



County of Fairfax, Virginia

September 23, 2015

STAFF REPORT

**SPECIAL PERMIT SP 2014-DR-124
VARIANCE VC 2014-DR-007**

DRANESVILLE DISTRICT

APPLICANT/OWNER: Mark B. VanKirk

SUBDIVISION: Broyhill's McLean Estates, Sect. 3

STREET ADDRESS: 1411 Mayflower Dr., McLean, 22101

TAX MAP REFERENCE: 30-1 ((12)) 224

LOT SIZE: 11,488 square feet

ZONING DISTRICT: R-3

ZONING ORDINANCE PROVISIONS: 8-914, 8-922, 18-401

SPECIAL PERMIT PROPOSALS: To permit a reduction of minimum yard requirements based on errors in building location to permit a pool deck to remain 3.0 ft. from a side lot line and 2.5 ft. from a rear lot line, and an accessory storage structure to remain 0.1 ft. from a side lot line and 0.3 ft. from a rear lot line, and to permit a reduction of certain yard requirements to permit construction of an addition 9.8 ft. from a side lot line.

VARIANCE PROPOSALS: To allow greater than 30% rear yard coverage.

STAFF RECOMMENDATIONS:

Staff recommends approval of SP 2014-DR-124 for the addition with adoption of the proposed development conditions contained in Appendix 1.

Casey V. Gresham

Staff recommends approval of VC 2014-DR-007 for rear yard coverage greater than 30 percent with adoption of the proposed development conditions contained in Appendix 2.

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

It should be further noted that the content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Board of Zoning Appeals.

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

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**

Special Permit

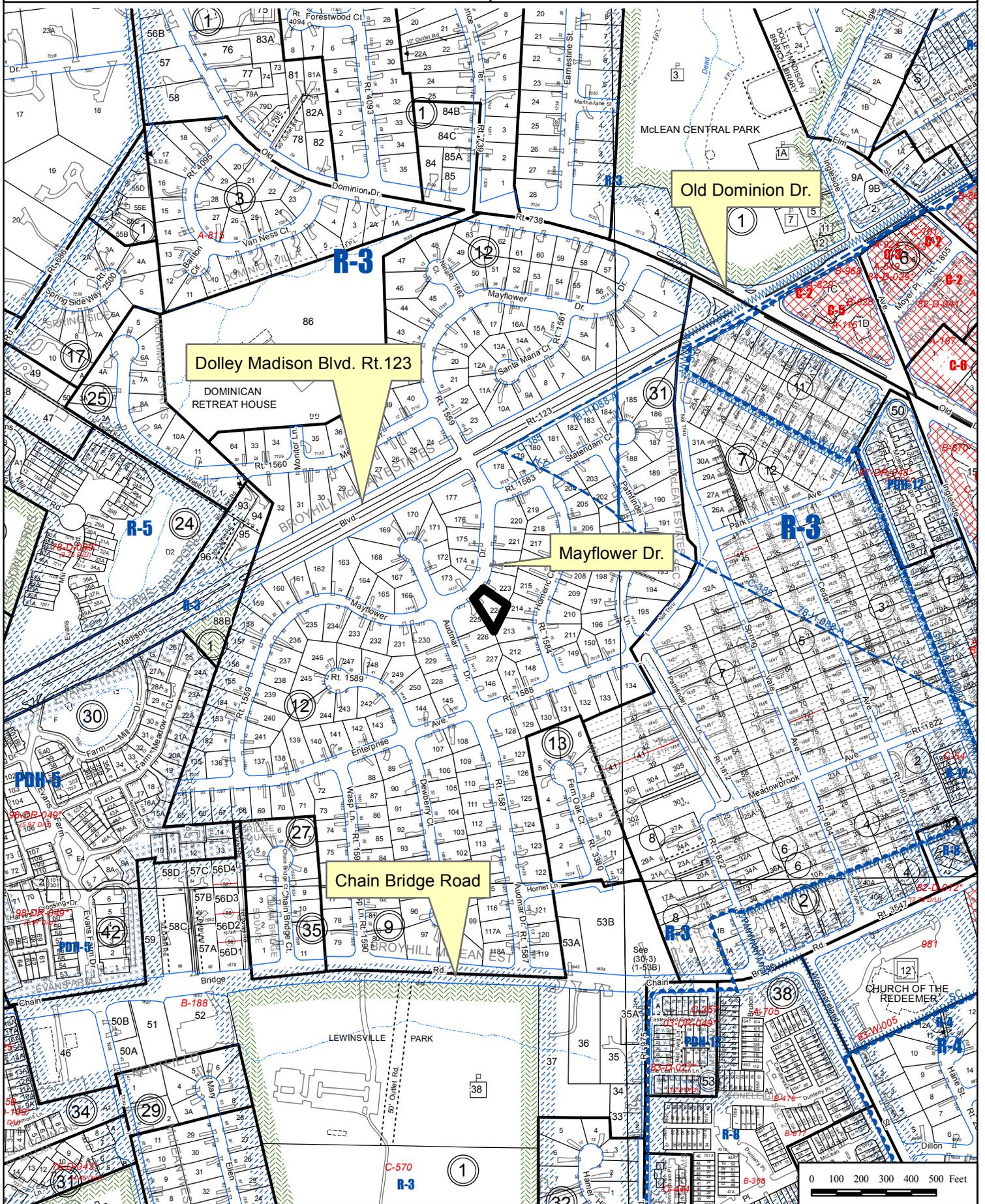
SP 2014-DR-124

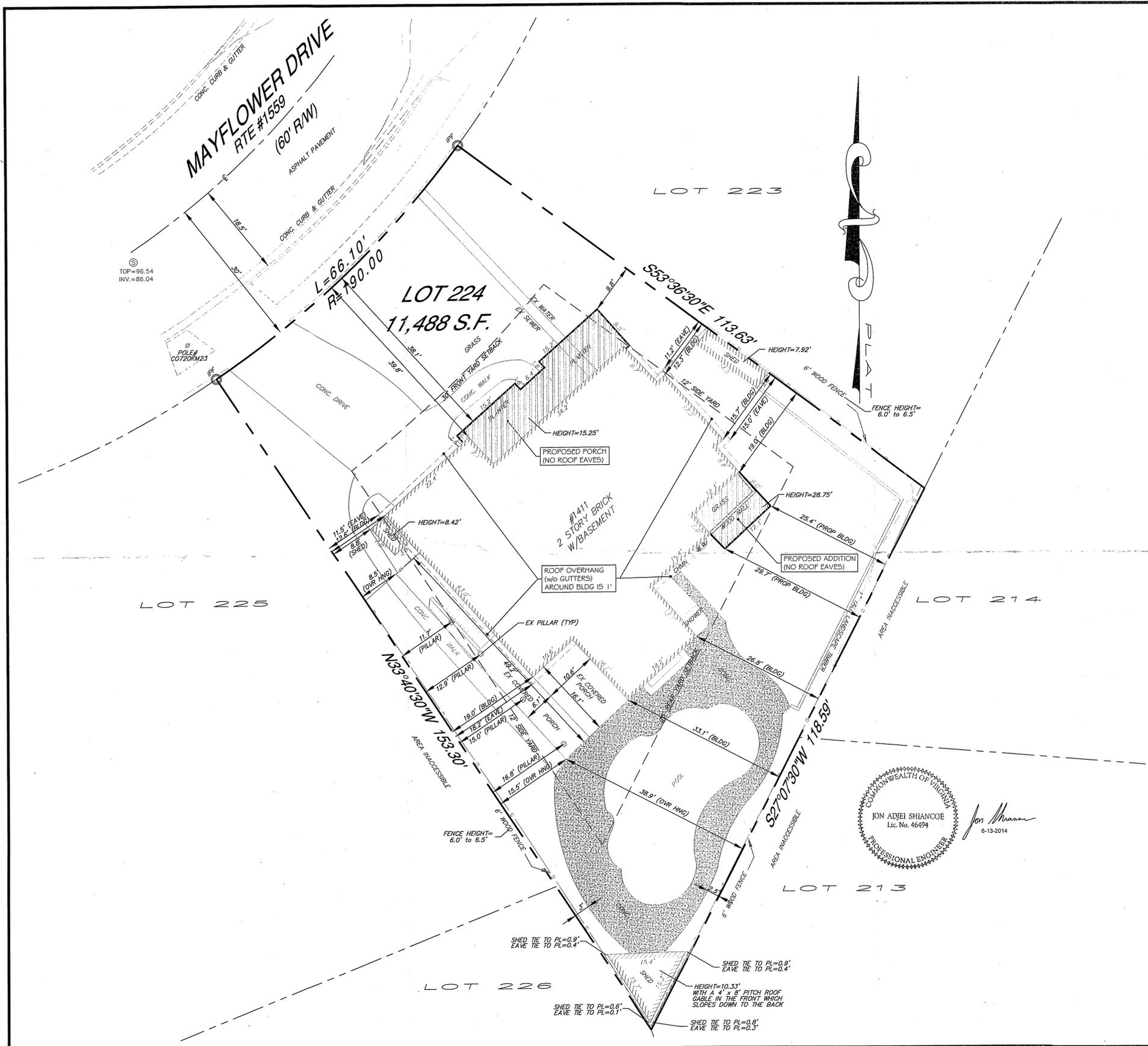
MARK B. VAN KIRK

Variance Application

VC 2014-DR-007

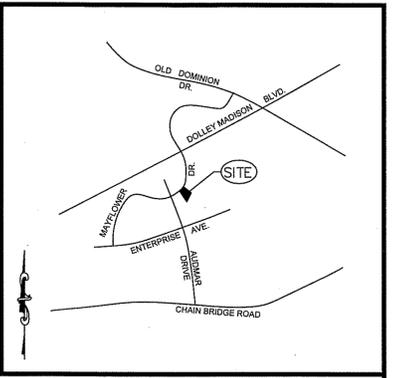
MARK VAN KIRK





GENERAL NOTES

- Zone: R-3 PIN: 0301 12 0224
 Front: 30'
 Rear Yard: 25'
 Side Yard: 12'
- Owner: Mark Van Kirk
 1411 Mayflower Drive
 McLean, VA 22101
- Topographic and boundary information shown hereon is based on a survey by Deetec Engineers & Surveyors completed in May of 2012.
- Total site area: 11,488 s.f.
- Deed Book: 18877 Page: 376
- The property is within the Dead Run watershed.
- The soil types on the property are 105B-Wheaton Glenelg complex & 105C-Wheaton Glenelg complex, both hydrologic group D.
- There is no RPA on site. There is no floodplain on site.
- The property is served by public water & sewer.
- There are no utility easements having a width of 25' more.
- Utility locations shown hereon are based on field observations and available records. Their locations should be considered approximate and must be verified by the site contractor and/or appropriate utility provider. Contractor must verify the accuracy prior to any construction.
- Existing home area: 2,547 s.f.
 Proposed front porch: 305 s.f.
 Proposed rear addition: 111 s.f.
 Property Area: 11,488 s.f.
 Existing GFA: 2,547 s.f. / 11,488 s.f. = 22.2%
 Proposed GFA: 2,963 s.f. / 11,488 s.f. = 25.8%
 Net Increase: 3.6%
- Rear Yard Area: 2,841 s.f.
 Pool & Patio in Rear Yard: 1,284 s.f.
 Rear Yard Coverage: 1,284 s.f. / 2,841 s.f. = 45%



VICINITY MAP
SCALE: 1" = 2000'

COMMONWEALTH OF VIRGINIA
JON ADJEI SHIANCOE
 Lic. No. 46494
 PROFESSIONAL ENGINEER
Jon Shiancoe
 6-13-2014

RECEIVED
 Department of Planning & Zoning
 JUN 10 2014
 Zoning Ev 2106

JAS DESIGN
 ENGINEERING LLC
 1776 I STREET NW • 9TH FLOOR • #90030
 WASHINGTON, DC 20006
 PHONE (301)-262-1630 WWW.JASDDESIGN.COM FAX (301)-262-1680

DRAWN BY: JAS
 DATE: MARCH 2014
 SCALE: 1"=10'
 SHEET NO.: 1 OF 1
 DWG FILE: 180-SITEPLAN.DWG

1411 MAYFLOWER DRIVE
 LOT 224, SECTION 3
 BROYHILLS MCLEAN ESTATES
 DRANESVILLE DISTRICT
 FAIRFAX COUNTY, VIRGINIA

SPECIAL PERMIT / VARIANCE PLAT

NO.	DATE	REVISIONS
	6-13-2014	ADDRESS ZONING COMMENTS

SPECIAL PERMIT REQUEST

The applicant is seeking a special permit to allow a concrete pool deck to remain 3.0 feet from a side lot line and 2.5 feet from a rear lot line and to allow an accessory storage structure (shed) to remain 0.1 feet from a side lot line and 0.3 feet from a rear lot line. The applicant is also seeking a special permit to permit a front porch addition to be constructed 9.8 feet from a side lot line.

VARIANCE REQUEST

The applicant requests approval of a variance to allow greater than 30 percent rear yard coverage to allow an existing shed, in-ground pool, and concrete pool deck to remain. The shed, pool, and deck cover 45 percent of the rear yard.

A copy of the special permit plat, titled, "1411 Mayflower Drive, Lot 224, Section 3, Broyhill's McLean Estates," prepared by Jon Adjei Shiancoe, P.E., dated March 2014, as revised through June 13, 2014, is included in the front of the staff report.

Copies of the proposed development conditions, the statement of justification with select file photographs, and the affidavit are contained in Appendices 1 through 4, respectively.

CHARACTER OF THE SITE AND SURROUNDING AREA

The application property is located on Mayflower Drive within the Broyhill's McLean Estates subdivision. It is developed with a two story single-family detached dwelling. A concrete driveway provides vehicular access to Mayflower Drive. A pool with a concrete apron and a shed, which houses the pool filter and mechanical equipment, are both located in the rear yard of the dwelling. A covered porch is also located in the rear yard, and a by-right shed is located in the side yard of the dwelling. A wood fence ranging from 6 to 6.5 feet in height encloses the rear and side yards of the dwelling.



Figure 1: House location

The property is located south of Dolley Madison Boulevard (Route 123) and southeast of Old Dominion Drive. The subject property and surrounding properties are zoned R-3 and developed with single-family detached dwelling.

BACKGROUND

Fairfax County Tax Records and building permit records indicate that the house was constructed in 2006 and purchased by the owner in that same year.

On July 3, 2007, the applicant applied for a building permit to construct an in-ground pool. This pool was constructed and passed all final inspections on January 9, 2008.

On February 4, 2010, the applicant applied for a building permit to construct a covered deck and spiral staircase in the rear of the dwelling and a covered porch addition on the southern side yard of the dwelling. The deck was constructed and passed all final inspections on September 24, 2010. Both permits are included in Appendix 5.

On May 28, 2013, the applicant applied for a special permit application for a front porch addition. It was through this application that the errors in building location and the greater than 30% rear yard coverage were noted. No complaints or Notices of Violations have been received for this property.

Records indicate that similar cases relating to the reduction of yard requirements for a front porch have been approved in the surrounding area. These cases are included in Appendix 6.

DESCRIPTION OF THE PROPOSAL

Addition

The applicant proposes a new front porch to be partially located in the required side yard setback. The front corner of the porch would be located 9.8 feet from the side lot line. The majority of the porch would be in conformance with the Ordinance. In an R-3 District, the required side yard is 12 feet; therefore, the applicant is requesting a reduction of 2.2 feet, for the front corner of the porch.

Special Permit Request						
	Structure	Yard	Minimum Yard Required	Proposed Location	Proposed Reduction	Percentage of Reduction Requested
Addition	Front Porch	Side	12 feet	9.8 feet	2.2 feet	18.3%

In addition to the proposed front porch, the applicant is also constructing a by-right addition, 111 square feet in size, located at the rear of the dwelling. The total increase in gross floor area, inclusive of both additions, would be 416 square feet, or 16%.

Errors in Building Location

There are two structures which are the subject of the error in building location requests. A shed and the concrete pool deck are encroaching into both the rear and side yards. The table below lists the specific setback requests:

Special Permit Requests						
	Structure	Yard	Minimum Yard Required	Existing Location	Existing Reduction	Percentage of Reduction Requested
Error	Pool Decking	Side Rear	7 feet 5 feet	3 feet 2.5 feet	4 feet 2.5 feet	51% 50%
Error	Shed	Side Rear	12 feet 10.3 feet	0.1 feet 0.3 feet	11.9 feet 10 feet	99 % 97%

Rear Yard Coverage Variance

The applicant requests a variance to exceed the 30% maximum rear yard coverage. The rear yard contains an existing shed, an in-ground pool, and a concrete pool deck. The total impervious area in the rear yard is approximately 45%; therefore the applicant is requesting an increase of 16% or 432 square feet.

ANALYSIS

Comprehensive Plan Provisions

Plan Area: Area II, McLean Planning District
Planning Sector: Kirby Community Planning Sector (M3)
Plan Map: Residential, 3-4 du/ac

Zoning District Standards

Bulk Standards (R-3)		
Standard	Required	Provided
Lot Size	10,500 sf.	11,488 sf.
Lot Width	Interior: 80 feet	~80 feet
Building Height	35 feet max.	Not provided
Front Yard	Min. 30 feet	38.1 feet
Side Yard	Min. 12 feet	8.5 feet ¹
Rear Yard	Min. 25 feet	25.4 feet

1. Side yard setback for the covered porch was determined to be vested by the Zoning Administration Division. This document is included in Appendix 7.

Additional Structures

An existing covered porch located in the southern side yard of the property is located 8.5 feet from a side lot line. However, as determined by the Zoning Administration Division, this addition received a building permit and a final inspection. It is determined to be a vested legal addition, and the Vested Rights letter is included in Appendix 7.

Zoning Ordinance Requirements (Appendix 8)

- *Sect. 8-006* General Special Permit Standards
- *Sect. 8-903* Standards For All Group 9 Uses
- *Sect. 8-914* Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location
- *Sect. 8-922* Provisions for Reduction of Certain Yard Requirements

General Standards for Special Permit Uses (Sect. 8-006)

Standards 1 and 2 Comprehensive Plan/ Zoning District	The Comprehensive Plan recommends residential uses and the property is developed with a residential use.
Standard 3 Adjacent Development	The proposed front porch addition provides a minimal encroachment (2.2 feet) into the side lot line. A majority of the porch is located in compliance with the side yard setback and only a small corner is encroaching into the setback. In staff's opinion, the proposed use will not hinder or discourage the use or development of neighboring properties or negatively affect value.
Standard 4 Pedestrian/Vehicular Traffic	No additional pedestrian or vehicular traffic is proposed with this application.
Standard 5 Landscaping/Screening	An existing wood fence six feet in height along the side and rear yards provide screening of the shed and pool decking to the neighboring properties.
Standard 6 Open Space	There is no prescribed open space requirement on individual lots in the R-3 District.
Standard 7 Utilities, Drainage, Parking, and Loading	There are no changes to the utilities, drainage, parking or loading on the property.
Standard 8 Signs	No signage is proposed.

Standards for all Group 3 Uses (Sect. 8-303)

Standard 1 Lot Size and Bulk Regulations	The bulk regulations for minimum required yards are requested to be modified with the special permit application.
Standard 2 Performance Standards	The use will comply with the performance standards set forth in Article 14 of the Zoning Ordinance.
Standard 3 Site Plan	This application is not subject to the provisions of Article 17, Site Plans.

Errors in Building Locations (Sect. 8-914)

Staff does not make recommendations on applications for errors in building locations, which in this case includes the locations of the existing shed and pool decking. According to the Statement of Justification, the applicant was unaware of the setback requirements for the shed and the pool decking.

Standards for Reduction of Certain Yard Requirements (8-922)- Porch Addition

<p>Standard 1 <i>Yard Requirements Subject to Special Permit</i></p>	<p><i>A. Minimum Required Yards - Yard not less than 50% of the requirement and not less than 5 feet:</i> The proposed addition will be located 9.8 feet from the northern side lot line. The required side yard in an R-3 District is 12 feet, resulting in a reduction of 18.3 percent.</p> <p><i>B. Pipestem Lots:</i> N/A</p> <p><i>C. Accessory Structure Locations:</i> N/A</p> <p><i>D. Extensions into Minimum Required Yards:</i> N/A</p>
<p>Standard 2 <i>Not a Detached Structure in a Front Yard</i></p>	<p>The application does not propose a detached accessory structure.</p>
<p>Standard 3 <i>Principal Structure that Complied with Yard Requirements When Established</i></p>	<p>The subject property contains a single family dwelling which is an existing principal structure.</p>
<p>Standard 4 <i>Addition No More than 150% of the Gross Floor Area (GFA) at the Time of First Expansion Request</i></p>	<p>The proposed front porch addition will be 305 square feet. The existing GFA of the primary structure is 2,547 square feet. With the proposed addition and the by-right addition, the total additional square footage would be 16% of the existing GFA.</p>
<p>Standard 5 <i>Accessory Structure Subordinate in Purpose, Scale, Use and Intent</i></p>	<p>As the proposed addition is not an accessory structure, this standard does not apply.</p>
<p>Standard 6 <i>Construction in Character with On-Site Development</i></p>	<p>The elevation drawings indicate that the size and scale of the proposed addition would be compatible with on-site development. Staff has included a development condition requiring substantial conformance with the proposed elevations (Attachment 1).</p>
<p>Standard 7 <i>Construction Harmonious with Off-Site Development</i></p>	<p>Through aerial photography, submitted photographs, and background research staff has confirmed that there are similar additions located in side yards on the neighboring properties. The proposed addition would not affect neighboring properties in terms of location, height and bulk, or vegetation.</p>
<p>Standard 8 <i>Construction Shall Not Adversely Impact Adjacent Properties</i></p>	<p>Staff believes that the proposed addition, at approximately 305 square feet, will not significantly impact the use and/or enjoyment of any adjacent property with regard to issues such as noise, light, air or safety. DPWES has indicated that there are no drainage complaints on file related to this property. Staff</p>

	believes the addition will not significantly increase runoff or erosion.
Standard 9 <i>Represents the Minimum Amount of Reduction Necessary</i>	In staff’s opinion, the size of the porch addition is modest in nature and will not negatively affect the surrounding properties. Based on the location of the front wall of the existing dwelling, the porch will not be encroaching any further into the front yard setback. In addition, existing mature vegetation screens the area from the neighboring properties. In addition, the lot shape is somewhat irregular, as the side lot lines are at an angle, and the lot narrows as it approaches the street. Other issues of yard determination, environmental characteristics, slopes, wells, easements and historic resources are not applicable to this site.
Standard 10 BZA May Impose Conditions	Proposed development conditions for the addition are included in Appendix 1.
Standard 11 Submission Requirements	A copy of the plat is included in the beginning of this report.
Standard 12 Architectural Elevations	Proposed elevations are included as an attachment to the development conditions.

Variance Requirements (Appendix 9)

Code of Virginia Sec. 15.2-2309, as amended

In addition to meeting the definition of a variance under the state code, an application must satisfy a specific set of criteria in order for the Board to grant a variance. According to the recently amended Virginia state code in Sec. 15.2-2309, a variance meeting the definition shall be granted if the following elements are met:

- 1. The evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance (Sect. 15.2-2309.2)*

In staff’s opinion, the request for the additional rear yard coverage to keep the existing pool deck, shed, and in-ground pool driven by a physical characteristic of the property. The dwelling (which was not constructed by the applicant) is located at the minimum rear yard setback and exceeds the front setback by 8.1 feet. Based on the house placement, the rear yard is smaller than that of surrounding properties of similar area. In

addition, the rear lot line is also diagonal, further reducing the amount of space located to the rear of the dwelling.

2. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance (Sect. 15.2-2309.2(i))

As indicated in the background section, the applicant applied for and received building permits and finalized inspections from Fairfax County permitting the pool to be constructed in this location. Through the County's building permit process for pools, the concrete apron is not required to be shown; the permit only requires the actual in-ground pool outline and mechanical equipment to be shown. Both the state and county building codes require that a non-slip continuous decking consisting of impervious materials be constructed around the entire perimeter of the pool with a minimum width of 5 feet. Based on these requirements and the fact that the pool itself makes up approximately 28% of the rear yard coverage, it would have been impossible for the applicant to meet the rear yard coverage requirements with the approved pool.

3. The granting of the variance will not be of substantial detriment to the adjacent property and nearby properties in the proximity of that geographical area (Sect. 15.2-2309.2(ii))

As the at-grade pool deck and shed housing the pool mechanical equipment are screened by a wood fence, staff does not believe that the rear yard coverage exceeding the 30 percent maximum would negatively affect the neighbors.

4. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general reduction to be adopted as an amendment to the ordinance (Sect. 15.2-2309.2(iii))

Staff does not believe the shallow rear yard is a hardship generally shared by any of the neighboring properties. The subject lot is irregular in shape, and other nearby properties have a greater depth than the subject property and therefore have a larger functional rear yard.

5. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property (Sect. 15.2-2309.2(iv))

Staff finds that variance request for excess coverage in a rear yard would not result in a use that is otherwise permitted or cause a change in the zoning classification of the property.

6. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to

subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application (Sect. 15.2-2309.2(v))

Other than through the removal of the pool, the concrete pool deck, and the shed containing mechanical pool equipment, the variance application is the only mechanism to provide the relief requested for excess coverage in the rear yard.

CONCLUSION / RECOMMENDATION

Staff recommends approval of SP 2014-DR-124 for the addition to be constructed with adoption of the proposed development conditions contained in Appendix 1.

Staff recommends approval of VC 2014-DR-007 for the rear yard coverage greater than 30 percent. Staff believes that the shallow depth of the rear yard and the location of the home limit the utilization of the rear yard of the property. In addition, as the applicant was issued a building permit and received final inspections on the pool, staff believes that he unknowingly exceeded the coverage requirement. As the structures causing the excess coverage are mostly at-grade and the necessity of a shed to contain and screen pool equipment, staff does not believe that granting the variance will negatively affect surrounding properties.

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.

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.

APPENDICES

1. Proposed Special Permit Development Conditions
2. Proposed Variance Development Conditions
3. Applicant's Statement of Justification and Select File Photographs
4. Applicant's Affidavit
5. Building Permit History
6. Similar Case History
7. Vested Rights Determination, Issued June 5, 2014
8. Applicable Zoning Ordinance Provisions
9. Variance provisions- Code of Virginia Sec. 15.2-2309, as amended

PROPOSED DEVELOPMENT CONDITIONS

SP 2014-DR-124

September 23, 2015

If it is the intent of the Board of Zoning Appeals to approve SP 2014-DR-124 located at Tax Map 30-1 ((12)) 224 to permit reduction of minimum yard requirements based on errors in building locations to permit deck to remain 3.0 ft. from a side lot line and 2.5 ft. from a rear lot line, and accessory storage structure (shed) to remain 0.1 ft. from a side lot line and 0.3 ft. from a rear lot line, and to permit reduction of certain yard requirements to permit construction of addition (front porch) 9.8 ft. from a side lot line, staff recommends that the Board condition the approval by requiring conformance with the following development conditions.

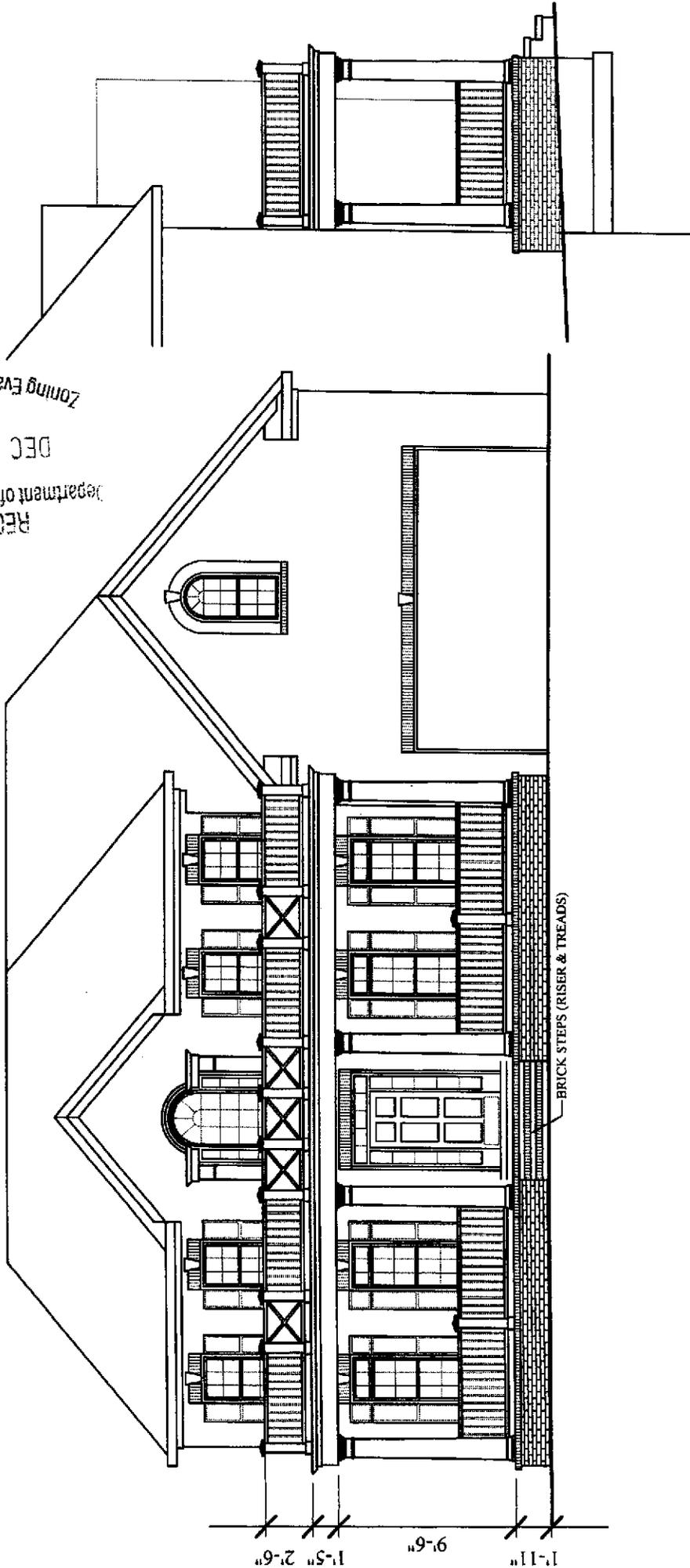
1. This approval is granted to the property only and is for the location indicated on the application, 1411 Mayflower Drive, and is not transferable to other land.
2. This special permit is granted only for the locations of the addition and the errors in building locations to permit a pool deck to remain 3.0 ft. from a side lot line and 2.5 ft. from a rear lot line, and accessory storage structure (shed) to remain 0.1 ft. from a side lot line and 0.3 ft. from a rear lot line, and to permit reduction of certain yard requirements to permit construction of addition (front porch) 9.8 ft. from a side lot line on the plat titled, "1411 Mayflower Drive, Lot 224, Section 3, Broyhills McLean Estates," prepared by Jon Adjei Shiancoe, P.E., dated March 2014, as revised through June 13, 2014, and approved with this application, as qualified by these development conditions.
3. Pursuant to Paragraph 4 of Section 8-922 of the Zoning Ordinance, the resulting gross floor area of an addition to the existing principal structure may be up to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion (2,547 square feet existing + 3,820.5 square feet (150%) = 6,367.5 square feet maximum permitted on lot) regardless of whether such addition complies with the minimum yard requirement or is the subject of a subsequent yard reduction special permit. Subsequent additions that meet minimum yard requirements shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings and materials as shown on Attachment 1 to these conditions.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, 30 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.

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



1'-11"
9'-6"
1'-5"
2'-6"

BRICK STEPS (RISER & TREADS)

FRONT (NORTH) ELEVATION

NOTE: ALL EXISTING BRICK, WINDOWS, DOORS, & TRIM TO REMAIN
SCALE: 1/8" = 1'-0"

Owner: Mark Van Kirk
1411 Mayflower Drive, McLean, Virginia

SIDE (EAST) ELEVATION

SCALE: 1/8" = 1'-0"

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

**VANKER
 PORCH & BDRM
 ADDITION**

INTELLECTUAL HOMES
 6733 Curran Street, Suite 210
 McLean, Virginia
 22101-1127

DRAWN BY:
 J. STEVENS

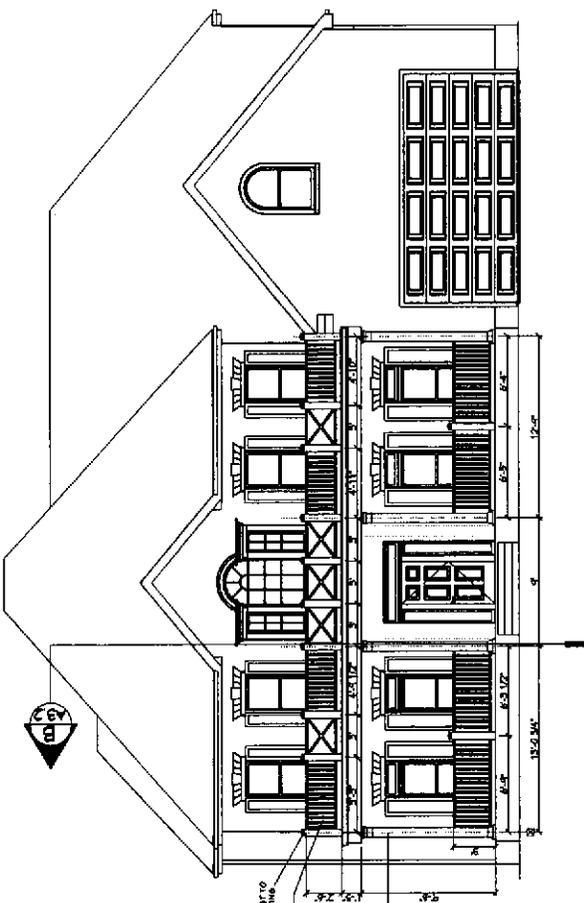
DATE:
 9/27/2013

SCALE:

SHEET:
 A1

DRAWING INDEX

- A11 FRONT ELEVATION
- A12 REAR ELEVATION
- A13 SIDE ELEVATION
- A14 PORCH ELEVATION
- A15 SECTION A-A
- A16 SECTION B-B
- A17 SECTION C-C
- A18 SECTION D-D
- A19 SECTION E-E
- A20 SECTION F-F
- A21 SECTION G-G
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- A35 SECTION U-U
- A36 SECTION V-V
- A37 SECTION W-W
- A38 SECTION X-X
- A39 SECTION Y-Y
- A40 SECTION Z-Z
- A41 SECTION AA-AA
- A42 SECTION BB-BB
- A43 SECTION CC-CC
- A44 SECTION DD-DD
- A45 SECTION EE-EE
- A46 SECTION FF-FF
- A47 SECTION GG-GG
- A48 SECTION HH-HH
- A49 SECTION II-II
- A50 SECTION JJ-JJ
- A51 SECTION KK-KK
- A52 SECTION LL-LL
- A53 SECTION MM-MM
- A54 SECTION NN-NN
- A55 SECTION OO-OO
- A56 SECTION PP-PP
- A57 SECTION QQ-QQ
- A58 SECTION RR-RR
- A59 SECTION SS-SS
- A60 SECTION TT-TT
- A61 SECTION UU-UU
- A62 SECTION VV-VV
- A63 SECTION WW-WW
- A64 SECTION XX-XX
- A65 SECTION YY-YY
- A66 SECTION ZZ-ZZ
- A67 SECTION AA-AA
- A68 SECTION BB-BB
- A69 SECTION CC-CC
- A70 SECTION DD-DD
- A71 SECTION EE-EE
- A72 SECTION FF-FF
- A73 SECTION GG-GG
- A74 SECTION HH-HH
- A75 SECTION II-II
- A76 SECTION JJ-JJ
- A77 SECTION KK-KK
- A78 SECTION LL-LL
- A79 SECTION MM-MM
- A80 SECTION NN-NN
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- A83 SECTION QQ-QQ
- A84 SECTION RR-RR
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- A89 SECTION WW-WW
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- A91 SECTION YY-YY
- A92 SECTION ZZ-ZZ
- A93 SECTION AA-AA
- A94 SECTION BB-BB
- A95 SECTION CC-CC
- A96 SECTION DD-DD
- A97 SECTION EE-EE
- A98 SECTION FF-FF
- A99 SECTION GG-GG
- A100 SECTION HH-HH



FRONT ELEVATION
 1/4"=1'-0"

DRAWINGS PREPARED BY INTELLECTUAL HOMES, LLC
 6733 Curran Street, Suite 210 - McLean, Virginia 22101
 703-356-1127

STRUCTURAL ENGINEERING BY: KNF ENGINEERING
 Kyle Frenzen, P.E.
 703-946-3183

CODE REQUIREMENTS:

1. ALL CONSTRUCTION SHALL BE CONFORMANT WITH THE FOLLOWING CODES, ORDINANCES, LOCAL AND NATIONAL REGULATIONS, AND ANY OTHER APPLICABLE REGULATIONS AND ORDINANCES.

2. THE 1/4"=1'-0" VIEW WORK SHALL BE CONFORMANT WITH THE FOLLOWING:

- 7. OTHER LOADS:
 - 7.1. LIVE LOADS
 - 7.2. DEAD LOADS
 - 7.3. WIND LOADS
 - 7.4. SEISMIC LOADS
 - 7.5. SOIL LOADS
 - 7.6. OTHER LOADS

- 8. FOUNDATION:
 - 8.1. FOUNDATION SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 8.2. FOUNDATION SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 8.3. FOUNDATION SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 8.4. FOUNDATION SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 8.5. FOUNDATION SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 8.6. FOUNDATION SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 8.7. FOUNDATION SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 8.8. FOUNDATION SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 8.9. FOUNDATION SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 8.10. FOUNDATION SHALL BE CONFORMANT WITH THE FOLLOWING:

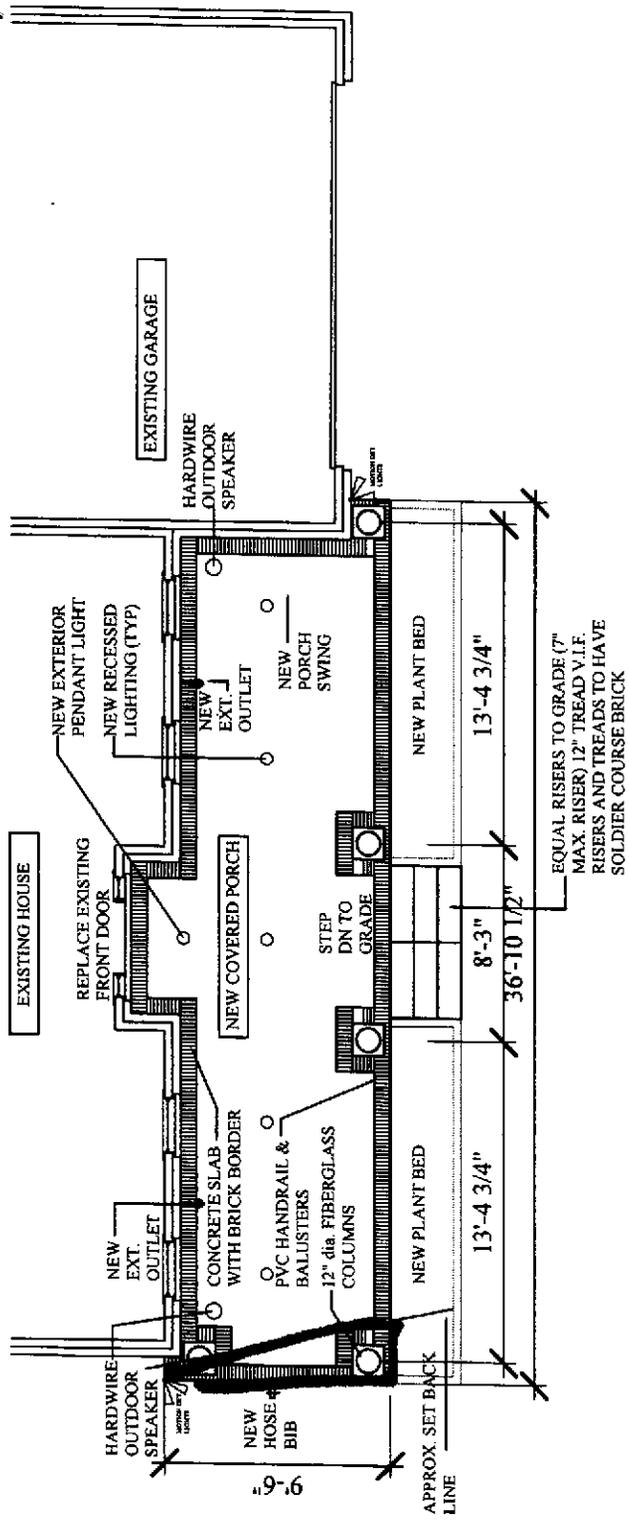
- 9. STRUCTURE:
 - 9.1. STRUCTURE SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 9.2. STRUCTURE SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 9.3. STRUCTURE SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 9.4. STRUCTURE SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 9.5. STRUCTURE SHALL BE CONFORMANT WITH THE FOLLOWING:
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 - 9.9. STRUCTURE SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 9.10. STRUCTURE SHALL BE CONFORMANT WITH THE FOLLOWING:

- 10. MATERIALS:
 - 10.1. MATERIALS SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 10.2. MATERIALS SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 10.3. MATERIALS SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 10.4. MATERIALS SHALL BE CONFORMANT WITH THE FOLLOWING:
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 - 10.9. MATERIALS SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 10.10. MATERIALS SHALL BE CONFORMANT WITH THE FOLLOWING:

- 11. FINISHES:
 - 11.1. FINISHES SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 11.2. FINISHES SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 11.3. FINISHES SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 11.4. FINISHES SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 11.5. FINISHES SHALL BE CONFORMANT WITH THE FOLLOWING:
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 - 11.8. FINISHES SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 11.9. FINISHES SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 11.10. FINISHES SHALL BE CONFORMANT WITH THE FOLLOWING:

- 12. OTHER:
 - 12.1. OTHER SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 12.2. OTHER SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 12.3. OTHER SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 12.4. OTHER SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 12.5. OTHER SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 12.6. OTHER SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 12.7. OTHER SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 12.8. OTHER SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 12.9. OTHER SHALL BE CONFORMANT WITH THE FOLLOWING:
 - 12.10. OTHER SHALL BE CONFORMANT WITH THE FOLLOWING:

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



COVERED FRONT PORCH PLAN

SCALE: 1/8" = 1'-0"

Owner: Mark Van Kirk
 1411 Mayflower Drive, McLean, Virginia

PROPOSED DEVELOPMENT CONDITIONS

VC 2014-DR-007

September 9, 2015

1. This variance is approved for the rear yard coverage greater than 30 percent as shown on the plat titled, "1411 Mayflower Drive, Lot 224, Section 3, Broyhills McLean Estates," prepared by Jon Adjei Shiancoe, P.E., dated March 2014, as revised through June 13, 2014, as submitted with this application and is not transferable to other land.

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

SPECIAL PERMIT JUSTIFICATION

March 22, 2013

Mark Van Kirk
1411 Mayflower Drive
McLean, Virginia 22101

The special permit request is for the addition of a new front covered porch to the existing brick colonial home at 1411 Mayflower Drive, McLean, Virginia. The new front porch is designed to match the existing length of the front of the house. The front corner of the new porch encroaches into the existing 12'-0" side set back by 2'-6". The front porch will not only enhance the front of the home but adds protective cover at the entry.

The request is to allow for the 2'-6" encroachment into the east side set back.

RECEIVED
Department of Planning & Zoning
MAY 21 2013
Zoning Evaluation Division

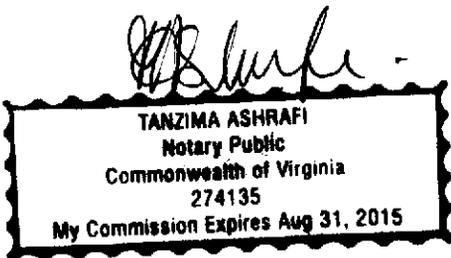
Variance Justification

November 11, 2013

Mark VanKirk
1411 Mayflower Drive
McLean, VA 22101

There were errors made during the installation of the pool and accompanying shed. We only found out about the issues when we went to have a permit pulled for a front covered porch addition. The variance is being applied for reduction in rear yard coverage exceeding 30% after meeting the following hardship conditions:

1. The property was acquired in good faith from the previous owners.
2. D - The pointed shape of the lot made it difficult for the homeowners to use all available space in their yard.
3. With the unique shape of the property lines the rear yard has limited useable space out of the setback areas
4. If not approved the cost to undo the current design including an in ground pool and structures would create significant of hardship on the homeowners with regard to cost as well as use of land
5. The rest of the lots surround the one in question are more square and would allow for a better use of pool/shed locations.
6. The pool and shed have become an integrated part of the homeowner's lives and their home.
7. The percentage of backyard space does not affect the neighbors due to the landscaping placement and the proper height of the fence.
8. The character of the zoning district is not being threatened by the use of a private residence use of the lot coverage.
9. With the approval of the variance the spirit of the Ordinance shall remain – the property has a proportional amount of landscaping to keep the feel of a backyard



Vincent D'Avena
Applicant

[Signature]

Mark Van Kirk
Owner

[Signature]

Date

11.14.13

Notary

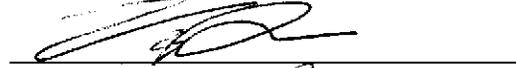
[Signature]

VIVIAN HERRING
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires November 30, 2017

There are no hazardous or toxic substances on the property.

The proposed additions does require a special permit but not a variance.

Vincent D'Avena / Applicant



Mark Van Kirk /Owner

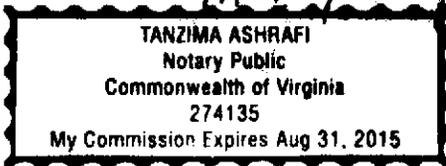


Notary



VIVIAN HERRING
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires November 30, 2017

 for Vincent Joseph Davena.



JAN 07 2014

Zoning Evaluation Division

Special Permit Justification

November 11, 2013

Mark VanKirk
1411 Mayflower Drive
McLean, VA 22101

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

There are two items being reviewed for the special permit request.

1. Addition of a new covered front porch
2. Roof height on a shed in the backyard.

Below are statements addressing 8-922 Items 4-10

4. The new gross floor area after additional requested areas: 2,943 sq ft vs 2,547 sq ft so a total of *346%*
5. New porch and shed in back of the yard are in appropriate scale, use and intent as the principal structure on the site
6. All proposed items fit the feel of the existing home with location to height, bulk, scale
7. There is no damage to be done to the surrounding structures, topography, existing vegetation or trees
 - a. Porch will only set into front grass area of set back
8. A new grading plan is being installed with the approval of the porch to prevent issues of safety, erosion or storm water runoff.
9. The reduction does not create burden to other surrounding lots or public spaces
10. Gross Floor area is observed and respected with the addition of the porch and approval of the shed roof.

Below are statements addressing 8-914 Paragraph 2

- a: Error within 10%
- b: porch was permitted and believed to be within compliance, rear shed was installed with mm1 and was thought to be allowed.
- c: The reduction does not impair or affect the intent of Ordinance 8-914
- d: The error in construction does not reduce the use of the property nor the enjoyment in the immediate vicinity
- e: The error does not cause unsafe conditions to either the property or public streets
- f: To comply with the minimum yard requirements would cause the whole roof to be changed
- g: This error does not increase the floor area ratio from what is permitted by the applicable zoning district regulations.

Architecture of Proposed New Building or Additions:

This porch addition and building error are for the personal use and benefit of the homeowner. The design selected for the porch not only adds an architectural element to the front of the house, but it also adds protection from the weather at the front door. The final design selected has the porch spanning the length of the house, as it provides the best architectural look in keeping with the current style of the home. The porch will be constructed with similar material as the current home, brick façade with white wood trim work, round fiberglass columns and molding per the plans.

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

MARK VAN KIRK RESIDENCE - 1411



FRONT (NORTH) ELEVATION



FRONT (NORTH) ELEVATION

MAYFLOWER DRIVE, MCLEAN, VA



REAR (SOUTH) ELEVATION



**FRONT (NORTH) ELEVATION
ELEVATION**



FRONT (NORTH) ELEVATION



REAR & SIDE (SOUTH/WEST)



FRONT SIDE (EAST) ELEVATION



REAR (SOUTH) ELEVATION



East Side Elevation



Rear Yard Facing West



West Side Elevation



Rear point of yard



Back Property line



Across rear yard



South Corner Rear



South West Rear



South West Lower Rear

RECEIVED
Department of Planning & Zoning

MAR 19 2014

Zoning Evaluation Division



North West Front



Van Kirk Right Side



South Rear



South East Rear



East Rear



South West Rear

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

123613

DATE: 27 JAN 2014
 (enter date affidavit is notarized)

I, Vincent D'Avena, 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)
- Vincent J. D'Avena	1610 Woodmore Lane McLean, VA 22101	Agent
- AV Remodeling & Construction, LLC	6733 Curran St. Suite 210 McLean, VA 22101	Agent
- Intellectual Homes, LLC	6733 Curran St. Suite 210 McLean, VA 22101	Agent
- Mark B. Van Kirk (check if applicable)	1141 Mayflower Drive McLean, VA 22101	Applicant / title owner

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

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

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

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

123613

DATE: 27 JAN 2014
(enter date affidavit is notarized)

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)

AV Remodeling + Construction, LLC
6733 Curran St. Suite 210
McLean, VA 22101

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)

Vincent J. D'Avena

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

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

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

Page 1 of 1

Special Permit/Variance Attachment to Par. 1(b)

DATE: 27 JAN 2014
(enter date affidavit is notarized)

123613

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

Intellectual Homes LLC
6733 Curran St. Suite 210
McLean, VA 22101

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

Vincent J. D'Avena

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

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

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

Page Three

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 27 JAN 2014
(enter date affidavit is notarized)

123613

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

PARTNERSHIP INFORMATION

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

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

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

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

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

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

Page Four

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 27 JAN 2014
(enter date affidavit is notarized)

123613

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

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

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

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

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

NONE

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

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 27 JAN 2014
(enter date affidavit is notarized)

123613

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

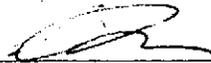
(NOTE: Business or financial relationships of the type described in this paragraph that arise after the filing of this application and before each public hearing must be disclosed prior to the public hearings. See Par. 4 below.)

(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)

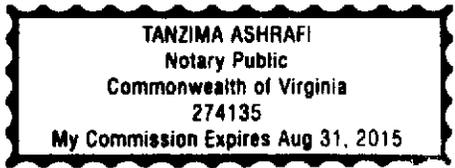
[] Applicant  Applicant's Authorized Agent

Vincent Davens, Owner Agent
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 27th day of January 2014, in the State/Comm. of VA, County/City of Fairfax


Notary Public

My commission expires: 08-31-2015



Application No.(s): SP 2014-DR-124
 (county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: June 30 2014
 (enter date affidavit is notarized)

I, Vincent D'Avena, do hereby state that I am an
 (enter name of applicant or authorized agent)

125964

(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)
Vincent J. D'Avena	1610 Woodmoor Ln, Mclean, VA 22101	Agent
A.V. Remodeling & Construction, LLC	6733 Curran Street, suite 210, McLean, VA 22101	Agent
Intellectual Homes, LLC	6733 Curran Street, suite 210, McLean, VA 22101	Agent
Mark B. VanKirk	1411 Mayflower Dr, McLean, VA 22101	Applicant/Title Owner

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

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

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

Application No.(s): SP 2014 - DR 124
(county-assigned application number(s), to be entered by County Staff)

Page Two

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: June 30 2014
(enter date affidavit is notarized)

125964

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)

A.V. Remodeling and Construction, LLC
6733 Curran Street, suite 210, McLean, VA 22101

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)

Vincent J. D'Avena

(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 2014 DR-124
(county-assigned application number(s), to be entered by County Staff)

Page 1 of 1

Special Permit/Variance Attachment to Par. 1(b)

DATE: June 30, 2014
(enter date affidavit is notarized)

175964

NAME & ADDRESS OF CORPORATION: (enter complete name, number, street, city, state, and zip code)
Intellectual Homes, LLC
6733 Curran Street, suite 210, McLean, VA 22101

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

Vincent J. D'Avena

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

DESCRIPTION OF CORPORATION: (check one statement)

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- 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 THE SHAREHOLDERS: (enter first name, middle initial, and last name)

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

Application No.(s): SP 2014-DR-124
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: June 30 2014
(enter date affidavit is notarized)

125964

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 2014 DR 124
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: June 30 2014
(enter date affidavit is notarized)

125964

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 2014-DR-124
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: June 30 2014
(enter date affidavit is notarized)

125964

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.)

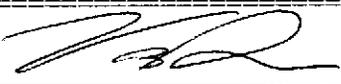
None

(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:



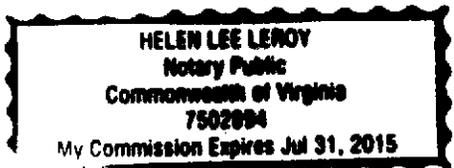
(check one) [] Applicant [X] Applicant's Authorized Agent

Vincas J D'Arena
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 30th day of June 20 14, in the State/Comm. of VIRGINIA, County/City of Fairfax.

Helon Lee Selvey
Notary Public

My commission expires: July 31, 2015





Land Development Information History: FIDO - POOL RES - 71840111

Permit Information

Permit Number: 71840111
Permit Type: RESIDENTIAL SWIMMING POOL/SPA
Job Address: 001411 MAYFLOWER DR
 MC LEAN , VA 22101-5613
Tax Map: 030-1 ((12)) 0224
Permit Status: Finalized
Work Description: BUILD INGROUNND POOL
Type of Work: INGROUNND GUNITE POOL

Inspection - R FINAL - FINAL INSPECTION - 3742178

Insp Type	Insp Date	Insp Name	Partial?	Insp Result	Re-Fee	Comments
R FINAL	2008-01-09	RAKESH KAPOOR	N	Passed	NO	

Land Development Information History: FIDO - ADDITION R - 100320182

Permit Information

Permit Number: 100320182
Permit Type: RESIDENTIAL ADDITION
Job Address: 001411 MAYFLOWER DR
 MC LEAN , VA 22101-5613
Tax Map: 030-1 ((12)) 0224
Permit Status: Finalized
Work Description: BUILD ONE STORY ADDITION OVER CRAWL SPACE/BUILD COVERED DECK AND ROOF OVER STAIRS/BUILD OUTSIDE SPIRAL STAIRCASE FOR DECK ABOVE
Type of Work: ADDITIONAL STORIES

Inspection - R FINAL - FINAL INSPECTION - 5005790

Insp Type	Insp Date	Insp Name	Partial?	Insp Result	Re-Fee	Comments
R FINAL	2010-09-24	JACK SMITH	N	Passed	NO	

Similar Case History

ZAPS - VC - VC 95-D -002

Application Desc ...: PERMIT CONSTRUCTION OF ADDITION 4.64 FT. FROM SIDE LOT LINE

ZAPS - SP - SP 2007-DR-149

Application Desc ...: REDUCTION OF CERTAIN YARD REQUIREMENTS TO PERMIT ADDITION 7.7 FEET FROM SIDE LOT LINE

ZAPS - VC - VC 2002-DR-163

Application Desc ...: TO PERMIT THE CONSTRUCTION OF ACCESSORY STRUCTURE 3.0 FEET FROM SIDE LOT LINE AND 6.5 FEET FROM REAR LOT LINE AND ACCESSORY STRUCTURE IN A FRONT YARD OF A LOT CONTAINING 36,000 SQUARE FEET OR LESS



County of Fairfax, Virginia

MEMORANDUM

DATE: June 5, 2014

TO: Debbie Pemberton, Applications Acceptance Branch, ZED

FROM: *MJM*
Matthew Mertz, Assistant to the Zoning Administrator

SUBJECT: Existing Compliance Issues

RE: 1411 Mayflower Drive

This is in response to your memorandum dated April 30, 2014 to Zoning Administration Division staff. It appears that the owner of the referenced property has submitted a special permit application for reduction of certain yard requirements to permit an addition 9.8 feet from the left side lot line. It appears that Zoning Evaluation Division staff found possible compliance issues with the existing side porch, pool, pool decking and rear shed during review of the application.

The property is zoned R-3 Residential District, Three Dwelling Units/Acre and is developed with a single family detached dwelling and accessory structures. The minimum yard requirements in the R-3 District are as follows: Front – 30 feet; Sides – 12 feet and Rear – 25 feet. The existing side covered porch is located 8.5 feet from the right side lot line and does not comply with the 12 foot minimum side yard requirement. However, pursuant to §15.2-2307 of the Code of Virginia, if a structure received approval of a Building Permit and final inspection or has been taxed for at least 15 years, it is legal and may remain. As the porch was built as part of a larger project under Building Permit #100890275 and passed final inspection on September 24, 2010, it is legal and may remain, but may not be replaced or enlarged.

In addition to a swimming pool constructed with zoning approval, a significant amount of pool decking and a 10.33 foot tall shed have been constructed in the rear yard without zoning approval. As the pool decking attaches to the dwelling, it is subject to Par. 2A of Sect. 2-412 of the Zoning Ordinance, which states that an open deck less than four (4) feet in height may extend five (5) feet into the minimum required side yards and 20 feet into the minimum required rear yard. Therefore, the pool decking should be located at least seven (7) feet from the side lot lines and five (5) feet from the rear lot line. As the pool decking is located approximately three (3) feet from the left side lot line and two (2) feet from the rear lot line, it does not comply with Sect. 2-412. Regarding the 10.33 foot tall shed, pursuant to Par. 10 of Sect. 10-104 of the Zoning Ordinance, the shed should be located outside the 12 foot minimum required side yard and at least 10.33 feet (its height) away from the rear lot line. As the shed is located less than one (1) foot from the side and rear lot lines, it does not comply with Sect. 10-104. In addition to not meeting location requirements, the pool decking and rear shed push the minimum required rear yard coverage to at least 45 percent in violation of Par. 3 of Sect. 10-103 of the Zoning Ordinance, which limits coverage of the minimum required rear yard to 30 percent. As the pool decking and shed did not have Building Permit

Department of Planning and Zoning
 Zoning Administration Division
 Ordinance Administration Branch
 12055 Government Center Parkway, Suite 807
 Fairfax, Virginia 22035-5505
 Phone 703-324-1314 FAX 703-803-6372
www.fairfaxcounty.gov/dpz



approval and have not been taxed for at least 15 years, they cannot be deemed legal under §15.2-2307 of the Code of Virginia.

Distribution:

Leslie B. Johnson, Zoning Administrator

Michelle O'Hare, Deputy Zoning Administrator for Ordinance Administration Branch

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 **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.

8-922 Provisions for Reduction of Certain Yard Requirements

8-922 Provisions for Reduction of Certain Yard Requirements

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

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

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

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

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

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

floor area, floor area ratio, lot coverage, landscaping and/or screening requirements.

11. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by fifteen (15) copies of a plat and such plat shall be presented on a sheet having a maximum size of 24" x 36", and one 8 ½" x 11" reduction of the plat. Such plat shall be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat shall be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia. Such plat shall contain the following information:
 - A. Boundaries of entire property, with bearings and distances of the perimeter property lines, and of each zoning district.
 - B. Total area of the property and of each zoning district in square feet or acres.
 - C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.
 - D. The location, dimension and height of any building, structure or addition, whether existing or proposed. In addition, for decks, the height of the finished floor above finished ground level.
 - E. All required minimum yards to include front, side and rear, a graphic depiction of the angle of bulk plane, if applicable, and the distances from all existing and proposed structures to lot lines.
 - F. Means of ingress and egress to the property from a public street(s).
 - G. For nonresidential uses, the location of parking spaces, indicating minimum distance from the nearest property line(s).
 - H. If applicable, the location of a well and/or septic field.
 - I. Existing and proposed gross floor area and floor area ratio.
 - J. Location of all existing utility easements having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.
 - K. The location, type and height of any existing and proposed landscaping and screening.

- L. Approximate delineation of any floodplain designated by the Federal Insurance Administration, United States Geological Survey, or Fairfax County, the delineation of any Resource Protection Area and Resource Management Area, and the approximate delineation of any environmental quality corridor as defined in the adopted comprehensive plan, and, if applicable, the distance of any existing and proposed structures from the floodplain, Resource Protection Area and Resource Management Area, or environmental quality corridor.
 - M. Seal and signature of professional person certifying the plat.
12. Architectural depictions of the proposed structure(s) as viewed from all lot lines and street lines to include building materials, roof type, window treatment and any associated landscaping and/or screening shall be provided.

VIRGINIA ACTS OF ASSEMBLY -- 2015 SESSION

CHAPTER 597

An Act to amend and reenact §§ 15.2-2201, 15.2-2308, 15.2-2309, and 15.2-2314 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-2308.1, relating to variances.

[H 1849]

Approved March 26, 2015

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2201, 15.2-2308, 15.2-2309, and 15.2-2314 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-2308.1 as follows:

§ 15.2-2201. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affordable housing" means, as a guideline, housing that is affordable to households with incomes at or below the area median income, provided that the occupant pays no more than thirty percent of his gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances authorized by this chapter, local governments may establish individual definitions of affordable housing and affordable dwelling units including determination of the appropriate percent of area median income and percent of gross income.

"Conditional zoning" means, as part of classifying land within a locality into areas and districts by legislative action, the allowing of reasonable conditions governing the use of such property, such conditions being in addition to, or modification of the regulations provided for a particular zoning district or zone by the overall zoning ordinance.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any tract of land which will be principally devoted to agricultural production.

"Historic area" means an area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.

"Incentive zoning" means the use of bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features, design elements, uses, services, or amenities desired by the locality, including but not limited to, site design incorporating principles of new urbanism and traditional neighborhood development, environmentally sustainable and energy-efficient building design, affordable housing creation and preservation, and historical preservation, as part of the development.

"Local planning commission" means a municipal planning commission or a county planning commission.

"Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under jurisdiction of the U.S. Department of Defense, including any leased facility, or any land or interest in land owned by the Commonwealth and administered by the Adjutant General of Virginia or the Virginia Department of Military Affairs. "Military installation" does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

"Mixed use development" means property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

"Official map" means a map of legally established and proposed public streets, waterways, and public areas adopted by a locality in accordance with the provisions of Article 4 (§ 15.2-2233 et seq.) hereof.

"Planned unit development" means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

"Planning district commission" means a regional planning agency chartered under the provisions of Chapter 42 (§ 15.2-4200 et seq.) of this title.

"Plat" or "plat of subdivision" means the schematic representation of land divided or to be divided and information in accordance with the provisions of §§ 15.2-2241, 15.2-2242, 15.2-2258, 15.2-2262, and 15.2-2264, and other applicable statutes.

"Preliminary subdivision plat" means the proposed schematic representation of development or subdivision that establishes how the provisions of §§ 15.2-2241 and 15.2-2242, and other applicable

statutes will be achieved.

"Resident curator" means a person, firm, or corporation that leases or otherwise contracts to manage, preserve, maintain, operate, or reside in a historic property in accordance with the provisions of § 15.2-2306 and other applicable statutes.

"Site plan" means the proposal for a development or a subdivision including all covenants, grants or easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the subdivision ordinance to which the proposed development or subdivision is subject.

"Special exception" means a special use, that is a use not permitted in a particular district except by a special use permit granted under the provisions of this chapter and any zoning ordinances adopted herewith.

"Street" means highway, street, avenue, boulevard, road, lane, alley, or any public way.

"Subdivision," unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.2-2258.

"Variance" means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the *shape*, size, or area of a lot or parcel of land; or the size, *height*, area, bulk, or location of a building or structure when the strict application of the ordinance would result in unnecessary or unreasonable hardship to the property owner *unreasonably restrict the utilization of the property*, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the *intended spirit and purpose of the ordinance, and would result in substantial justice being done*. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

"Zoning" or "to zone" means the process of classifying land within a locality into areas and districts, such areas and districts being generally referred to as "zones," by legislative action and the prescribing and application in each area and district of regulations concerning building and structure designs, building and structure placement and uses to which land, buildings and structures within such designated areas and districts may be put.

§ 15.2-2308. Boards of zoning appeals to be created; membership, organization, etc.

A. Every locality that has enacted or enacts a zoning ordinance pursuant to this chapter or prior enabling laws, shall establish a board of zoning appeals that shall consist of either five or seven residents of the locality, appointed by the circuit court for the locality. Boards of zoning appeals for a locality within the fifteenth or nineteenth judicial circuit may be appointed by the chief judge or his designated judge or judges in their respective circuit, upon concurrence of such locality. Their terms of office shall be for five years each except that original appointments shall be made for such terms that the term of one member shall expire each year. The secretary of the board shall notify the court at least thirty days in advance of the expiration of any term of office, and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the locality except that one may be a member of the local planning commission. A member whose term expires shall continue to serve until his successor is appointed and qualifies. The circuit court for the City of Chesapeake and the Circuit Court for the City of Hampton shall appoint at least one but not more than three alternates to the board of zoning appeals. At the request of the local governing body, the circuit court for any other locality may appoint not more than three alternates to the board of zoning appeals. The qualifications, terms and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the chairman twenty-four hours prior to the meeting of such fact. The chairman shall select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any application in which a regular member abstains.

B. Localities may, by ordinances enacted in each jurisdiction, create a joint board of zoning appeals that shall consist of two members appointed from among the residents of each participating jurisdiction by the circuit court for each county or city, plus one member from the area at large to be appointed by the circuit court or jointly by such courts if more than one, having jurisdiction in the area. The term of office of each member shall be five years except that of the two members first appointed from each jurisdiction, the term of one shall be for two years and of the other, four years. Vacancies shall be filled for the unexpired terms. In other respects, joint boards of zoning appeals shall be governed by all other provisions of this article.

C. With the exception of its secretary and the alternates, the board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The board

may elect as its secretary either one of its members or a qualified individual who is not a member of the board, excluding the alternate members. A secretary who is not a member of the board shall not be entitled to vote on matters before the board. ~~For~~ *Notwithstanding any other provision of law, general or special, for the conduct of any hearing, a quorum shall be not less than a majority of all the members of the board and the board shall offer an equal amount of time in a hearing on the case to the applicant, appellant or other person aggrieved under § 15.2-2314, and the staff of the local governing body.* Except for matters governed by § 15.2-2312, no action of the board shall be valid unless authorized by a majority vote of those present and voting. The board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the locality and general laws of the Commonwealth. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year.

D. Within the limits of funds appropriated by the governing body, the board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of the board may receive such compensation as may be authorized by the respective governing bodies. Any board member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court that appointed him, after a hearing held after at least fifteen days' notice.

E. Notwithstanding any contrary provisions of this section, in the City of Virginia Beach, members of the board shall be appointed by the governing body. The governing body of such city shall also appoint at least one but not more than three alternates to the board.

§ 15.2-2308.1. Boards of zoning appeals, ex parte communications, proceedings.

A. *The non-legal staff of the governing body may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. The applicant, landowner or his agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent or attorney are all invited.*

B. *Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost to such applicant, appellant or other person aggrieved under § 15.2-2314, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the board. If the applicant, appellant or other person aggrieved under § 15.2-2314 requests additional documents or materials be provided by the locality other than those materials provided to the board, such request shall be made pursuant to § 2.2-3704. Any such materials furnished to a member of the board shall also be made available for public inspection pursuant to subsection F of § 2.2-3707.*

C. *For the purposes of this section, "non-legal staff of the governing body" means any staff who is not in the office of the attorney for the locality, or for the board, or who is appointed by special law or pursuant to § 15.2-1542. Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.*

D. *This section shall not apply to cases where an application for a special exception has been filed pursuant to subdivision 6 of § 15.2-2309.*

§ 15.2-2309. Powers and duties of boards of zoning appeals.

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. *The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence.* The board shall consider ~~the purpose and intent~~ of any applicable ordinances, laws, and regulations in making its decision. *For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.*

2. ~~To authorize~~ *Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases such a variance as defined in § 15.2-2201 from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship;* provided that the spirit of the ordinance shall be observed and substantial justice done; ~~as follows:~~ *the burden of proof shall be on the*

applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

~~When a property owner can show that his~~ Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) the property interest for which the variance is being requested was acquired in good faith and ~~where by reason of the exceptional and any hardship was not created by the applicant for the variance; narrowness, shallowness, size, or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.~~ (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

No such variance shall be authorized by the board unless it finds:

- a. That the strict application of the ordinance would produce undue hardship relating to the property;
- b. That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
- c. That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

No variance shall be ~~authorized~~ considered except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

No variance shall be authorized unless the board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

In ~~authorizing~~ granting a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest; and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

§ 15.2-2314. Certiorari to review decision of board.

Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may file with the clerk of the circuit court for the county or city a petition that shall be styled "In Re: date Decision of the Board of Zoning Appeals of [locality name]" specifying the grounds on which aggrieved within 30 days after the final decision of the board.

Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals and shall prescribe therein the time within which a return thereto must be made and served upon the secretary of the board of zoning appeals or, if no secretary exists, the chair of the board of zoning appeals, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

Any review of a decision of the board shall not be considered an action against the board and the board shall not be a party to the proceedings; however, the board shall participate in the proceedings to the extent required by this section. The governing body, the landowner, and the applicant before the board of zoning appeals shall be necessary parties to the proceedings *in the circuit court*. The court may permit intervention by any other person or persons jointly or severally aggrieved by any decision of the board of zoning appeals.

The board of zoning appeals shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of the portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

~~If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take evidence as it may direct and report the evidence to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.~~ The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

In the case of an appeal from the board of zoning appeals to the circuit court of an order, requirement, decision or determination of a zoning administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, or any modification of zoning requirements pursuant to § 15.2-2286, the findings and conclusions of the board of zoning appeals on questions of fact shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision. Any party may introduce evidence in the proceedings in the court. The court shall hear any arguments on questions of law *de novo*.

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted an application for a variance, ~~or application for a special exception,~~ the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by ~~showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved,~~ the decision of the board of zoning

appeals was plainly wrong and in violation of the purpose and intent of the zoning ordinance proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision.

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted application for a special exception, the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning appeals was plainly wrong, was in violation of the purpose and intent of the zoning ordinance, and is not fairly debatable.

In the case of an appeal from the board of zoning appeals to the circuit court of a decision of the board, any party may introduce evidence in the proceedings in the court in accordance with the Rules of Evidence of the Supreme Court of Virginia.

Costs shall not be allowed against the locality, unless it shall appear to the court that it acted in bad faith or with malice. In the event the decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making the return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, the locality may request that the court hear the matter on the question of whether the appeal was frivolous.