY LANE
 CITY FAIRFAX STATE VA ZIP _____
 TELEPHONE _____

CONTRACTOR INFORMATION SAME AS OWNER
 CONTRACTORS MUST PROVIDE THE FOLLOWING:
 COMPANY NAME HUSTON POOLS INC
 ADDRESS 11139 LEE HIGHWAY
 CITY FAIRFAX STATE VA ZIP 22030
 TELEPHONE 703-246-0037
 STATE CONTRACTORS LICENSE # 037033A
 COUNTY BPOL # 00191538

APPLICANT
SL HUSTON II HUSTON POOLS INC
DESCRIPTION OF WORK
Inground Pool

HOUSE TYPE
 ESTIMATED COST OF CONSTRUCTION 29,000
 BLDG AREA (SQ FT OF FOOTPRINT) 5254
 USE GROUP OF BUILDING _____
 TYPE OF CONSTRUCTION GRANITE
 SEWER SERVICE PUBLIC SEPTIC OTHER
 WATER SERVICE PUBLIC WELL OTHER
 OTHER PLEASE SPECIFY _____
DESIGNATED MECHANICS' LIEN AGENT
 (Residential Construction Only)
 NAME _____
 ADDRESS _____
 NONE DESIGNATED PHONE _____

CHARACTERISTICS FOR NEW SFD, TH, APT & CONDOS	
# KITCHENS	EXTER. WALLS
# BATHS	INTER. WALLS
# HALF BATHS	ROOF MATERIAL
# BEDROOMS	FLOOR MATERIAL
# OF ROOMS	FIN. BASEMENT
# STORIES	HEATING FUEL
BUILDING HEIGHT	HEATING SYSTEM
BUILDING AREA	# FIREPLACES
BASEMENT	<u>Pool</u>

DO NOT WRITE IN GRAY SPACES - COUNTY USE ONLY
 PLAN # 0584-33-0038
 TAX MAP # 0584-33-0038

ROUTING	DATE	APPROVED BY
LICENSING	<u>10-13-05</u>	<u>CRK</u>
ZONING	<u>10/13/05</u>	<u>BB</u>
SITE PERMITS	<u>10-12-05</u>	<u>NY ST</u>
HEALTH DEPT		
BUILDING REVIEW	<u>12/13/05</u>	<u>SGA</u>
SANITATION		
FIRE MARSHAL		
ASBESTOS		
PROFFERS		

FEE \$ 100.00
 FILING FEE \$ _____
 AMOUNT DUE \$ _____

BUILDING PLAN REVIEW
 REVIEWER _____ # OF HOURS _____
 REVISION FEES \$ _____
 FIRE MARSHAL FEES \$ _____
 FIXTURE UNITS _____ PLAN LOC J R

APPROVED FOR ISSUANCE OF BUILDING PERMIT
 (LOG OUT)
 BY IB DATE 10/13/05

ZONING REVIEW
 USE SFD
 ZONING DISTRICT R-3 HISTORICAL DISTRICT _____
 ZONING CASE # _____
 GROSS FLOOR AREA OF TENANT SPACE _____
 YARDS: GARAGE 1 2 3
 FRONT OPTIONS YES NO
 FRONT N/A REMARKS Build inground
 L SIDE 6' pool / no decking / no spa
 R SIDE 48' 27' x 23'
 REAR 7'

GRADING AND DRAINAGE REVIEW
 SOILS # 32 A B C
 AREA TO BE DISTURBED (TOTAL SQ FT THIS PERMIT) 2500
 IMPERVIOUS AREA (TOTAL SQ FT THIS PERMIT) 675
 PLAN # _____ APPR. DATE _____

STAMPS
 (See reverse side of application)

REMARKS
Inground Granite
Pool No Decking No
SPA

Any and all information and/or stamps on the reverse side of this form are a part of this application and must be complied with. I hereby certify that I have authority of the owner to make this application, that the information is complete and correct, and that the construction and/or use will conform to the building code, the zoning ordinance and other applicable laws and regulations which relate to the property.

SL HUSTON II 10-10-05
 Signature of Owner or Agent Date

SL HUSTON II PRESIDENT HUSTON POOLS INC
 Printed Name and Title

(Notarization of signature is required if owner is listed as the contractor and is not present at time of application)

NOTARIZATION (if required)
 State (or territory or district) of _____
 County (or city) of _____ to wit: I, _____
 Notary Public in the State and County aforesaid, do certify that _____
 whose name is signed to this application, appeared before me in the State and County aforesaid and executed this affidavit.
 Given under my hand this _____ day of _____, 20____ My
 commission expires the _____ day of _____, 20____
 (Notary Signature)



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

DATE OF ISSUANCE: April 4, 2012

SHERIFF'S LETTER

CASE #: 201201682 **SR#:** 81272

SERVE: Harlan Y. M Lee
Mary J. Lee
9207 Briary Lane
Fairfax, Virginia 22031

LOCATION OF VIOLATION 9207 Briary Lane
Fairfax, Virginia 22031-3868
Tax Map #: 58-4 ((33)) 38
Zoning District: R-3

Dear Property Owner:

An inspection of the above referenced property on April 02, 2012 revealed the following violations of the Fairfax County Zoning Ordinance.

§ 10-104 (3C) Accessory Fence Exceeding 7' in the Side or Rear Yard
§ 2-302 (6) Accessory Use must comply with Article 10:

The presence of an approximately fourteen (14) foot tall accessory fence in the rear yard of this property. The Fairfax County Zoning Ordinance permits accessory fences in the front yard so long as they are in conformance with Par. 3C of Sect. 10-104 of the Zoning Ordinance which states:

Except as may be qualified by Sect. 2-505, a fence or wall may be located as follows. Such regulations shall not be deemed to negate the screening requirements of Article 13.

In any side or rear yard on any lot, a fence or wall not exceeding seven (7) feet in height is permitted. However, a solid wood or

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 FAX 703-324-9346
www.fairfaxcounty.gov/code

Harlan Y M Lee

Mary J Lee

April 4, 2012

Page 2

masonry fence or wall not exceeding eight (8) feet in height, located flush to the ground; is permitted:

- (1) In any side or rear yard of a reverse frontage lot; or
- (2) For that portion of a side or rear yard of a residential lot where the side or rear lot line is within 150 feet of a major thoroughfare and abuts common or dedicated open space, where such open space is located between the lot line and the major thoroughfare.

Therefore, as this accessory fence exceeds seven feet (7') in height in the rear yard contrary to the provisions of Par. 3C of Sect. 10-104 of the Zoning Ordinance, you are in violation of Par. 3C of Sect. 10-104 and Par. 6 of Sect. 2-302 of the Zoning Ordinance which states:

No accessory structure or use, as defined in Article 20, shall hereafter be built, moved, remodeled, established, altered or enlarged unless such accessory structure or use complies with the provisions of Par. 1 of Article 10.

You are hereby directed to clear this violation within fifteen (15) days of the date of this Notice. Compliance can be accomplished by:

- Removing the fence from the property in its entirety; or
- Reducing the height of the fence to seven feet (7') in the rear yard.

A follow-up inspection will be made at the expiration of the time period outlined in this Notice. Failure to comply with the Notice will result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance which can result in court ordered sanctions.

You may have the right to appeal this Notice of Zoning Violation within thirty (30) days of the date of this letter in accordance with Sec. 15.2-2311 of the Code of Virginia. This decision shall be final and unappealable if it is not appealed within such thirty (30) days. Should you choose to appeal, the appeal must be filed with the Zoning Administrator and the Board of Zoning Appeals (BZA) in accordance with Part 3 of Article 18 of the Fairfax County Zoning Ordinance. Those provisions require the submission of an application form, 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.

Harlan Y M Lee

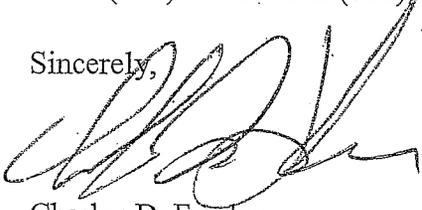
Mary J Lee

April 4, 2012

Page 3

Should you have any questions or need additional information, please do not hesitate to contact me at (703)324-1348 or (703)324-1300.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles D. Forshee". The signature is stylized and cursive, with a large initial "C" and "F".

Charles D. Forshee

Code Compliance Investigator II



County of Fairfax, Virginia

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

****REVISED LETTER****

Via Email (mjleeva@gmail.com) and U.S. Mail

December 11, 2012

Mary Jane Lee
9207 Briary Lane
Fairfax, VA 22031

RECEIVED
Department of Planning & Zoning

FEB 27 2013

Zoning Evaluation Division

Re: 2307 Request – Special Permit SP 2012-0160
9207 Briary Lane
Briars at Westchester, Sec. 2
Tax Map: 58-4 ((33)) 38
Zoning District: R-3

Dear Ms. Lee:

This is in response to your email of November 7, 2012 requesting a determination that the existing gazebo and swimming pool/deck located at the referenced property are vested pursuant to Section 15.2-2307 of the Code of Virginia. This letter supersedes my letter dated November 20, 2012.

According to the plat submitted with your special permit application dated June 27, 2012 and revised October 12, 2012, the gazebo is 12.5 feet in height and located 6.5 feet from the rear lot line and 13.0 feet from the adjacent side lot line. Pursuant to Par. 12 of Sec. 10-104 of the Zoning Ordinance, as the gazebo is an accessory structure that exceeds 7 feet in height, it is required to be located at least a distance equal to its height – or 12.5 feet – from the rear lot line and at least 12 feet from the adjacent side lot line. The gazebo is therefore located 6 feet too close to the rear lot line.

Also according to the plat, the pool area, including a surrounding concrete patio, is located 2.7 feet from the rear lot line and 2.4 feet from the adjacent side lot line. Pursuant to Par. 2A of Sec. 2-412 of the Zoning Ordinance, the patio must be located at least 5 feet from the rear lot line and at least 7 feet from the adjacent side lot line.

Section 15.2-2307 states:

Notwithstanding any local ordinance to the contrary, if (i) the local government has issued a building permit, the building or structure was thereafter constructed in

Department of Planning and Zoning
Zoning Administration Division
Ordinance Administration Branch
12055 Government Center Parkway, Suite 8
Fairfax, Virginia 22035-55
Phone 703-324-1314 FAX 703-803-63
www.fairfaxcounty.gov/dj

Mary Jane Lee
December 11, 2012
Page 2

accordance with the building permit, and upon completion of construction, the local government issued a certificate of occupancy or a use permit therefore, or (ii) the owner of the building or structure has paid taxes to the locality for such building or structure for a period in excess of 15 years, a zoning ordinance may provide that the building or structure is nonconforming, but shall not provide that such building or structure is illegal and shall be removed solely due to such nonconformity. Further, a zoning ordinance may provide that such building or structure be brought in compliance with the Uniform Statewide Building Code.

As noted on the attached form, our research unfortunately indicates that no building permit was issued (or required) for the gazebo and it has not been taxed for at least 15 years. Although a building permit was issued for the pool and received final inspection, no patio was shown on the building permit. The patio surrounding the pool cannot, therefore, be deemed as vested pursuant to Section 15.2-2307 of the Code of Virginia. I further note that our records do not reflect that an electrical permit was issued for the hot tub located to the rear of the pool decking.

In order to maintain the structures in their current configurations, a special permit for a reduction to the minimum yard requirements based on an error in building location for the gazebo and pool patio and a variance to allow accessory structures to cover more than 30% of the minimum required rear yard could be sought. The special permit application may be added to your pending application for a special permit, with no additional filing fee required. The variance application is a separate application, but would not require an additional filing fee. For more information on the special permit and variance process, please contact the Zoning Evaluation Division at 703-324-1290. Should you have any additional questions, please feel free to contact me at 703-324-1314.

Sincerely,



Jill G. Cooper, AICP
Senior Assistant to the Zoning Administrator

cc: Linda Q. Smyth, Supervisor, Providence District
Leslie B. Johnson, Zoning Administrator
Mavis E. Stanfield, Deputy Zoning Administrator for Appeals
Diane Johnson-Quinn, Deputy Zoning Administrator for Zoning Permit Review Branch
Michael Chauncey, Application Acceptance, Zoning Evaluation Division
Charles D. Forshee, Code Compliance Investigator, DCC

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.

8-919 Noise Barriers

The BZA may approve an increase in height and/or modification to the corresponding location regulations as set forth in Sect. 10-104 for a noise barrier which reduces adverse impacts of highway noise on properties located adjacent to major thoroughfares, or which reduces adverse noise impacts of commercial and industrial uses on adjacent properties, in accordance with the following:

1. A noise impact study shall be submitted with the application. The study shall demonstrate the need for such a barrier and the level of mitigation to be achieved, and shall include the height of the barrier, the proposed location of the barrier on the property, the acoustical design and structural features of the barrier, the type of building materials to be used in construction of the barrier and the proposed measures to mitigate any visual impacts of the barrier on adjacent property, to include the location and design of the barrier, use of berming and landscaping.
2. The BZA shall determine that the proposed height and location of the noise barrier are necessary in order to achieve mitigation of the noise and that the noise barrier will not adversely impact the use or development of surrounding properties.
3. Before establishment, the noise barrier shall be subject to the provisions of Article 17, Site Plans or other appropriate submission as determined by the Director.

18-404 Required Standards for Variances

To grant a variance the BZA shall make specific findings based on the evidence before it that the application satisfies all of the following enumerated requirements:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property; or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
 - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purposes of this Ordinance and will not be contrary to the public interest.

18-405 Conditions

Upon a determination by the BZA that the applicant has satisfied the requirements for a variance as set forth in Sect. 404 above, the BZA shall then determine the minimum variance that would afford relief. In authorizing such variance the BZA may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be met.