



APPLICATION ACCEPTED: September 24, 2014

DATE OF PUBLIC HEARING: January 14, 2015

TIME: 9:00 a.m.

County of Fairfax, Virginia

January 7, 2015

STAFF REPORT

SPECIAL PERMIT SP 2014-LE-215

LEE DISTRICT

APPLICANTS/OWNERS: Thanh P. Duong
Diem-Nhien T. Pham

LOCATION: 5314 Nutting Drive, Springfield, 22151

SUBDIVISION: Springfield, Section 9

TAX MAP: 80-3 ((2)) (36) 7

LOT SIZE: 10,561 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 an addition to remain 10.7 feet from side lot line.

It should be noted that it is not the intent of staff to recommend that the Board, in adopting any conditions, relieve the applicants/owners from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

It should be further noted that the content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Board of Zoning Appeals. A copy of the BZA's Resolution setting forth this decision will be mailed within five days after the decision becomes final.

Laura Arseneau

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

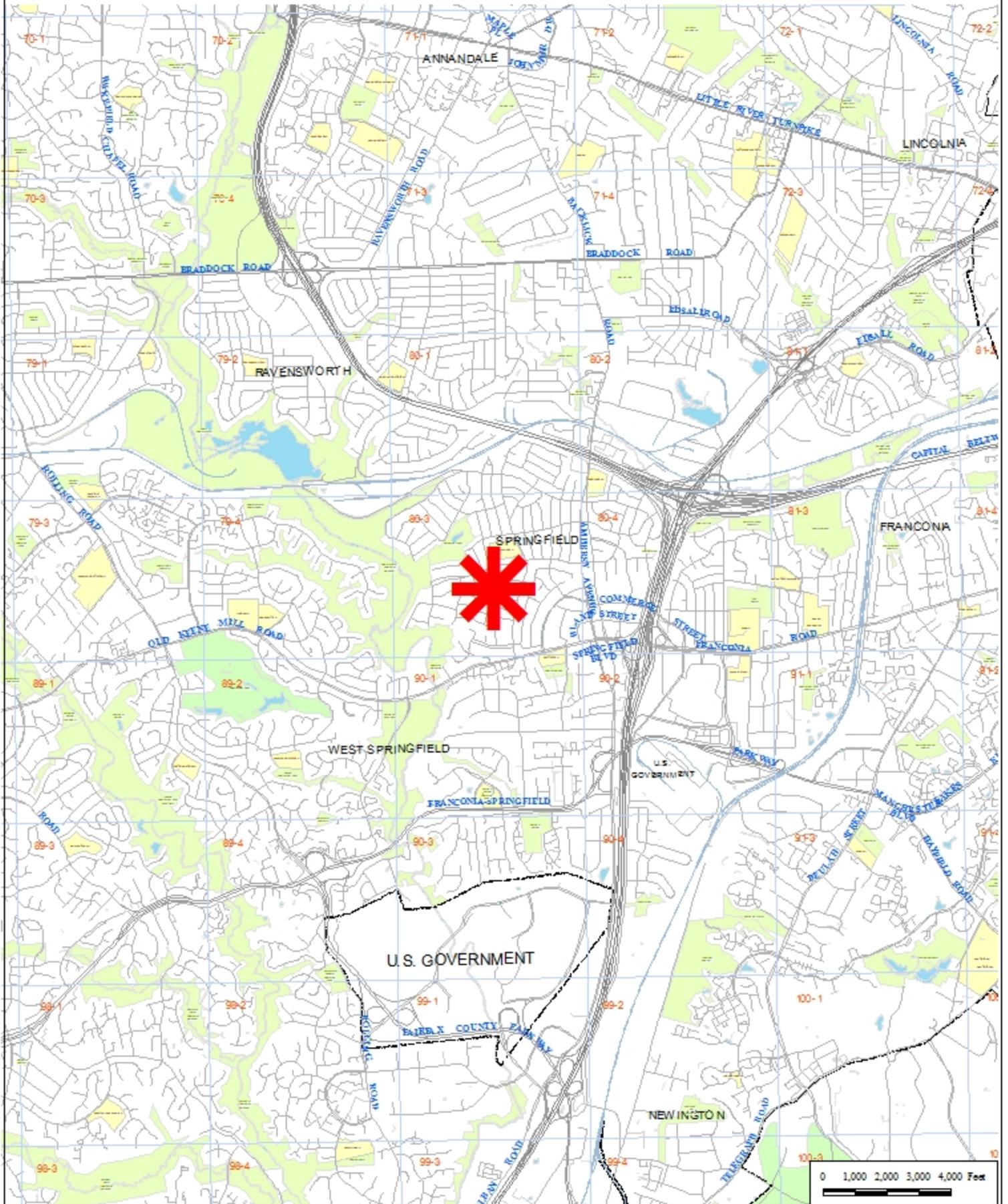
For additional information, call Zoning Evaluation Division, Department of Planning and Zoning at 703-324-1280, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035. **Board of Zoning Appeals' meetings are held in the Board Room, Ground Level, Government Center Building, 12000 Government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



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

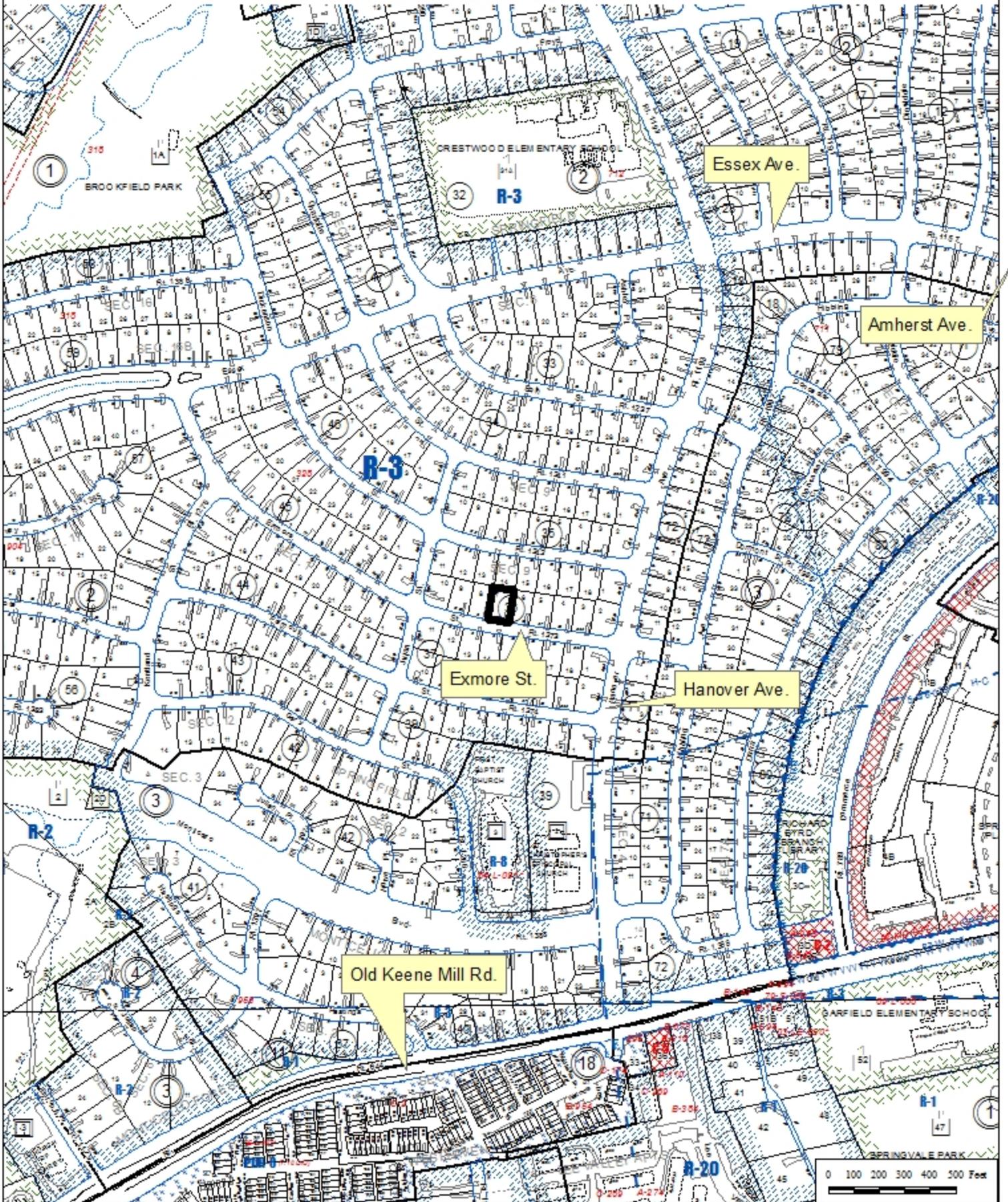
Special Permit

SP 2014-LE-215
THANH P. DUONG, DIEM-NHIEN T. PHAM



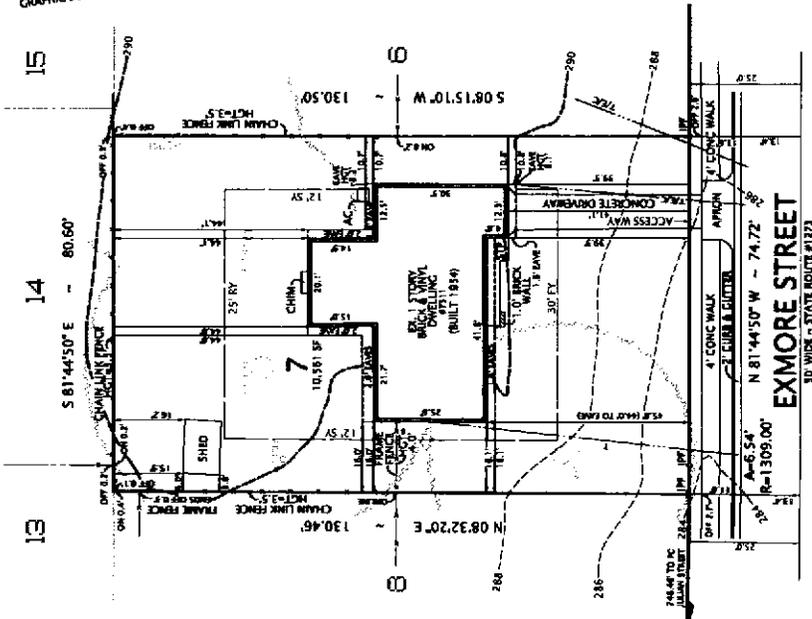
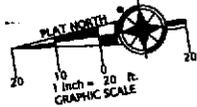
Special Permit

SP 2014-LE-215
THANH P. DUONG, DIEM-NHIEN T. PHAM



NOTES

1. TAX MAP: 80-3-02-36-007
2. ZONE: R-3 (RESIDENTIAL 3 DU/JAC)
3. LOT AREA: 10,561 SF (0.2424 ACRE)
4. REQUIRED YARDS:
 - FRONT: 30 FEET
 - SIDE: 12 FEET
 - REAR: 25 FEET
5. HEIGHTS:
 - EX. DWELLING: 11.2 FEET
 - EX. SHED: 08.3 FEET
 - EX. FENCES: AS NOTED
6. THIS PROPERTY IS SERVED BY PUBLIC WATER AND SEWER.
7. THERE IS NO OBSERVABLE EVIDENCE OF GRAVE SITES OR BURIAL GROUNDS ON THIS PROPERTY.
8. ALL IMPROVEMENTS SHOWN ON THIS PLAT ARE EXISTING.
9. THE SURVEYOR IS NOT AWARE OF ANY UTILITY BASEMENTS 25 FEET IN WIDTH OR GREATER AFFECTING THIS PROPERTY.
10. TOPOGRAPHY DELINEATED HEREON WAS TAKEN FROM AVAILABLE RECORDS, IS SHOWN AT 2' INTERVALS, AND IS AERIAL.
11. THERE ARE NO FLOODPLAINS OR RESOURCE PROTECTION AREAS ON THIS PROPERTY.
12. AREAS:
 - 1ST FLOOR GROSS FLOOR AREA = 1,747 SF
 - FLOOR AREA RATIO: GFA (1747) / LOT AREA (10561) = 0.17



NOT TO SCALE

SHOWING THE IMPROVEMENTS ON
 LOT 7, BLOCK 36, SECTION NINE
SPRINGFIELD
 (DIED BOOK 1135, PAGE 932)
 FAIRFAX COUNTY, VIRGINIA
 LEE DISTRICT
 SCALE: 1" = 20' JUNE 10, 2014

<p>1. I HEREBY CERTIFY THAT THE PORTION OF ALL THE EXISTING IMPROVEMENTS HAVE BEEN CAREFULLY ESTABLISHED BY A CURRENT FIELD SURVEY AND UNLESS SHOWN THERE ARE NO VISIBLE ENCROACHMENTS AS OF THE DATE.</p>	<p>THIS PLAT IS SUBJECT TO THE RESTRICTIONS OF RECORD. A TITLE REPORT WAS NOT FURNISHED. NO CONNER MARKERS SET.</p>
<p>CASE NAME: DIBB-HENRI T. PHAM THANH P. DUONG</p>	<p>DOMINION Surveyors Inc. 8400-H PEAR TREE VILLAGE COURT ALEXANDRIA, VA 22304 TEL: 703-993-2299 FAX: 703-993-6412</p>



REAR OF DWELLING (8-10-1)



FRONT OF DWELLING (8-10-1A)



FRONT OF DWELLING (8-10-1A)

SPECIAL PERMIT REQUEST

The applicant is seeking a special permit to allow a reduction to minimum yard requirements based on error in building location to permit addition to remain 10.7 feet from a side lot line. The applicant enclosed a former carport into living space. The addition is 11.2 feet in height.

	Structure	Yard	Minimum Yard Required	Existing Location	Existing Reduction	Percentage of Reduction Requested
Special Permit	Enclosed Carport	Side	12.0 feet	10.7 feet	1.3 feet	10.8%

A copy of the special permit plat titled “Plat, Showing the Improvements on Lot 7, Block 36, Section Nine, Springfield,” prepared by George M. O’Quinn, L.S, of Dominion Surveyors Inc., dated June 10, 2014, is included in the front of the staff report.

CHARACTER OF THE SITE AND SURROUNDING AREA

The 10,561 square foot lot is developed with single story vinyl and brick single family detached dwelling, which is accessed via a concrete driveway from Exmore Street.

A shed is located to the northwest of the property, and it meets the setback requirements. A 3.5 foot high chain link fence exists on portions of the eastern and western property lines, and also along with the northern property line. A 4.0 foot high wood frame fence exists to the west of the dwelling. The property has a manicured lawn, shrubs, and mature trees, and the topography is relatively flat.



Figure 1- Aerial Photo of Subject Property

The subject property and surrounding properties are zoned R-3 and developed with single family detached dwellings.

BACKGROUND

Fairfax County Tax Records indicate that the single family dwelling was constructed in 1954 and purchased by the applicant on May 2, 2014.

A complaint for an unpermitted addition to the east of the house was filed on May 5, 2014 (Appendix 4). A second complaint for a violation in building setbacks, was filed on May 16, 2014 (Appendix 4). The complaints are under investigation by the Department of Code Compliance (DCC) and are awaiting the result of this special permit.

The applicant applied for a building permit for the existing addition on May 21, 2014 and failed zoning review (Appendix 5).

A Notice of Violation (NOV) was issued to the applicant on May 22, 2014, for an existing addition that did not meet applicable zoning setbacks (Appendix 6). In the NOV, it states that the addition was approximately 11 feet from the eastern side lot line. However, when the certified plat was submitted to verify the setback of the addition, it was determined that the actual setback was 10.7 feet.

A copy of information outlining similar special permit and variance requests in the area is attached in Appendix 7.

ANALYSIS

Comprehensive Plan Provisions

Plan Area: Area IV, Springfield Planning District
Planning Sector: Crestwood Community Planning Sector (S2)
Plan Map: Residential uses, at 2-3 dwelling units/acre (du/ac)

Zoning Ordinance Requirements

- General Special Permit Standards (Sect. 8-006)
- Group 9 Standards (Sect. 8-903)
- 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 sections of the Zoning Ordinance as referenced above, a copy of which is included in Appendix 8. Subject to development conditions, the special permit must meet these standards.

CONCLUSION

Staff does not make recommendations on an error in building location. However, if it is the intent of the Board of Zoning Appeals to approve this application, the BZA should

condition its approval by requiring conformance with the conditions set forth in Appendix 1.

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. Building Permit History
5. Complaint History
6. Notice of Violation, dated May 22, 2013
7. Similar Case History
8. Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS**SP 2014-LE-215****January 7, 2015**

If it is the intent of the Board of Zoning Appeals to approve SP 2014-LE-215, located at Tax Map 80-3 ((2)) (36) 7, to permit an reduction in minimum yard requirements based on error in building location pursuant to Sect. 8-914 of the Fairfax County Zoning Ordinance, the BZA should condition the approval by requiring conformance with the following development conditions.

1. This special permit is approved for the location of the enclosed carport, as shown on the plat prepared titled, "Plat, Showing the Improvements on Lot 7, Block 36, Section Nine, Springfield," prepared by George M. O'Quinn, L.S, of Dominion Surveyors Inc., dated June 10, 2014.
2. All applicable permits and final inspections shall be obtained for the addition within 180 days of the approval of this application.

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

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

Propose Use

The enclosed carport has a setback (right side) less than 12 feet minimum requirement. The proposed enclosed carport now has a setback of 10.8" (per new plat dated 6/10/2014).

The non-compliance was done in good faith. We were not aware that we ~~exceed the~~ have less than the 12 feet requirement setback. The encroachment will not affect our neighbor. The 10.7ft is more than the 10 percent side setback. We believe not it will not affect the zoning ordinance. It will not create unsafe condition.

We have already built or enclosed the finished carport. It will cost us a lot of money or financial burden to remove and less living area.

The reduced sideset back will not ~~in~~ exceed the floor ~~to~~ area ratio for the R-3 district.

There is no known of all hazardous or toxic substances. The proposed development conforms to the provisions of all applicable ordinances. DP


9.24.14

RECEIVED
Department of Planning & Zoning

SEP 24 2014

Zoning Evaluation Division

RECEIVED
Department of Planning & Zoning

JUN 24 2014

Zoning Evaluation Division









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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 6-23-14
 (enter date affidavit is notarized)

125974

I, Thanh P. Duong, 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)
THANH P. DUONG	7311 Exmore street Springfield VA 22150	OWNER
DIEM-NHIEN T. PHAM	7311 Exmore street Springfield VA 22150	OWNER

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

* In the case of a condominium, the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium.

** List as follows: Name of trustee, Trustee for (name of trust, if applicable), for the benefit of: (state name of each beneficiary).

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

Page Two

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 6-23-14
(enter date affidavit is notarized)

125974

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

Page Three

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 6-23-14
(enter date affidavit is notarized)

125974

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 6-23-14
(enter date affidavit is notarized)

125974

1(d). One of the following boxes **must** be checked:

In addition to the names listed in Paragraphs 1(a), 1(b), and 1(c) above, the following is a listing of any and all other individuals who own in the aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the **APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE*** of the land:

Other than the names listed in Paragraphs 1(a), 1(b), and 1(c) above, no individual owns in the aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the **APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE*** of the land.

2. That no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household owns or has any financial interest in the subject land either individually, by ownership of stock in a corporation owning such land, or through an interest in a partnership owning such land.

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

NONE

(check if applicable) There are more interests to be listed and Par. 2 is continued on a "Special Permit/Variance Attachment to Par. 2" form.

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 6-23-14 125974
(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)

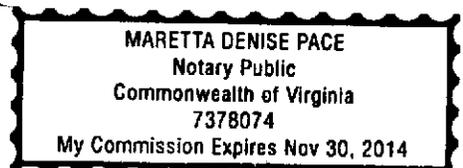
Applicant [Signature] Applicant's Authorized Agent [Signature]

Thanh P. Duong PHAM, DIEM-NHIEN T.
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 23 day of June 2014, in the State/Comm. of VIRGINIA, County/City of FAIRFAX

[Signature]
Notary Public

My commission expires: 11-30-14





Land Development Information History: FIDO - ADDITION R - 141290037

Permit Information

Permit Number:	141290037	Application Date:	
Permit Type:	RESIDENTIAL ADDITION	Tax Map:	080-3 ((02)) (36) 0007
Job Address:	007311 EXMORE ST	Permit Status:	Permit Issued
	SPRINGFIELD , VA 22150-4025	Bldg:	Floor: Suite:
Location:		Permit Fee:	
Subdivision:	SPRINGFIELD		
Magisterial District:	LEE		
Subcensus Tract:			
AP (Tenant) Name:			
Work Description:	CERC CASE #201402873 ENCLOSE CARPORT PER COUNTY DETAIL		
Type of Work:	CARPORT		
Building Use:	SFD - SINGLE FAMILY DWELLING		
Standard:	IR09 - IRC 2009		
Plan Number:	N-14-3207		
Parent Permit:			
ISIS Permit:			
Type of Const:	VB		
Use Group:	R5		
Comments:			

Link to FIDO record : [141290037](#)

Owner Information

<http://ldip.fairfaxcounty.gov/page/detail?uri=%2Fdocs%2Ffido%2Fpermit-1831903.xml&searchgrid=80...> 12/16/2014

Owner:

Address:

City:

Contractor Information

Name: OWNER IS CONTRACTOR BPOL License:

Address: State License:

City: State: VA Zip: Trade Reg.:

Trade Name:

Applicant Information

Applicant:

Address:

City: State: Zip:

Other Contact Information

Contact:

Address:

City: State: Zip:

Inspections

Inspection - R FOOTING - FOOTING INSPECTION - 6364728

Insp Type	Insp Date	Insp Name	Partial?	Insp Result	Re-Fee	Comments
R FOOTING			N	None	NO	

Inspection - R FRAMING - FRAMING INSPECTION - 6364729

Insp Type	Insp Date	Insp Name	Partial?	Insp Result	Re-Fee	Comments
R FRAMING			N	None	NO	

Inspection - R FINAL - FINAL INSPECTION - 6364730

Insp Type	Insp Date	Insp Name	Partial?	Insp Result	Re-Fee	Comments
R FINAL			N	None	NO	

Reviews

Review - SETBACK - (SETBACK CERTIFICATION REVIEW) - 2331274

Review Type	Review Date	Reviewer	Started	Status

Review Type	Review Date	Reviewer	Started	Status
SETBACK			N	Incomplete

Review - SITEPERMIT - (SITE PERMITS REVIEW) - 2326104

Review Type	Review Date	Reviewer	Started	Status
SITEPERMIT	2014-05-21	SHERRY SHEPARD	Y	Approved

Review - ZONING - (ZONING REVIEW) - 2326103

Review Type	Review Date	Reviewer	Started	Status
ZONING	2014-05-21	TAMMY MILLER	Y	Failed

Review - ZONING - (ZONING REVIEW) - 2331107

Review Type	Review Date	Reviewer	Started	Status
ZONING	2014-05-21	CLAUDIA VILLABONA	Y	Approved

Contact Us: [General \(Office of Public Affairs\)](#) | [Technical \(Web Administrator\)](#) | [Directed Inquiries \(County Agencies\)](#)
Phone: [County Main Number - 703-FAIRFAX \(703-324-7329\)](#), TTY 711 | [County Phone Listing](#)

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Land Development Information History: Search [Help](#)

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All text: All Ids: After Date:
 Address: Project Name: Before Date:
 Grid: 80 Quad: 3 Subdivision: 2 Block: 36 Lot: 7 Suffix:

Search Results

Switch to view:

Showing from 1 to 2 of about 2 results

Sort by: Pages: [1](#)

# Record	Status	Date
1 FIDO - DCC - Complaint 105121 Project Name: SPRINGFIELD Address: 007311 EXMORE ST	Under Investigation	No Date In Record
2 FIDO - DCC - Complaint 104399 Project Name: SPRINGFIELD Address: 007311 EXMORE ST	Under Investigation	No Date In Record

Showing from 1 to 2 of about 2 results

Pages: [1](#)

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Land Development Information History: FIDO - DCC - Complaint 105121

Complaint Details

Complaint #	105121
Street Address	007311 EXMORE ST
Magisterial District	Lee
Complaint Description	Setback
Agency	DCC
Status	Under Investigation
Opened Date	2014-05-16
Closed Date	
Disposition	
Inspector Assigned	Peggy Delean
Notice of Violation and/or Corrective Work Order	No
Litigation	No

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Land Development Information History: FIDO - DCC - Complaint 104399

Complaint Details

Complaint #	104399
Street Address	007311 EXMORE ST
Magisterial District	Lee
Complaint Description	Unpermitted Addition
Agency	DCC
Status	Under Investigation
Opened Date	2014-05-05
Closed Date	
Disposition	
Inspector Assigned	Ricky Antonowics
Notice of Violation and/or Corrective Work Order	No
Litigation	No

Contact Us: [General \(Office of Public Affairs\)](#) | [Technical \(Web Administrator\)](#) | [Directed Inquiries \(County Agencies\)](#)
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Return Copy

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: May 22, 2014

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Thanh Phuc Duong
Diem-Nhien T. Pham

ADDRESS: 5314 Nutting Drive
Springfield, VA 22151

LOCATION OF VIOLATION: 7311 Exmore St.
Springfield, VA 22150-4025

TAX MAP REF: 0803 02360007

ZONING DISTRICT: R- 3

CASE #: 201402873 **SR #:** 105121

ISSUING INVESTIGATOR: Peggy Delean, (703)324-1330

POTENTIAL CIVIL PENALTIES UNDER ZONING ORDINANCE

§ 18-903(1):	Zoning Violation	First Offense	Each Subsequent Offense
	§2.307.1	\$ 200.00	\$ 500.00
	TOTAL:	\$ 200.00	\$ 500.00

Dear Responsible Party:

An inspection of the above referenced property on May 19, 2014, revealed the following violation of the Fairfax County Zoning Ordinance:

§ 2-307 (1) Meeting Minimum Bulk Regulations – Addition Added

The inspection revealed that a carport, located on the right side of the house, has been enclosed on the

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

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Diem-Nhien T. Pham
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front and right sides. A carport is defined in Article 20 of the Zoning Ordinance as:

CARPORT: Any space outside a building and contiguous thereto, wholly or partly covered by a roof, used for the shelter of parked motor vehicles. A carport shall have no enclosure that is more than eighteen (18) inches in height, other than the minimum required supports for its roof, and the side(s) of the building to which the carport is contiguous.

The structure no longer meets the definition of a carport and is, therefore, an addition. This addition is approximately 11' from the side lot line. This property is zoned an R-3 District and bulk regulations for this district include minimum yard requirements for a single family attached dwelling, which is delineated in Par. 2A(1) of Sect. 3-307 of the Zoning Ordinance, which states:

Minimum yard requirements

A. Single family dwellings

(1) Conventional subdivision lot

- (a) Front yard: 30 feet
- (b) Side yard: 12 feet
- (c) Rear yard: 25 feet

Therefore, since the dwelling with the addition does not meet the minimum side yard requirement for the R-3 District, it is in violation of Par. 2A(1) of Sect. 3-307 and Par. 1 of Sect. 2-307 of the Zoning Ordinance, which states:

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

You are hereby directed to clear this violation within **thirty (30) days** after the date of this notice. Compliance must be accomplished by:

- Removing the front and side enclosures and restoring the structure to a carport to allow it to extend into the minimum required side yard requirements; or
- Removing the addition from the property entirely; or

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- Reducing the size of the addition to meet minimum required side yard requirements and obtaining approval for a Building Permit; or
- Making an application for and ultimately obtaining approval of a Group 9 Special Permit from the Board of Zoning Appeals (BZA) for an error in building location to allow the addition to remain at its present location on the property and obtain approval of a Building Permit for the addition.

A follow-up inspection will be made at the expiration of the time period outlined in this Notice. Failure to comply with the notice will result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance which can result in court ordered sanctions or civil penalties. Civil penalties may be ordered in the amount of \$200.00 for each violation of the Zoning Ordinance cited herein for the first violation and \$500.00 for each violation of the Zoning ordinance cited herein for any subsequent violation, in accordance with Zoning Ordinance §18-903(1).

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, 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. For information regarding an appeal contact:

Zoning Administration Division
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035
Office: (703)324-1314

Information and forms can also be obtained at <http://www.fairfaxcounty.gov/dpz/bza/appeals/>.

If you have questions, would like to schedule an appointment to meet with an investigator, or schedule a follow up inspection, please contact me directly at (703)324-1330. For any other questions, contact our main office at (703)324-1300.

Thanh Phuc Duong
Diem-Nhien T. Pham
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LEGAL NOTICE ISSUED BY:



Signature

Peggy Delean
Code Compliance Investigator
(703)324-1330
Margaret.Delean@fairfaxcounty.gov

PERSONAL SERVICE _____

Being unable to make personal service a copy was delivered in the following manner:

- Delivered to a person found in charge of usual place of business or employment during business hours and giving information of its purport.
- Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode or party named above after giving information its purport. List name, age of recipient, and relation of recipient to party named above.

Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).

Served on a Secretary of the Commonwealth.

Not found.

J. SILVER / 696
SERVING OFFICER

5-22-14 for Stacey A. Kincaid, Sheriff
DATE Fairfax County, VA

PERSONAL SERVICE _____

Being unable to make personal service a copy was delivered in the following manner:

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Served on a Secretary of the Commonwealth.

Not found.

SERVING OFFICER
for _____

DATE _____

Similar Case History

# Record		Status
1	ZAPS - SP - SP 00-L -029 Land Use: BUILDING IN ERROR : MODIFICATION TO MIN YD REQUIREMENT BASED ON ERROR Appl Description: REDUCTION IN MINIMUM YARD REQUIREMENTS BASED ON ERROR IN BUILDING LOCATION TO PERMIT ADDITION TO REMAIN 9.7 FT. FROM SIDE LOT LINE	APPLICATION APPROVED
2	ZAPS - SP - SP 2011-LE-098 Land Use: BUILDING IN ERROR : MODIFICATION TO MIN YD REQUIREMENT BASED ON ERROR Appl Description: REDUCTION IN THE MINIMUM YARD REQUIREMENTS BASED ON ERROR IN BUILDING LOCATION TO PERMIT ROOFED DECK TO REMAIN 21.0 FEET FROM THE FRONT LOT LINE AND ACCESSORY STORAGE STRUCTURE TO REMAIN 1.1 FEET FROM THE REAR LOT LINE AND 0.6 FEET FROM THE SIDE LOT LINE	APPLICATION APPROVED
3	ZAPS - SP - SP 95-L -053 Land Use: BUILDING IN ERROR : MODIFICATION TO MIN YD REQUIREMENT BASED ON ERROR Appl Description: REDUCTION TO MINIMUM YARD REQUIREMENTS BASED ON ERROR IN BUILDING LOCATION TO PERMIT ADDITION TO REMAIN 4.0 FT. FROM SIDE LOT LINE	APPLICATION APPROVED
4	ZAPS - SP - SP 2007-LE-031 Land Use: BUILDING IN ERROR : MODIFICATION TO MIN YD REQUIREMENT BASED ON ERROR Appl Description: REDUCTION IN THE MINIMUM YARD REQUIREMENTS BASED ON ERRORS IN BUILDING LOCATIONS TO PERMIT DWELLING TO REMAIN 10.2 FEET, ADDITION 9.2 FEET AND DECK 0.4 FEET FROM THE SIDE LOT LINE	APPLICATION APPROVED
5	ZAPS - SP - SP 2005-LE-016 Land Use: BUILDING IN ERROR : MODIFICATION TO MIN YD REQUIREMENT BASED ON ERROR Appl Description: TO PERMIT REDUCTION IN THE MINIMUM YARD REQUIREMENTS BASED ON ERROR IN BUILDING LOCATION TO PERMIT ADDITION TO REMAIN 0.4 FEET FROM SIDE LOT LINE.	APPLICATION APPROVED
6	ZAPS - SP - SP 2010-LE-022 Land Use: BUILDING IN ERROR : MODIFICATION TO MIN YD REQUIREMENT BASED ON ERROR Appl Description: REDUCTION TO MINIMUM YARD REQUIREMENTS BASED ON ERROR IN BUILDING LOCATION TO PERMIT ACCESSORY STORAGE STRUCTURE TO REMAIN 3.3 FEET FROM SIDE LOT LINE	APPLICATION APPROVED
7	ZAPS - SP - SP 01-L -014 Land Use: BUILDING IN ERROR : MODIFICATION TO MIN YD REQUIREMENT BASED ON ERROR Appl Description: REDUCTION TO MINIMUM YARD REQUIREMENTS BASED ON ERROR IN BUILDING LOCATION TO PERMIT ADDITION TO REMAIN 2.7 FT. FROM SIDE LOT LINE	APPLICATION APPROVED
8	ZAPS - SP - SP 2011-LE-012 Land Use: BUILDING IN ERROR : MODIFICATION TO MIN YD REQUIREMENT BASED ON ERROR Appl Description: REDUCTION OF THE MINIMUM YARD REQUIREMENTS BASED ON ERROR IN BUILDING LOCATION TO PERMIT DWELLING TO REMAIN 9.6 FEET FROM SIDE LOT LINE	APPLICATION APPROVED
9	ZAPS - SP - SP 2004-LE-011 Appl Description: MODIFICATION TO MINIMUM YARD REQUIREMENTS BASED ON ERROR IN BUILDING LOCATION TO PERMIT ACCESSORY STORAGE STRUCTURE TO REMAIN 4.2 FEET FROM THE REAR LOT LINE AND 4.4 FEET WITH EAVE 3.4 FEET FROM THE SIDE LOT LINE	APPLICATION APPROVED

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, or
 - B. The error is up to ten (10) percent of the measurement involved and such reduction or modification is requested in conjunction with the approval of a special permit for another use or application for a variance on the property, or is in conjunction with another special permit for an error in building location on the property that exceeds ten (10) percent of the measurement involved, and
 - C. 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
 - D. Such reduction or modification will not impair the purpose and intent of this Ordinance, and
 - E. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
 - F. It will not create an unsafe condition with respect to both other property and public streets, and
 - G. To force compliance with the minimum yard requirements or location regulations would cause unreasonable hardship upon the owner.
 - H. The reduction or modification 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.