



APPLICATION ACCEPTED: May 5, 2015
DATE OF PUBLIC HEARING: August 5, 2015 @ 9:00am

County of Fairfax, Virginia

July 29, 2015

STAFF REPORT

SPECIAL PERMIT SP 2015-MA-076

MASON DISTRICT

APPLICANT: Terry Kim

OWNERS: Terry Kim
David T. Kim

LOCATION: 4023 Hirst Drive, Alexandria, 22003

SUBDIVISION: Accotink Heights

TAX MAP: 59-4 ((5)) 4

LOT SIZE: 16,866 square feet

ZONING: R-2, HC

ZONING ORDINANCE PROVISION: 8-914

SPECIAL PERMIT PROPOSAL: To permit reductions in minimum yard requirements based on errors in building locations to permit an addition to remain 6.7 feet from a side lot line; a roofed deck and patio to remain 3.1 feet from a side lot line; and an accessory structure to remain 2.3 feet from a 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.

Laura Arseneau

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.

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).

- NOTES:
1. THIS PLAT IS BASED ON A CURRENT FIELD SURVEY ON APRIL 13, 2015
 2. NO TITLE REPORT WAS FURNISHED
 3. NO 25' WIDE OR GREATER EASEMENTS FOUND, NO EASEMENTS WERE FOUND OTHER THAN SHOWN, NON RECORDED EASEMENTS MAY EXIST
 4. THIS PROPERTY IS LOCATED IN FEMA FLOOD ZONE HAZARD "X" AS PER FLOOD INSURANCE RATE MAP, COMMUNITY PANEL NUMBER 51059C0280E; DATED SEPTEMBER 17, 2010
 5. CURRENT INST., DB 23616 PG 1687
 6. HOUSE BUILT IN APPROXIMATELY 1950, ADDITION IN 2014
 7. MINIMUM YARD REQUIREMENTS: FRONT 35', SIDE 15', REAR 25'
 8. PROPERTY IS SERVED BY PUBLIC WATER AND SEWER
 9. IPF DENOTES IRON PIPE FOUND

RECEIVED
Department of Planning & Zoning

MAY 05 2015

Zoning Evaluation Division

HIRST DR
50' R/W

SPLIT SHED

Elev.	Lowest adjacent grade	Max. height above LAG
A 256.0'	256.7'	11.7'
B 257.6'		
C 256.7'		

HOUSE AND ADDITION

Elev.	Mean Terrain
D 257.0'	255.5'
E 257.0'	Height at roof midpoint, house 270.9'
F 256.1'	Height at roof midpoint, addition 267.8'
G 256.1'	House Roof, AMT 15.4'
H 254.9'	Addition Roof, AMT 12.3'
I 251.3'	
J 256.4'	

TBM

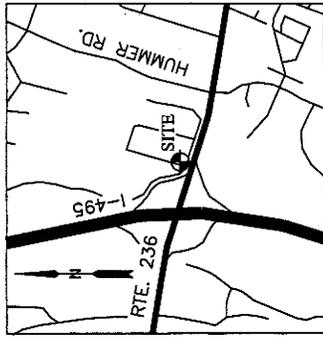
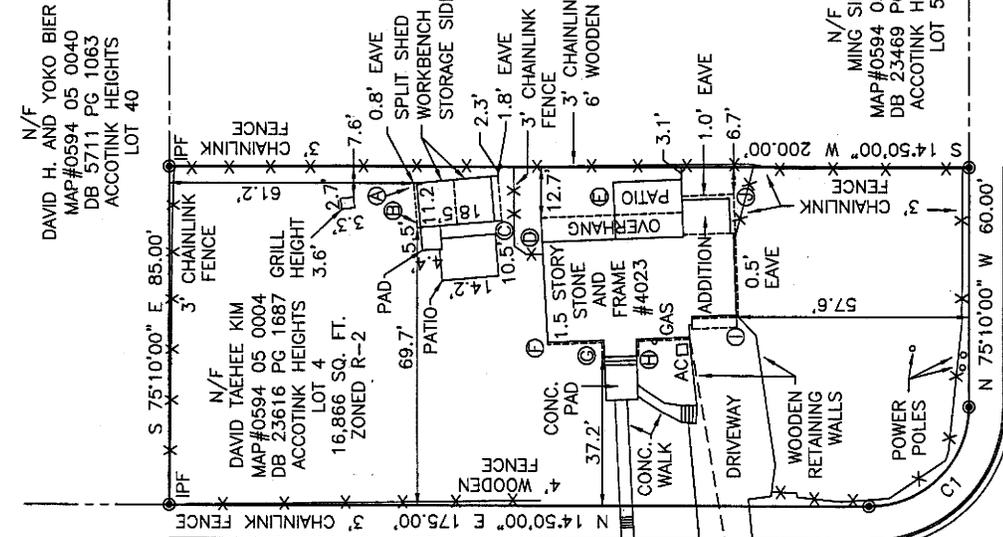
ELEV. 247.71



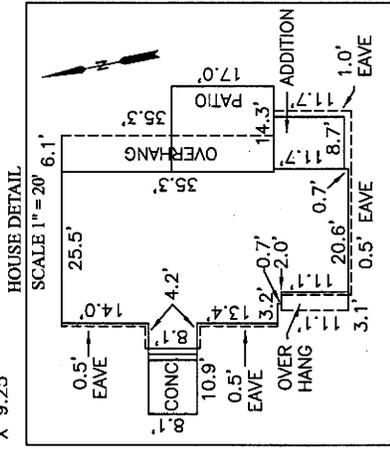
GRAPHIC SCALE 1" = 30'

CURVE	RADIUS	ARC LENGTH	CHORD BEARING	CHORD LENGTH	DELTA ANGLE
C1	25.00'	39.27'	N 30°10'00" W	35.36'	90°00'01"

NOTE: BEARINGS BASED ON PLAT OF RECORD FOR ACCOTINK HEIGHTS, RECORDED AT FAIRFAX COUNTY, VIRGINIA



VICINITY MAP 1"=2000'



HOUSE DETAIL SCALE 1"=20' 6.1'

N/F MING SIEK
MAP#0594 05 0005
DB 23469 PG 1478
ACCOTINK HEIGHTS
LOT 5

ACCOTINK HEIGHTS
LOT 4
MAP# 0594 05 0004
ZONED R-2
MASON DISTRICT
FAIRFAX COUNTY, VIRGINIA



ANDREW HORNBECK, LS #3192

MERESTONE GEOMATICS, LLC
LAND SURVEYING
6404 SECCA DR., FREDERICKSBURG, VA 22407
540-877-8722
WWW.MERESTONEGEOMATICS.COM

DATE: 05/05/2015
SURVEY: ANH
DRAWN: ANH
CHECKED: NMH

SPECIAL PERMIT PLAT
DATE: 05/05/2015
SCALE: 1" = 30'
JN: 2015-1157

SHEET 1 OF 1

REVISIONS:
DATE: 04/28/2015
COUNTY COMMENTS: TRELIS REMOVED
DATE: 05/05/2015

SPECIAL PERMIT REQUEST

The applicant is seeking a special permit to allow a reductions in minimum yard requirements based on errors in building locations to permit an addition to remain 6.7 feet from a side lot line; a roofed deck and patio to remain 3.1 feet from a side lot line; and an accessory structure (workshop) to remain 2.3 feet from a side lot line. The addition is approximately 102 square feet and 12.3 feet in height. The roofed deck and related patio are approximately 243 square feet in size. The accessory structure is approximately 208 square feet and 11.7 feet in height.

	Structure	Yard	Minimum Yard Required	Existing Location	Existing Reduction	Percentage of Reduction Requested
Special Permit	Addition	Side	15.0 feet	6.7 feet	8.3 feet	55.3%
	Roofed deck	Side	15.0 feet	3.1 feet	11.9 feet	79.3 %
	Accessory Structure/ Workshop	Side	15.0 feet	2.3 feet	12.7 feet	84.7%

A copy of the special permit plat titled “Special Permit Plat, Accotink Heights, Lot 4, Map # 0594 05 0004, Zoned R-2,” prepared by Andrew N. Hornbeck, L.S., dated May 5, 2015, is included in the front of the staff report.

CHARACTER OF THE SITE AND SURROUNDING AREA

The 16,866 square foot corner lot is developed with a one and one-half story single family detached dwelling and a garage, which is accessed via a driveway from Hirst Drive. The property has two front yards along Hirst Drive and Little River Turnpike. A stone paver sidewalk, steps and a concrete stoop are located in the front yard. An addition and a roofed deck and patio are located in the side yard of the dwelling. An accessory structure/ workshop is located to the



Figure 1- Aerial Photo of Subject Property

north of the dwelling. A four foot wood fence is located on a portion of the front property line along Hirst Drive. A three foot high chain link fence is located on the majority of the remaining property line.

The subject property and surrounding properties to the north, east and west are zoned R-2 and developed with single family detached dwellings. The property to the south is VDOT right-of-way for Little River Turnpike. The subject property is located in a Highway Corridor Overlay District for Little River Turnpike.

BACKGROUND

Fairfax County Tax Records indicate that the single family dwelling was constructed in 1950 and purchased by the applicant and her husband in 2014.

- April 18, 2014- A complaint was filed for an unpermitted shed/workshop (Appendix 4). The complaint is under investigation by the Department of Code Compliance (DCC) and is awaiting the result of this special permit. No violation was issued for the shed/workshop.
- April 21, 2014- A second complaint for a violation in building setbacks was filed for the location of the addition to the to the eastern side of the dwelling (Appendix 4). This complaint is under investigation by the DCC and is awaiting the result of this special permit.
- May 5, 2014- A Notice of Violation (NOV) related to the above complaint for the was issued to the applicant for the addition that did not meet applicable zoning setbacks (Appendix 5).
- December 5, 2014- An Agreed Final Order was issued to the applicant to allow them to apply and obtain a special permit for the addition to the east of the dwelling (Appendix 6).

According to the applicant's statement of justification (Appendix 2), in order to fix previous water leakage problems and prevent further damage, the applicant's father constructed an extension to the existing addition which increased the height to 8 feet and extended the existing roof of the addition to 6.7 feet from the property line. According to the applicant, the applicant's father completed this without knowledge of the setback regulations. The shed/workshop and roofed patio were built by a previous homeowner.

ANALYSIS

Comprehensive Plan Provisions

Plan Area: Area I, Annandale Planning District
Planning Sector: Holmes Run Community Planning Sector (A9)
Plan Map: Residential uses, at 2-3 dwelling units/acre

Bulk Standards (R-2)		
Standard	Required	Provided
Lot Size	15,000 sf.	16, 866 sf.
Lot Width	Interior: 100 feet	200 feet
Building Height	35 feet max.	15.4 feet
Front Yard	Min. 35 feet	37.2 feet, 57.6 feet
Side Yard	Min. 15 feet	6.7 feet ¹
Rear Yard	Min. 25 feet	> 25 feet

1. Modification for minimum side yard is being requested with this application

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 6. 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. Complaint History
5. Notice of Violation dated May 5, 2014
6. Agreed Court Order
7. Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS**SP 2015-MA-076****July 29, 2015**

If it is the intent of the Board of Zoning Appeals to approve SP 2015-MA-076, located at Tax Map 59-4 ((5)) 4, to permit reductions in minimum yard requirements based on errors in building locations 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 addition, roofed deck and patio and the accessory structure (workshop), as shown on the plat titled "Special Permit Plat, Accotink Heights, Lot 4, Map # 0594 05 0004, Zoned R-2," prepared by Andrew N. Hornbeck, L.S., dated May 5, 2015.
2. All applicable permits and final inspections shall be obtained for the addition, roofed deck and detached accessory structure 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.

MAY 05 2015

Zoning Evaluation Division

STATEMENT OF JUSTIFICATION

Case No.: CL-2014-0010506

REQUEST TO MODIFY THE MIMIMUM YARD AND BUILDING SETBACK
REQUIREMENT BY SPECIAL EXCEPTION UNDER SECTION 110-369 OF THE
FAIRFAX COUNTY CODE

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

Description and Location of Subject Property

The subject property is a single-family house on 4023 Hirst Drive, Annandale, Virginia built in the year of 1950. The size of the subject property is approximately 1600 square feet consisting of four bedrooms and two bathrooms. The subject property is located on the intersection of Lafayette Village Drive and Hirst Drive. The district of the subject property is a Mason R-2 district.

Background

Not long after the subject property was purchased in March 5, 2014, my family and I, the residents of the subject property discovered that there were water leakages in various parts of the house whenever it rained. As a result, the ceilings of our kitchen, the dining room and the inner walls became soaked in water, not only leaving water stains on the ceilings and the walls, but also causing discomfort and conditions that are not fit for living. Furthermore, our basement was stagnated with water, which caused damage to some of our personal properties that were kept therein. In the hopes of rectifying this grave matter, my father, who works in the construction field, without knowing that a permit is required, extended the already existing setback by 3.6 feet in length, and to 8 feet in height. This extension of the setback was a direct and natural result of extending the roof in order to keep the water away from running down the walls of the property from the roof but causing it to fall on the ground. Again, the construction was carried out without knowledge of regulations set by the Fairfax County.

Requests

The addition to the dwelling located 6.7 feet from the side lot line was extended from the already existing setback by 3.6 feet in length from the previous owner's installed structure in good faith due to a water leak. For the roofed deck (patio) located 3.1 feet and accessory structure (workshop with storage) located 2.3 feet from the side lot line was result of a build from the previous owner. Therefore, these two structures is no fault of the property owner. The error does not exceed more than ten percent of the measurement involved and such modification will not impair the purpose and intent of this ordinance. Also plead this modification will not be detrimental to the use and enjoyment of other property in the immediate vicinity and will not create an unsafe

condition with respect to both other property and public streets. The modification will not result an increase in density or floor area ratio from that permitted by the Mason R-2 district. In the hopes of special permit approval from the zoning administrator, my family and I repaired the discomfoting conditions that were not fit for living and prevented further damage in the basement due to water leakages in various parts of the house when it rained. If the BZA deny the special permit, it will cause unreasonable financial/discomfort hardships.

I respectfully ask the Fairfax Board of Zoning Appeal to consider our circumstances and allow us to preserve this one-story extension setback as such extension does not curtail the privacy of neighboring properties while demolishing such extension would entail extreme hardship for myself and my family. Without the extension of the roof and the setback, water leakage will continue to deteriorate the more than 50-year-old house, and may in the long-term cause irreparable damages.

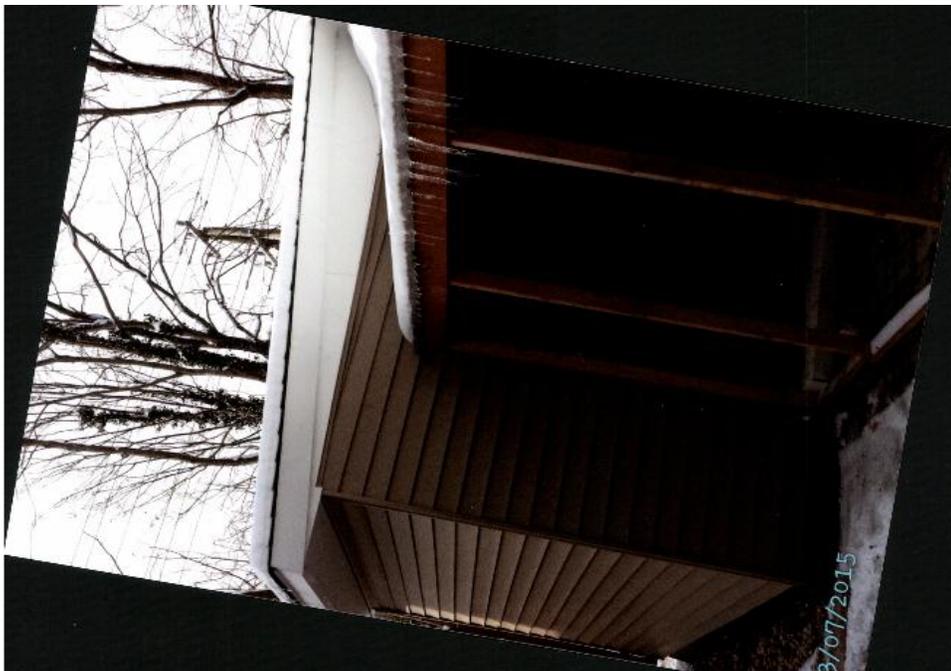
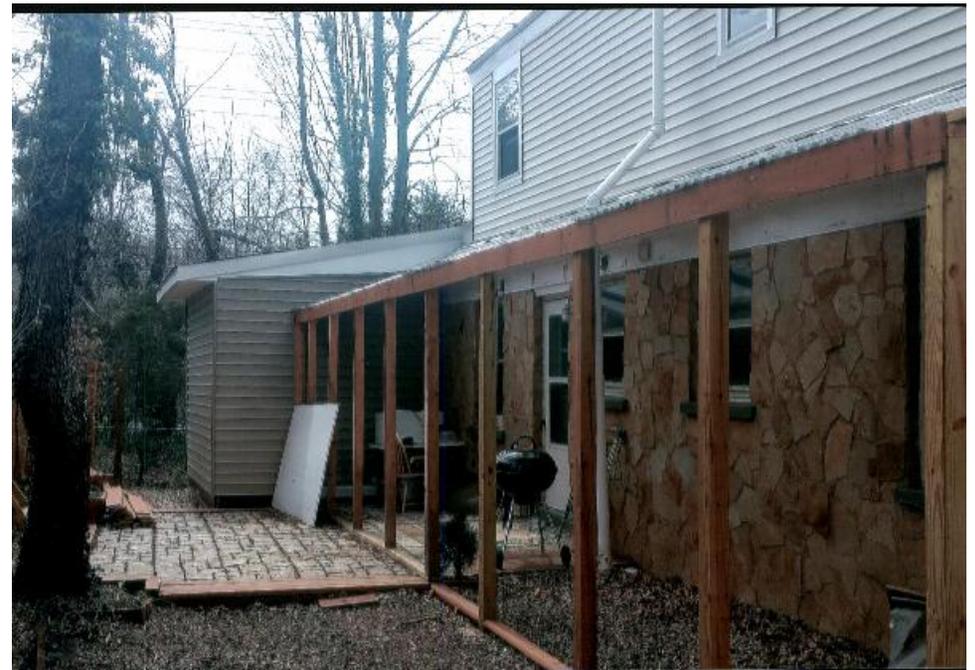
Hence, this memorandum is to plead I, the owner of the subject property located on 4023 Hirst Drive, Annandale, Virginia, am granted a special permit to maintain the current setback by special exception under Section 110-369 of the Fairfax County Code.

Should the special permit be granted, I along with my family will demonstrate our utmost efforts to conform to the regulations set forth for the Mason R-2 district.

Sincerely,

Terry Kim

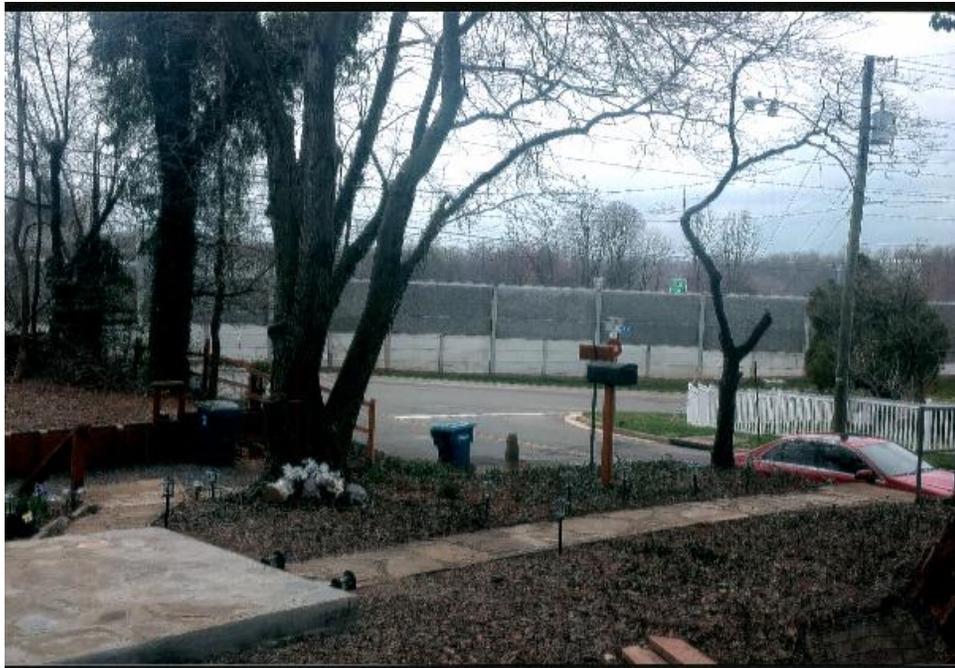
Owner of the subject property



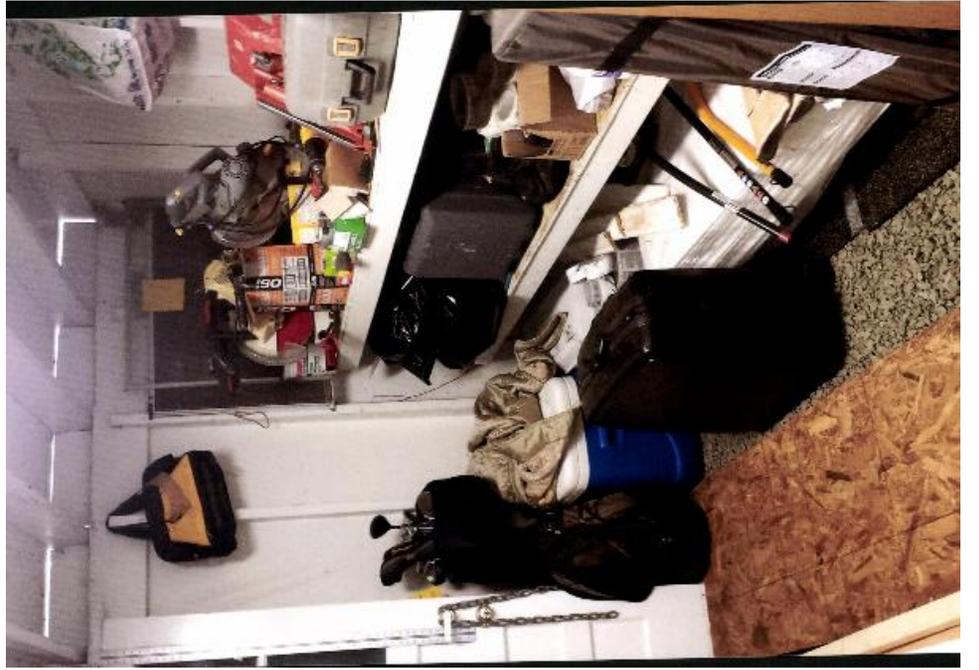


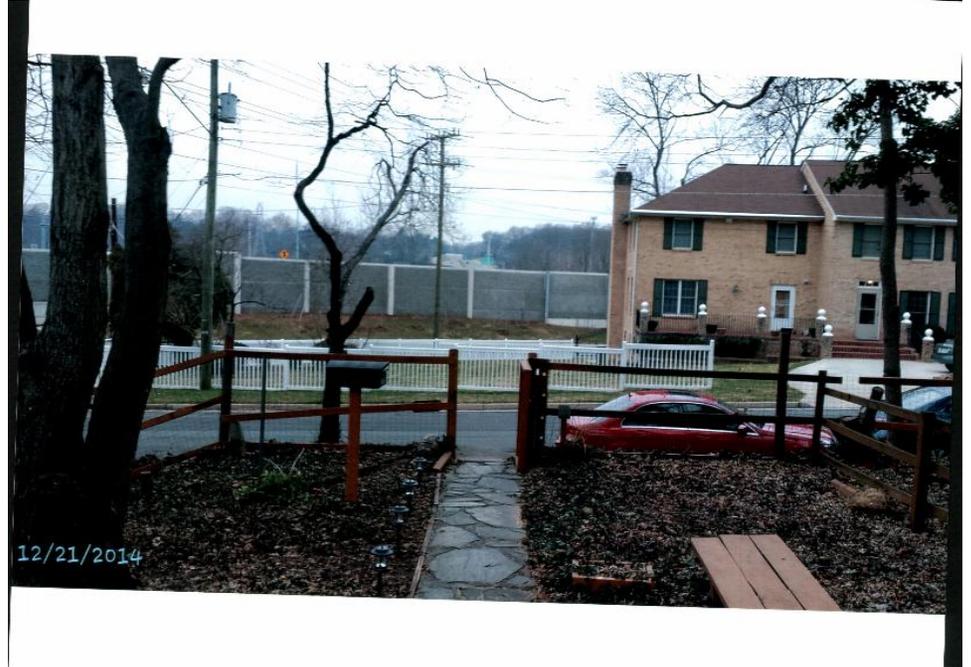




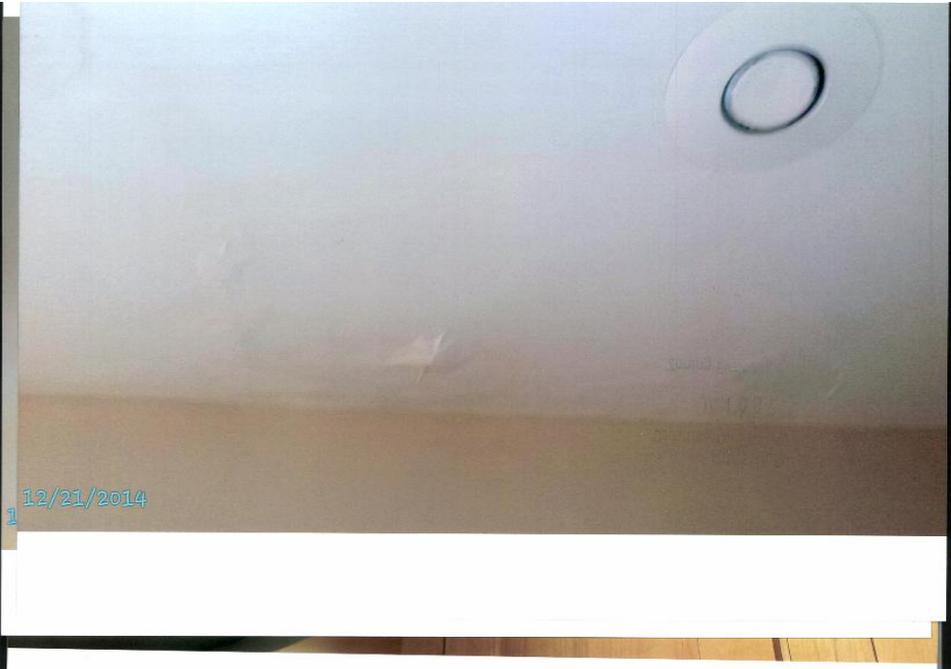














Application No.(s): SP 2015-MA-076
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 2-27-15
(enter date affidavit is notarized)

128110

I, Terry Kim, 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)
Terry Kim	4023 Hirst Dr Annandale VA 22003	Applicant/Title-owner
David T. Kim	4023 Hirst Dr Annandale VA 22003	Co 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 2015-MA-076
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 2-27-15
(enter date affidavit is notarized)

128110

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

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

CORPORATION INFORMATION

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

DESCRIPTION OF CORPORATION: (check one statement)

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

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

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

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

Application No.(s): SP 2015-MA-076
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 2-27-15
(enter date affidavit is notarized)

12810

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

PARTNERSHIP INFORMATION

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

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

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

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

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

Application No.(s): SP 2015-MIA-076
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 2-27-15
(enter date affidavit is notarized)

128110

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 2015-MA-076
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 2-27-15
(enter date affidavit is notarized)

12810

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:

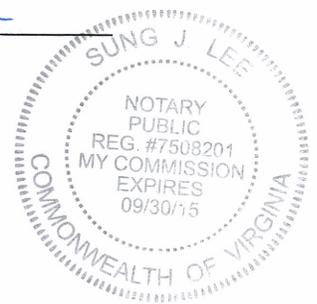
(check one) Applicant Applicant's Authorized Agent

Terry Kim
(type or print first name, middle initial, last name, and title of signer)

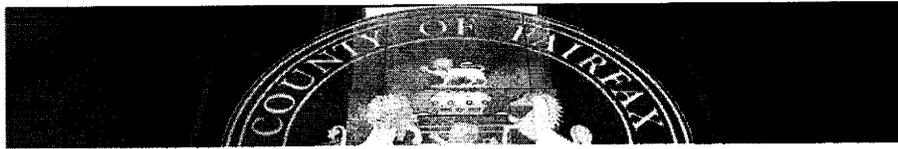
Subscribed and sworn to before me this 27 day of Feb, 20 15, in the State/Comm. of VA, County/City of Fairfax.

My commission expires: 9/30/15

[Signature]
Notary Public



[Signature]



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Community Complaint Inquiry

(4023 HIRST DR, ANNANDALE)

Complaint Number	Description	Status	Opened	Closed	Disposition
86891	Grass	Closed	08/17/2012	08/28/2012	Unfounded (No Problem Found)
103840	Unpermitted Construction	Under Investigation	04/18/2014		
103867	Zoning	Under Investigation	04/21/2014		

Complaint #	103867
Street Address	4023 Hirst Dr
Magisterial District	Mason
Complaint Description	Zoning
Agency	Code Compliance
Status	Under Investigation
Opened Date	04/21/2014
Closed Date	
Disposition	
Inspector Assigned	Victoria Dzierzek, 703-324-1300
Notice of Violation and/or Corrective Work Order	Yes ADDITION
Litigation	Yes

[Return](#)

Contact Fairfax County: [Phone, Email or Twitter](#) | Main Address: [12000 Government Center Parkway, Fairfax, VA 22035](#)
 Technical Questions: [Web Administrator](#)

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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 5, 2014

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: David Taehee Kim
Terry Kim

ADDRESS: 4023 Hirst Drive
Annandale, VA 22003

LOCATION OF VIOLATION: 4023 Hirst Drive
Annandale, Virginia 22003-2414

TAX MAP REF: 0594 05 0004

ZONING DISTRICT: R- 2

CASE #: 201402384 **SR #:** 103867

ISSUING INVESTIGATOR: Robert Burk

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 April 30, 2014 revealed the following violation of the Fairfax County Zoning Ordinance:

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

The inspection revealed an addition has been built on to the rear side of the single family detached dwelling with the following dimensions: approximately eight feet in width and approximately eight

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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feet in length. This addition, thereby, becomes part of the principal building or dwelling.

This addition is approximately four feet from the side lot line. This property is zoned R-2 District and bulk regulations for this district include minimum yard requirements for a single family attached dwelling, which is delineated in Par. 2(A)1 of Sect. 3-207 of the Zoning Ordinance, which states:

Minimum yard requirements

A. Single family dwellings

- (1) Conventional subdivision lot
 - (a) Front yard: 35 feet
 - (b) Side yard: 15 feet
 - (c) Rear yard: 25 feet

Therefore, since the dwelling with the addition does not meet the minimum side yard requirement for the R-2 District, it is in violation of Par. 2(A)1 of Sect. 3-207 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 these violations within thirty (30) days after the date of this notice. Compliance must be accomplished by:

- Removing the addition from the property entirely; or
- 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.

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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.

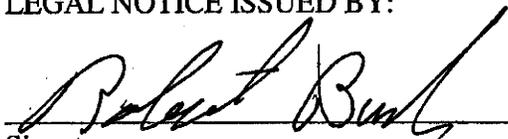
Should you choose to appeal, the appeal must be filed with the Zoning Administrator and the Board of Zoning Appeals (BZA) in accordance with Part 3 of Article 18 of the Fairfax County Zoning Ordinance. Those provisions require the submission of an application form, a written statement setting forth the 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 . For any other questions, contact our main office at (703) 324-1300.

LEGAL NOTICE ISSUED BY:



Signature

Robert Burk
Code Compliance Investigator

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Terry Kim
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PERSONAL SERVICE David Taehee Kim

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.

5/5/14 DATE

E. MURRAY / 0547
SERVING OFFICER
Stacey A. Kincaid, Sheriff
Fairfax County, VA

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.

DAVID TAEHEE KIM - Father

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.

5/5/14 DATE

E. MURRAY / 0547
SERVING OFFICER
Stacey A. Kincaid, Sheriff
Fairfax County, VA

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Not found.

SERVING OFFICER _____
for _____

DATE _____

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Served on a Secretary of the Commonwealth.

Not found.

SERVING OFFICER _____
for _____

DATE _____

JAN 08 2015

Zoning Evaluation Division

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

**LESLIE B. JOHNSON, FAIRFAX COUNTY
ZONING ADMINISTRATOR,** :

Plaintiff, :

v. :

CASE NO. CL-2014-0010506

DAVID TAEHEE KIM :

and :

TERRY KIM, :

Defendants. :

AGREED FINAL ORDER

THIS CAUSE came before the Court at the request of the Plaintiff, Leslie B. Johnson, Fairfax County Zoning Administrator ("Zoning Administrator"), and Defendants David Taehee Kim and Terry Kim ("Defendants"), for the entry of this Agreed Final Order; and

IT APPEARING TO THE COURT that the property that is the subject of this lawsuit is located at 4023 Hirst Drive, Annandale, Virginia (Tax Map No. 59-4((5)) parcel 4) ("subject property"), is zoned to the R-2 District (Residential District, Two Dwelling Units/Acre), and is owned by the Defendants; and

IT FURTHER APPEARING TO THE COURT that the Defendants constructed and are maintaining an addition to the dwelling on the subject property ("Addition") that is located within the minimum required side yard in violation of Fairfax County Zoning Ordinance ("Zoning Ordinance") §§ 2-307(1) and 3-307(2)(A)(1)(b); and

IT FURTHER APPEARING TO THE COURT that the Defendants constructed the Addition without a building permit issued by the Zoning Administrator in violation of Zoning Ordinance § 18-601; and

IT FURTHER APPEARING TO THE COURT that the Defendants intend to submit a Special Permit application ("Permit Application") to the Board of Zoning Appeals ("BZA") to cure the aforementioned Zoning Ordinance violation; and

IT FURTHER APPEARING TO THE COURT that the Zoning Administrator and the Defendants have agreed to settle this case under the terms and conditions set forth below, as evidenced by the endorsements hereon of the Defendants and counsel for the Zoning Administrator; and

IT FURTHER APPEARING TO THE COURT that the parties hereto agree that the terms of this Agreed Final Order are reasonable and shall not be modified except by the written agreement of the Zoning Administrator and the Defendants with the approval of this Court; and

IT FURTHER APPEARING TO THE COURT that this Agreed Final Order should be entered; now, therefore, it is hereby

ADJUDGED and ORDERED as follows:

1. The Defendants' maintenance and/or allowing the maintenance of the Addition on the subject property that is located less than 15 feet from the side lot line and within the minimum required side yard violates Zoning Ordinance §§ 2-307(1) and 3-207(2)(A)(1)(b); and
2. The Defendants shall, within 30 days after entry of this Agreed Final Order, submit to the County, in complete and proper form, all documents, surveys and/or plans, and fees that are necessary to file the Permit Application with the Fairfax County Department of Planning and Zoning (DPZ) and thereafter shall diligently pursue a final decision on the Permit Application by responding to all DPZ requests for additional information within 14 days and cooperating fully in scheduling all hearing in the matter; and
3. To the extent that the BZA denies the Defendants' Permit Application and, as a result, the Zoning Ordinance violation alleged in the Complaint remains unresolved, the

Defendants shall, within 30 days after such denial by the BZA and as is necessary to comply with the Zoning Ordinance, lawfully demolish the Addition on the subject property and permanently remove the resulting debris from the subject property to a lawful site, or (ii) obtain all necessary permits and modify the Addition so that it meets the minimum side yard requirements and permanently remove all resulting debris from the subject property to a lawful site; and

4. In the event that the BZA approves the Permit Application, the Defendants shall, with 30 days after the date of such approval, apply for and obtain a building permit approved by the Zoning Administrator for the Addition on the subject property as required by Zoning Ordinance § 18-601. Further, the Defendants must obtain a final inspection under the building permit within 30 days after its issuance; and

5. Unless the Zoning Administrator objects, nothing herein shall preclude the BZA from deciding a special permit application after these timeframes have expired; and

6. The Defendants, their tenants, agents, and/or employees are permanently enjoined from maintaining and/or allowing the maintenance of the Addition to the dwelling on the subject property that is located within the minimum required side yard in violation of Zoning Ordinance §§ 2-307(1) and 3-207(2)(A)(1)(b); and

7. The maintenance and/or allowing the maintenance of the Addition to the dwelling on the subject property that is located within the minimum required side yard in violation of Zoning Ordinance §§ 2-307(1) and 3-207(2)(A)(1)(b) is permanently enjoined; and

8. The Zoning Administrator and/or her agents shall be permitted to enter upon the subject property at reasonable times to inspect and photograph the subject property to ensure that the Defendants comply with this Agreed Final Order; and

9. The terms and deadlines set forth in this Agreed Final Order are reasonable and shall not be modified except by the written agreement of the parties with the approval of this Court; and

10. The Clerk of the Fairfax County Circuit Court shall record a copy of this Agreed Final Order among the land records of Fairfax County, Virginia, pursuant to Va. Code Ann. § 17.1-227, to give notice of the prohibitions and restrictions contained herein to any successors-in-interest of the Defendants and shall index this Agreed Final Order as follows:

GRANTORS: David Taehee Kim and Terry Kim

GRANTEES: Leslie B. Johnson; Fairfax County
Zoning Administrator

AND THIS CAUSE IS FINAL.

ENTERED this _____ day of _____ 2014.

JUDGE, FAIRFAX COUNTY CIRCUIT COURT

WE ASK FOR THIS:

DAVID P. BOBZIEN
COUNTY ATTORNEY

By _____

Marc E. Gori (VSB No. 74926)
Assistant County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035-0064
(703) 324-2421/(703) 324-2665 (fax)
marc.gori@fairfaxcounty.gov
Counsel for Plaintiff Leslie B. Johnson, Fairfax County Zoning Administrator

SEEN AND AGREED:

David Taehee Kim
4023 Hirst Drive
Annandale, Virginia 22003
Defendant *pro se*

Terry Kim
4023 Hirst Drive
Annandale, Virginia 22003
Defendant *pro se*

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.