



APPLICATION ACCEPTED: July 1, 2015
DATE OF PUBLIC HEARING: September 23, 2015 @ 9:00 a.m.

County of Fairfax, Virginia

September 16, 2015

STAFF REPORT

SPECIAL PERMIT SP 2015-DR-103

DRANESVILLE DISTRICT

APPLICANT/OWNER: Sheila E. Frace, Trustee of the Sheila E. Frace Trust dated April 20, 2005

LOCATION: 1836 Cherri Drive, Falls Church, 22043

SUBDIVISION: Pimmit Hills

TAX MAP: 40-1 ((3)) 311

LOT SIZE: 10,058 square feet

ZONING: R-4

ZONING ORDINANCE PROVISION: 8-914

SPECIAL PERMIT PROPOSAL: To permit a reduction in minimum yard requirements based on an error in building location to permit an accessory storage structure to remain 2.5 feet from a side lot line, and 1.9 feet from a rear lot line.

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.

Paul S. Yoon

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.**

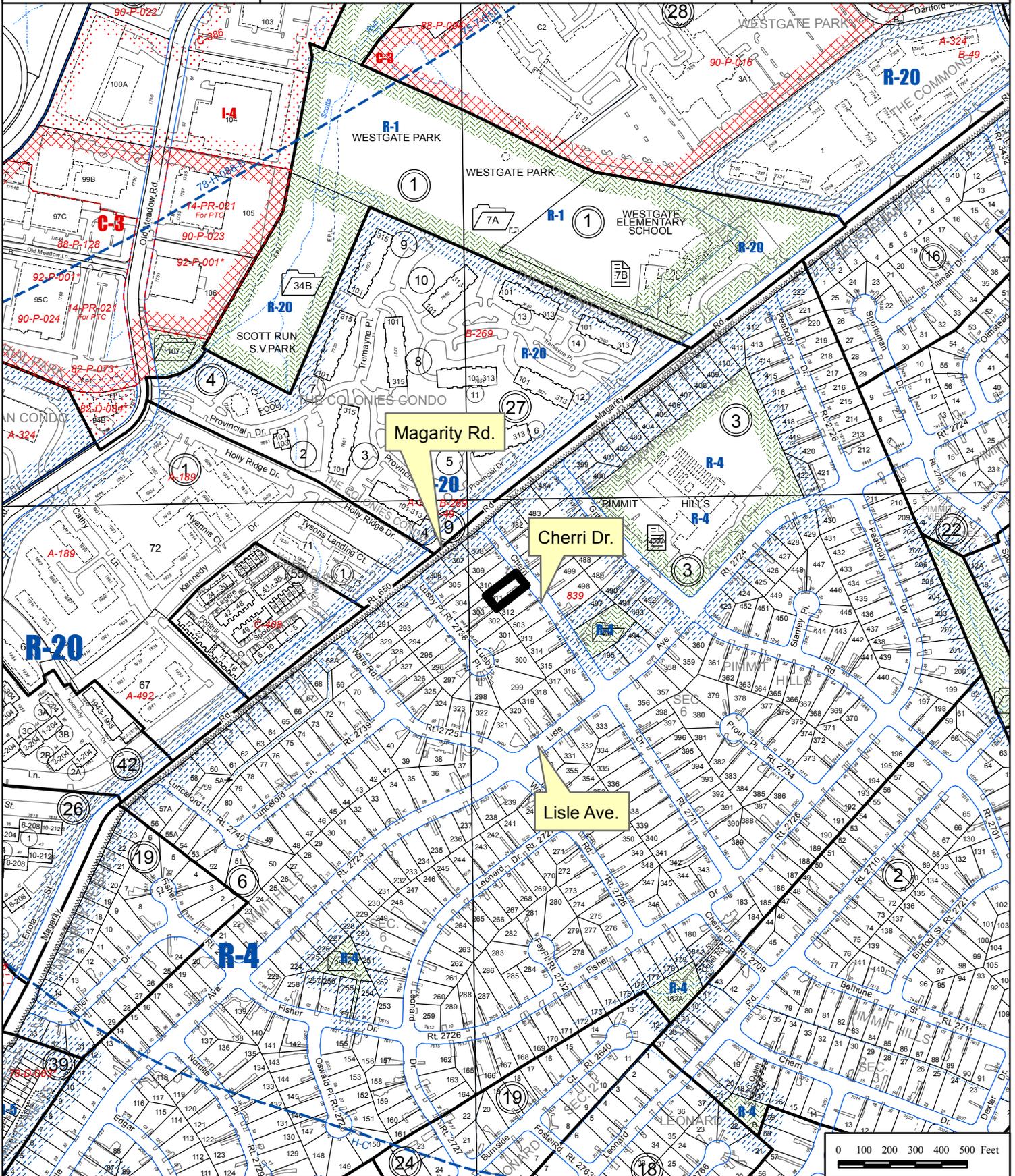


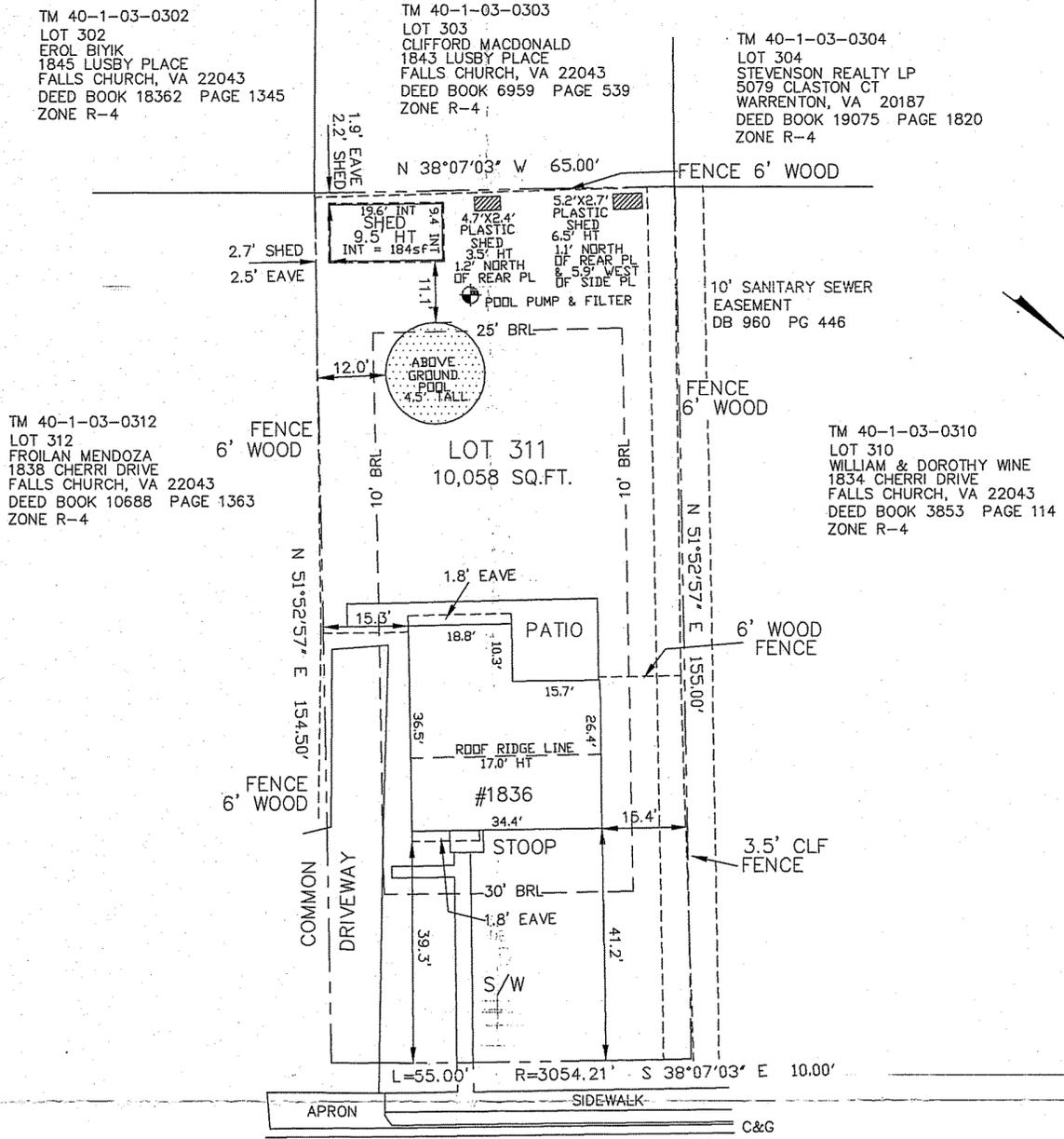
Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 48 hours advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).



Special Permit SP 2015-DR-103

SHEILA E FRACE, TRUSTEE OF THE SHEILA E. FRACE TRUST DATED APRIL 20, 2005





RECEIVED
Department of Planning & Zoning
JUN 26 2015
Zoning Evaluation Division

GENERAL NOTES

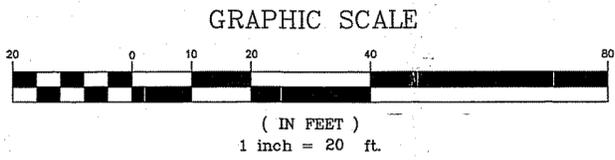
- 1: THERE ARE NO KNOWN CEMETARIES LOCATED ON THIS PROPERTY.
- 2: THE PROPERTY IS SERVED BY PUBLIC SEWER AND WATER.
- 3: THE PROPERTY IS SERVED BY NATURAL GAS.
- 4: NO EASEMENTS 25' OR GREATER EXIST
- 5: SURVEY PROVIDED BY JAMES D. THURBER L.S.

FLOOD ZONE NOTE

1) THIS PARCEL IS LOCATED IN FLOOD ZONE X AS DEPICTED ON THE FLOOD INSURANCE RATE MAP COMMUNITY # 51059C PANEL # 0165 E AND IS DATED 9-17-2010.

OWNERS TAB
TM 40-1-03-0311
LOT 311
SHEILA E. FRACE, TR.
1836 CHERRI DRIVE
FALLS CHURCH, VA 22043
DEED BOOK 18440 PAGE 0509
ZONE R-4

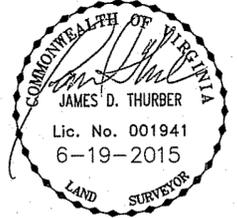
ZONING TAB
ZONE R-4
SETBACKS
FRONT...30 FEET
SIDE...10 FEET
REAR...25 FEET



NO.	DATE	COUNTY COMMENTS DESCRIPTION	JDT BY
1	6-19-2015	COUNTY COMMENTS	JDT

JAMES D. THURBER, L.S.
LAND SURVEYOR
10707 WOODLAND DRIVE
FREDERICKSBURG, VA 22407
PHONE: 540-207-3348 EMAIL: jim@telsltd.com

CERTIFIED CORRECT



SPECIAL PERMIT PLAT
LOT 311 SECTION 6
PIMMIT HILLS
FAIRFAX COUNTY, VIRGINIA
DRANESVILLE DISTRICT
SCALE: 1" = 20' DATE: APRIL 2, 2015

FILE#: FFX1836 CLIENT: HELLER
DATE: 4-2-2015 CHECKED BY: JDT
SCALE: 1" = 20' CREW: JT/CR

SPECIAL PERMIT REQUEST

The applicant is seeking a special permit to allow a reduction in minimum yard requirements based on an error in building location to permit a shed to remain 2.5 feet from a side lot line, and 1.9 feet from a rear lot line. The request was submitted in response to a notice of violation placed on the property by the Department of Code Compliance on May 15, 2013 for unauthorized outdoor storage. This information is included in Appendix 4.

	Structure	Yard	Minimum Yard Required	Existing Location	Existing Reduction	Percentage of Reduction Requested
Special Permit	Shed (over 8.5 feet)	Side Rear	10.0 feet 25.0 feet	2.5 feet 1.9 feet	7.5 feet 23.1 feet	75% 92%

A copy of the special permit plat titled “Special Permit Plat, Lot 311 Section 6, Pimmit Hills,” prepared by James D. Thurber, L.S, dated June 19, 2015, is included in the front of the staff report.

CHARACTER OF THE SITE AND SURROUNDING AREA

The 10,058 square foot lot in the Pimmit Hills subdivision is developed with a one story single family detached dwelling. The dwelling is accessed via a gravel driveway from Cherri Drive, and a concrete walkway extends from the stoop to both the driveway and Cherri Drive.



Figure 1: House location
For illustrative purposes only

A patio is located at the rear of the home. The rear yard contains an above ground pool 4.5 feet in height, as well as the shed. A 6.0 foot wood frame fence runs along the rear lot line.

The subject property and surrounding properties are zoned R-4 and developed with single family detached dwellings.

BACKGROUND

Fairfax County Tax Records indicate that the single family dwelling was constructed in 1953 and purchased by the applicant in 2006.

Since the adoption of the Zoning ordinance, similar special permit and variance applications have been heard by the Board of Zoning Appeals for nearby properties. This information is included in Appendix 5.

ANALYSIS

Comprehensive Plan Provisions

Plan Area: Area II, McLean Planning District
Planning Sector: Pimmit Planning Sector (M2)
Plan Map: Residential uses, at 3-4 dwelling units/acre (du/ac)

Zoning District Standards

Bulk Standards (R-4)		
Standard	Required	Provided
Lot Size	8,400 sf.	10,058 sf.
Lot Width	70.0 feet	65.0 ¹ feet
Building Height	35 feet max.	17.0 feet
Front Yard	Min. 35.0 feet	39.3 feet
Side Yard	Min. 10.0 feet	15.3 feet, 15.4 feet
Rear Yard	Min. 25 feet	43.1 feet

¹ The subject parcel was created prior to the adoption of the 1978 Zoning Ordinance; therefore, although the parcel does not meet the Ordinance requirements, it is grandfathered as a legal, buildable lot under the provisions of Sect. 2-405.

Accessory Structures On-Site

Structure	Yard	Minimum Yard Required	Existing Location	Existing Height
Shed	Side	10.0 feet	2.5 ¹ feet	9.5 feet ²
	Rear	25.0 feet	1.9 ¹ feet	
Shed	Rear	25.0 feet	1.2 feet	3.5 feet
Shed	Side	10.0 feet	5.9 feet	6.5 feet
	Rear	25.0 feet	1.1 feet	

¹ This reduction is being requested with this application.

² Section 10-104 states accessory storage structure which exceeds 8 ½ feet in height shall not be located closer to a distance equal to its height to the rear lot line.

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. If it is the intent of the Board of Zoning Appeals to approve this application, staff recommends that the BZA condition its approval on the adoption of the development 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 Statement of Justification and Select File Photos
3. Applicant's Affidavit
4. Notice of Violation
5. Similar Case History
6. Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS**SP 2015-DR-103****September 16, 2015**

If it is the intent of the Board of Zoning Appeals to approve SP 2015-DR-103, located at Tax Map 40-1 ((3)) 311, to permit a 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 shed, as shown on the plat prepared titled, "Special Permit Plat, Lot 311 Section 6, Pimmit Hills," prepared by James D. Thurber, L.S, dated June 19, 2015, and approved with this application, as qualified by these development conditions.
2. The applicant shall obtain the proper electrical permit for electrical service in the shed within ninety (90) days of BZA approval.

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.

Statement of Justification
Special Permit Application for Approval of Reduction to the Minimum Yard Requirements
Based on Error in Building Location
1836 Cherri Drive, Falls Church, VA 22043-1072

An existing accessory storage structure, a garden shed, measuring approximately 9.5 feet (9 ft. 6 in.) in height at its peak, with gross interior floor space of 184 square feet, is located approximately 2.7 feet (2 ft. 8 in.+) from the side lot line (structure, with the eave 2.5 feet from the side lot line), and 2.2 feet (2 ft. 2 in.+) from the rear lot line (structure, with the eave 1.9 feet from the rear lot line) on applicant's property located at 1836 Cherri Drive, Falls Church in the R-4 District. The height of this structure is approximately one (1) foot taller than the maximum allowed under Par. 10E of Section 10-104 of the Zoning Ordinance, which states:

"An accessory storage structure which exceeds eight and one-half (8 ½) feet in height shall not be located closer than a distance equal to its height to the rear lot line or located closer than a distance equal to the minimum required side yard to the side lot line."

Minimum required side yard distance in the R-4 District is 10 feet, as detailed in Par. 2A(1)(b) of Sect. 3-407 of the Zoning Ordinance.

Subject shed has not been altered in dimensions nor location since purchase of the property in May 1993 by Sheila E. Frace. This is evidenced by a comparison of two survey plats, one created in April 1993 just prior to purchase, and another recently, in April 2015, for this instant application.

SEE: [1] Exhibit 'A': Survey Plat by Kenneth W. White, Land Surveyor, dated April 13, 1993;
 [2] Exhibit 'B': Survey Plat by James D. Thurber, Land Surveyor, dated April 2, 2015.

The indicated error in location occurred through no fault of applicant Frace. Rather, said error can be wholly attributed to a prior owner.

SEE: Exhibit 'C': Statement of Dorothy Wine, 1834 Cherri Drive, Falls Church, VA.

Not only is applicant Frace blameless in this regard, but her actions at the time indicate a high standard of 'due diligence' leading up to her real estate purchase. In March 1993, more than one month prior to the closing on May 3rd, 1993, Ms. Frace undertook what then was considered 'standard best practice', by hiring a certified home inspector to conduct an independent inspection of subject property. Said inspection identified no error in building location.

SEE: Exhibit 'D': 'Report of Inspection on Structural, Electrical and Mechanical Grading and Drainage' by Robert L. DuBose, Professional Engineer, dated March 22, 1993.

Further, at no time during her real estate search nor during purchase of the subject property was Ms. Frace ever advised by any real estate professional, by her home mortgage company, by her real estate attorney, nor by her insurance carrier that anything other than an inspection by a certified home inspector would be recommended in order to ascertain compliance with all local building, safety, fire, and electrical codes and zoning requirements.

By deed filed with Fairfax County, indicating sale and price information, and accompanied by a plat depicting all structures upon the subject property, Ms. Frace purchased the subject property on May 4th, 1993. In the intervening twenty-two (22) years, all assessed property taxes have been paid on subject property.

SEE: Exhibit 'E': Deed filed May 4, 1993, platted and recorded with Fairfax County.

Granting the instant application will not detrimentally affect the use and enjoyment of abutting properties, as evidenced by absence during the past twenty-two years of any complaints re the subject shed. Testimony by a zoning administration official during the October 9th, 2013 public hearing before the Board of Zoning Appeals (re the original Notice of Violation dated May 24, 2013) verified the absence of complaints.

SEE ALSO: Ibid. Exh. 'C'.

In addition, a privacy fence, six-feet in height, completely surrounds the rear yard of subject property, helping to shield subject shed from the view of abutting properties.

Immediately next to subject shed, on the southeasterly side of subject property, four lots meet contiguously at right angles, including 1836 Cherri Drive (the subject property), 1838 Cherri Drive, 1845 Lusby Place, and 1843 Lusby Place.

At 1838 Cherri Drive there exists a permanent accessory structure, a rear-yard, one-and-a-half story two-car garage and workshop, the dimensions and height of which are so great as easily to dwarf the subject shed. That building sits close by its rear and side lot lines. This placement distracts any attention that might otherwise be drawn to subject shed.

SEE: Exhibit 'H': Photographs, varies.

At 1845 Lusby Place there exists an accessory storage structure, a garden shed, which sits 'catty-corner' to the subject shed. That structure, surrounded on that property by intense vegetation, totally blocks visibility of the subject shed.

SEE: Ibid. Exh. 'H'.

At 1843 Lusby Place, another rear yard, one-and-a-half story two-car garage totally dwarfs the subject shed. Also, the property's rear corner (immediately behind subject shed) is used for storage, specifically, an enclosed trailer, and also a boat with trailer.

SEE: Ibid. Exh. 'H'.

Two other parcels abut subject property. These are located at 1841 Lusby Place and 1834 Cherri Drive on the northwesterly side of subject property.

From 1841 Lusby Place, view of subject shed is totally blocked by the aforementioned one-and-a-half story garage at 1843 Lusby Place.

From 1834 Cherri Drive, the view of subject shed is minimized owing to applicant Frace's six-foot privacy fence, because the shed is located on the corner opposite, and finally because a mature evergreen tree helps to shield the view. Again, it is worth noting that the one-and-a-half-story garages at 1838 Cherri Drive and 1843 Lusby Place both dwarf the subject shed thereby making it comparatively inconspicuous from any angle.

SEE: [1] Ibid. Exh. 'C';
[2] Ibid. Exh. 'H'.

Approving the instant application to accommodate the existing location and dimensions of the subject shed will not create an unsafe condition with respect to other properties or public streets. As stated above, the subject structure is located at the rear corner of the subject property, as far from public streets as possible on this parcel. Further, it sits on the side of the property opposite the sanitary sewer easement. In addition, the structure's placement provides sufficient distance from side and rear lot lines to allow access for maintenance.

To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner. According to Zoning Enforcement, such compliance could be achieved by removing the structure entirely, or by reducing the overall height of the structure by approximately one (1) foot, or by moving the structure to comply with set-backs.

The first option would remove the existing accessory storage on a property without garage or home basement, and would thus place unreasonable hardship on the owner.

The second option would be costly, as it involves a structural change to the shed. Quotes for this work, including materials, range from \$3,200 to \$14,500, and would result in a cramped work space, especially uncomfortable during warm weather. Reducing height of the shed would also require removal of ceiling fans, further reducing air circulation and dramatically increasing temperatures within the structure during summer.

SEE: [1] Exhibit 'F': Itemized Estimate, 'Rebuild Shed', from No Va Tech Services, Co., dated May 6, 2013;
[2] Exhibit 'G': Estimate, 'Shed Roof Work', from Fred Home Repairs, dated July 12, 2013.

The third option would be similarly costly. There would be labor and materials involved in moving and relocating the structure, including electrical service, as well as moving and relocating an above-ground swimming pool and its associated appurtenances. Further, relocating the shed would require removal of at least one mature evergreen tree from subject property within a watershed management district (which specific tree helps shield the subject shed from the view of the neighbor at 1834 Cherri Drive).

As the issue raised by Zoning Enforcement is location and not the footprint of the subject shed, granting a reduction in the minimum yard requirements to accommodate the existing location and dimensions of the shed will not result in an increase in density or floor area ratio from that already permitted for accessory structures. The interior gross dimension of the shed is 184 square feet.

Subject shed is the same structure that has existed on the subject property for twenty-two (22) years and was present when subject property was purchased in May 1993 by Sheila E. Frace. Subject shed has not been altered in dimensions nor location in any way. This is confirmed by the neighbor at 1834 Cherri Drive.

SEE: [1] Ibid. Exh. 'C';
[2] Ibid. Exh. 'A'.

In summary, grant of the instant application to reduce the minimum yard requirements will not impair the purpose and intent of the Ordinance because such grant would have zero impact on the health, safety, and general welfare of the public and would set no precedent that could undermine implementation or enforcement of the Comprehensive Plan for orderly and controlled development of the County.

Furthermore, the Ordinance specifically establishes the application process by which the Group 9 Special Permit can be adjudged and approved as a means to accommodate an unusual set of circumstances (like those in the instant application) within the context of maintaining successful implementation and enforcement of the Comprehensive Plan.











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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: August 25, 2015
 (enter date affidavit is notarized)

131376

I, Sheila E. Frace, 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)
Sheila E. Frace, Trustee for the Sheila E. Frace Trust dated April 20, 2005 (living trust) for the benefit of:	1836 Cherri Drive Falls Church, VA 22043-1072	Applicant / Title Owner
Glenn M. Heller and Harold T. Heller	1836 Cherri Drive Falls Church, VA 22043-1072 1836 Cherri Drive Falls Church, VA 22043-1072	Beneficiary Beneficiary
Kellie M. L. Budd, Esquire with Doumar Martin PLLC (check if applicable)	2000 14 th Street North, Suite 210 Arlington, VA 22201	Attorney / Agent

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).

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: August 25, 2015
(enter date affidavit is notarized)

131374

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)

Doumar Martin, PLLC
2000 North 14th Street, Suite 210
Arlington, VA 22201

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)

George R.A. Doumar, sole member and owner

(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)

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SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: August 25, 2015
(enter date affidavit is notarized)

131376

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)

None / Not Applicable

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

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

(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): _____
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SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: August 25, 2015
(enter date affidavit is notarized)

131376

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.

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: August 25, 2015
(enter date affidavit is notarized)

131376

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)

Sheila E. Frace
 Applicant [] Applicant's Authorized Agent

Sheila E. Frace
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 25th day of August 2015, in the State/Comm. of Virginia, County/City of Fairfax.

Marleine W Awad
Notary Public

My commission expires: March 31, 2019

Marleine W Awad
Notary Public
Registration Number 7099442
Commonwealth of Virginia
My Commission Expires March 31 2019



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 24, 2013

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: The Sheila E. Frace Trust
ADDRESS: c/o Shelia E. Frace Trustee
1836 Cherri Drive
Falls Church, Virginia 22043

LOCATION OF VIOLATION: 1836 Cherri Drive
Falls Church, Virginia 22043-1072

TAX MAP REF: 0401 03 0311

ZONING DISTRICT: R- 4

CASE #: 201303186 **SR #:** 94382

POTENTIAL CIVIL PENALTIES UNDER ZONING ORDINANCE

§ 18-903(1):	Zoning Violation	First Offense	Each Subsequent Offense
	§10-104 (10E)	\$ 200.00	\$ 500.00
	§10-102 (24)	\$ 200.00	\$ 500.00
	TOTAL:	\$ 400.00	\$ 1000.00

Dear Responsible Party:

The purpose of this letter is to rescind the previous Notice of Violation dated May 22, 2013, and issue a new Notice of Violation regarding zoning violations on the above referenced property.

Inspections of the above referenced property on May 21, 2013 and May 23, 2013 revealed the following violations of the Fairfax County Zoning Ordinance

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

The Sheila E. Frace Trust
c/o Shelia E. Frace Trustee
May 24, 2013
SR 94382
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§ 10-104 (10E) Accessory Storage Structure Location
§ 2-302 (6) Accessory Use must comply with Article 10:

The presence of an accessory storage structure which measured approximately 9 feet 6 inches in height, is approximately 200 square feet in area and is located approximately 2 feet and approximately 1 foot respectively from the side and rear lot lines.

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

An accessory storage structure which exceeds eight and one-half (8 ½) feet in height shall not be located closer than a distance equal to its height to the rear lot line or located closer than a distance equal to the minimum required side yard to the side lot line.

The minimum required side yard distance in the R- 4 District is 10 feet as detailed in Par. 2A (1) (b) (c) of Sect. 3-407 of the Zoning Ordinance.

Therefore, as this accessory storage structure exceeds eight and one-half (8 ½) feet in height and is not located in accordance with the provisions of Par. 10E of Sect. 10-104 above, it is in violation of Par. 10E of Sect. 10-104 and Par. 6 of Sect. 2-302 of the Zoning Ordinance which states:

No accessory structure or use, as defined in Article 20, shall hereafter be built, moved, remodeled, established, altered or enlarged unless such accessory structure or use complies with the provisions of Par. 1 of Article 10.

You are hereby directed to clear this violation within fifteen (15) days of the date of this Notice. Compliance can be accomplished by:

- Removing the storage structure from the property in its entirety; or
- Reducing the height of the structure to eight and one-half (8 ½) feet or less to allow it to remain at its present location; or
- Relocating the structure to a distance from the rear and side lot lines in accordance with Par. 10E of Sect. 10-104 of the Zoning Ordinance as outlined above.

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

§ 10-102 (24) Outdoor Storage
§ 2-302 (6) Accessory Use must comply with Article 10:

An inspection has determined that you are allowing storage in the front, side and rear yards of the address listed above. These items consist of, but are not limited to, the following:

A tool box, ladder, wheels, tires, fish tank, propane tank, bicycles, tricycles, punching bag, dart board, animal cages and other miscellaneous junk and debris.

This outdoor storage:

Exceeds 100 square feet in area, and
Is not located in the rear half of the lot, and
Is not screened from view from the first story window of any neighboring dwelling.

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

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

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

No accessory structure or use, as defined in Article 20, shall hereafter be built, moved, remodeled, established, altered or enlarged unless such accessory structure or use complies with the provisions of Part 1 of Article 10.

You are hereby directed to clear this violation within fifteen (15) days of the date of this Notice. Compliance can be accomplished by the following:

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

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/>.

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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)324-9327. For any other questions, contact our main office at (703)324-1300.

LEGAL NOTICE ISSUED BY:

Signature

Michael Caudle
Code Compliance Investigator
(703)324-9327

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.

SERVING OFFICER

_____ for _____

DATE _____

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.

SERVING OFFICER

_____ for _____

DATE _____

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.

SERVING OFFICER

_____ for _____

DATE _____

PERSONAL SERVICE _____

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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.

SERVING OFFICER

_____ for _____

DATE _____

Similar Case History

Group: 2014-DR-224

SP 2014-DR-224

APPLICANT: MOHAMMAD ZIA TUFAIL
STATUS: BZA DECISION
STATUS/DECISION DTE: 02/04/2015
ZONING DISTRICT: R- 4
DESCRIPTION: REDUCTION OF MINIMUM YARD REQUIREMENTS BASED ON ERROR IN BUILDING LOCATION TO PERMIT ACCESSORY STORAGE STRUCTURE TO REMAIN 3.2 FEET FROM SIDE LOT LINE AND 2.1 FEET FROM REAR LOT LINE AND DWELLING TO REMAIN 9.7 FT FROM SIDE LOT LINE
LOCATION: 1916 CHERRI DRIVE, FALLS CHURCH, VA 22043
TAX MAP #S:
0401 03 0341

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.