APPLICATIONS ACCEPTED: September 13, 2013
BOARD OF ZONING APPEALS: December 11, 2013
TIME: 9:00 a.m.

County of Fairfax, Virginia

December 4, 2013

STAFF REPORT

SPECIAL PERMIT APPLICATION NO. SP 2013-DR-075
CONCURRENT WITH VARIANCE APPLICATION VC 2013-DR-018

DRANESVILLE DISTRICT

APPLICANTS/OWNERS:	Stephen G. Rademaker Danielle M. Pletka
SUBDIVISION:	Chesterbrook Woods
STREET ADDRESS:	1620 Brookside Road, McLean, 22101
TAX MAP REFERENCE:	31-4 ((4)) 30B
LOT SIZE:	28,616 square feet
ZONING DISTRICT:	R-2
ZONING ORDINANCE PROVISIONS:	8-923 & 18-401
SPECIAL PERMIT PROPOSAL:	To permit an existing fence greater than 4.0 feet in height to remain in the front yard.
VARIANCE PROPOSAL:	To permit an existing accessory structure to remain in the front yard of a lot containing 36,000 square feet or less.

A copy of the BZA's Resolution setting forth this decision will be mailed within five 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\(12-11) SP 2013-DR-075 Rademaker (fence&yard&VC)\Rademaker Staff Report.doc *Erin M. Haley*

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-075

STEPHEN G. RADEMAKER AND DANIELLE M. PLETKA

Variance Application
VC 2013-DR-018

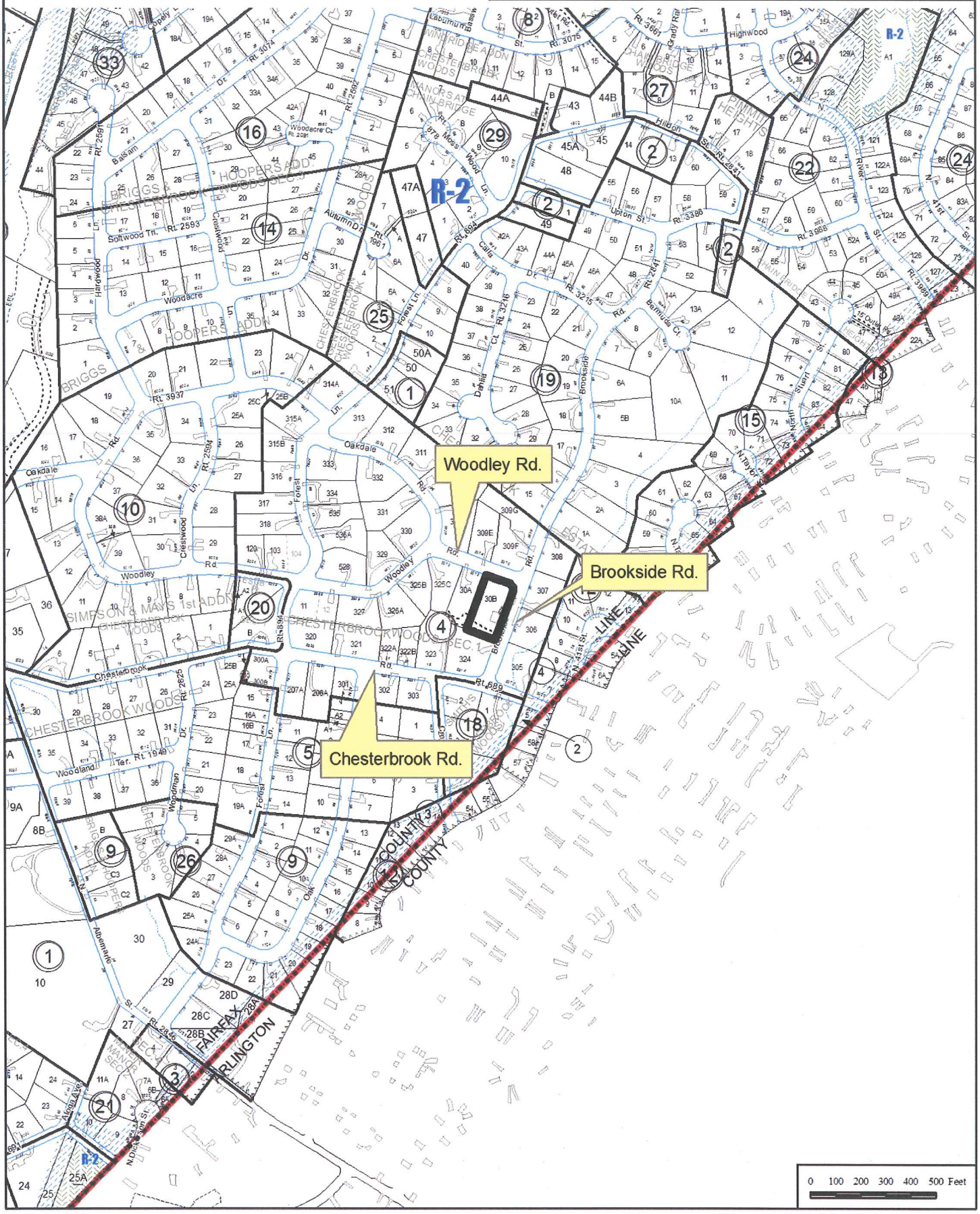
STEPHEN G. RADEMAKER AND DANIELLE M. PLETKA

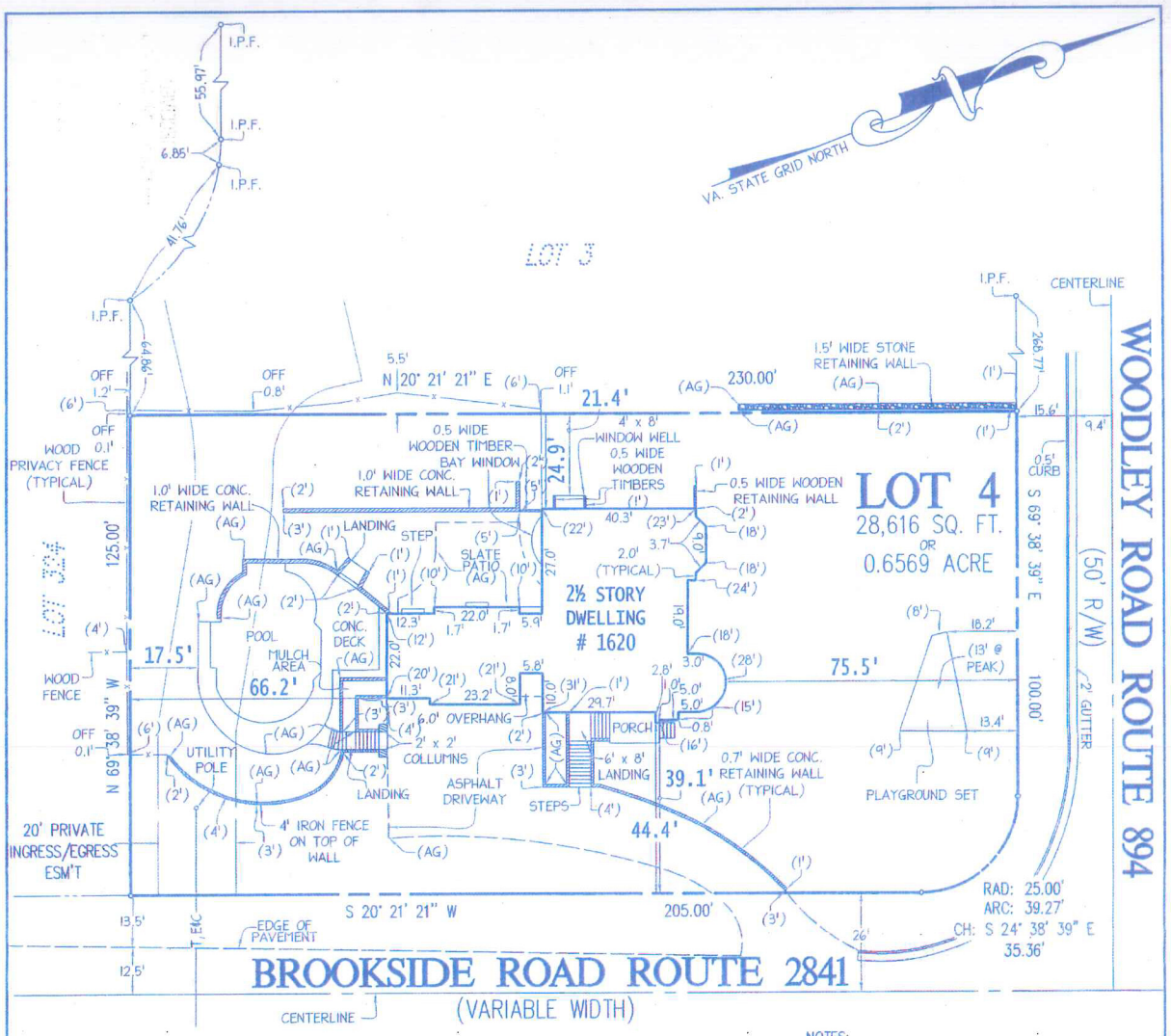
Special Permit
SP 2013-DR-075

STEPHEN G. RADEMAKER AND DANIELLE M. PLETKA

Variance Application
VC 2013-DR-018

STEPHEN G. RADEMAKER AND DANIELLE M. PLETKA





LEGEND:

I.P.F.	DENOTES IRON PIPE FOUND
-X-	DENOTES FENCE LINE
-T,E&C-	DENOTES OVERHEAD TELEPHONE, ELECTRIC, AND CABLE LINES
B.R.L.	DENOTES BUILDING RESTRICTION LINES
N/F	DENOTES NOW OR FORMERLY
(2')	DENOTES HEIGHT ABOVE GRADE
(AG)	DENOTES AT GRADE

COMMONWEALTH OF VIRGINIA
TIMOTHY J. FARRELL
Lic. No. 2683
LAND SURVEYOR

SETBACK TABLE
ZONED R2

SETBACK REQUIREMENTS	
YARD	SETBACK
FRONT	35'
REAR	25'
SIDE	15'

NOTES:

1) THIS PLAT HAS BEEN PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND DOES NOT THEREFORE NECESSARILY INDICATE ALL ENCUMBRANCES ON THE PROPERTY.

2) THE LOT SHOWN HEREON APPEARS TO PLOT IN FLOOD ZONE "X" AREA DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN, AS SHOWN ON F.E.M.A. MAP# 51059C0170E EFFECTIVE DATE: SEPTEMBER 17, 2010

3) THE PROPERTY SHOWN ON THIS PLAT IS LOCATED ON TAX ASSESSMENT MAP # 031-4-04-0030B

4) EASEMENTS, B.R.L.S & MERIDIAN, IF SHOWN HEREON, ARE AS DELINEATED ON PLAT RECORDED IN DEED BOOK 15724, PAGE 1297 (UNLESS NOTED OTHERWISE).

5) PROPERTY SERVED BY PUBLIC WATER AND SEWER.

6) NO BURIAL SITES ON LOT PER RECORD PLAT.

7) NO EXISTING UTILITY EASEMENTS HAVING A WIDTH OF TWENTY-FIVE FEET OR MORE PER RECORD PLAT.

8) CURRENT OWNERS: DANIELLE M. PLETKA AND STEPHEN G. RADEMAKER AS RECORDED IN DEED BOOK 16131, PAGE 783.

VARIANCE PLAT

LOT 4

SECTION ONE

CHESTERBROOK WOODS

DRANESVILLE DISTRICT

FAIRFAX COUNTY, VIRGINIA

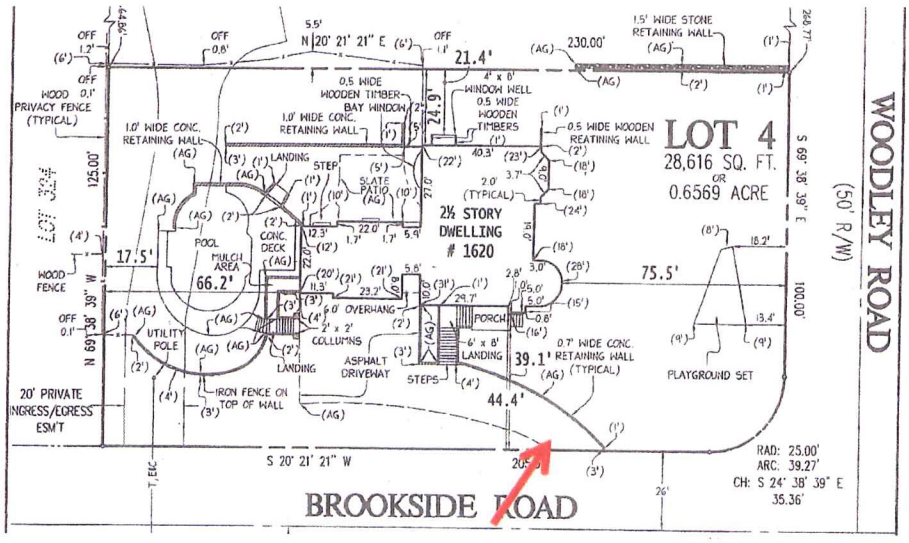
B.W. SMITH AND ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYING
MANASSAS, VIRGINIA (703) 368-5866 1(800) 682-0996

DFT: R.D.P.	CHK: M.K.S.	NO TITLE REPORT FURNISHED	SCALE= 1" = 30'

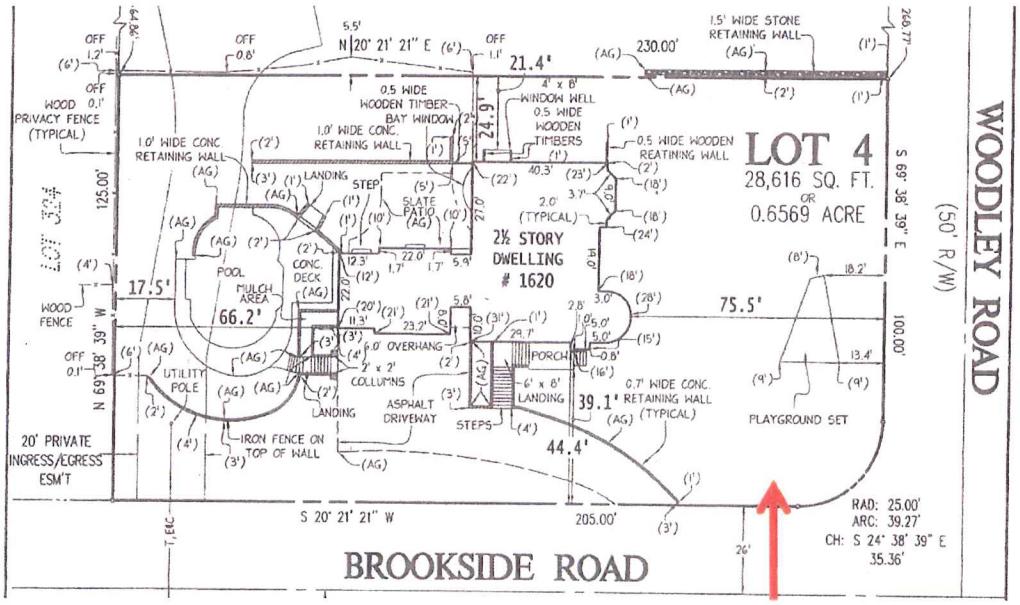
FIELD CREW: D. CONRAD
REVISION: 6/04/13 (COUNTY COMMENTS)
JOB# 20130102
DATE: 1/22/13

View from Brookside Rd. looking Northwest. This view—from the driveway entrance to the house—is the only angle from which the swing set is clearly visible from a public right-of-way adjacent to the house.



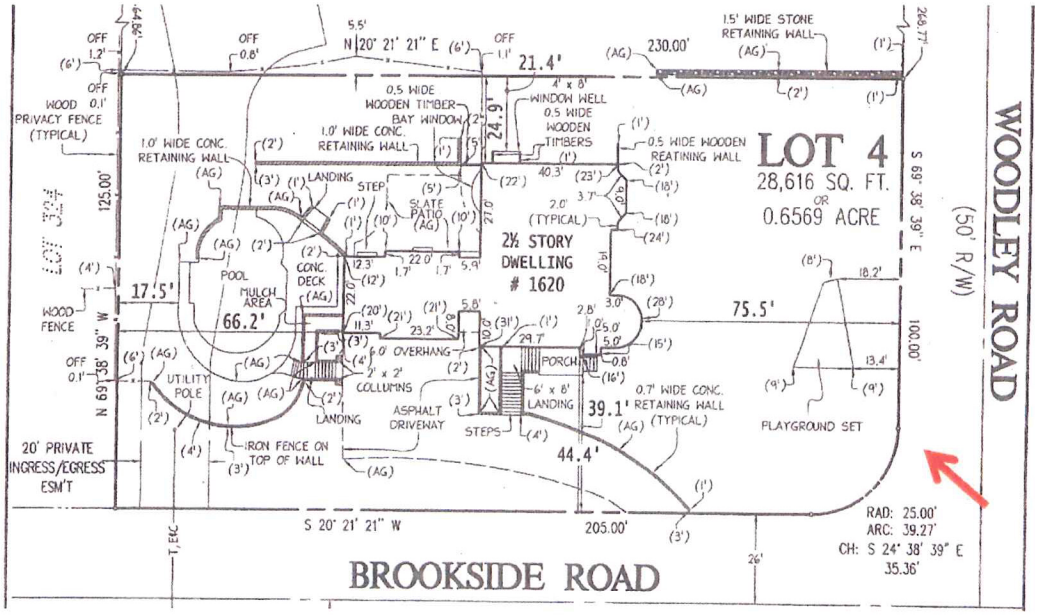
RECEIVED
Department of Planning & Zoning
SEP 09 2013
Zoning Evaluation Division

View from Brookside Rd. looking West. A holly hedge blocks all view of the swing set.



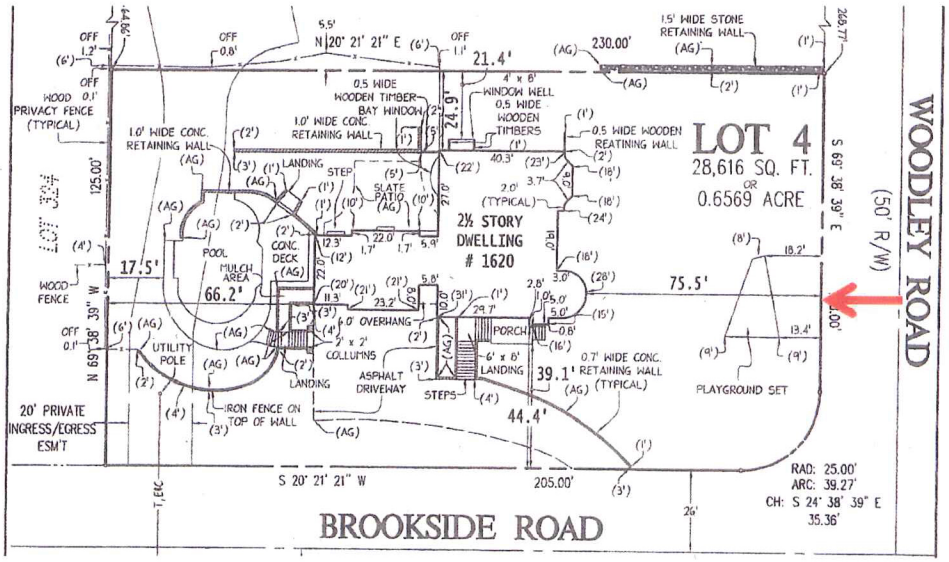
RECEIVED
Department of Planning & Zoning
SEP 09 2013
Zoning Evaluation Division

View from Woodley Rd. looking Southwest. A holly hedge blocks view of all but the top of the swing set.



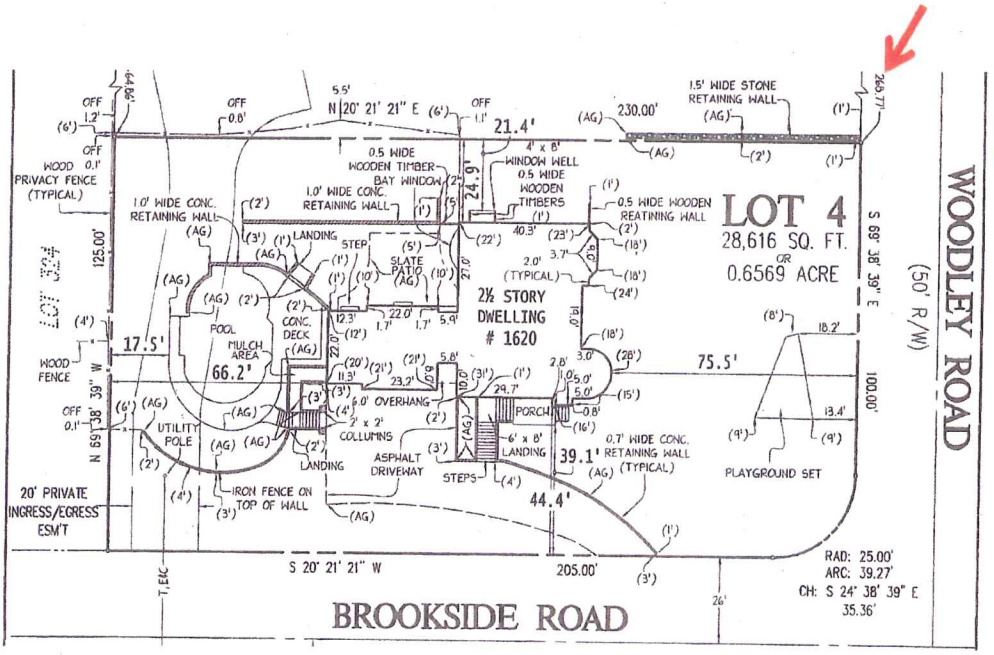
RECEIVED
Department of Planning & Zoning
SEP 09 2013
Zoning Evaluation Division

View from Woodley Rd. looking South. A holly hedge blocks view of all but the top of the swing set.



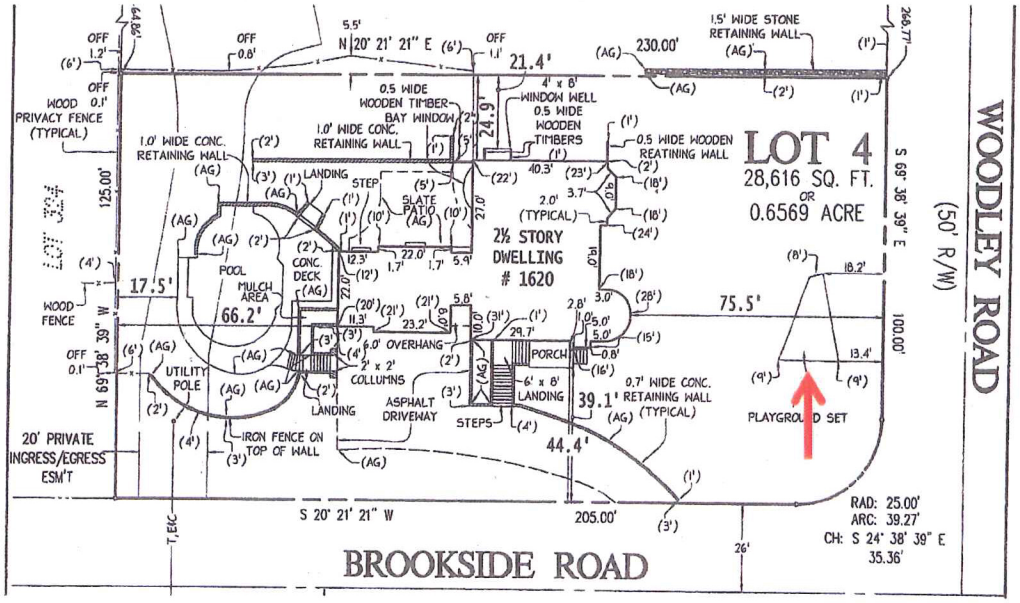
RECEIVED
Department of Planning & Zoning
SEP 09 2013
Zoning Evaluation Division

View from Woodley Rd. looking Southeast. A copse of trees blocks any view of the swing set.



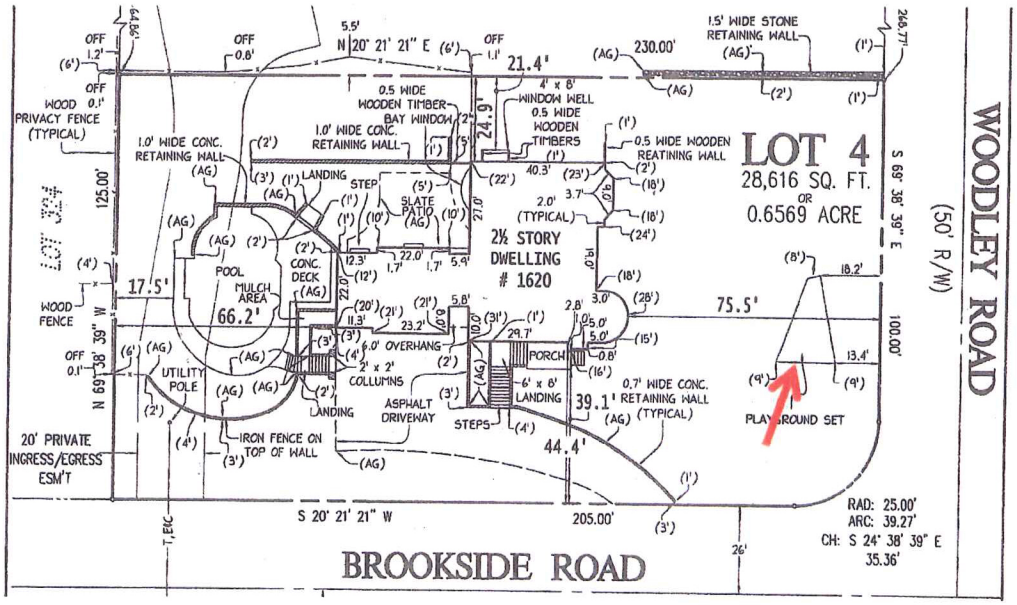
RECEIVED
Department of Planning & Zoning
SEP 09 2013
Zoning Evaluation Division

View of the swing set from inside the holly hedge, looking West.



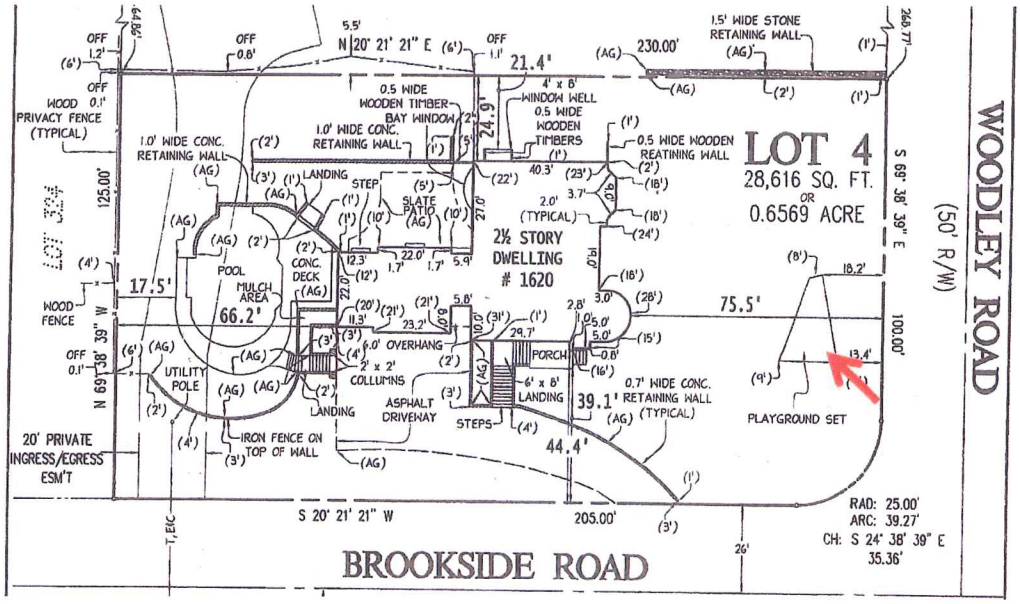
RECEIVED
Department of Planning & Zoning
SEP 09 2013
Zoning Evaluation Division

Close-up view of the swing set from inside the holly hedge, looking West.



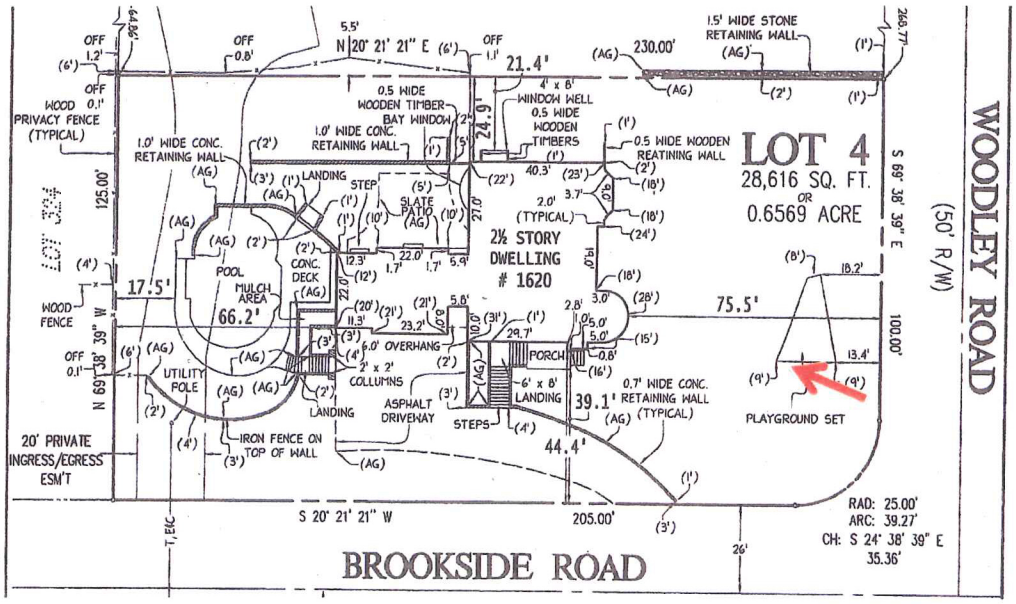
RECEIVED
Department of Planning & Zoning
SEP 09 2013
Zoning Evaluation Division

Close-up view of the swing set from inside the holly hedge, looking Southwest, with house in background.

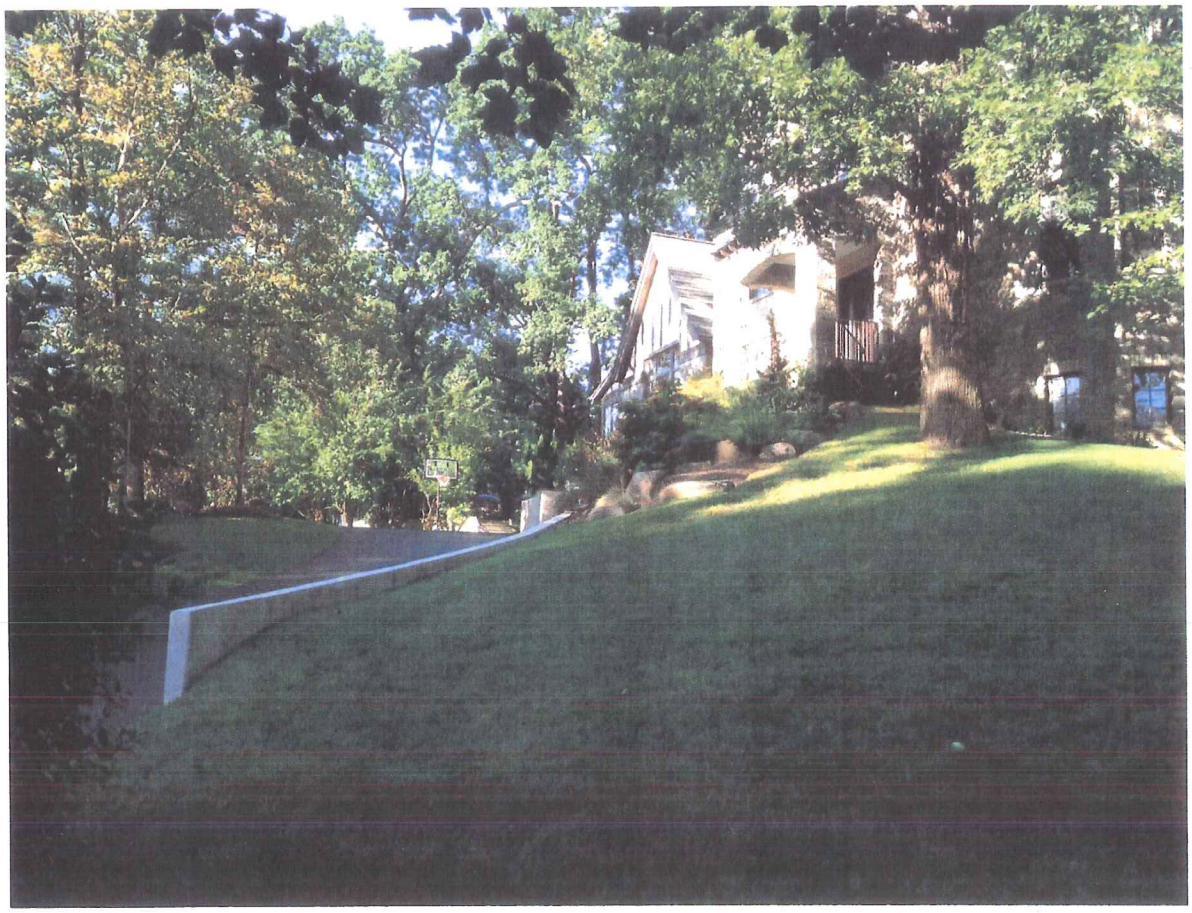


RECEIVED
Department of Planning & Zoning
SEP 09 2013
Zoning Evaluation Division

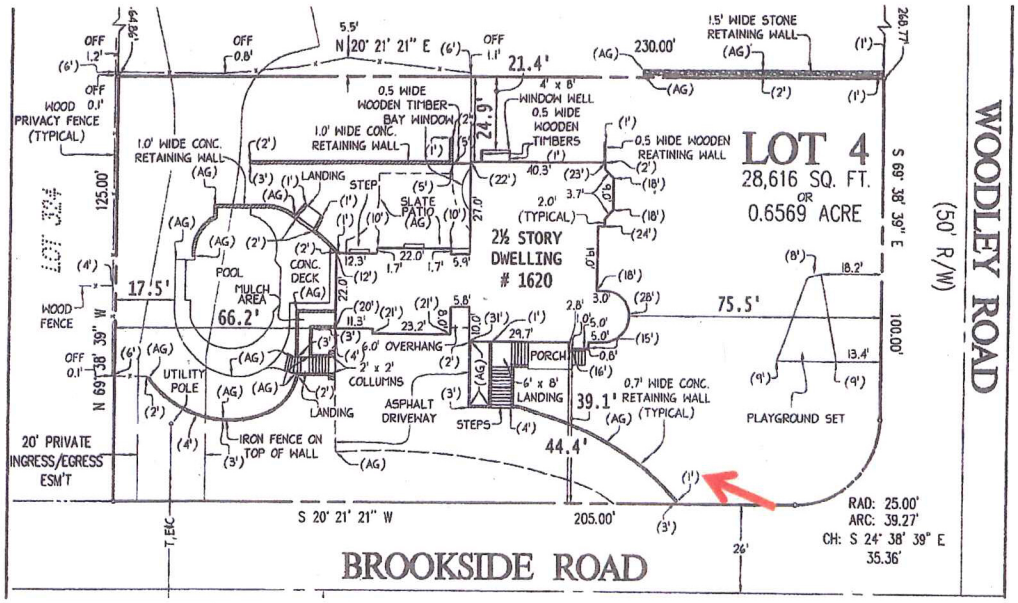
View of the "front yard" between Woodley Rd. and the house, taken from inside the holly hedge, looking South.



RECEIVED
Department of Planning & Zoning
SEP 09 2013
Zoning Evaluation Division

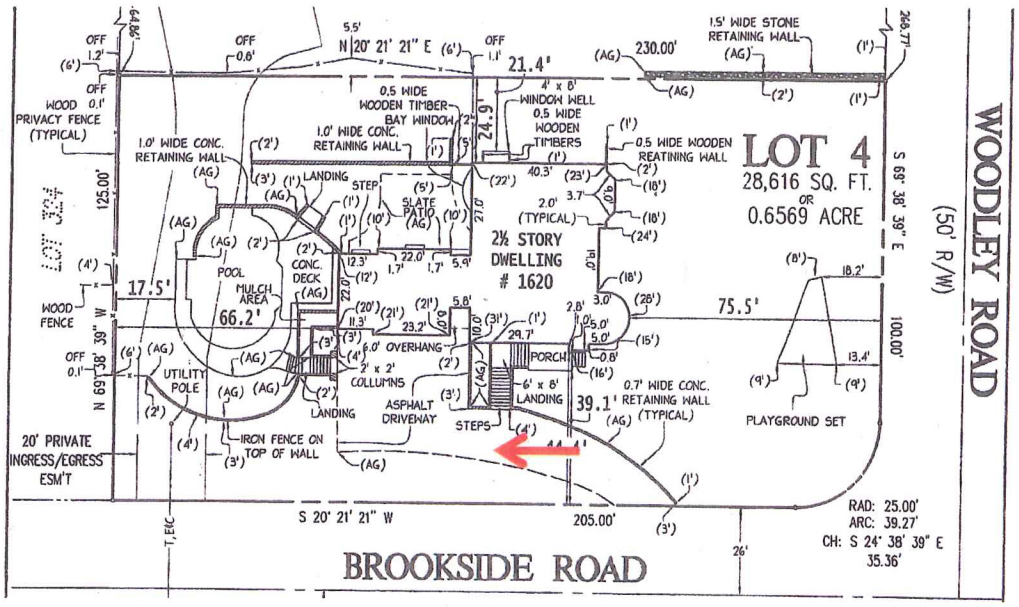


View of the "front yard" between Brookside Rd. and the house, taken from inside the holly hedge, looking South.



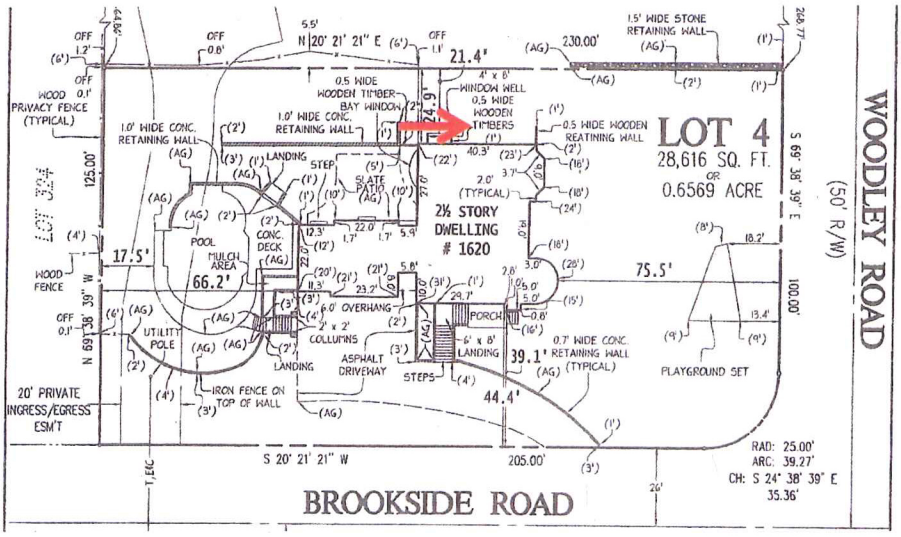
RECEIVED
Department of Planning & Zoning
SEP 09 2013
Zoning Evaluation Division

Front yard of house, facing Brookside Rd.



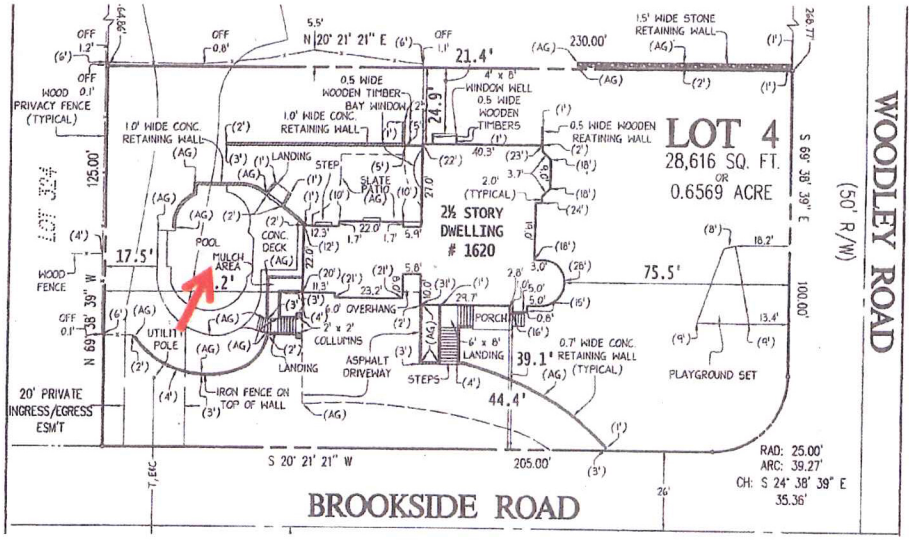
RECEIVED
Department of Planning & Zoning
SEP 09 2013
Zoning Evaluation Division

View of the "side yard" to the West of the house. The property line is just to the left of the large tree on the left. The sloping angle of the fence corresponds to the slope of the terrain. There is no possibility of erecting the swing set in this confined space on this terrain.



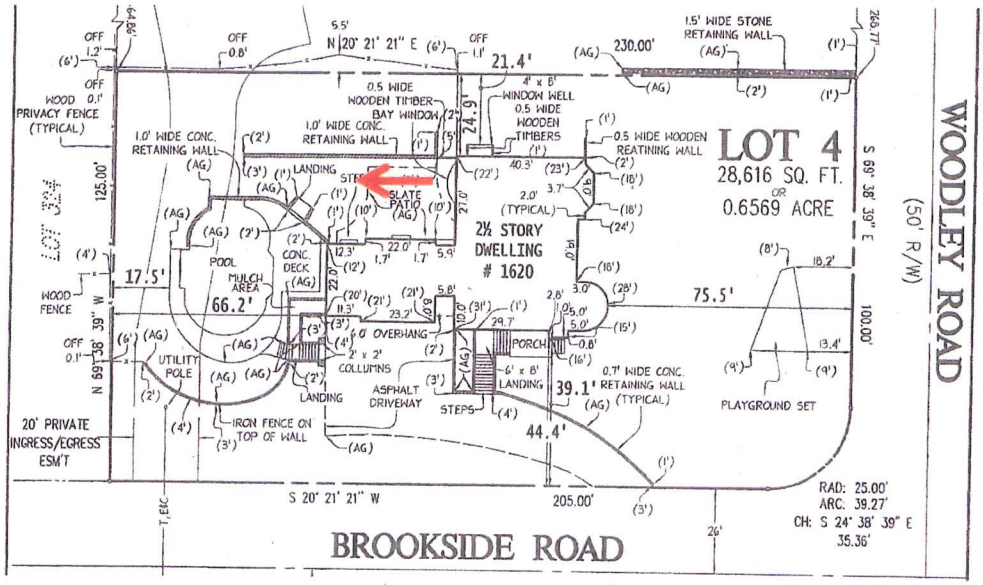
RECEIVED
Department of Planning & Zoning
SEP 09 2013
Zoning Evaluation Division

View of the "side yard" to the South of the house. The property line is about five feet to the left of the paved area surrounding the pool. There is no possibility of erecting the swing set in this area given the presence of the pool and the retaining walls.



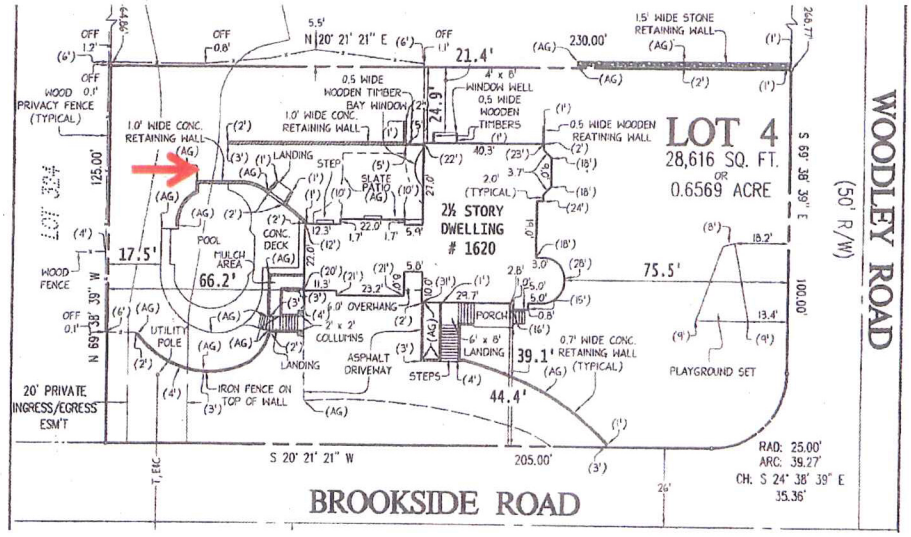
RECEIVED
Department of Planning & Zoning
SEP 09 2013
Zoning Evaluation Division

View of the "back yard" to the Southwest of the house. There is no possibility of erecting the swing set in this area given the presence of the paved patio, retaining walls, and steep hillside.



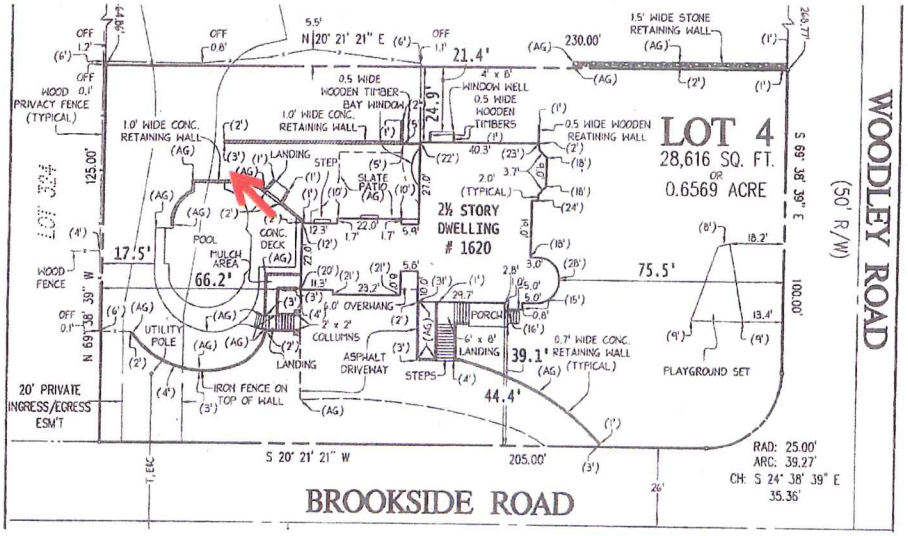
RECEIVED
Department of Planning & Zoning
SEP 09 2013
Zoning Evaluation Division

Alternate view of the "back yard" to the Southwest of the house. Again, there is no possibility of erecting the swing set in this area given the presence of the paved patio, retaining walls, and steep hillside.

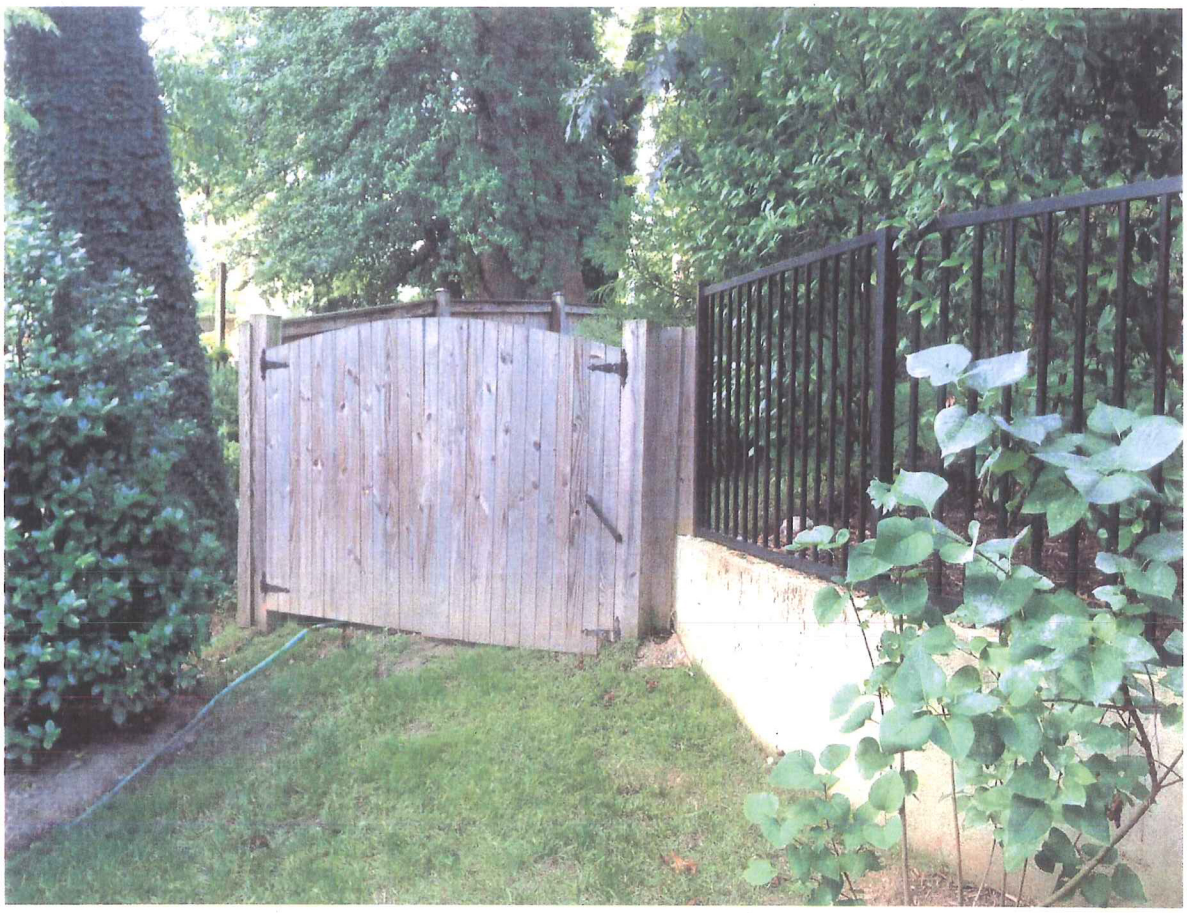


RECEIVED
Department of Planning & Zoning
SEP 09 2013
Zoning Evaluation Division

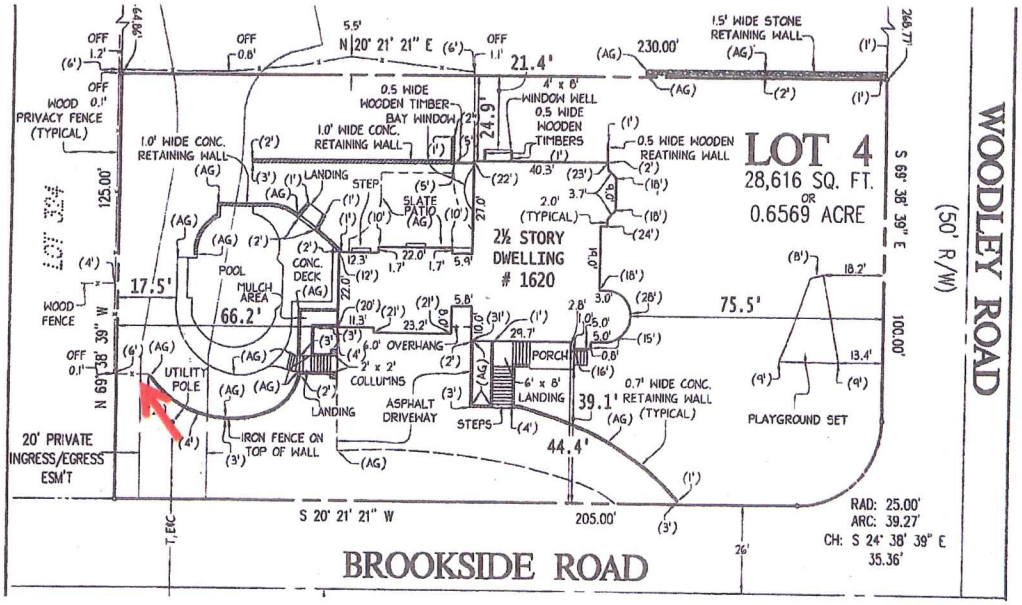
View of Southwest corner of the "back yard". Fences mark the property line. Between the retaining walls, steep slope, and large trees in this corner of the lot, there is no possibility of erecting the swing set in this area.



RECEIVED
Department of Planning & Zoning
SEP 09 2013
Zoning Evaluation Division

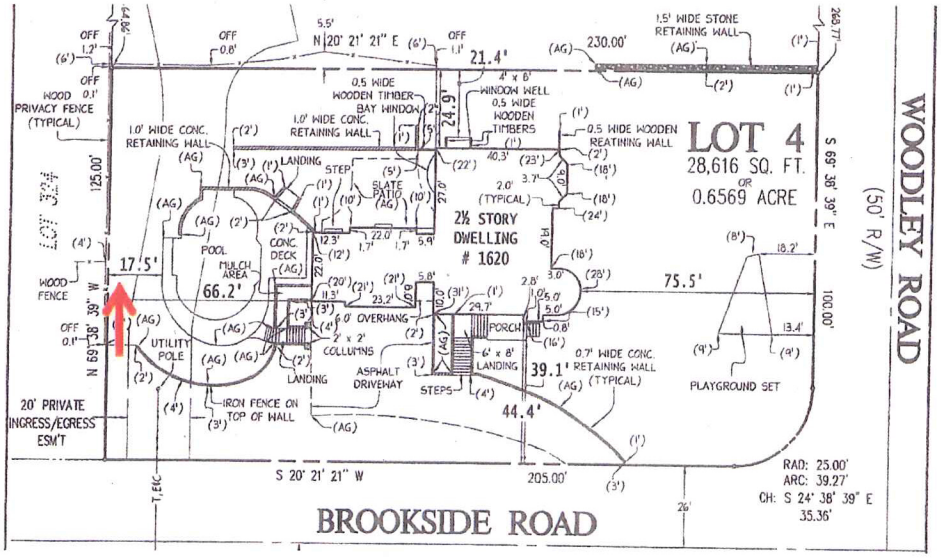


Gate to pool area. This is the portion of the fence that exceeds the 4 ft. height limitation.



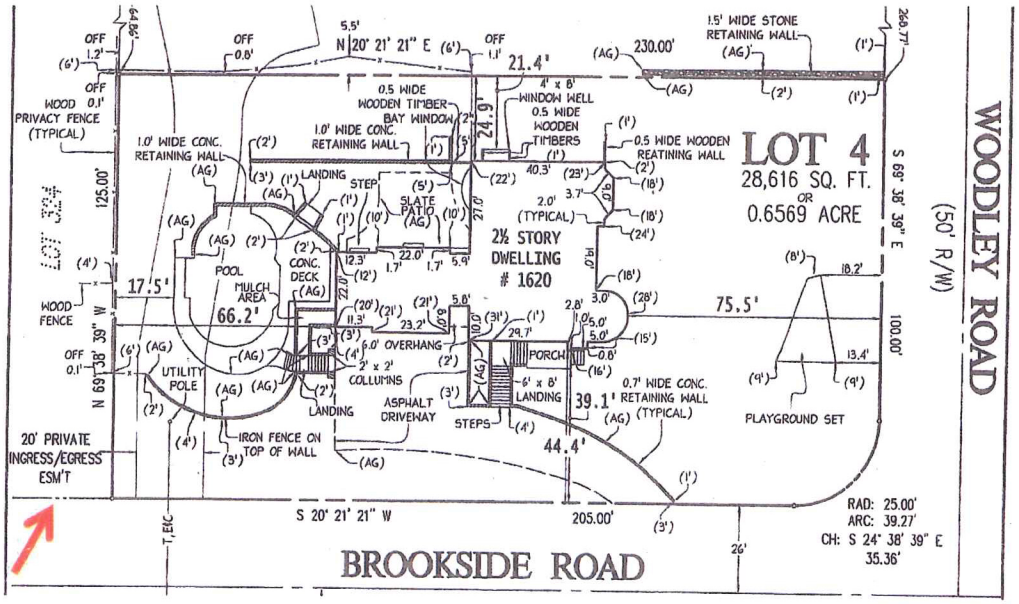
RECEIVED
Department of Planning & Zoning
SEP 09 2013
Zoning Evaluation Division

View of the "side yard" to the South of the house, between the property line and pool area. The steep slope and the confined space preclude erecting the swing set in this area.



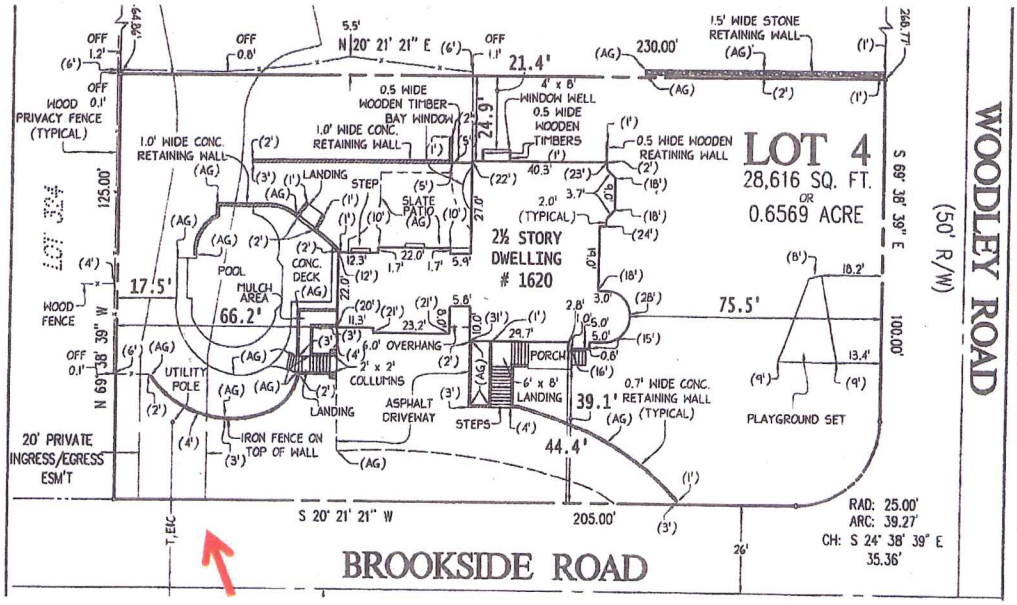
RECEIVED
Department of Planning & Zoning
SEP 09 2013
Zoning Evaluation Division

View of the gate to pool area from Brookside Rd., looking Northwest. The fence is virtually invisible from the road due to vegetation.



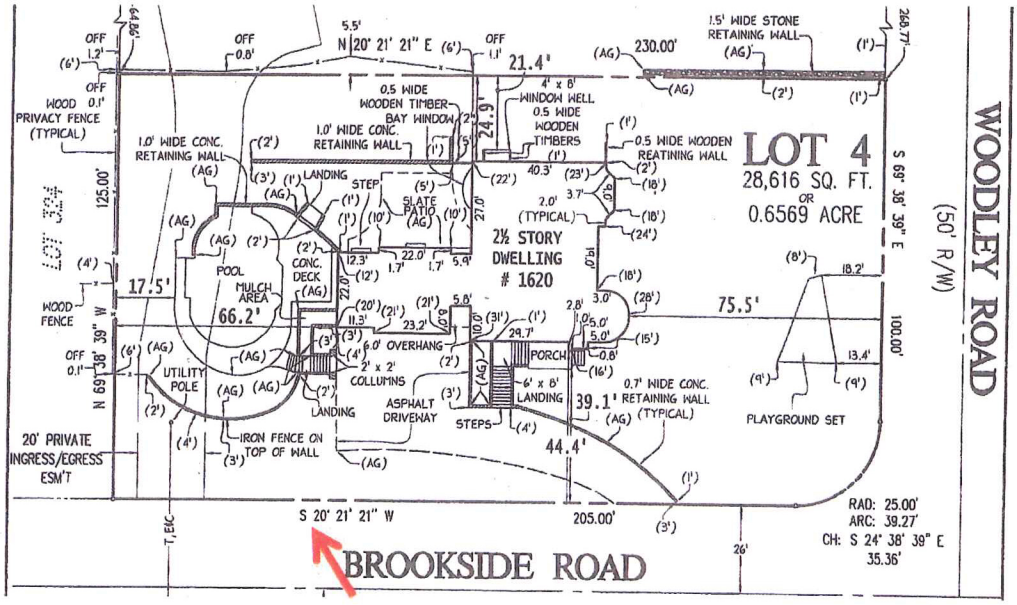
RECEIVED
Department of Planning & Zoning
SEP 09 2013
Zoning Evaluation Division

View of the gate to pool area from Brookside Rd., looking West. The fence is virtually invisible from the road due to vegetation.



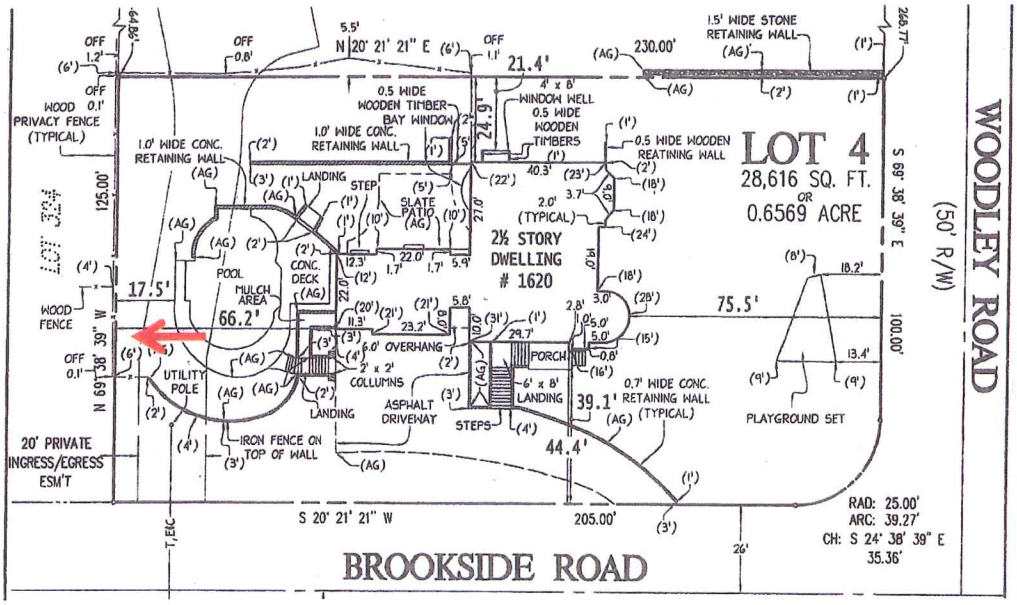
RECEIVED
Department of Planning & Zoning
SEP 09 2013
Zoning Evaluation Division

View of the gate to pool area from Brookside Rd., looking Southwest. The fence is virtually invisible from the road due to vegetation.



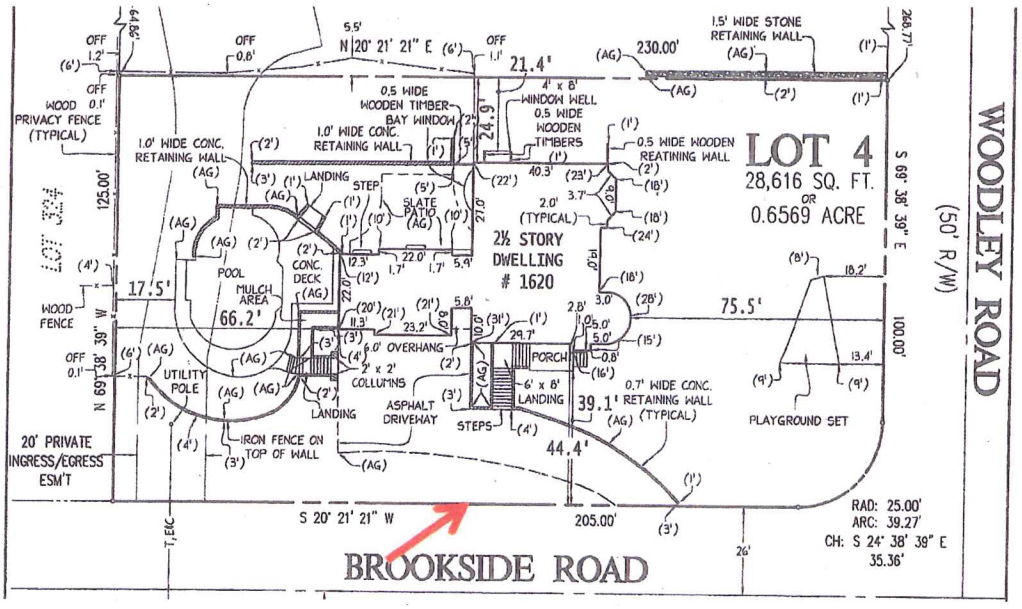
RECEIVED
Department of Planning & Zoning
SEP 09 2013
Zoning Evaluation Division

View of the pool perimeter fence, looking South. The fence to the left was installed by us; the fence to the right was installed by our neighbor.



RECEIVED
Department of Planning & Zoning
SEP 09 2013
Zoning Evaluation Division

View from Brookside Rd. looking North. An embankment blocks any view of the swing set.



SPECIAL PERMIT REQUEST

The applicants are requesting approval of a special permit to allow a fence greater than 4.0 feet in height to remain in the front yard of a corner lot. A portion of the wood fence on the south side of the house is made up of a gate, which has a permitted height of 8.0 feet. The portion of the fence "in the front yard" that is the subject of this special permit is actually located on the adjacent Lot 324 to the south, approximately 0.1 feet off the property line.

VARIANCE REQUEST

The applicants are also requesting approval of a variance to permit an accessory structure, a playground set, to remain in the front yard of a corner lot containing 36,000 square feet or less. The subject property is 28,616 square feet in size. The playground set is located 13.4 feet from the front lot line adjacent to Woodley Road.

A copy of the plat titled "Variance Plat, Lot 4, Section One, Chesterbrook Woods," prepared by Timothy J. Farrell, Land Surveyor, of B.W. Smith and Associates, Inc., dated January 22, 2013, revised June 4, 2013, is included in the front of the staff report.

CHARACTER OF THE SITE AND SURROUNDING AREA

As depicted in the picture on the following page, the subject parcel and surrounding properties are within the Chesterbrook Woods subdivision and are developed with single family detached dwellings, zoned R-2. The application property is a corner lot with frontage on both Brookside Road and Woodley Road. The dwelling is 2 1/2 – stories, stucco and stone with 6,138 square feet of above grade living area.

The existing dwelling contains a concrete deck and pool to the south off the rear of the dwelling and a slate patio on the west side of the dwelling. Access to the lot is provided via a curved asphalt driveway from Brookside Road terminating at a garage and door on the east side of the dwelling. A staircase extends from the driveway to a porch. There are several retaining walls located on the subject property. Wood fencing 6.0 feet in height attaches to the dwelling and extends along the west and south side lot lines, enclosing the portion of the yard containing the pool; however, only the portion of the fencing on the west side is located on the subject property. The rest of the wood fence is located on two adjacent properties. A playground set is located to the north of the dwelling in the front yard adjacent to Woodley Road.

The lot contains several mature trees and landscaping. The topography of the parcel is varied and slopes down towards Woodley Road.

BACKGROUND

The applicants purchased the property in 2004. They then obtained building permits to demo the previous dwelling and construct the existing dwelling, which was completed in 2006. They also obtained a permit for the retaining walls in 2005 and a permit for the in-ground granite pool in 2008.

The Department of Code Compliance received a complaint about the noise of the applicants' pool equipment. During the investigation, the noise complaint was determined to be unfounded, but the inspector discovered that an accessory structure, a playground set, is located in the front yard adjacent to Woodley Road. A notice of violation (NOV) was sent to the applicants on September 25, 2012, and a copy is included as Appendix 5. During the application acceptance process, the portion of 6.0 wood fence was discovered in the front yard.

Since the adoption of the Zoning Ordinance, the Board of Zoning Appeals has not heard any other similar cases.

ZONING ORDINANCE REQUIREMENTS

- Sect. 8-006 General Special Permit Standards
- Sect. 8-903 Group 9 Standards
- Sect. 8-923 Provisions for Increase in Fence and/or Wall Height in Any Front Yard
- Sect. 18-401 Required Standards for Variances

This special permit is subject to sections of the Zoning Ordinance as referenced above, a copy of which is included in Appendix 6. Subject to development conditions, the special permit must meet these standards.

CONCLUSION

If it is the intent of the BZA to approve this application, staff suggests the BZA condition its approval by requiring conformance with the conditions set forth in Appendix 1 and Appendix 2 of this report, Proposed Development Conditions.

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

APPENDICES

1. Proposed Special Permit Development Conditions
2. Proposed Variance Development Conditions
3. Applicants Affidavits
4. Applicants Statements of Justification
5. Notice of Violation, dated September 19, 2012
6. Applicable Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS

SP 2013-DR-075

December 4, 2013

1. This special permit is granted only for the purposes, structures and/or uses indicated on the plat "Variance Plat, Lot 4, Section One, Chesterbrook Woods" prepared by Timothy J. Farrell, Land Surveyor, of B.W. Smith and Associates, Inc., dated January 22, 2013, signed June 4, 2013, and approved with this application, as qualified by these development conditions.

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.

PROPOSED DEVELOPMENT CONDITIONS

VC 2013-DR-018

December 4, 2013

1. This variance is approved to permit the accessory structure, a playground set, to remain in the front yard of the property as shown on the plat "Variance Plat, Lot 4, Section One, Chesterbrook Woods" prepared by Timothy J. Farrell, Land Surveyor, of B.W. Smith and Associates, Inc., dated January 22, 2013, signed June 4, 2013, as submitted with this application and is not transferable to other land.

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

APPENDIX 3

Application No.(s): SP 2013 - DR - 075
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: September 6, 2013
(enter date affidavit is notarized)

I, Stephen G. Rademaker and Danielle M. Pletka, do hereby state that I am an
(enter name of applicant or authorized agent)

122509

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

and that, to the best of my knowledge and belief, the following is true:

==========

1(a). The following constitutes a listing of the names and addresses of all **APPLICANTS, TITLE OWNERS, CONTRACT PURCHASERS,** and **LESSEES** of the land described in the application,* and, if any of the foregoing is a **TRUSTEE,**** each **BENEFICIARY** of such trust, and all **ATTORNEYS** and **REAL ESTATE BROKERS,** and all **AGENTS** who have acted on behalf of any of the foregoing with respect to the application:

(**NOTE**: All relationships to the application listed above in **BOLD** print must be disclosed. Multiple relationships may be listed together, e.g., **Attorney/Agent, Contract Purchaser/Lessee, Applicant/Title Owner**, etc. For a multiparcel application, list the Tax Map Number(s) of the parcel(s) for each owner(s) in the Relationship column.)

NAME (enter first name, middle initial, and last name)	**ADDRESS** (enter number, street, city, state, and zip code)	**RELATIONSHIP(S)** (enter applicable relationships listed in **BOLD** above)
Stephen G. Rademaker	1620 Brookside Rd., McLean, VA 22101	Applicant/Title Owner
Danielle M. Pletka	1620 Brookside Rd., McLean, VA 22101	Applicant/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-DR-075
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: September 6, 2013
(enter date affidavit is notarized)

122509

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)

N/A

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)

N/A

(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-075
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: September 6, 2013
(enter date affidavit is notarized)

122509

==========

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)

N/A

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

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

N/A

(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-075
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: September 6, 2013 122509
(enter date affidavit is notarized)

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-075
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: September 6, 2013 122509
(enter date affidavit is notarized)

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

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

None

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

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

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

WITNESS the following signature: _____ _____

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

Stephen G. Rademaker and Danielle M. Pletka, Title Owners
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 6 day of September 2013, in the State/Comm. of District of Columbia, County/City of —.

_____
Notary Public

My commission expires: Terri Vinson Gbade
Notary Public, District of Columbia
My Commission Expires 5/14/2015

Application No.(s): VC 2013 - DR - 018
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: September 6, 2013
(enter date affidavit is notarized)

122508

I, Stephen G. Rademaker and Danielle M. Pletka, 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

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)
Stephen G. Rademaker	1620 Brookside Rd., McLean, VA 22101	Applicant/Title Owner
Danielle M. Pletka	1620 Brookside Rd., McLean, VA 22101	Applicant/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): VC 2013-DR-018
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: September 6, 2013
(enter date affidavit is notarized)

122508

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)

N/A

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)

N/A

(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): VC 2013-DR-018
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: September 6, 2013
(enter date affidavit is notarized)

122508

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)

N/A

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

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

N/A

(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): VC 2013-DR-018
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: September 6, 2013
(enter date affidavit is notarized)

122508

==========

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): VC 2013-DR-018
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: September 6, 2013
(enter date affidavit is notarized)

122508

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

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

None

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

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

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

WITNESS the following signature: [signature]

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

Stephen G. Rademaker and Danielle M. Pletka, Title Owners
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 6 day of September 2013, in the State/Comm. of District of Columbia, County/City of —.

[signature]
Notary Public

erri Vinson Gbade
tary Public, District of Columbia
ommission Expires 5/14/2015

My commission expires: _____

APPENDIX 4

ing

SEP 0 9 2013

Zoning Evaluation Division

STEPHEN RADEMAKER AND DANIELLE PLETKA
1620 Brookside Road
McLean, Virginia 22101

September 6, 2013

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

SUBJECT: Statement of Justification for Special Permit

Dear Sirs:

This statement is submitted in support of our Application for a Special Permit. As required in connection with that application, this statement addresses in detail how the application complies with all nine required standards for a special permit as set forth in Section 8-923 of the Zoning Ordinance.

Background

We the applicants, Stephen Rademaker and Danielle Pletka, moved into our house at 1620 Brookside Rd. in August of 2006. Joining us in that move were our four children, Nicola (at that time age 2), Sophia (then 7), Olivia (then 10), and Andrew (then 19). In the fall of 2007, we decided to install a swimming pool on our property. We contracted with Maryland Pools, Inc., to design, permit, and construct the pool. All required permits were issued by Fairfax County, and in the spring of 2008, the pool was installed.

As part of this process, we were required for reasons of safety to ensure that the pool area was completely enclosed by fencing. There was a pre-existing wooden fence on the property of our neighbor to the south (lot 324), and we were able to rely on this fence for all but about 10 ft. of the southern perimeter of the pool area. It was necessary for us to hire a fencing company to fence in the rest of the pool area. Upon the advice of Maryland Pools, we contracted with a Fairfax County-based fencing company. We did not direct the fencing company to install fencing of any particular height around the pool. Rather, we relied on their expertise to install appropriate fencing. They chose to install a 6 ft. high wooden along the other perimeters of the pool area, except on top of a pre-existing retaining wall along the eastern perimeter of the pool area. On top of this wall, the fencing company installed a 4 ft. high iron fence.

Once construction of the pool and the fencing was complete, the site was inspected and approved by Fairfax County inspectors. In reliance upon the approval we had received from Fairfax County, we thanked Maryland Pools and the fencing company for their efforts and paid them in full. Had Fairfax County informed us at that time that the fence had been installed in violation of zoning requirements, we would have compelled the fencing company to correct the problem and install a compliant fence.

For the next five years, no issues arose with respect to the fence. In the fall of 2012, however, we were the subject of a Notice of Violation completely unrelated to the fence. In April 2013 we filed an Application for a Variance addressing the subject matter of the Notice of Violation. As part of that

Application, we submitted a new plat map of our property, which, among other things, showed the fencing that had been installed around the pool area.

That plat map was reviewed by technical experts in the Department of Planning and Zoning, who evidently discerned from the map a minor violation of Fairfax zoning requirements with respect to fences. As we understand it, the violation concerns the wooden fencing in the southeast corner of the pool area. This consists of the approximately 10 ft. of fencing we installed to complete the fence line along the southern perimeter of the pool area, as well as an adjacent wooden gate approximately 10 ft. wide on the eastern perimeter of the pool area between the property line and the commencement of the iron fencing on top of the retaining wall. Both the 10 ft. of fencing and the gate are approximately 6 ft. high, consistent with the rest of the wooden fence enclosing the pool area. However, at least some portion of this fencing appears to be within the "front yard" of our house, where we understand fencing cannot exceed 4 ft. in height. To the extent that there may be an issue regarding the height of the pre-existing fence on our neighbor's property, we assume that does not concern us.

By letter dated May 13, 2013, we were informed by a member of the Department of Planning and Zoning staff that our Application for a Variance was defective in a number of respects. Among other things, we were told that if we wished to proceed with our Application for a Variance we would need also to submit an Application for a Special Permit with respect to the fence. This Application for a Special Permit is submitted pursuant to that advice, at the same time that we are submitting a revised Application for a Variance.

<u>The Six Required Standards</u>

This application complies with all six required standards for a Special Permit with respect to the height of a fence, as set forth in Section 8-923 of the Zoning Ordinance as follows:

1. *The maximum fence and/or wall height shall not exceed six (6) feet and such fence and/or wall shall not be eligible for an increase in fence and/or wall height pursuant to Par. 31 of Sec. 10-104.*

The fencing in question does not exceed 6 ft. in height, and we do not intend to seek an increase in fence height above 6 ft.

2. *The fence and/or wall shall meet the sight distance requirements contained in Sect. 2-505.*

The fencing in question is not on a corner of our lot near an intersection, and is about 20 ft. removed from the nearest public right-of-way.

3. *The BZA shall determine that the proposed fence and/or wall height increase is warranted based upon such factors to include, but not limited to, the orientation and location of the principal structure on the lot, the orientation and location of nearby off-site structures, topography of the lot, presence of multiple front yards, and concerns related to safety and noise.*

The 6 ft. high fencing at issue is consistent in height with the rest of the fencing enclosing the pool area, including the fencing installed by our neighbor, to which it is attached. Aesthetically, therefore, it is more attractive than would be a 4 ft. high fence in this location. It also contributes to realization of the safety considerations that account for installation of the fence in the first place. Simply put, a 6 ft. high

fence provides a greater impediment to accidental or unauthorized entry to our pool area than would a 4 ft. high fence.

4. *The BZA shall determine that the proposed fence and/or wall height increase will be in character with the existing on-site development and will be harmonious with the surrounding off-site uses and structures in terms of location, height, bulk, scale and any historic designations.*

The 6 ft. high fencing at issue is virtually invisible from outside our property due to screening provided by a holly tree hedge and other vegetation. Further, as explained above, it is consistent in height with the fencing installed by our neighbor, to which it is attached.

5. *The BZA shall determine that the proposed fence and/or wall height increase shall not adversely impact the use and/or enjoyment of other properties in the immediate vicinity.*

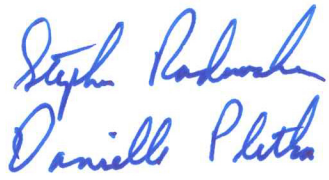
The 6 ft. high fencing at issue is visible only from one adjacent property, and that neighbor has a pre-existing 6 ft. high fence that is harmonious with our fence. We are confident that neighbor would prefer to maintain the harmonious appearance of the fencing along our property line rather than disrupt it with fencing of inconsistent height.

6. *The BZA may impose such conditions as it deems necessary to satisfy these criteria, including but not limited to imposition of landscaping or fence and/or wall design requirements.*

The 6 ft. high fencing at issue is already screened by our holly tree hedge and other vegetation. As a result, it is virtually invisible from outside out property. The fact that no one in our neighborhood has ever complained about our fence suggests that no additional mitigation measures are necessary.

We are grateful for the consideration of this application. Should you have any questions about the foregoing points, you may send them to SRademaker@Podesta.com, or raise them by phone at (202) 460-0348.

Sincerely,



RECEIVED
Department of Planning & Zoning

SEP 09 2013

Zoning Evaluation Division

STEPHEN RADEMAKER AND DANIELLE PLETKA
1620 Brookside Road
McLean, Virginia 22101

September 6, 2013

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

SUBJECT: Statement of Justification for Variance

Dear Sirs:

This statement is submitted in support of our Application for a Variance. As required in connection with that application, this statement addresses in detail how the application complies with all nine required standards for a variance as set forth in Section 18-404 of the Zoning Ordinance.

Background

We the applicants, Stephen Rademaker and Danielle Pletka, moved into our house at 1620 Brookside Rd. in August of 2006. Joining us in that move were our four children, Nicola (at that time age 2), Sophia (then 7), Olivia (then 10), and Andrew (then 19). In the spring of 2010, we decided to install a swing set on the property for our children. In keeping with the character of our neighborhood, we negotiated with distributors of high end play sets for children, and ultimately contracted with Play N' Learn, Inc., of Chantilly, VA, to install a swing set. As indicated on the attached invoice, the installed price of the swing set was $7,393.83. Installation was performed by Play N' Learn, Inc., on May 7, 2010.

Play N' Learn assisted us in selecting the site for the swing set. Play N' Learn's website emphasizes that they offer "an experienced, knowledgeable staff" and "full expert delivery and installation." As a business located and operating in Fairfax County, it never occurred to us that their expert staff would install the swing set in an improper or impermissible location. At no time did they suggest to us that the site selected could be problematic under the Fairfax County Zoning Ordinance, and it never occurred to us that such might be the case. Certainly we were unaware of the fact that, as a corner lot, the Fairfax County Zoning Ordinance regards our property to have two front yards, one (like our house) facing Brookside Rd., and the other facing Woodley Rd.

The site chosen for the swing set was in what we have always regarded as our side yard—the North side of the house facing Woodley Rd. This is a grassy area almost entirely enclosed by a 12-foot high hedge of holly trees. Because of the hedge and other features of the property, this area is virtually invisible from outside the property from all but one perspective. And unlike most of the rest of the property, the area is flat. The rest of the property is on a hillside, interrupted by retaining walls that we installed, and by the house itself, the foundation of which acts as a one-story high retaining wall on the side of the hill.

In truth, there was no other site on the property where the swing set could have been installed. Excluding those parts of the property which we knew at the time to be our front yard (the side between the house and Brookside Rd.), or which we subsequently learned were technically considered front yard

(the side facing Woodley Rd.), more than half the .66 acre property was off-limits. Further excluding the areas taken up by the house, pool, patio, and retaining walls, only a small fraction of the property remains. All of the remaining areas are too steep to permit the installation of a swing set. In addition, all the remaining areas are either too narrow (in the case of the area to the West of the house and the area to the South of the pool), or densely wooded (in the case of the Southwest corner of the property). Therefore, had we realized in 2010 that we were not permitted to install the swing set on the side of the house facing Woodley Rd., we would not have proceeded with the project.

The first indication we had that there was any issue with the location of the swing set came when we received a Notice of Violation (Case #201206579 SR # 87692) dated September 25, 2012. The Notice stated that a Fairfax County code compliance investigator had determined that we had "an accessory structure (play structure) located in the front yard" and that this structure "is in conflict with Par. 12C of Sect. 10-104 of the Fairfax County Zoning Ordinance."

In subsequent conversations with the investigator who signed the Notice, we were informed that he had come to our property to investigate a complaint that our swimming pool equipment made too much noise. He determined that the complaint about our swimming pool equipment was ill-founded, but while on the property he noticed the swing set and chose to cite it as a violation of the Zoning Ordinance. When asked, he confirmed that no complaint had ever been received regarding the location of the swing set.

On October 19, 2012, we submitted an Application for Appeal of the Notice of Violation, arguing that the swing set had been sited in the front yard due to an error in building location. Department of Planning and Zoning staff subsequently brought to our attention that there were no grounds in this case for an Application for Appeal, and that if we wished to challenge the Notice of Violation, the proper procedure for doing so is to submit an Application for a Variance. Accordingly, acting on the advice of the staff, we withdrew the Application for Appeal, and on April 23, 2013 submitted an Application for a Variance.

By letter dated May 13, 2013, we were informed by a member of the Department of Planning and Zoning staff that our Application for a Variance was defective in a number of respects. Accordingly, we have revised the Application in order to correct those defects and are submitting this revised Application for a Variance.

<u>The Nine Required Standards</u>

This application complies with all nine required standards for a variance as set forth in Section 18-404 of the Zoning Ordinance as follows:

1. *That the subject property was acquired in good faith.*

We bought 1620 Brookside Rd. in 2004, immediately after the birth of our fourth child. We moved into the property in August 2006 following demolition of a pre-existing structure and construction of the house in which we now reside. We had resided for the previous 12 years in a nearby neighborhood of Fairfax County; our move was occasioned by the need to find a larger house for our growing family.

2. *That the subject property has at least one of seven specified characteristics.*

Our property has at least four of the seven specified characteristics:

A and B. Exceptional narrowness and exceptional shallowness at the time of the effective date of the Ordinance.

Because ours is a corner lot, these characteristics are effectively interchangeable for our property; the property is both "narrow" and "shallow", depending on whether looked at from the perspective of Brookside Rd. or Woodley Rd. Due to the siting of our house, more than half of our .66 acre property is technically characterized as "front yard" and therefore not available for construction of a swing set. Most of the remaining property that is not technically "front yard" is occupied by the house, pool, patio, and retaining walls. Therefore only a small fraction of the property would theoretically be available for construction of a swing, and these areas are too cramped for such a use.

As indicated on the plat map, the margin between the edge of the window well and the western boundary of our property is just 21.4 ft. Similarly the margin between the edge of the pool area and the southern boundary is just 17.5 ft. And, as explained below, in both cases these margin areas are too steep to permit construction of a swing set.

E. Exceptional topographic conditions.

Most of our property consists of a steep hillside. In order to build on and landscape the property, we had to construct four major retaining walls. In addition, the house itself was built to function as a retaining wall. The house is built in an "L" shape in order to wrap around the hill, and the level of the land on the Southwest side of the house is one story higher than on the North and East sides of the house. As a result, there are few areas on the property that are flat enough to build a swing set, and these are all either located in one of the "front yards" or already occupied by other structures. The largest single area of flat land is in the "front yard" on the North side of the house, adjacent to Woodley Rd., where the swing set was installed in 2010. All of the areas not in a "front yard" and not already occupied are too steep to build a swing set on. This includes the margin areas to the West of the house and to the South of the pool area. It also includes the area in the southwest corner of the property. That corner is both too steep to build on, and wooded in a manner that would prevent construction of a swing set, including by an old-growth oak and a large holly tree.

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

In addition to the facts described above, the location currently occupied by the swing set is extraordinary for a "front yard" in that it is almost entirely concealed from the surrounding neighborhood. Due to the hillside on which our house sits, that yard is well below the level of the house, and screened by an embankment along much of Brookside Rd. It is surrounded on two sides by a roughly 12-foot high hedge of holly trees, and on a third side by thick copse of trees. As a result, the swing set is clearly visible from only one point along the perimeter of our property, where our driveway joins Brookside Rd.

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

The facts we present are, hopefully, unusual in Fairfax County. We built an expensive structure by accident in an improper location. We were unaware that we had two "front yards", and therefore did not do this intentionally. To the contrary, we reasonably relied on a self-professed "expert" contractor to install the structure in a permissible location. There is no alternate location on our property where the structure could have been built, or to which it can now be moved. None of our neighbors has ever complained about the structure, and indeed some of their children play on it. Despite being in a "front yard", the structure is largely invisible to our neighbors due to unique features of the site. And it is fundamentally a temporary structure. Our youngest child is now nine years old, and we do not anticipate retaining the play set after she and her older sisters have grown up. The likelihood of all these circumstances presenting themselves in another case are slim, and therefore this is not a situation that calls for general regulation or amendment to the Zoning Ordinance, but rather is better addressed by means of a variance.

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

For the reasons already explained, there is no alternative location on our property to which the swing set may be moved. Accordingly, strict application of this Ordinance will require permanent dismantlement of the swing set. We, of course, would be disappointed to see our $7,400 investment in the swing set wiped out. But much harder to accept would be the disappointment of our children. How do we explain to them that their elected government has decided that they must be deprived of their swing set even though no one in the neighborhood has ever complained about it? The real hardship will be theirs, as they will be deprived of a source of much joy in their lives.

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

The vast majority of properties in our neighborhood are not corner lots, and therefore the owners are permitted the use of a substantially larger percentage of their property than are we. Perhaps for this reason, we are not aware of any other properties in our zoning district or vicinity that have children's play structures located in a "front yard".

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

Strict application of the Zoning Ordinance would certainly amount to confiscation of our children's swing set, as there is no other location on our property where it could be installed. It would also deny our children the enjoyment of the one portion of the property that they regard as their own. Their consternation at having their swing set taken from them by government fiat would not just be a hardship, it would be traumatic.

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

No owners of adjacent properties have ever complained about our swing set. This is hardly surprising, given that the swing set is barely visible from the street. To the extent our neighbors notice it at all, it is due to the sounds of our children—and in some cases theirs as well—joyfully playing on it. These

sounds enhance the sense of community in our neighborhood. Far from being detrimental to adjacent properties, this is an enhancement.

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

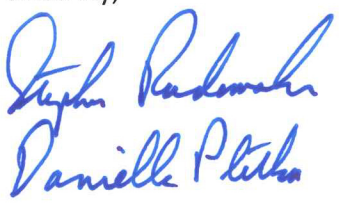
For the same reasons that the swing set is an enhancement rather than a detriment to adjacent properties, granting the variance will not adversely affect the character of the zoning district. Further, given the small size of the swing set relative to the zoning district, and minor nature of the proposed variance, it is inconceivable that granting the variance will change the character of the zoning district in any way.

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

The objective of the Zoning Ordinance is to maximize the benefit to all residents of Fairfax County of our land resources. In a case such as this, where no one has complained about the existing swing set, it is barely visible to others in the neighborhood, and the hardship to our children of requiring it to be dismantled is manifest, the spirit and purposes of the Zoning Ordinance would best be served by granting the variance.

We are grateful for the consideration of this application. Should you have any questions about the foregoing points, you may send them to SRademaker@Podesta.com, or raise them by phone at (202) 460-0348.

Sincerely,



ORDER
RETAIL

PLAY N' LEARN, INC.
4106 WESTFAX DRIVE
CHANTILLY, VA 20151
(703) 502-1864

Order No. S-82039
Order Date. . . . 04/18/10
Page. 1

Sold To: STEPHEN G RADEMAKER
1620 BROOKSIDE ROAD
MC LEAN, VA 22101
703-919-6515

Ship To: STEPHEN G RADEMAKER
1620 BROOKSIDE ROAD
MC LEAN, VA 22101

Customer ID . . . 122728
P.O. Number . . .
P.O. Date 04/18/10
Due Date 04/18/10

Ship Via. . . . . . OUR TRUCK
Ship Date. 04/18/10
Terms. . . . . . ***COD***
Salesperson(s). . AMY EDWARDS

Notes:
CUSTOMER NEEDS INSTALLATION ON MAY 7TH PER RANDI
ALLOW 5 DAYS FOR CALL FOR SCHEDULING
MICHAEL DISCOUNTED ORDER BY $100.00 DUE TO RAINBOW CATALOG WITH PRICING IS ON IT'S WAY AIE

*******BEING INSTALLED FROM COLUMBIA WAREHOUSE*
D&I 5/7 ARRIVE 11-1

tem No.	Description	Schedule Delivery	Qty	List Price	Disc. %	Total Price	WH
29042	2010-57 OUTBACK HD + ROCK	Yes	1	8,174.00	25	6,130.50	WH
29101	10 OB RUNGLADDER HD	Yes	-1	690.00	25	-517.50	WH
29104	10 OB CHAINLADDER HD	Yes	1	920.00	25	690.00	WH
29194	10 MONKEY CLIMBER HD	Yes	1	1,050.00	25	787.50	WH
29267	10 TODDLER SWING GREEN	Yes	-1	145.00	25	-108.75	WH
29270	10 BELT SWING GREEN	Yes	1	80.00	25	60.00	WH
	Delivery Charge for 29042	Yes	1	99.00	100	0.00	
	Installation Charge for 29042	Yes	1	475.00	100	0.00	
	Installation Charge for 29194	Yes	1	50.00	100	0.00	

Pmt. Date	Pmt. Method	Exp. Date	Credit Card/Check No.	Approval	Amount Pd.		
04/18/10	COUPON			RAINBOW CA	100.00	**Subtotal:**	7,041.75
04/18/10	AMEX	02/01/12	**********2014	169557	3,600.00	**Sales Tax:**	352.08
						Total:	7,393.83
						Balance:	3,693.83

Customer Signature

Date

CUSTOMER COPY

APPENDIX 5

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
Fairfax County Zoning Ordinance

DATE OF ISSUANCE: September 25, 2012

SHERIFF'S LETTER

CASE #: 201206579 **SR#:** 87692

SERVE: Danielle M. Pletka
Stephen G. Rademaker
1620 Brookside Road
McLean, Virginia 22101

LOCATION OF VIOLATION 1620 Brookside Road
McLean, Virginia 22101-3306
Tax Map #: 31-4 ((4)) 30B
Chesterbrook Woods, Sec. 1, Lot 1
Zoning District: R-2

Dear Property Owners:

An inspection of the above referenced property on September 19, 2012 revealed the following violations of the Fairfax County Zoning Ordinance.

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

The presence of an accessory structure (play structure) located in the front yard of this lot containing 28,616 square feet and is approximately 15 feet in height and approximately 15 feet X 20 feet, (300) square feet in area.

Based on the above information, the location of the accessory structure is in conflict with Par. 12C of Sect. 10-104 of the Fairfax County Zoning Ordinance which states in part:

> No accessory structure or use, except a statue, basketball standard or flagpole, shall be located (a) in any minimum required front yard

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

> on any lot or (b) in any front yard on any lot containing 36,000 square feet or less.

Therefore, this is a violation of Par. 6 of Sect. 2-302 of the Fairfax County 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 Part 1 of Article 10.

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

- Removing the accessory structure from the property in its entirety, or
- Relocating the accessory structure from the front yard to the rear or side yard in accordance with the location regulations of Par. 12 of Sect. 10-104 of the Fairfax County Zoning Ordinance.

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.

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,

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.

8-923 ***Provisions for Increase in Fence and/or Wall Height in Any Front Yard***

The BZA may approve a special permit to allow an increase in fence and/or wall height in any front yard subject to all of the following:

1. The maximum fence and/or wall height shall not exceed six (6) feet and such fence and/or wall shall not be eligible for an increase in fence and/or wall height pursuant to Par. 3I of Sect. 10-104.

2. The fence and/or wall shall meet the sight distance requirements contained in Sect. 2-505.

3. The BZA shall determine that the proposed fence and/or wall height increase is warranted based upon such factors to include, but not limited to, the orientation and location of the principal structure on the lot, the orientation and location of nearby off-site structures, topography of the lot, presence of multiple front yards, and concerns related to safety and/or noise.

4. The BZA shall determine that the proposed fence and/or wall height increase will be in character with the existing on-site development and will be harmonious with the surrounding off-site uses and structures in terms of location, height, bulk, scale and any historic designations.

5. The BZA shall determine that the proposed fence and/or wall height increase shall not adversely impact the use and/or enjoyment of other properties in the immediate vicinity.

6. The BZA may impose such conditions as it deems necessary to satisfy these criteria, including but not limited to imposition of landscaping or fence and/or wall design requirements.

7. 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 or structure, to include existing or proposed fences and/or walls.

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 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. If applicable, existing 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.

8. Architectural depictions of the proposed fence and/or wall to include height, building materials and any associated landscaping shall be provided.

18-404 Required Standards for Variances

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

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

18-405 Conditions

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