



APPLICATION ACCEPTED: August 6, 2013
DATE OF PUBLIC HEARING: October 30, 2013
TIME: 9:00 a.m.

County of Fairfax, Virginia

October 23, 2013

STAFF REPORT

SPECIAL PERMIT APPLICATION NO. SP 2013-MA-060

MASON DISTRICT

APPLICANT: Silvio Armando Diaz Guzman

OWNERS: Silvio Armando Diaz Guzman and Amalia Diaz De Jesus

LOCATION: 3820 Barcroft Lane, Alexandria 22312

SUBDIVISION: Barcroft Terrace

TAX MAP: 61-3 ((9)) 34

LOT SIZE: 10,500 square feet

ZONING: R-3

ZONING ORDINANCE PROVISION: 8-914

SPECIAL PERMIT PROPOSAL: To permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 0.0 ft. from rear lot line and 1.0 ft. from side lot line.

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

The approval of this 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.

O:\ehaley\10-30\ SP 2013-MA-060 Diaz Guzman (Error)\Diaz Guzman Staff report.docx

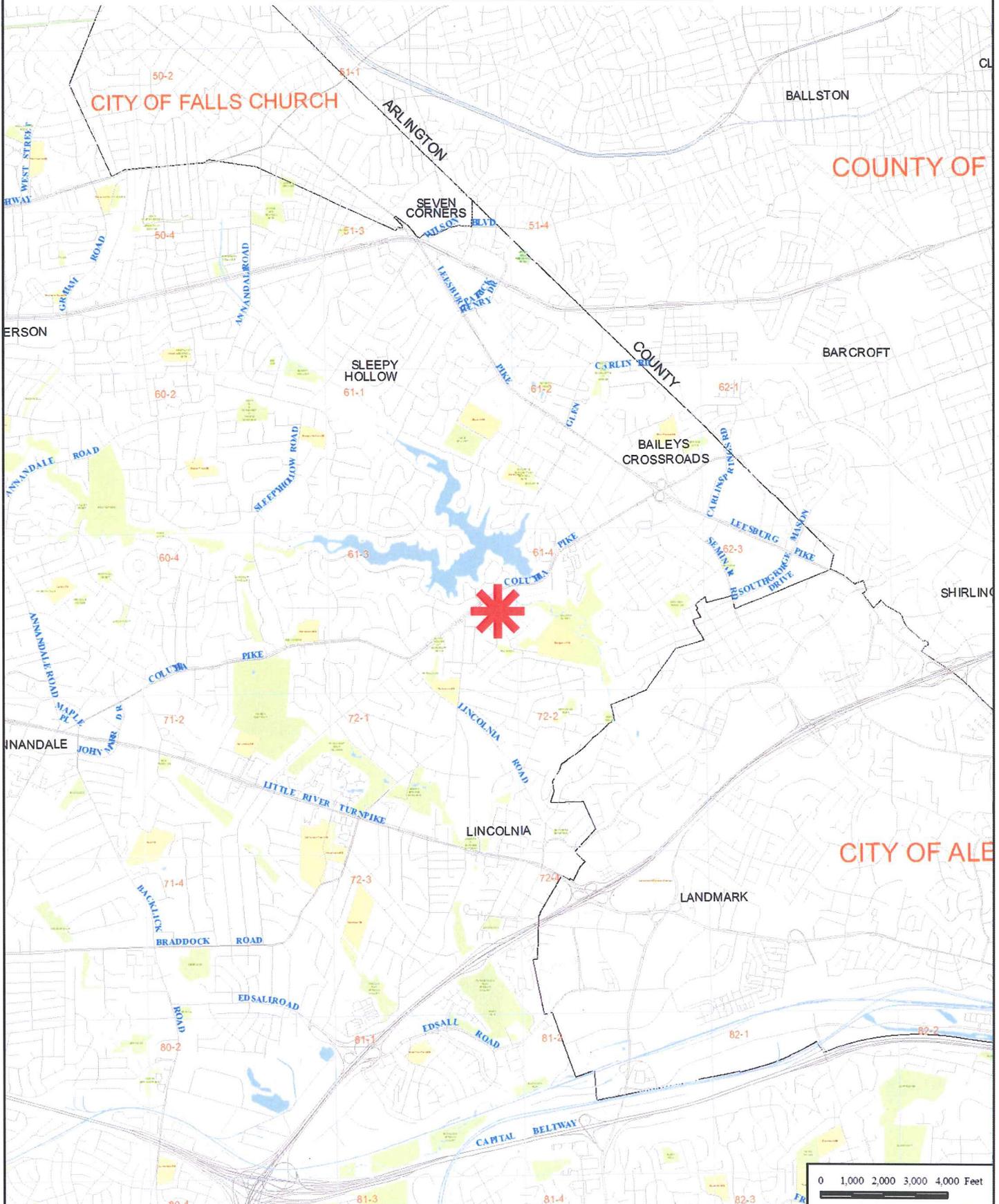
Erin M. Haley

For additional information, call Zoning Evaluation Division, Department of Planning and Zoning at 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.**

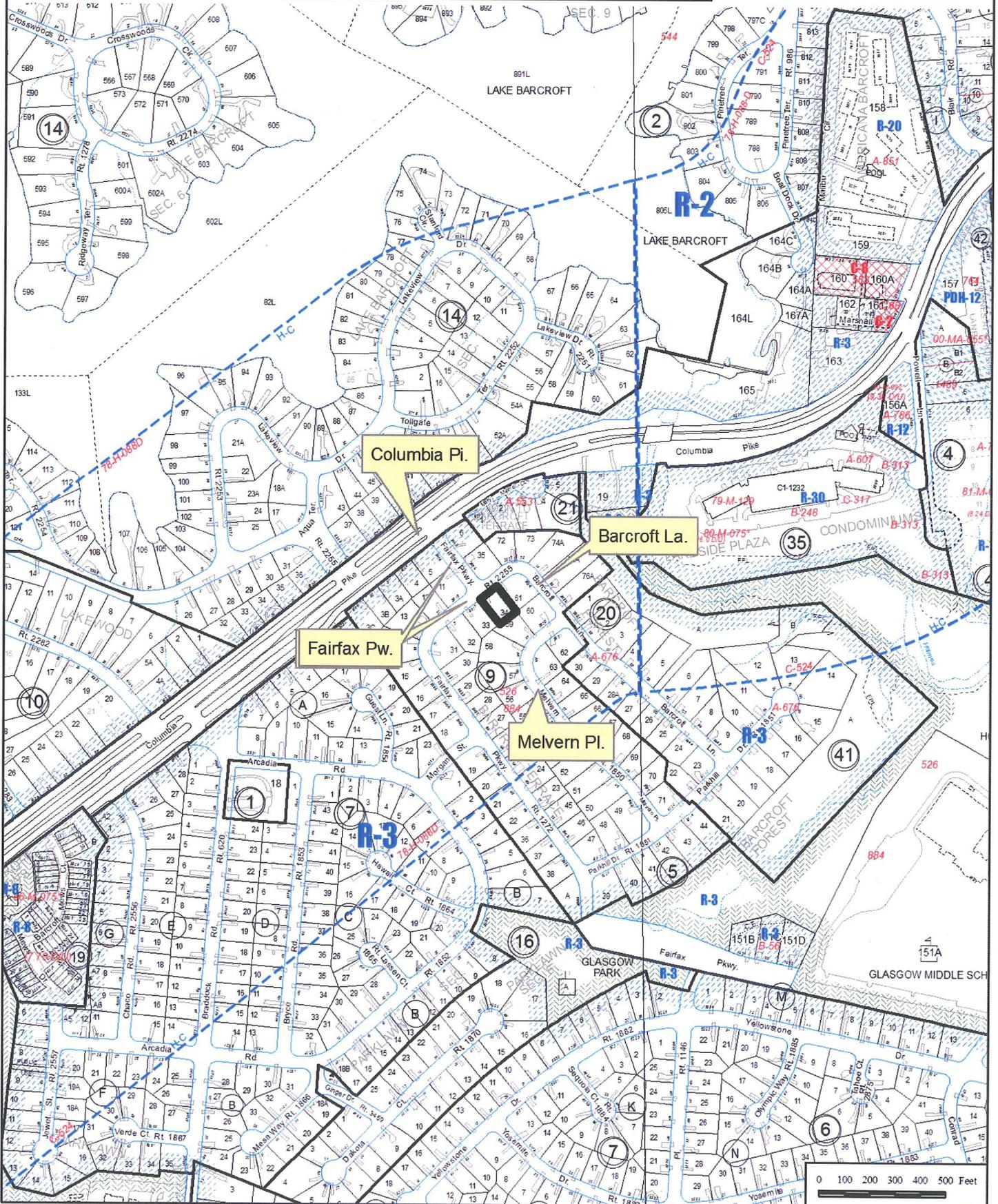


Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 48 days advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

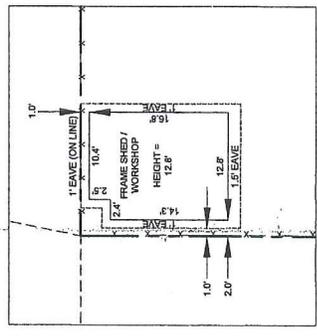
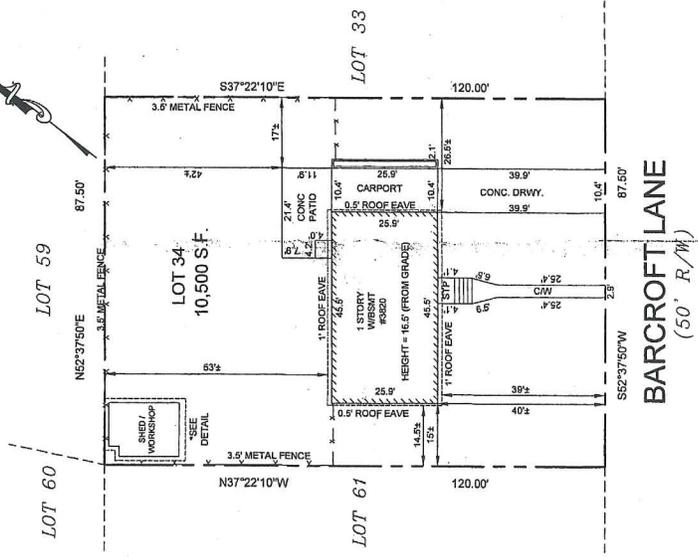
Special Permit
SP 2013-MA-060
SILVIO ARMANDO DIAZ GUZMAN



Special Permit
SP 2013-MA-060
SILVIO ARMANDO DIAZ GUZMAN



ADDRESS: 3820 BARCROFT LANE
ALEXANDRIA, VA 22312



NOTES:

1. TAX MAP: 0613 09 0034
2. ZONE: R-3
3. LOT AREA: 10,500 SQUARE FEET
4. REQUIRED YARDS:
FRONT: 30 FEET
SIDE: 12 FEET
REAR: 25 FEET
5. THIS PROPERTY IS SERVED BY PUBLIC WATER AND SEWER
6. THERE IS NO OBSERVABLE EVIDENCE OF GRAVE SITES OR BURIAL GROUNDS ON THIS PROPERTY
7. ALL IMPROVEMENTS SHOWN ON THIS PLAN ARE EXISTING UNLESS DENOTED AS PROPOSED.
8. THE SURVEYOR IS NOT AWARE OF ANY UTILITY EASEMENTS 25 FEET IN WIDTH OR GREATER AFFECTING THIS PROPERTY.
9. THERE ARE NO FLOOD PLAINS, FLOOD HAZARD AREAS OR RESOURCE PROTECTION AREAS ON THIS PROPERTY.
10. APPROXIMATE FLOOR AREAS (BASED ON EXTERIOR WALL DIMENSIONS):
EXISTING DWELLING: 1,178 SQUARE FEET
EXISTING SHED: 132 SQUARE FEET
TOTAL FLOOR AREA OF ADDITION EQUALS 17.6% OF THE EXISTING FLOOR AREA

Application No. _____

Chairman, Board of Zoning Appeals

RECEIVED
Department of Planning & Insp.
OCT 01 2013

Zoning Evaluation Division

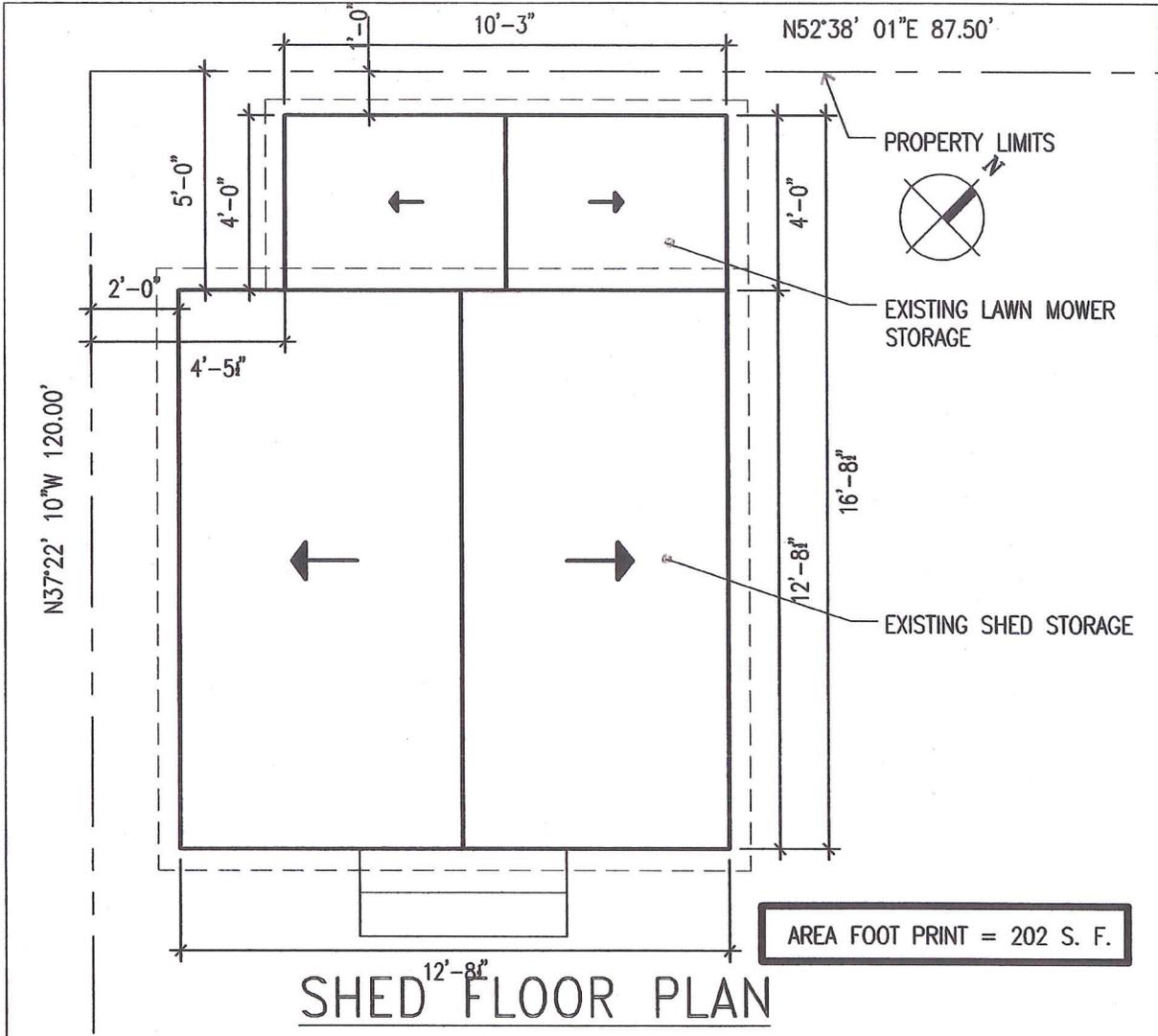
REV. 9-25-13
ISSUED 07-25-09
FILE: 14500 BARCROFT 2013 2

PLAT SHOWING IMPROVEMENTS ON
LOT 34 SECTION 1
MASON DISTRICT
BARCROFT TERRACE
FAIRFAX COUNTY, VIRGINIA
SCALE: AS SHOWN AREA: 7/20/13

REAL ESTATE SURVEYORS & DEVELOPERS, LLC
RESIDENTIAL
WWW.RESDLLC.COM
LAWRELL WELLS EXECUTIVE PARK
LAUREL, MARYLAND 20707
TEL: 800/668-1102 FAX: 800/668-1108

FITZROY J. ESTERLAND
NO. 001883
LAND SURVEYOR
DATE: 10/01/13

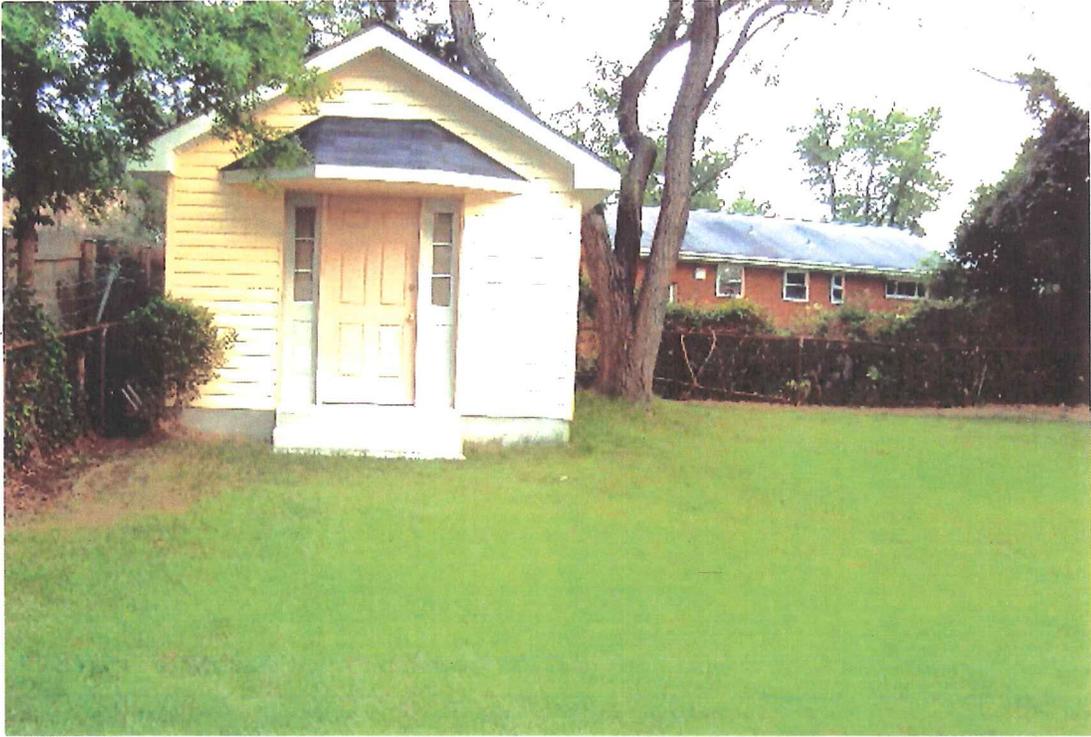
I, HEREBY CERTIFY THAT IMPROVEMENTS ARE SHOWN ON THIS PLAT IN ACCORDANCE WITH THE REQUIREMENTS OF ALL APPLICABLE PROFESSIONAL UNDERSTANDINGS AND BELIEFS, AND THAT I AM A LICENSED SURVEYOR IN THE STATE OF VIRGINIA.



OWNER: SILVIO A. DIAZ	SCALE: 1/4"=1'-0"	SK-1
ADDRESS: 3820 BARCROFT LN ALEXANDRIA VA. 22313	DATE: JUNE 27/2011	

1

PROPERTY
LIMIT



SHED FRONT VIEW



SHED SIDE VIEW

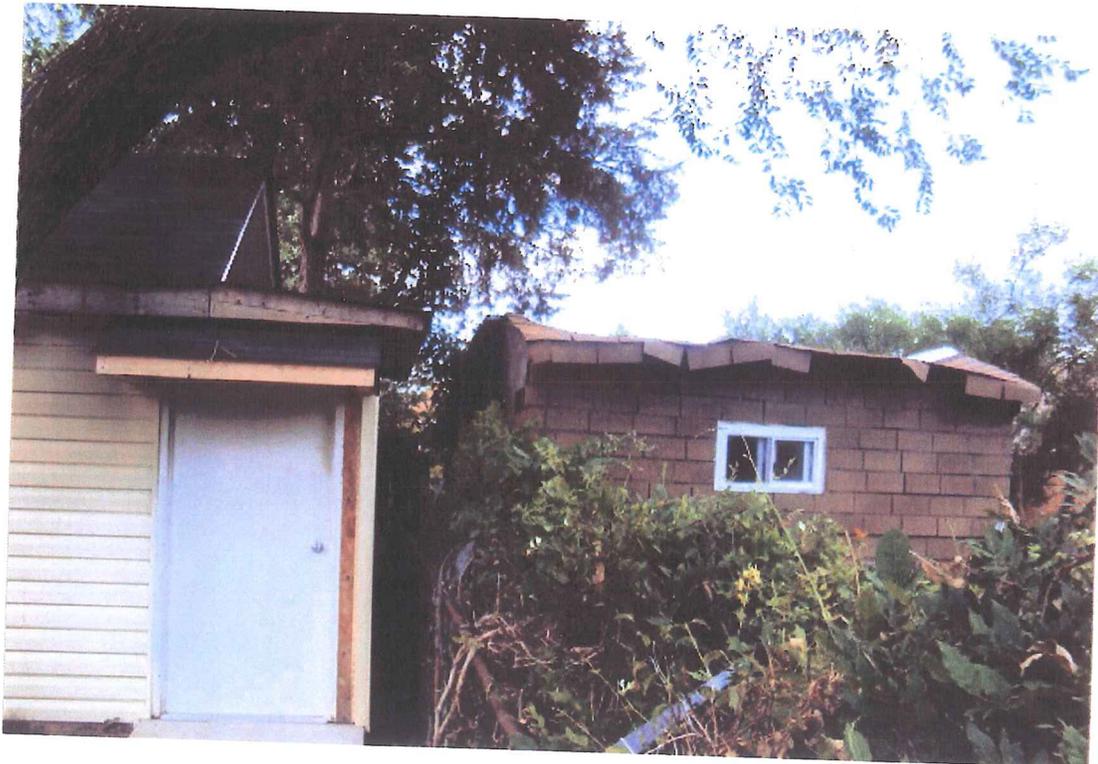
RECEIVED
Department of Planning & Zoning
JUN 28 2011

Zoning Evaluation Division

2



PERSPECTIVE VIEW



MY SHED AND NEIGHBOR SHED

RECEIVED
Department of Planning & Zoning

JUN 28 2011

Zoning Evaluation Division



HOUSE BACK VIEW



HOUSE FRONT VIEW

RECEIVED
Department of Planning & Zoning

JUN 28 2011

Zoning Evaluation Division

4



BACK HOUSE & SHED VIEW



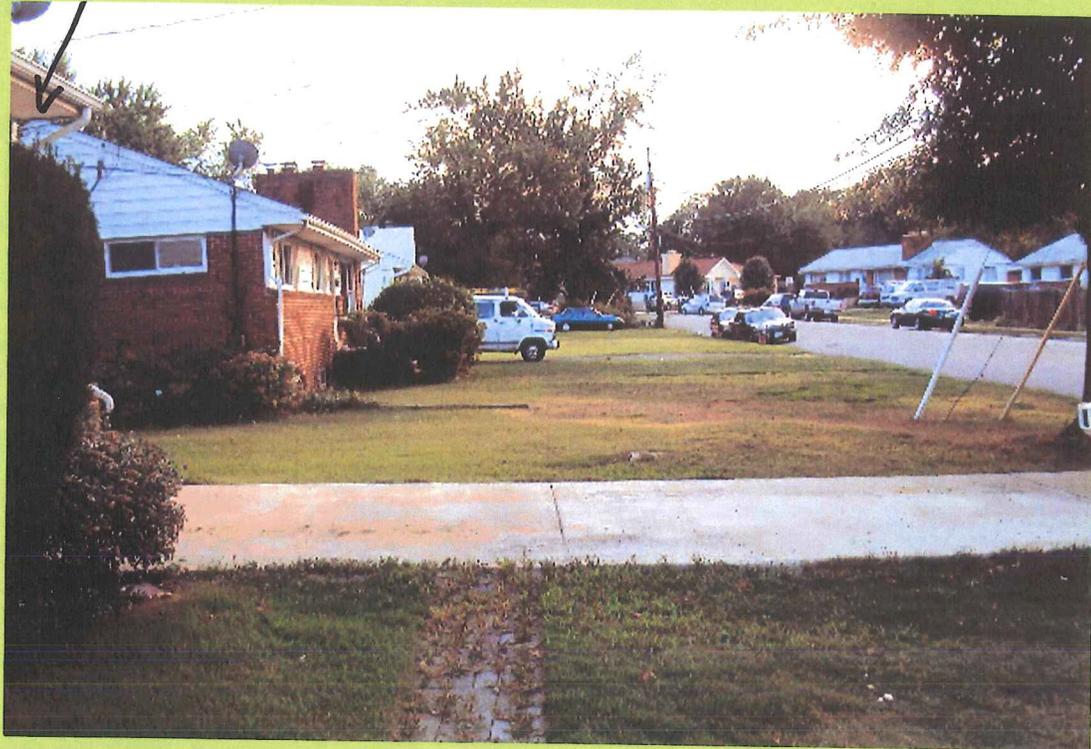
BACK HOUSE VIEW & CAR-PORT

Department of Planning & Zoning

JUN 28 2011

Zoning Enforcement Division

MY HOUSE



①

VIEW LEFT FROM MY FRONT DOOR



②

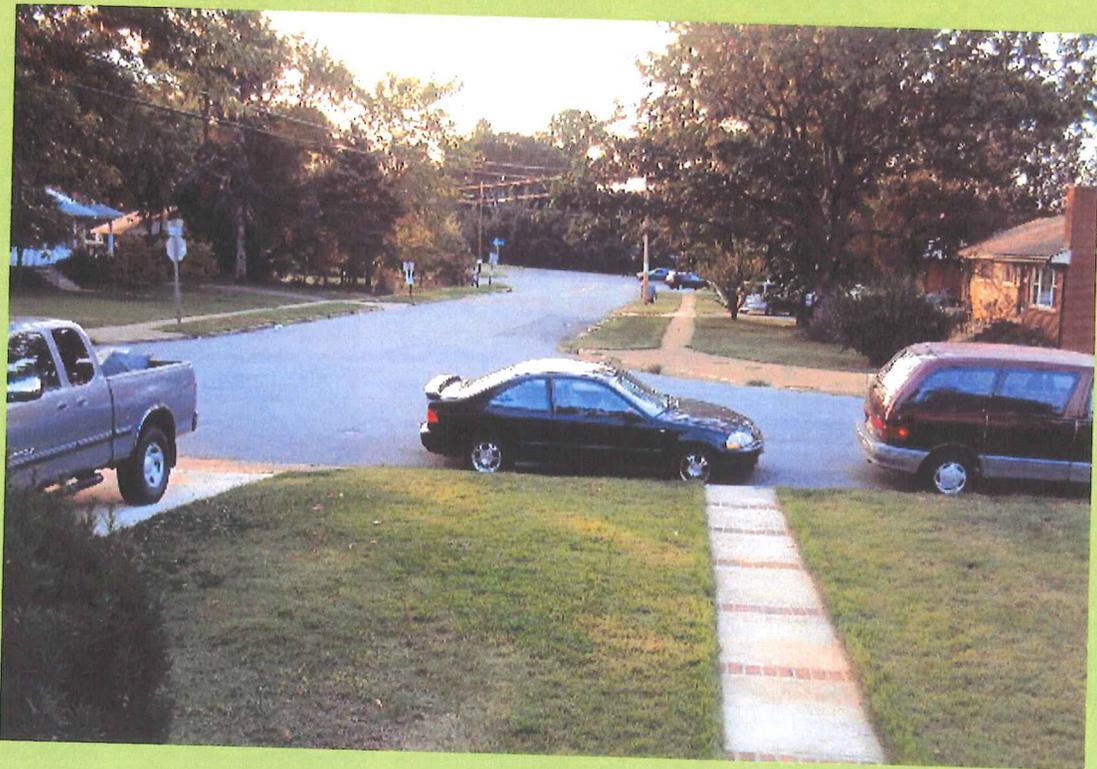
MY HOUSE

VIEW RIGHT FROM MY FRONT DOOR



3

VIEW RIGHT ACROSS MY FRONT DOOR



4

VIEW LEFT ACROSS MY FRONT DOOR

DESCRIPTION OF SPECIAL PERMIT REQUEST

The applicant is requesting approval of a special permit to allow a reduction to minimum yard requirements based on an error in building location to permit an accessory structure, a shed/workshop, to remain 0.0 feet from the rear lot line and 1.0 feet from the western side lot line. Based on a setback equal to the distance of its height, a minimum rear yard of 12.8 feet is required. In the R-3 district a minimum side yard of 12.0 feet is required. Therefore, a modification of 12.8 feet is requested for the rear yard and a modification of 11.0 feet is requested for the side yard.

A copy of the special permit plat depicting the structures on site, titled "Plat showing improvements on Lot 34 Section 1, Mason District, Barcroft Terrace," prepared by Real Estate Surveyors & Developers, LLC, dated September 27, 2013, is included at the front of the staff report.

CHARACTER OF THE SITE AND SURROUNDING AREA

The 10,500 square foot lot is developed with a one-story brick and vinyl single family detached dwelling constructed in 1954. A concrete patio exists on the rear of the dwelling. A carport is located on the east side of the dwelling with a concrete driveway leading from Barcroft Lane to the carport. A 3.5 foot metal fence encloses the rear yard. The property has a manicured lawn with a few mature trees and shrubs.



The picture on the previous page illustrates the application property and surrounding lots, all of which are zoned R-3 and developed with single family detached dwellings.

BACKGROUND

According to Fairfax County Tax Records the applicant purchased the property in 2004. In April of 2011, the Department of Code Compliance received a complaint that two dwellings existed on the subject property. On May 5, 2011, after an inspection, the Department of Code Compliance issued a Notice of Violation to the owner of the property citing violations of excessive dwelling units, outdoor storage, an illegal accessory use, and an accessory structure not meeting minimum bulk regulations in an R-3 district (see Appendix 4). The applicant subsequently cleared all violations except for the accessory structure that is the subject of this special permit request.

A copy of information outlining special permit requests heard in the surrounding area is attached in Appendix 5.

Urban Forestry Analysis

Staff from the Urban Forestry Management Division (UFMD) noted that the shed/workshop was constructed immediately next to a mature deciduous tree (Appendix 6). The proximity of the structure will likely cause negative impacts to the tree in the future. The recommendation is that two additional large deciduous trees such as swamp white oak, white oak, chestnut oak, mockernut hickory, pignut hickory, American beech, blackgum, or tulip poplar be planted to help compensate for the lost canopy on the property. The applicant has agreed to provide additional trees on site and a development condition is included to address this issue.

Zoning Ordinance Provisions

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

This special permit is subject to Sects. 8-006, and 8-914 of the Zoning Ordinance as referenced above, a copy of which is included in Appendix 7. Subject to development conditions, the special permit must meet these standards.

CONCLUSION

If it is the intent of the BZA to approve this application, the BZA should 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 May 5, 2011
5. Similar Case History
6. Urban Forestry memo
7. Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS

SP 2013-MA-060

October 23, 2013

1. This special permit is approved for the location of the shed/workshop as shown on the plat prepared by Real Estate Surveyors & Developers, LLC, dated September 27, 2013, signed by Fitzroy J. Bertrand, as submitted with this application and is not transferable to other land.
2. A minimum of two large deciduous trees in the oak, hickory, beech, blackgum, or maple (except silver maple) family shall be planted in the rear yard within six months of approval of this special permit. The trees shall be a minimum of six feet in height at the time of planting.

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-MA-060
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: JUNE 22 2011
(enter date affidavit is notarized)

I, SILVIO ARMANDO DIAS, 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

112598

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)
SILVIO ARMANDO DIAZ	GUZMAN, 3820 BARCROFT LN ALEXANDRIA VA, 22312	APPLICANT / OWNER
ANALIS DIAZ DE JESUS	3820 BARCROFT LN ALEXANDRIA VA 22313	TITLE 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): SP 2013-MA-060
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: JUNE 28 2011
(enter date affidavit is notarized)

112598

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

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

CORPORATION INFORMATION

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

DESCRIPTION OF CORPORATION: (check one statement)

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

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

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

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

Application No.(s):

SP 2013-MA-060

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

Page Three

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: JUNE 23 / 2011
(enter date affidavit is notarized)

112598

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

PARTNERSHIP INFORMATION

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

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

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

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

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

Application No.(s): SP 2013-MA-060
(county-assigned application number(s), to be entered by County Staff)

Page Four

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: JUNE 23 2011
(enter date affidavit is notarized)

112598

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-MA-060
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: JUNE / 33 / 2011
(enter date affidavit is notarized)

112598

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:

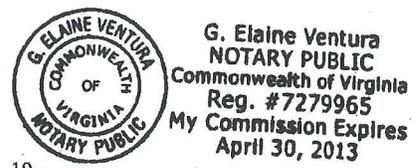
(check one) Silvio A Diaz [] Applicant's Authorized Agent
 Applicant

SILVIO ARMANDO DIAZ GUZMAN
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 23 day of June 2011, in the State/Comm. of Virginia, County/City of Fairfax.

G. Elaine Ventura
Notary Public

My commission expires: 4/30/2013



July 29, 2013

TO: Fairfax County Zoning Evaluation Division

Ref: Special Permit

My error exceeds (10) percent because I built a 16.8'x 12.8' 210 sq/ft area shed with 1 foot from rear lot line and 2.00 feet from side lot line; instead of 13.80 feet from rear lot line and 12.00 feet from side lot line. The noncompliance was done in good faith or through no fault of the property owner and guided basically from the majority of the neighbors in my zoning area.

Such reduction will not impair the purpose and intent of this Ordinance, and It will not be detrimental to the use and enjoyment of other property in the immediate vicinity and it will not create an unsafe condition with respect to both other property and public streets; to force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner since the structure was built on a concrete slab floor with a lot of nails, making it a very solid structure. The reduction will not result in an increase in density or floor area ration from that permitted by be applicable zoning district regulations.

Silvio armando Diaz Guzman

Silvio Armando Diaz Guzman
3820 Barcroft Lane
Alexandria, Va 22321-1143

RECEIVED
Department of Planning & Zoning
JUL 31 2013
Zoning Evaluation Division

August 24, 2010

Department of Planning and Zoning
Evaluation Division
County Of Fairfax

Re: Violation Notice Case # 201101 993 SR # 70309
3820 Barcroft Lane.
Alexandria, Va. 23312

Dear Mr. Officer

I'm Property of the house located at 3820 Barcroft Lane Va. 22312.

Six months ago I build an addition (Shed) on my house, I didn't know I had to build according the feet back of the Zoning Ordinance Permit Division requirements. I added 12'-10" x 12'-10" Shed storage on the west corner of the existing lot with a feed back of 2'-0" from limit of property on west side and 4'- 11" on the north side of the limit of the lot. see sketch plan attached.

The reason for build this addition is because I need storage for materials, mattress, and construction remnants, patio furniture and I can build by myself. The area that I added is 166 sq/ft of new construction 13'-0" height. I did this in good faith as my neighbors have it.

I appreciate your considerations in this case

Sincerely

Silvio A Diaz

Silvio Diaz
7208 Quince Ave.
3820 Barcroft Lane.
Alexandria, Va. 23312

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



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: May 5, 2011

SHERIFF'S LETTER

CASE #: 201101993 **SR#:** 70309

SERVE: Silvio A. Diaz
Jesus Amalia Diaz
3820 Barcroft Lane
Alexandria, Virginia 22312

LOCATION OF VIOLATION 3820 Barcroft Lane
Alexandria, Virginia 22312-1143
Tax Map #: 61-3 ((9)) 34
Zoning District: R-3

Dear Property Owners:

An inspection of the above referenced property on May 03, 2011 revealed the following violations of the Fairfax County Zoning Ordinance.

§ 2-501 Excessive Dwelling Units:

The inspection revealed there are two (2) complete and separate dwellings in this single family dwelling unit on the above-referenced property. Part 3 of Article 20 of the Zoning Ordinance defines a dwelling unit as:

One (1) or more rooms in a residential building or residential portion of a building which are arranged, designed, used, or intended for use as a complete, independent living facility which includes permanent provisions for living, sleeping, eating, cooking and sanitation. Occupancy shall be in accordance with the provisions of Sect. 2-502.

Therefore, the presence of more than one dwelling unit on the above-referenced property is in violation of Sect. 2-501 of the Zoning Ordinance which states, in part:

Silvio A. Diaz
Jesus Amalia Diaz
May 5, 2011
Page 2

There shall be not more than one (1) dwelling unit on any one (1) lot, nor shall a dwelling unit be located on the same lot with any other principal building....

You are hereby directed to clear this violation within fifteen (15) days of the date of this notice. Compliance can be achieved as follows:

- Removing, on a permanent basis, all interior door locks that prevent the free and unfettered access to all common living areas or which may separate different levels of the structure; and
- Removing, on a permanent basis, all but one kitchen located in the dwelling to include: the ovens, microwave, ranges, sinks, cabinets, countertops, refrigerators, and freezers or combinations thereof; all other appliances and accoutrements used or intended for use for cooking or eating, and all plumbing, electrical, and gas connections and piping; and
- Applying for and obtaining approval from the Fairfax County Building Official (12055 Government Center Parkway, Second Floor, Permit Application Center) for a valid demolition permit for the removal of all electrical circuits, plumbing fixtures and piping and natural gas piping systems which were installed to establish the second kitchen in the dwelling unit at this property, and obtaining a passing final inspection of such demolition work; and
- Ceasing, on a permanent basis, the use of all but one (1) dwelling unit, on the property, and restoring the structure such that it contains no more than one (1) dwelling unit.

§ 10-102 (24) Outdoor Storage

§ 2-302 (6) Accessory Use must comply with Article 10:

An inspection has determined that you are allowing the storage in the rear yard and on the carport of, but not limited to, the following:

Building materials, tires, car parts, bricks, lumber, carpet and other miscellaneous junk and debris.

This outdoor storage:

Exceeds 100 square feet in area, and

Is not located in the rear half of the lot, and

Is not screened from view from the first story window of any neighboring dwelling.

Silvio A. Diaz
Jesus Amalia Diaz
May 5, 2011
Page 3

This outdoor storage is violation of Par. 24 of Sect. 10-102 of the Fairfax County Zoning Ordinance that states in part:

Storage, outdoor in R districts, provided such storage is located on the rear half of the lot, is screened from the view from the first story window of any neighboring dwelling, and the total area for such outdoor storage does not occupy more than 100 square feet.

Therefore, you are in violation of Par. 6 of Sect. 2-302 of the Zoning Ordinance that 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 Part 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 the following:

- Removing all outdoor storage from this lot; or
- Relocation of the outdoor storage to the rear half of the lot, and
- Screening it from the view from the first story window of any neighboring dwelling, and
- Limiting it to a total area not exceeding 100 square feet.

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

The presence of an accessory storage structure which measured approximately eleven (11) in height, is approximately one hundred and ninety (190) square feet in area and is located approximately one (1) foot and approximately one (1) respectively from the side and rear lot lines.

The Fairfax County Zoning Ordinance permits accessory storage structures to be located in minimum required yards; however, if the structure exceeds eight and one-half (8½) feet in height, it must be located on the lot so as to comply with Par. 10E of Sect. 10-104 of the Zoning Ordinance which states:

An accessory storage structure which exceeds eight and one-half (8 ½) feet in height shall not 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-3 District is twelve (12) feet as detailed in Par.2.A. (1) (b) of Sect. 3-307 of the Zoning Ordinance.

Silvio A. Diaz
Jesus Amalia Diaz
May 5, 2011
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Therefore, as this accessory storage structure exceeds eight and one-half (8 ½) feet in height and is not located in accordance with the provisions of Par. 10E of Sect. 10-104 above, it is in violation of Par. 10E 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 storage structure from the property in its entirety; or
- Reducing the height of the structure to eight and one-half (8 ½) feet 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. 10E 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 storage 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.

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.

Silvio A. Diaz
Jesus Amalia Diaz
May 5, 2011
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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,

Charles D. Forshee
Property Maintenance/Zoning Enforcement Inspector

CDF/

Similar Case History

Group: 92-M-033**SP 92-M-033**

APPLICANT: IRA AND ROSA MCKOY
STATUS: APPLICATION APPROVED
STATUS/DECISION DTE: 07/31/1992
ZONING DISTRICT: R-3
DESCRIPTION: REDUCTION TO MINIMUM YARD REQUIREMENTS BASED ON ERROR IN BUILDING LOCATION TO ALLOW STRUCTURE TO REMAIN 8 FT. FROM SIDE LOT LINE
LOCATION: 6230 PARKHILL DRIVE
TAX MAP #S:
0613 09 0047



County of Fairfax, Virginia

MEMORANDUM

DATE: September 10, 2013

TO: Erin M. Haley, Planner II
Zoning Evaluation Division, DPZ

FROM: Nicholas J. Drunasky, Urban Forester II
Forest Conservation Branch, UFMD

SUBJECT: Barcroft Terrace Section 1, Lot 34, SP 2013-MA-060

This review is based upon the Special Permit application SP 2013-MA-060, stamped as "Received Department of Planning & Zoning July 31, 2013."

General Comment: It appears that the frame shed was constructed immediately next to a mature deciduous shade tree, which will likely cause negative impacts to the tree in the future. Staff recommends planting two additional large deciduous trees such as swamp white oak, white oak, chestnut oak, mockernut hickory, pignut hickory, American beech, blackgum, or tulip poplar to help compensate for the lost canopy on the property.

If you have any questions, please feel free to contact me at 703-324-1770.

NJD/

UFMDID #: 184265

cc: DPZ File

Department of Public Works and Environmental Services
Urban Forest Management Division
12055 Government Center Parkway, Suite 518
Fairfax, Virginia 22035-5503
Phone 703-324-1770, TTY: 703-324-1877, Fax: 703-803-7769
www.fairfaxcounty.gov/dpwes



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.

8-922 Provisions for Reduction of Certain Yard Requirements

The BZA may approve a special permit to allow a reduction of certain yard requirements subject to all of the following:

1. Only the following yard requirements shall be subject to such special permit:
 - A. Minimum required yards, as specified in the residential, commercial, industrial and planned development districts in Articles 3, 4, 5 and 6, provided such yards are not subject to proffered conditions or development conditions related to yards and/or such yards are not depicted on an approved conceptual development plan, final development plan, development plan, special exception plat, special permit plat or variance plat.
 - B. Yard regulations for pipestem lots and lots contiguous to pipestem driveways set forth in Sect. 2-416.
 - C. Accessory structure location requirements set forth in Sect. 10-104.
 - D. Regulations on permitted extensions into a minimum required yard as set forth in Sect. 2-412.

Approval of a reduction of yard requirements specified in Paragraphs A, B and C above shall not result in any yard that is less than fifty (50) percent of the requirement and shall not result in any yard of less than five (5) feet, as measured from the lot line to the closest point of the proposed structure.

Approval of a reduction of yard requirements specified in Par. D above shall not result in an extension that exceeds the applicable distances set forth in Sect. 2-412 by more than fifty (50) percent. Where no extension is permitted by the provisions of Sect. 2-412, the BZA shall not approve a special permit that results in a structure that extends into a minimum required yard by more than fifty (50) percent.

2. Such reduction shall not result in the placement of a detached accessory structure in a front yard where the placement of such accessory structure is not otherwise permitted in that yard.

3. This special permit shall only apply to those lots that contain a principal structure and use that complied with the minimum yard requirements in effect when the use or structure was established.
4. The resulting gross floor area of an addition to an existing principal structure may be up to 150 percent of the total gross floor area of the principal structure that existed at the time of the first yard reduction request. In such instance, if a portion of the principal structure is to be removed, no more than fifty (50) percent of the gross floor area of the existing principal structure at the time of the first yard reduction shall be removed.
5. The resulting gross floor area of an existing accessory structure and any addition to it shall be clearly subordinate in purpose, scale, use and intent to the principal structure on the site.
6. The BZA shall determine that the proposed development will be in character with the existing on-site development in terms of the location, height, bulk and scale of the existing structure(s) on the lot.
7. The BZA shall determine that the proposed development is harmonious with the surrounding off-site uses and structures in terms of location, height, bulk and scale of surrounding structures, topography, existing vegetation and the preservation of significant trees as determined by the Director.
8. The BZA shall determine that the proposed development shall not adversely impact the use and/or enjoyment of any adjacent property with regard to issues such as noise, light, air, safety, erosion, and stormwater runoff.
9. The BZA shall determine that the proposed reduction represents the minimum amount of reduction necessary to accommodate the proposed structure on the lot. Specific factors to be considered include, but are not limited to, the layout of the existing structure; availability of alternate locations for the addition; orientation of the structure(s) on the lot; shape of the lot and the associated yard designations on the lot; environmental characteristics of the site, including presence of steep slopes, floodplains and/or Resource Protection Areas; preservation of existing vegetation and significant trees as determined by the Director; location of a well and/or septic field; location of easements; and/or preservation of historic resources.

10. The BZA may impose such conditions as it deems necessary to satisfy these criteria, including, but not limited to imposition of a maximum gross floor area, floor area ratio, lot coverage, landscaping and/or screening requirements.
11. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by fifteen (15) 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. 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. The location, dimension and height of any building, structure or addition, whether existing or proposed. In addition, for decks, the height of the finished floor above finished ground level.
 - E. All required minimum yards to include front, side and rear, a graphic depiction of the angle of bulk plane, if applicable, and the distances from all existing and proposed 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 a well and/or septic field.
 - I. Existing and proposed gross floor area and floor area ratio.
 - 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. The location, type and height of any existing and proposed landscaping and screening.
 - L. Approximate delineation of any floodplain designated by the Federal Insurance Administration, United States Geological Survey, or Fairfax County, the delineation of any Resource Protection Area and Resource Management Area, and the approximate delineation of any environmental quality corridor as defined in the adopted comprehensive plan, and, if applicable, the distance of any existing and proposed structures from the floodplain, Resource Protection Area and Resource Management Area, or environmental quality corridor.
 - M. Seal and signature of professional person certifying the plat.
12. Architectural depictions of the proposed structure(s) as viewed from all lot lines and street lines to include building materials, roof type, window treatment and any associated landscaping and/or screening shall be provided.