



APPLICATION ACCEPTED: April 24, 2013
DATE OF PUBLIC HEARING: July 17, 2013
TIME: 9:00 a.m.

County of Fairfax, Virginia

July 10, 2013

STAFF REPORT

SPECIAL PERMIT APPLICATION NO. SP 2013-DR-031

DRANESVILLE DISTRICT

APPLICANT: Boyd T. Cloern Revocable Trust, Dara R. Alderman Revocable Trust, Boyd Cloern, Co-Trustee, Dara Alderman, Co-Trustee

OWNERS: Dara R. Alderman and Boyd T. Cloern, Trustees of the Boyd T. Cloern Revocable Trust and Dara R. Alderman Revocable Trust for the benefit of the minor children of Boyd Cloern and Dara Alderman

LOCATION: 1850 MacArthur Drive, McLean, 22101

SUBDIVISION: Chesterbrook

TAX MAP: 41-1 ((11)) 31

LOT SIZE: 10,043 square feet

ZONING: R-2

ZONING ORDINANCE PROVISION: 8-914

SPECIAL PERMIT PROPOSALS: To permit reduction to the minimum yard requirements based on error in building location to permit accessory structure to remain 8.4 ft. from rear lot line and 6.4 feet from side lot line.

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

O:\rhomer\Special Permits\Cloern (error)\staff report.doc

Rebecca Homer

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.**

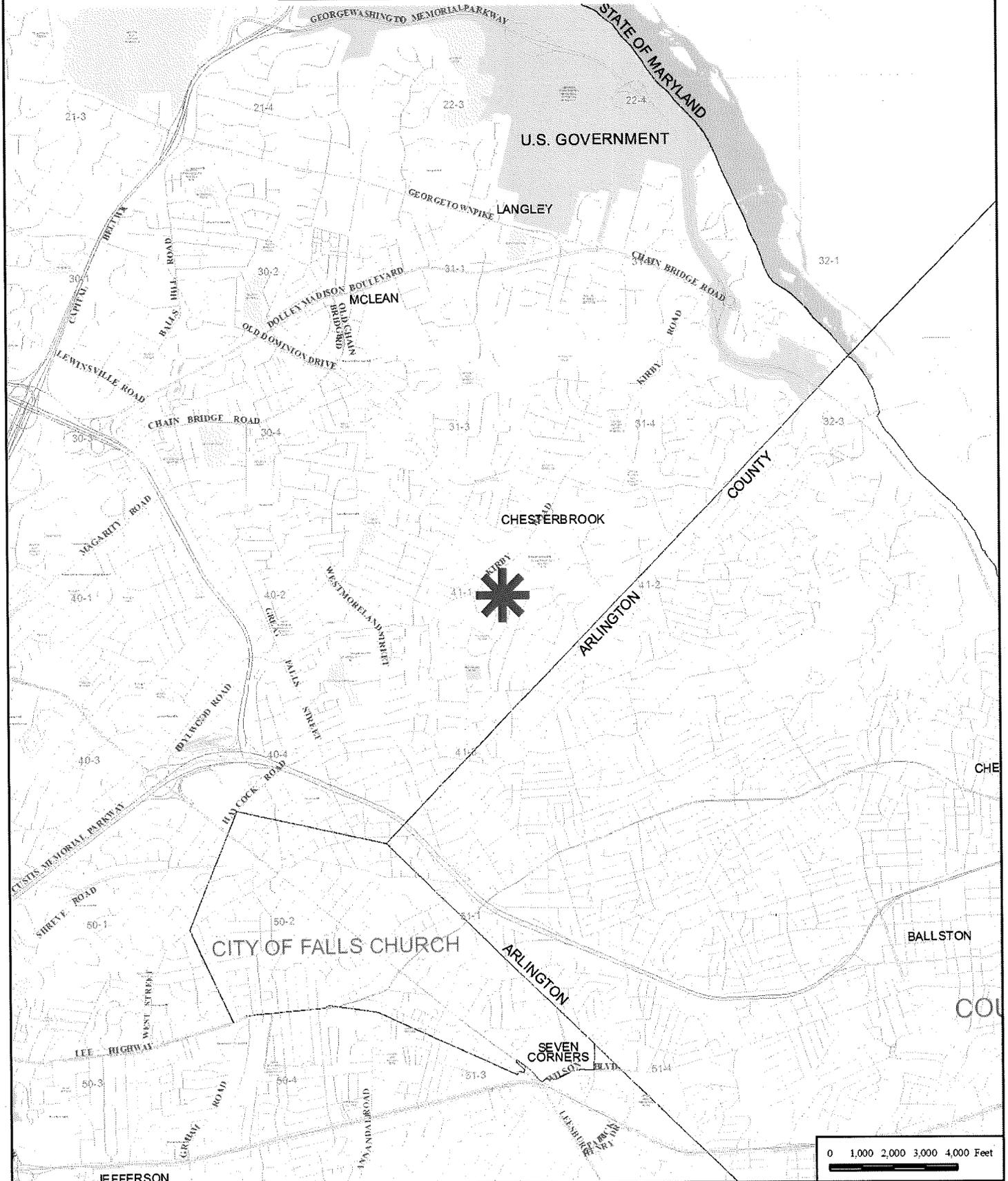


Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 48 hours advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

Special Permit

SP 2013-DR-031

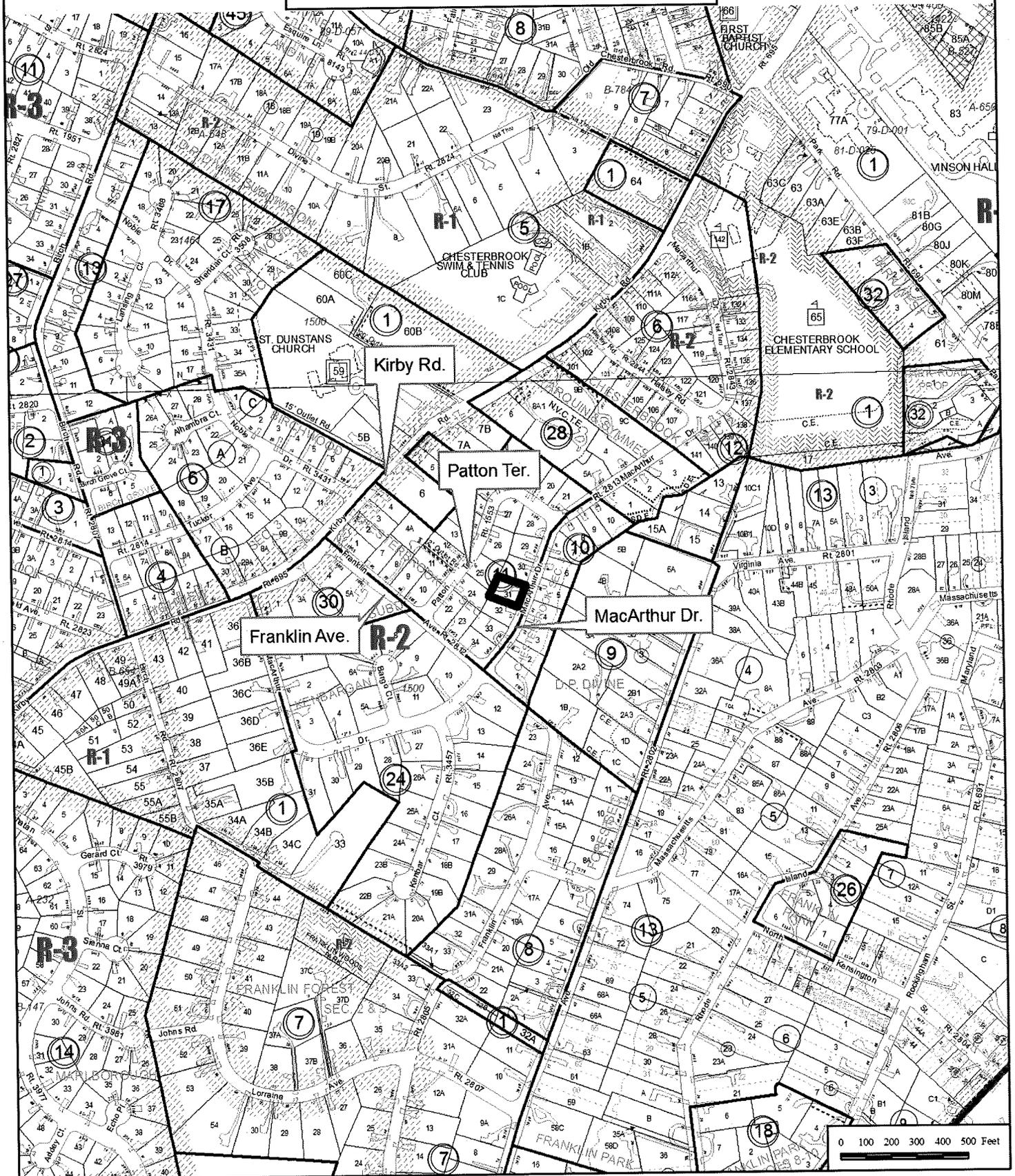
BOYD T. CLOERN REVOCABLE TRUST, DARA
R. ALDERMAN REVOCABLE TRUST



Special Permit

SP 2013-DR-031

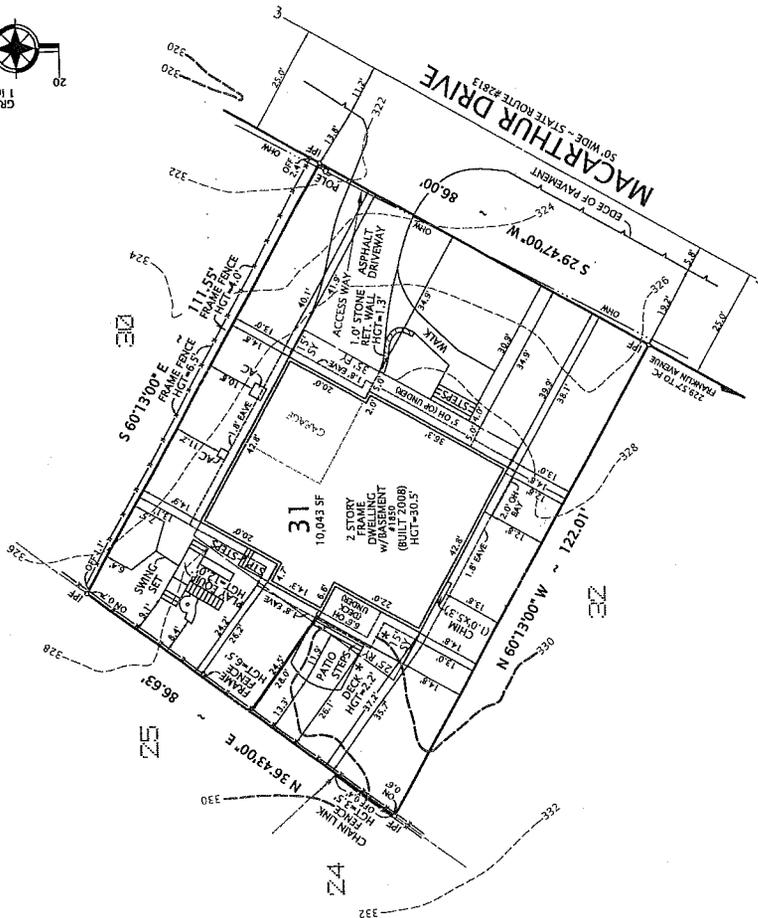
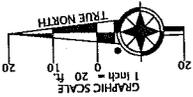
BOYD T. CLOERN REVOCABLE TRUST, DARA
R. ALDERMAN REVOCABLE TRUST



NOTES:

- TAX MAP: 41-1-11-0031
- ZONE: R-2 (RESIDENTIAL 2 DU/AC)
- LOT AREA: 10,043 SF (0.2306 ACRE)
- REQUIRED YARDS:
 - FRONT: = 35.0 FEET
 - SIDE: = 15.0 FEET
 - REAR: = 25.0 FEET
- THIS PROPERTY IS SERVED BY PUBLIC WATER AND SEWER.
- THERE IS NO OBSERVABLE EVIDENCE OF GRAVE SITES OR BURIAL GROUNDS ON THIS PROPERTY.
- ALL IMPROVEMENTS SHOWN ON THIS PLAT ARE EXISTING.
- THE SURVEYOR IS NOT AWARE OF ANY UTILITY EASEMENTS 25 FEET IN WIDTH OR GREATER AFFECTING THIS PROPERTY.
- TOPOGRAPHY DELINEATED HEREON WAS TAKEN FROM AVAILABLE RECORDS, IS SHOWN AT 2' INTERVALS, AND IS AERIAL.
- THERE ARE NO FLOODPLAINS OR RESOURCE PROTECTION AREAS ON THIS PROPERTY.
- AREAS:
 - BASEMENT = 2,065 SF
 - 1ST FLOOR = 2,525 SF
 - 2ND FLOOR = 2,241 SF
 - GROSS FLOOR AREA = 4,766 SF

FLOOR AREA RATIO: EX GFA (4,766) / LOT AREA (10,043) = 0.47



PLAT

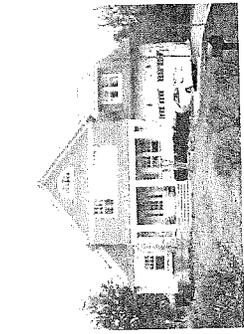
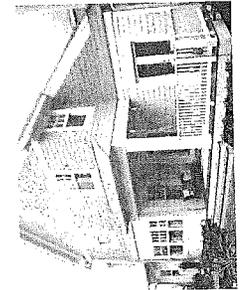
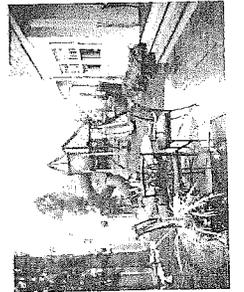
SHOWING THE IMPROVEMENTS ON
LOT 31, SECTION ONE

CHESTERBROOK

(DEED BOOK 481, PAGE 51)
FAIRFAX COUNTY, VIRGINIA
DRANESVILLE DISTRICT
JANUARY 09, 2013

SCALE: 1" = 20'

| | | |
|--|--|--|
| <p>CASE NAME: DARA RAE ALDERMAN CLOERN/ALDERMAN, TR.</p> | <p>01/09/2013 GEORGE M. O'QUINN LICENSE NO. 2009</p> | <p>THE PLAT IS SUBJECT TO RESTRICTIONS OF RECORD. A TITLE REPORT WAS NOT FURNISHED. NO CORNER MARKERS SET.</p> |
| <p>DOMINION Surveyors 8808 H PEAR TREE VILLAGE COURT ALEXANDRIA, VIRGINIA 22309 FAX: 703-993-6412</p> | | <p>COMMONWEALTH OF VIRGINIA LAND SURVEYOR <i>George M. O'Quinn</i></p> |





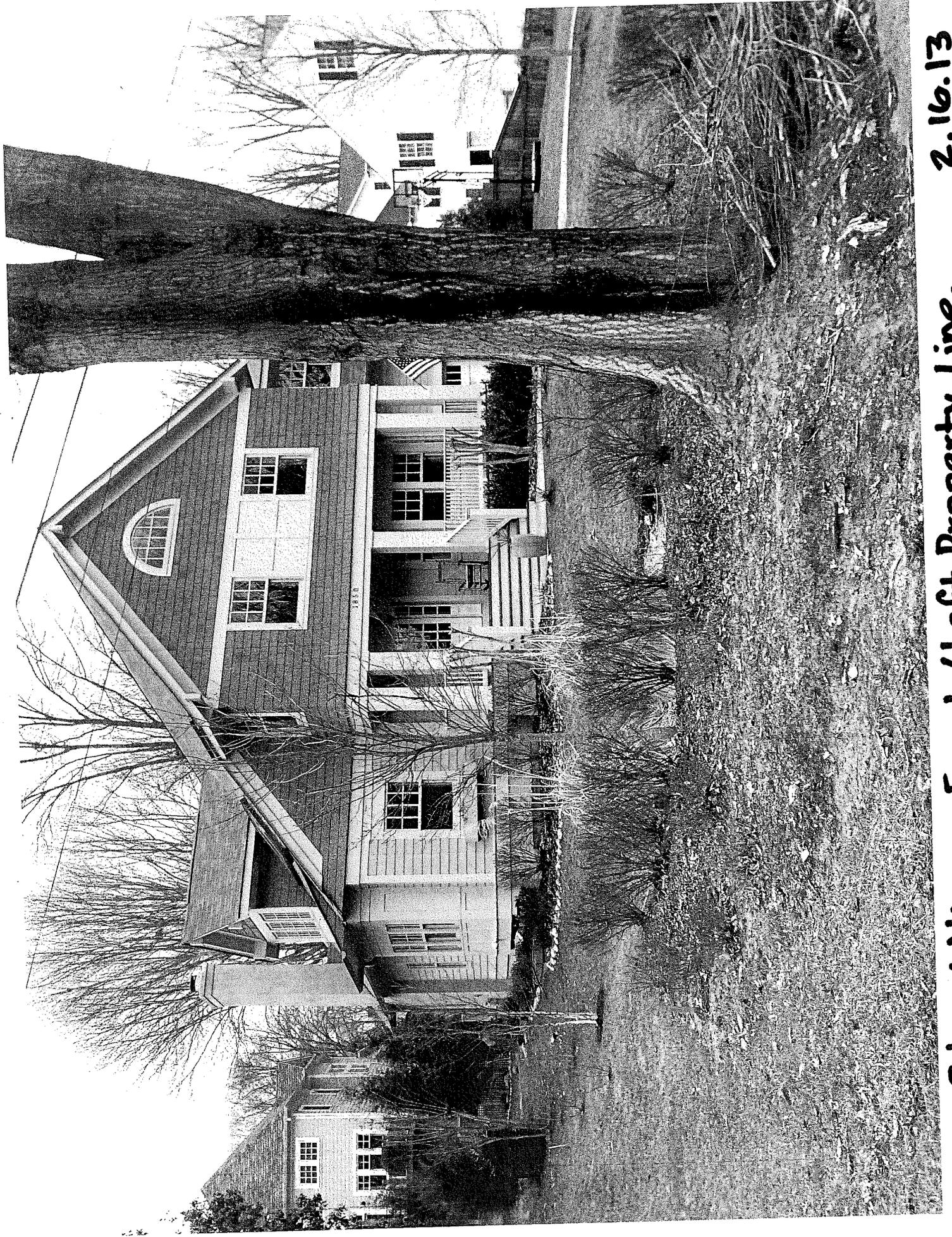






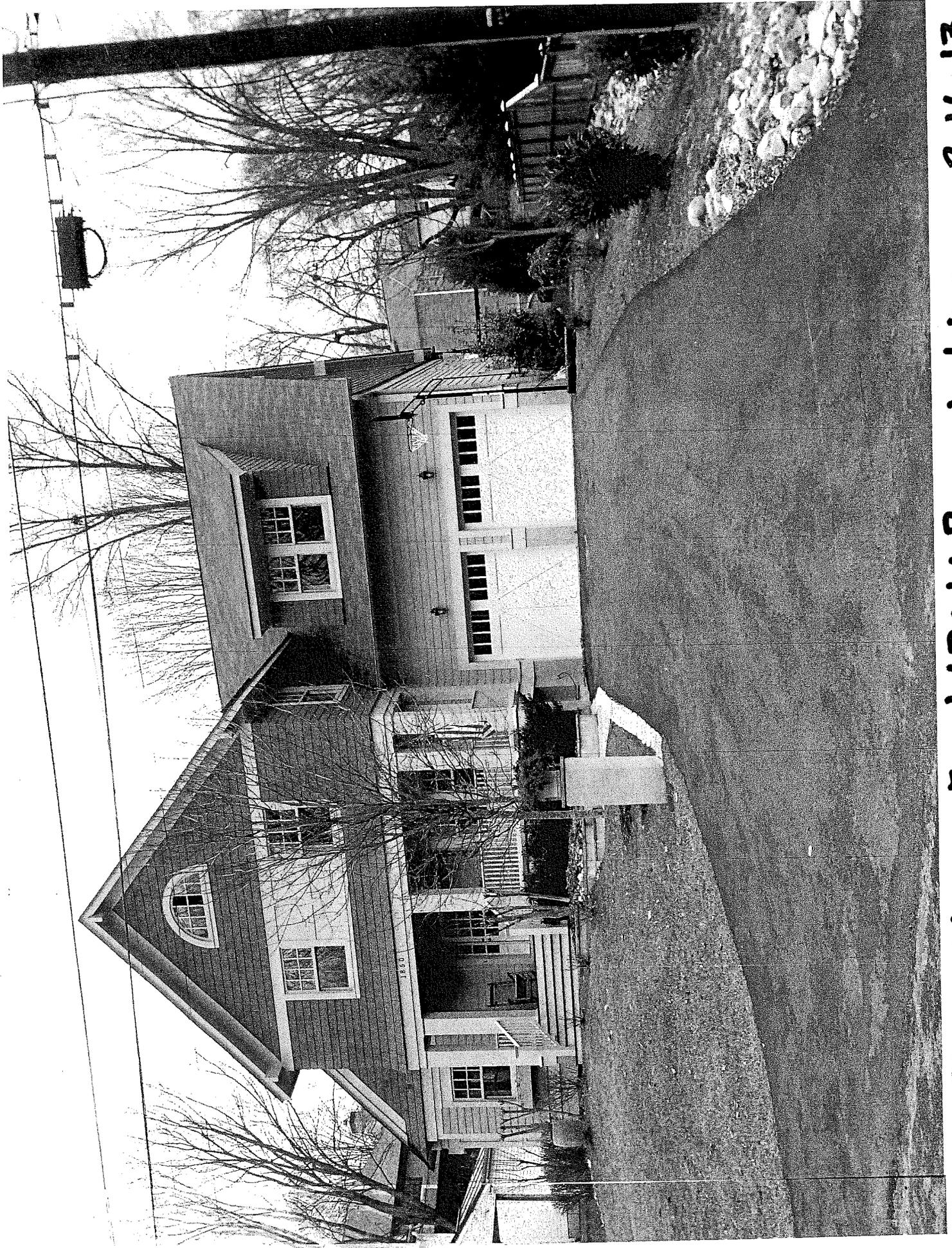






Street View - Front / Left Property Line

2.16.13



Street View - Front / Right Property Line 2.16.13



Backyard View from Left Property Line 2.16.13

DESCRIPTION OF THE APPLICATION

The applicant is requesting approval for a reduction to the minimum yard requirements based on an error in building location to permit an accessory structure, a playset, to remain 8.4 feet from the rear lot line and 6.4 feet from the northern side lot line. The playset is 12.0 feet in height.

| | Structure | Yard | Min. Yard Req.* | Structure Location | Amount of Error | Percent of Error |
|-----------------------|-------------------------------|------|-----------------|--------------------|-----------------|------------------|
| Special Permit | Accessory Structure (Playset) | Rear | 12.0 feet | 8.4 feet | 3.6 feet | 30.0% |
| | | Side | 15.0 feet | 6.4 feet | 8.6 feet | 57.3% |

* Minimum yard requirement per Section 10-104.

EXISTING SITE DESCRIPTION

The 10,043 square-foot property is developed with an existing single family dwelling. Access to the site is provided from MacArthur Drive to an attached garage. The yard contains several existing trees and foundation plantings. The rear yard contains a slate patio, which is attached to the dwelling. The referenced playset is located within the rear yard, 8.4 feet from the rear lot line and 6.4 feet from the northern side lot line.

A frame fence, ranging in height from 4.0 feet to 6.5 feet is located along the rear lot line and northern side lot line.

CHARACTER OF THE AREA

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

BACKGROUND

The dwelling on the applicant's property was constructed in 2008. The original dwelling was constructed prior to 1959. In 2007, a building permit was issued to demolish the existing dwelling and construct a new single family dwelling. The applicant indicates the playset was installed by Play N' Learn in April 2011.

In 2008, a building permit was issued to construct the fence along the side and rear lot line.

On September 11, 2012, a Notice of Violation (NOV) was issued by the Department of Code Compliance, citing the applicant for an obstructed swale and an accessory structure that did not meet the location requirements because it was too close to the side and rear lot lines. The obstructed swale has since been resolved. A copy of the NOV is included in Appendix 4.

A copy of the special permit plat entitled "Plat, Showing the Improvements on Lot 31, Section One, Chesterbrook" prepared by Dominion Surveyors Inc., dated January 9, 2013, is included at the front of the staff report.

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

ZONING ORDINANCE REQUIREMENTS (See Appendix 5)

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

This special permit is subject to Sects. 8-006, 8-903, and 8-914 of the Zoning Ordinance as referenced above, a copy of which is included in Appendix 5. Subject to development conditions, the special permit must meet these standards.

CONCLUSION

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

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

APPENDICES

1. Proposed Development Conditions
2. Applicant's Affidavit
3. Applicant's Statement of Justification
4. Notice of Violation dated September 11, 2012
5. Zoning Ordinance Provisions

SP 2013-DR-031

PROPOSED DEVELOPMENT CONDITIONS

SP 2013-DR-031

July 10, 2013

1. This special permit is approved for the location of the playset as shown on the special permit plat prepared by Dominion Surveyors Inc., dated January 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.

Application No.(s): SP 2013-DR-031
 (county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 4/4/13
 (enter date affidavit is notarized)

I, Dara R. Alderman, Co-Trustee, 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 119938

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) |
|---|--|---|
| Dara R. Alderman and Boyd T. Cloern, Trustees of the Boyd T. Cloern Revocable Trust and Dara R. Alderman Revocable Trust for the benefit of the minor children of Boyd Cloern and Dara Alderman | 1850 MacArthur Dr., McLean VA 22101 | Applicant/Title Owner/Trustee |
| The Law Office of William B. Lawson, PC | 6045 Wilson Blvd., Ste. 100, Arlington VA 22205 | Attorney/Agent |
| William Barnes Lawson, Jr. | 6045 Wilson Blvd., Ste. 100, Arlington VA 22205 | Attorney/Agent |

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

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

Application No.(s):

SP 2013-DR-031
(county-assigned application number(s), to be entered by County Staff)

Page Two

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE:

4/4/13
(enter date affidavit is notarized)

119938

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)

The Law Office of William Barnes Lawson, PC
6045 Wilson Blvd., Suite 100
Arlington, VA 22205

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)

William Barnes Lawson, Jr.

(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): SP 2013-DR-031
(county-assigned application number(s), to be entered by County Staff)

Page Three

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 4/4/13
(enter date affidavit is notarized)

119938

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)

Not applicable

(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)

Not applicable

(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): SP 2013-DR-031
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 4/4/13
(enter date affidavit is notarized)

119938

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): SP 2013-DR-031
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 4/4/13
(enter date affidavit is notarized)

119938

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 Dara Alderman Co-Trustee Applicant's Authorized Agent

Dara Alderman Co-Trustee
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 4th day of April 2013, in the State/Comm. of Washington DC, County/City of _____

[Signature]
Notary Public

My commission expires: October 31, 2014

Notary Public, District of Columbia
My Commission Expires 10/31/2014

RECEIVED
 Department of Planning & Zoning
 FEB 25 2013
 Zoning Administration Division

Special Permit Statement of Justification

Applicants submit this special permit application with the hope of keeping an existing children's play set at its current size and in its current location on Applicants' property. The play set was purchased in March 2011 by Applicant from Play N' Learn, a Fairfax County business located at 4102 Pepsi Place, Chantilly, Virginia. The play set was professionally installed on Applicants' property in April 2011 by Play N' Learn. The play set has been used since that time by Applicants' children, their guests, and many neighborhood children.

Applicant was unaware of a zoning problem related to the play set prior to receiving a Notice of Violation in June 2012. The Notice related to two issues: (1) a drainage complaint, and (2) the location of the play set. The drainage issue was resolved several months ago and the violation concerning the drainage has been withdrawn by the county. It is Applicants' understanding that the play set was cited simply as a matter of course when Applicants' property was inspected for the drainage issue.

- A. Type of operation:** The play set is for private residential use. Applicants' children, their guests, and many children in Applicants' neighborhood use the play set on nearly a daily basis.
- B. Hours of operation:** The play set does not have "hours of operation," but Applicants' children, their guests, and other neighborhood children use the play set at various time during daylight hours, weather permitting.
- C. Estimate number of patrons/clients/patients/pupils/etc.:** <15
- D. Proposed number of employees/attendants/teachers/etc.:** Adults supervise use of the play set (Applicants, babysitters, parents of children playing on play set, etc.)
- E. Estimate traffic impact on proposed use:** None.
- F. Vicinity or general area to be served by the use:** Private residential use.
- G. Description of building façade and architecture of proposed new building or additions:** Not applicable.
- H. A listing, if known, of all hazardous or toxic substances:** None.
- I. A statement of how the proposed use conforms to the provisions of all applicable ordinances or if any waiver, exception or variance is sought by the applicant from such ordinances, such shall be specifically noted with the justification for any such modification.**

Fairfax County Zoning Ordinance Section 10-102(5) lists children's play equipment as a permitted accessory use. Section 10-104(12) places limitations

on the location of play equipment that exceeds seven (7) feet in height. Specifically, such equipment should not be located closer to the rear lot line than a distance equal to its height or located closer to the side lot line than a distance equal to the minimum side yard.

As noted above, Applicants purchased their children's play set from a local retailer, Play N' Learn, and the play set was installed by Play N' Learn. Applicants trusted that the play set was installed in conformity with applicable laws. Applicants were taken by surprise when they received a Notice of Violation, but realized after seeking the advice of counsel that the play set was installed in violation of Fairfax County rules.

Like many houses in Fairfax County, Applicants' house has a very small back yard. The back yard is approximately 25 feet deep. Yards of this size do not lend themselves to most outdoor sports and activities because of the limited space, so Applicant followed the lead of many other families in the vicinity and purchased the play set at issue for their three young sons, ages 2, 4, and 7, as well as other children in the neighborhood.

Applicants have the overwhelming support of their neighbors in this matter. (Please see attached petition.) Nevertheless, Applicants have taken a number of remedial measures to date to obstruct the view of the play set from neighboring properties.

- Installed a wood privacy fence of nearly 7 feet in height along the rear lot line.
- Repositioned evergreen trees along the rear lot line (currently approximately 15 feet in height).
- Planted a row of fast-growing evergreen trees along the side lot line near play set (currently approximately 10 feet in height).
- Planted a row of deciduous trees for additional screening during Spring/Summer/Fall months along the side lot line near play set (currently approximately 6 to 8 feet in height).
- Repositioned evergreen trees along side lot line opposite play set (currently approximately 6 feet in height).

Because of the size constraints in Applicants' back yard, repositioning the play set will not bring it into conformity with the applicable ordinance. Furthermore, the play set can not be altered to a height of seven feet or below since support components of the set exceed that height. Applicants therefore request a special permit so that they may keep their children's play set at its current height and in its current location.

SUPPORT FOR SPECIAL PERMIT AT 1850 MACARTHUR DRIVE

WE SUPPORT THE GRANTING OF A SPECIAL PERMIT TO THE ALDERMAN-CLOERN FAMILY AT 1850 MACARTHUR DRIVE SO THAT THEY MAY KEEP THEIR CHILDREN'S PLAY SET AT ITS CURRENT HEIGHT AND IN ITS CURRENT LOCATION.

| NAME: | ADDRESS: | DATE: |
|-------------------|----------------------|---------|
| Dan + Sue Lyons | 1854 MacArthur Dr. | 2/16/13 |
| Ajay Ejuikar | 1905 Franklin Rd | 2/16/13 |
| Joe Redding | 1853 Patton Terr | 2/16/13 |
| Dede Zecher | 1840 Patton Terr | 2/16/13 |
| JUDY GAYEN | 1835 MACARTHUR DR | 2/16/13 |
| Brink | 1848 MacArthur Dr | 2/16/13 |
| Woods | 1838 MacArthur Dr. | 2/16/13 |
| Deborah Blacksten | 1847 MacArthur Dr | 2/16/13 |
| John Blacksten | 1847 MacArthur Dr. | 2/16/13 |
| Dusty Sparrow | 1845 MacArthur Dr | 2/16/13 |
| Greg Commins | 1846 MacArthur Dr. | 2/16/13 |
| Tom + Tina Davis | 1859 Patton Terrace | 2/19/13 |
| Theresa Harrison | 1860 Patton Terrance | 2/20/13 |
| Fenny Hurwitz | 1903 Franklin Ave | 2/20/13 |

Supplement to
Special Permit Statement of Justification

This supplement is provided per your request to address additional standards for error in building location, Section 8-914, Paragraph 2, Items A-G.

A. Applicants represent that the error exceeds ten (10) percent of the measurement involved.

B. Applicants represent that the noncompliance was done in good faith, or through no fault of their own. Specifically, Applicants purchased their children's play set from a local Fairfax County retailer, Play N' Learn, and the play set was professionally installed by Play N' Learn in a location in their rear yard specifically selected by Play N' Learn employees to accommodate the play set. Applicants trusted that the play set was installed by Play N' Learn in conformity with applicable laws. Applicants were taken by surprise when they received a Notice of Violation, but realized after seeking the advice of counsel that the play set was installed in violation of Fairfax County rules.

C. Applicants represent that the requested reduction will not impair the purpose and intent of this Ordinance.

D. Applicants represent that allowing the play set to remain in its current location and at its current height will not be detrimental to the use and enjoyment of other property in the immediate vicinity. Applicants' play set has been used by numerous children in the immediate vicinity, including both households whose property adjoins Applicants' rear lot line. Applicants have the overwhelming support of their neighbors in this matter. (Please see petition included with February 19, 2013 submission.) Nevertheless, Applicants have taken a number of remedial measures to date to obstruct the view of the play set from neighboring properties.

- Installed a wood privacy fence of nearly 7 feet in height along the rear lot line.
- Repositioned evergreen trees along the rear lot line (currently approximately 15 feet in height).
- Planted a row of fast-growing evergreen trees along the side lot line near play set (currently approximately 10 feet in height).
- Planted a row of deciduous trees for additional screening during Spring/Summer/Fall months along the side lot line near play set (currently approximately 6 to 8 feet in height).
- Repositioned evergreen trees along side lot line opposite play set (currently approximately 6 feet in height).

Moreover, it is Applicants' understanding that the play set was cited simply as a matter of course when Applicants' property was inspected for the drainage issue (which has been withdrawn).

E. Applicants represent that the play set will not create an unsafe condition with respect to both other property and public streets.

F. Applicants represent that to force compliance with minimum yard requirements would cause unreasonable hardship on them. Specifically, because of the size constraints in Applicants' back yard, repositioning the play set will not bring it into conformity with the applicable ordinance. Furthermore, the play set can not be altered to a height of seven feet or below since support components of the set exceed that height. Therefore, enforcement of the minimum yard requirements would result in Applicants having to remove their children's play set from their yard.

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



County of Fairfax, Virginia

Return Copy

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

NOTICE OF VIOLATION Fairfax County Zoning Ordinance

DATE OF ISSUANCE: September 11, 2012

SHERIFF'S LETTER

CASE #: 201206384 SR#: 87507

SERVE:

Boyd Tristan Cloern Revocable Trust F N
Dara Rae Alderman Revocable Trust F N
Boyd Tristan Cloern, Co-Trustee
Dara Rae Alderman, Co-Trustee
1850 MacArthur Drive
McLean, Virginia 22101

LOCATION OF VIOLATION

1850 MacArthur Drive
McLean, Virginia 22101-5340
Tax Map #: 041-1 ((11)) 31
Chesterbrook, Sec. 1, Lot 31
Zoning District: R-2

Dear Property Owners:

An inspection of the above referenced property on June 6, 2012, and September 06, 2012, revealed the following violations of the Fairfax County Zoning Ordinance.

§ 2-602 (1) Obstructed Swale:

According to the approved grading plan 004095-INF-002 a drainage swale was installed at the rear of the above-referenced property. The swale was installed during the construction of the house to honor the drainage divides and water flow depicted on the grading plan. An inspection of the above-referenced property revealed that you have filled in the swale, graded the area and planted trees causing the water to divert to surrounding properties. Furthermore, the radius of the swale was altered by the placement of playground equipment (child's play structure) in the swale, which further impedes the ability of the water to turn properly towards MacArthur Drive. Your actions have forced a change of the water pattern, which slows the flow of water as it tries to get back into the swale that leads to MacArthur Drive.

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

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Swales are required to be left in their designed condition to prevent surface drainage problems. The obstructions placed in this swale, as indicated above, have created a violation of Par. 1 of Sect. 2-602 of the Fairfax County Zoning Ordinance which states:

Notwithstanding the provisions of Sect. 601 above, no building shall be erected on any land and no change shall be made in the existing contours of any land, including any change in the course, width or elevation of any natural or other drainage channel, in any manner that will obstruct, interfere with, or change the drainage of such land, taking into account land development that may take place in the vicinity under the provisions of this Ordinance, without providing adequate drainage in connection therewith as determined by the Director in accordance with the provisions of the Public Facilities Manual.

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

- Restoring the contours and drainage on site to match the approved grading plan; and
- Removing the playground equipment (child's play structure) from the radius of the swale, on a permanent basis.

§ 10-104 (12E) Accessory Structure Location
§ 2-302 (6) Accessory Use must comply with Article 10:

The presence of an accessory structure (child's play structure) which measured approximately 13 feet in height, is approximately 280 square feet in area and is located approximately 8 feet and approximately 8 feet respectively from the side and rear lot lines.

The Fairfax County Zoning Ordinance permits accessory structures to be located in minimum required yards; however, if the structure exceeds seven (7) feet in height, it must be located on the lot so as to comply with Par. 12E of Sect. 10-104 of the Zoning Ordinance which states:

No accessory structure or use which exceeds seven (7) feet in height shall be located closer than a distance equal to its height to the rear lot line or located closer than a distance equal to the minimum required side yard to the side lot line.

The minimum required side yard distance in the R- 2 District is 15 feet as detailed in Par. 2 (A) (b) (c) of Sect 3-207 of the Zoning Ordinance.

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Therefore, as this accessory structure exceeds seven (7) feet in height and is not located in accordance with the provisions of Par. 12E of Sect. 10-104 above, it is in violation of Par. 12E 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 thirty (30) days of the date of this Notice. Compliance can be accomplished by:

- Removing the accessory structure (child's play structure) from the property in its entirety; or
- Reducing the height of the structure to seven (7') feet in height or less to allow it to remain at its present location; or
- Relocating the structure to a distance from the rear and side lot lines in accordance with Par. 12E of Sect. 10-104 of the Zoning Ordinance as outlined above.

As an alternative you may apply to the Fairfax County Board of Zoning Appeals (BZA) and actively pursue and ultimately obtain approval of a Group 9 Special Permit for an error in building location to allow the accessory structure to remain at its present height and at its present location. For information and answers to any questions regarding this application process, you may contact the Zoning Evaluation Division at 703-324-1290.

A follow-up inspection will be made at the expiration of the 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.

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Should you have any questions or need additional information, please do not hesitate to contact me at (703)324-9327 or (703)324-1300.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Caudle", written in a cursive style.

Michael Caudle
Code Compliance Investigator

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.