



APPLICATION ACCEPTED: September 19, 2015  
BOARD OF ZONING APPEALS: January 6, 2016 @ 9:00 a.m.

# County of Fairfax, Virginia

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December 30, 2015

## STAFF REPORT

SPECIAL PERMIT SP 2015-SP-129

### SPRINGFIELD DISTRICT

**APPLICANT/OWNER:** Kohli, Vijay  
**STREET ADDRESS:** 5615 Dogue Run Drive, Fairfax Station, 22039  
**SUBDIVISION:** Barton Place  
**TAX MAP REFERENCE:** 77-1 ((18)) 41  
**LOT SIZE:** 35,135 square feet  
**ZONING DISTRICT:** R-C, WS  
**ZONING ORDINANCE PROVISIONS:** 8-922  
**SPECIAL PERMIT PROPOSAL:** To permit reduction in certain yard requirements to permit construction of an addition 18.9 feet from a rear lot line

### STAFF RECOMMENDATION:

Staff recommends approval of SP 2015-SP-129 for the addition with the adoption of the proposed development conditions contained in Appendix 1.

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.

*Sharon E. Williams*

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

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

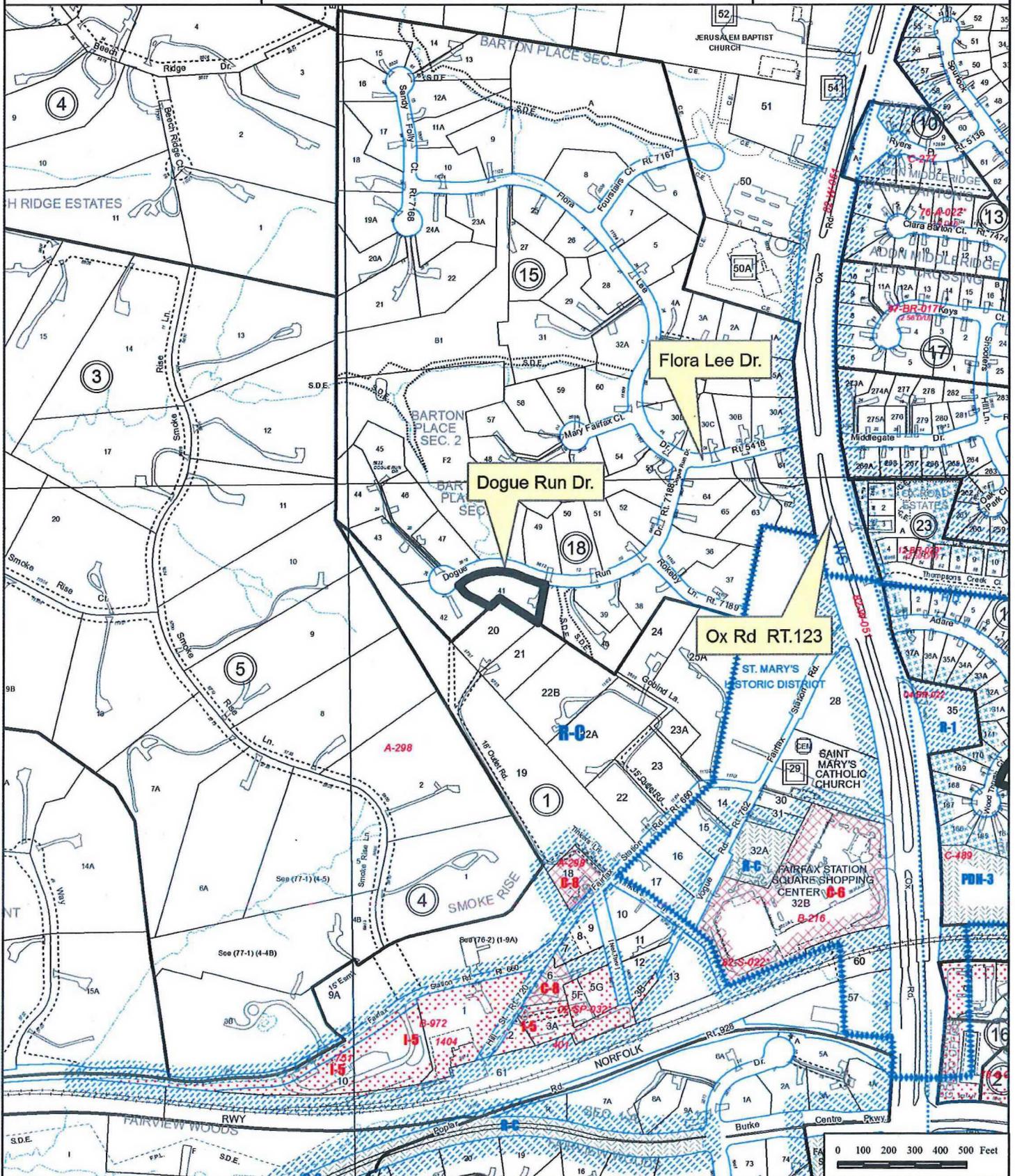
For additional information, call Zoning Evaluation Division, Department of Planning and Zoning at 703-324-1280, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035. **Board of Zoning Appeals' meetings are held in the Board Room, Ground Level, Government Center Building, 12000 Government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



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

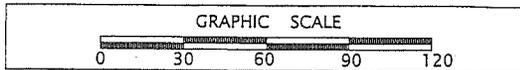
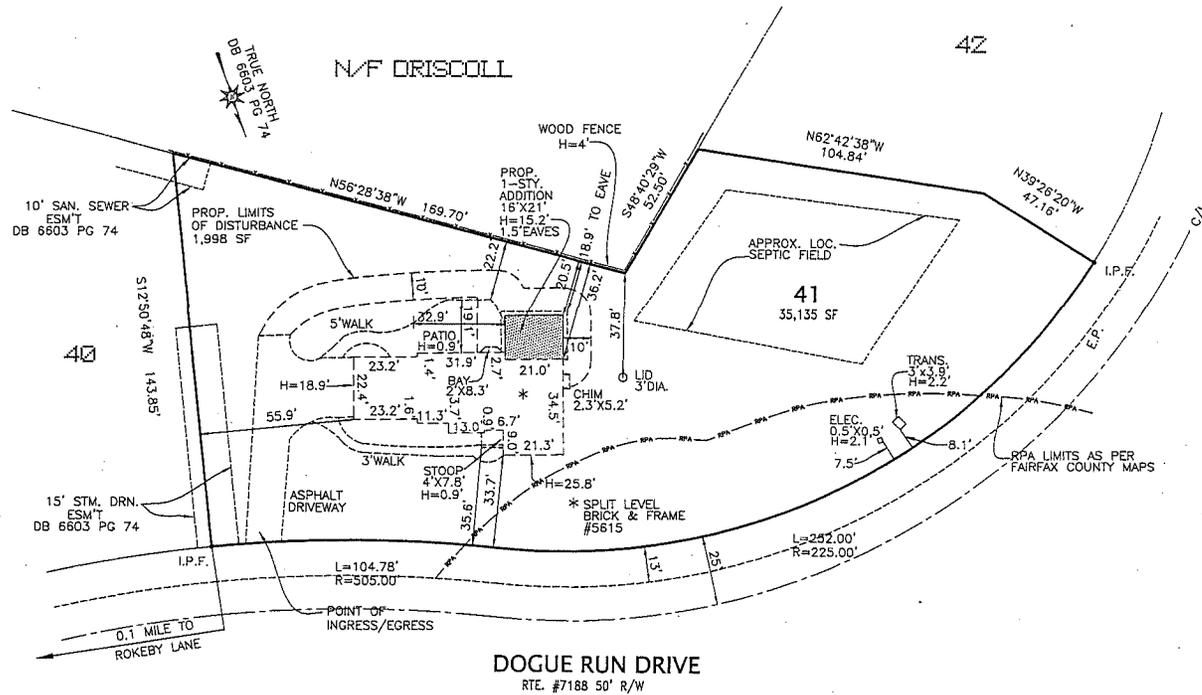


# Special Permit SP 2015-SP-129 VIJAY KOHLI



NOTES:

1. TM #077-1-18-0041.
2. ZONE: R-C
3. SETBACKS: FRONT = 40', SIDE = 20', REAR = 25'.
4. PROPERTY IS SERVED BY PUBLIC WATER AND ON-SITE SEPTIC.
5. THERE ARE NO KNOWN GRAVES OR STRUCTURES MARKING A PLACE OF BURIAL ON THIS SITE.
6. THERE ARE NO MAJOR UNDERGROUND UTILITIES OR EASEMENTS FOR SUCH UTILITIES HAVING A WIDTH OF 25 FEET OR GREATER LOCATED ON THIS SITE.
7. THIS SITE DOES NOT CONTAIN 100-YEAR FLOOD PLAIN, A PORTION OF THE SITE IS LOCATED WITHIN THE RESOURCE PROTECTION AREA (RPA) AS PER THE FAIRFAX COUNTY CHESAPEAKE BAY MAPS.
8. NO ADDITIONAL LANDSCAPING OR SCREENING IS PROPOSED WITH THIS PLAN.
9. FLOOR AREA CALCULATIONS: PER ZO SECTION 20-300 (DEFINITIONS) (FRAME CONSTRUCTION, 6 INCH EXTERIOR WALLS)  
 EX. LOT AREA = 35,135 SF  
 EX. GROSS FLOOR AREA TOTAL (SPLIT LEVEL, PARTIAL BSMT.) = 3,615 SF  
 PROP. ADDITION = 310 SF  
 PROP. GROSS FLOOR AREA TOTAL = 3,925 SF  
 PERCENTAGE OF ADDITION TO MAIN BLDG. = 310 / 3,615 = 8.6%  
 EX. FAR (TOTAL) = 3,615 / 35,135 = 0.10  
 PROP. FAR (TOTAL) = 3,925 / 35,135 = 0.11



BY PROVISIONS OF THE VIRGINIA CODE: NO CORNER MARKERS SET.  
 BOUNDARY SURVEY NOT PERFORMED.  
 PLAN SUBJECT TO RESTRICTIONS OF RECORD, TITLE REPORT NOT FURNISHED.

RECEIVED  
 Department of Planning & Zoning  
 SEP 10 2015  
 Zoning Evaluation Division

SPECIAL PERMIT PLAT  
 LOT 41 SECTION 2  
 BARTON PLACE  
 SPRINGFIELD DISTRICT  
 FAIRFAX COUNTY, VIRGINIA  
 SCALE 1"=30' DATE 05-05-15  
 REV. 09-09-15



ALEXANDRIA SURVEYS, LLC  
 1229 CARRISONVILLE ROAD SUITE 104 STAFFORD, VA 22556  
 TEL. NO. 703-636-1313 FAX NO. 703-736-4266

## SPECIAL PERMIT REQUEST

The applicants request an approval to permit a reduction in certain yard requirements to permit construction of a sunroom addition 18.9 feet from a rear lot line. The sunroom will measure 15.2 feet in height. The total addition would add 310 square feet in gross floor area.

A copy of the special permit plat, titled "Special Permit Plat Lot 41, Section 2, Barton Place," prepared by Michael L. Flynn on May 5, 2015, as revised on September 9, 2015, is included in the front of the staff report.

Copies of the proposed development conditions, the statement of justification and select file photographs and the affidavit are contained in appendices 1 through 3, respectively.

## CHARACTER OF THE SITE AND SURROUNDING AREA

The application property consists of a split level single-family detached dwelling. An asphalt driveway extends to Dogue Run Drive, and a stoop provides access to the main entrance of the dwelling. Existing mature vegetation is located on the eastern edge and southeastern corner of the property, providing screening to the area.

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



Figure 1: Aerial View

## BACKGROUND AND HISTORY

The application property and surrounding properties were zoned R-1 until July 26, 1982 when the area was rezoned to the R-C District pursuant to RZ 82-W-051 and RZ 82-W-054 to established the R-C and Water Supply Protection Overlay Districts. Although the property is in the R-C District, it was allowed to be developed under the provisions of the R-1 Cluster District due to court decree, Chancery No. 80678 in reference to Chancery No. 78456 (Appendix 5), because the preliminary site plan for the Barton Place Section 2 subdivision was approved prior to the rezoning approval. Fairfax County Tax Records indicate that the single family dwelling was constructed in 1988. The applicant is the original owner of the home.

The lot is undersized in the R-C District and the front of the house encroaches into the front yard, located 33.7 feet from the front lot line. However, the house conforms to the R1-C standards as stipulated in the 1985 court decree, and was constructed in conformance with the original building permit (Appendix 6).

## DESCRIPTION OF THE REQUEST

As discussed, the applicants are requesting approval of a special permit for a reduction of certain yard requirements to permit construction of an addition. The addition, located 18.9 feet from the rear lot line, would be used as a sunroom. In the R-C district the required rear yard is 25 feet; therefore, the applicants are requesting a reduction of 6.1 feet, or 24.4%.

Structure	Yard	Minimum Yard Required	Proposed Location	Proposed Reduction	Percentage of Reduction Requested
Sunroom	Rear	25.0 feet	18.9	6.1 feet	24.4%

The applicants propose to construct a sunroom. The addition would be a maximum of 15.2 feet in height, and it would add an additional 310 square feet in gross floor area. The roofline of the proposed sunroom would be lower than the existing roofline of the house and well within the height requirement.



Figure 2:  
Proposed  
Elevation

**ANALYSIS**

**Comprehensive Plan Provisions**

**Plan Area:** Area III, Pohick Planning District  
**Planning Sector:** Twin Lakes Community Planning Sector (P1)  
**Plan Map:** Private Open Space

**Zoning District Standards**

Bulk Standards (R-C)			R-1C Standards
Standard	Required	Provided	
Lot Size	5 acres	35,135 square feet <sup>1</sup>	25,000 square feet
Lot Width	Interior: 200 feet	200 feet	No requirement
Building Height	35 feet max.	25.8 feet	35 feet max.
Front Yard	Min. 40 feet	33.7 feet <sup>2</sup>	Min. 30 feet
Side Yard	Min. 20 feet	55.9 feet	12 feet, total minimum of 40 feet
Rear Yard	Min. 25 feet	18.9 feet <sup>3</sup>	Min. 25 feet

<sup>1</sup>Lot undersized as a result of court decree allowing the subdivision to be developed to R-1C

<sup>2</sup>As permitted with the 1987 building permit

<sup>3</sup>As permitted through the approval of this application

**Urban Forestry Analysis (Appendix 4)**

Should the construction of the proposed addition be approved, the Urban Forest Management Division (UFMD) recommends that the applicant take reasonable steps to maximize the preservation of existing vegetation by minimizing soil disturbance to only that necessary to access and construct the addition and by providing tree protection fencing along the proposed limits of disturbance to protect trees that may be impacted by these activities. The UFMD also recommends that the applicant take all reasonable steps to transplant any of the saplings or shrubs that are within the limits of clearing and grading. A development condition has been proposed to require these measures.

**Zoning Ordinance Requirements (Appendix 7)**

- Sect. 8-006 General Special Permit Standards
- Sect. 8-903 All Group 9 Uses
- Sect. 8-922 Provisions for Reduction of Certain yard Requirements

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

<p><b>Standards 1 and 2</b> Comprehensive Plan/ Zoning District</p>	<p>The Comprehensive Plan recommends residential uses and the property is developed with a residential use. The R-C District allows a reduction in minimum required yards with special permit approval.</p>
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<p><b>Standard 3</b> Adjacent Development</p>	<p>In staff's opinion, the proposed use will not hinder or discourage the use or development of neighboring properties or negatively affect value. The proposed addition is located at the rear of the house facing a vegetated, sloped portion of the yard. The sloped yard will help screen the proposed addition.</p>
<p><b>Standard 4</b> Pedestrian/Vehicular Traffic</p>	<p>No increase in vehicular or pedestrian traffic is expected with this application. In staff's opinion, the proposed sunroom is not hazardous and does not conflict with existing and anticipated traffic in the neighborhood.</p>
<p><b>Standard 5</b> Landscaping/Screening</p>	<p>A vegetated sloped portion of the rear yard will help to screen the proposed addition.</p>
<p><b>Standard 6</b> Open Space</p>	<p>There is no prescribed open space requirement on individual lots in the R-C District.</p>
<p><b>Standard 7</b> Utilities, Drainage, Parking, and Loading</p>	<p>There are no changes to the utilities, drainage, parking or loading of the site.</p>
<p><b>Standard 8</b> Signs</p>	<p>No signage is proposed.</p>

**Standards for all Group 9 Uses (Sect. 8-903)**

<p><b>Standard 1</b> Lot Size and Bulk Regulations</p>	<p>The bulk regulations for the minimum required rear yard are requested to be modified with the special permit application.</p>
<p><b>Standard 2</b> Performance Standards</p>	<p>The use will comply with the performance standards set forth in Article 14 of the Zoning Ordinance.</p>
<p><b>Standard 3</b> Site Plan</p>	<p>The construction is not disturbing 2,500 square feet; therefore, the application is not subject to the provisions of Article 17, Site Plans.</p>

**Standards for Reduction of Certain Yard Requirements (Sect. 8-922)**

<p><b>Standard 1</b> Yard Requirements Subject to Special Permit</p>	<p>A. <i>Minimum required yards – Yards not less than 50% of the requirement and not less than 5 feet:</i> The proposed screened porch addition would be located 18.9 feet from the rear lot line. The required rear yard in an R-C District is 25 feet, resulting in a reduction of 6.1 feet, or 24.4%.</p> <p>B. <i>Pipestem lots – N/A</i></p> <p>C. <i>Accessory structure locations – N/A</i></p> <p>D. <i>Extensions into minimum required yards allowed by Sect. 2-412 – N/A</i></p>
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<p align="center"><b>Standard 2</b> Not a Detached Structure in a Front Yard</p>	<p>The application does not propose a detached accessory structure.</p>
<p align="center"><b>Standard 3</b> Principal Structure that Complied with yard Requirements When Established</p>	<p>When the existing structure was built in 1988, as previously discussed, it conformed to the R-1 Cluster District regulations. A court decree allowed the subdivision to be developed as R-1 Cluster even though the lot is in the R-C District.</p>
<p align="center"><b>Standard 4</b> Addition No More than 150% of Existing Gross Floor Area (GFA)</p>	<p>The screened porch addition is 310 square feet. The existing GFA of the primary structure is 3,615 square feet; therefore, the proposed addition will be 8.6% of the GFA.</p>
<p align="center"><b>Standard 5</b> Accessory Structure Subordinate in Purpose, Scale, Use, and Intent</p>	<p>The sunroom is part of the principal structure, so this standard is not applicable.</p>
<p align="center"><b>Standard 6</b> Construction in Character with On-Site Development</p>	<p>The proposed addition will be constructed to the south of the existing dwelling. The elevation drawings indicate that the materials, size and scale of the proposed addition would be compatible with the existing dwelling.</p>
<p align="center"><b>Standard 7</b> Construction Harmonious with Off-Site Development</p>	<p>Through the statement of justification, aerial photography, photos and architectural elevations submitted by the applicant, staff has determined that the addition is similar in nature to surrounding dwellings in the neighborhood in terms of height, scale, and architecture. As previously stated, the proposed addition abuts a vegetated, sloped portion of the rear yard that will provide sufficient screening. Staff believes this addition will be harmonious with surrounding uses and meets this provision.</p>
<p align="center"><b>Standard 8</b> Construction Shall Not Adversely Impact Adjacent Properties</p>	<p>Staff believes that the proposed addition will not significantly affect the use and/or enjoyment of any adjacent property with regard to issues such as noise, light, air, or safety since the proposed addition will be located behind a landscaped portion of the adjacent lot. DPWES has indicated that there are no drainage complaints on file related to this property. Staff believes the addition will not significantly increase runoff or erosion.</p>

<p><b>Standard 9</b> Represents the Minimum Amount of Reduction Necessary</p>	<p>Staff believes the special permit application proposal is modest in nature and is the minimum amount of reduction necessary due to the shape of the lot. The lot has a curved front lot line and an angled rear lot line, leaving little room for additions or expansions to the rear of the home. The lot also has RPA located to the northwest of the dwelling in addition to a sanitary sewer and storm drainage easement, both located to the east of the dwelling.</p> <p>Other issues of yard determination, environmental characteristics, wells, and historic resources are not applicable to this site.</p>
<p><b>Standard 10</b> BZA May Impose Conditions</p>	<p>Proposed development conditions are included in Appendix 1.</p>
<p><b>Standard 11</b> Submission Requirements</p>	<p>A copy of the plat is included in the beginning of this report.</p>
<p><b>Standard 12</b> Architectural Elevations</p>	<p>Proposed elevations are included as an attachment to the development conditions in Appendix 1.</p>

**CONCLUSION / RECOMMENDATION**

Staff believes that the request is in conformance with the applicable Zoning Ordinance provisions and is in harmony with the Comprehensive Plan. Staff recommends approval of SP 2015-SP-129 for the addition with the adoption of the proposed development conditions contained in Appendix 1.

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

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

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 Development Conditions
2. Applicant's Statement of Justification and Select File Photographs
3. Applicant's Affidavit
4. Urban Forestry Memo
5. Bill of Complaint and Final Order Chancery No. 80678 & Final Decree  
Chancery No. 78456 for original subdivision
6. Original Building Permit
7. Applicable Zoning Ordinance Provision

**PROPOSED DEVELOPMENT CONDITIONS****SP 2015-SP-129****December 30, 2015**

If it is the intent of the Board of Zoning Appeals to approve SP 2015-SP-129 located at Tax Map 77-1 ((18)) 41 to permit a reduction of certain yard requirements pursuant to Section 8-922 of the Fairfax County Zoning Ordinance to permit a residential addition (sunroom) 18.9 feet from the rear lot line, staff recommends that the Board condition the approval by requiring conformance with the following development conditions.

1. These conditions shall be recorded by the applicant among the land records of Fairfax County for this lot prior to the issuance of a building permit. A certified copy of the recorded conditions shall be provided to the Zoning Permit Review Branch, Department of Planning and Zoning.
2. This special permit is approved for the location and size of the sunroom (310 square feet and 15.2 feet in height), as shown on the plat entitled "Special Permit Plat Lot 41, Section 2, Barton Place," prepared by Michael L. Flynn, on May 5, 2015, as revised on September 9, 2015, as submitted with this application and is not transferable to other land.
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 (3,615 square feet existing + 5,422.5 square feet (150%) = 9,037.5 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 shall be permitted without an amendment to this special permit.
4. The addition shall be generally consistent with the architectural renderings as shown on Attachment 1 to these conditions.
5. Tree preservation fencing shall be provided along the proposed limits of disturbance to protect trees that may be impacted by the construction of the addition.
6. Saplings or shrubs that are within the limits of clearing and grading shall be transplanted to another area on the lot.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six months after the date of approval unless the use has been established as outlined above. The Board of Zoning Appeals may grant additional time

to establish the use 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.



REAR ELEVATION

SCALE = 1/4" = 1'

PAGE OF	SCALE = 1/4" = 1'	 <b>MDC</b> JONATHAN MITCHEM DESIGN	Designer's Address: 8756 Old Colony Way Alexandria VA 22309	(703)-371-8264
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RECEIVED  
Department of Planning & Zoning

AUG 28 2015

Zoning Evaluation Division

## County Of Fairfax Statement of Justification

Address: 5615 Dogue Run Drive Fairfax Station VA 20176

### Special Permits

ADDRESS: 8205 Higham St. Lorton Va. 22079

Telephone Number: (703)-932-5893

Project Name: 3 Season Sunroom

Homeowners: Kohli Residence

Date: 8-13-2015

8-922:

#### PROVISIONS FOR REDUCTION OF YARD REQUIREMENTS:

#1, 2, 3) N/A

#4) The resulting gross floor area of proposed structure = 8.6 of compared principal structure.

#5) N/A

#6) PROPOSED STRUCTURE:

Our proposed structure has been designed to blend in with the existing architecture of the existing dwelling, as well as the surrounding development. The height and design of proposed structure, as well as the bulk and scale, matches the general size and flow of the existing dwelling, and the surrounding architecture of the community. Our proposed addition/sun room in no way impedes the vision or sight line of other dwellings or from the roadway.

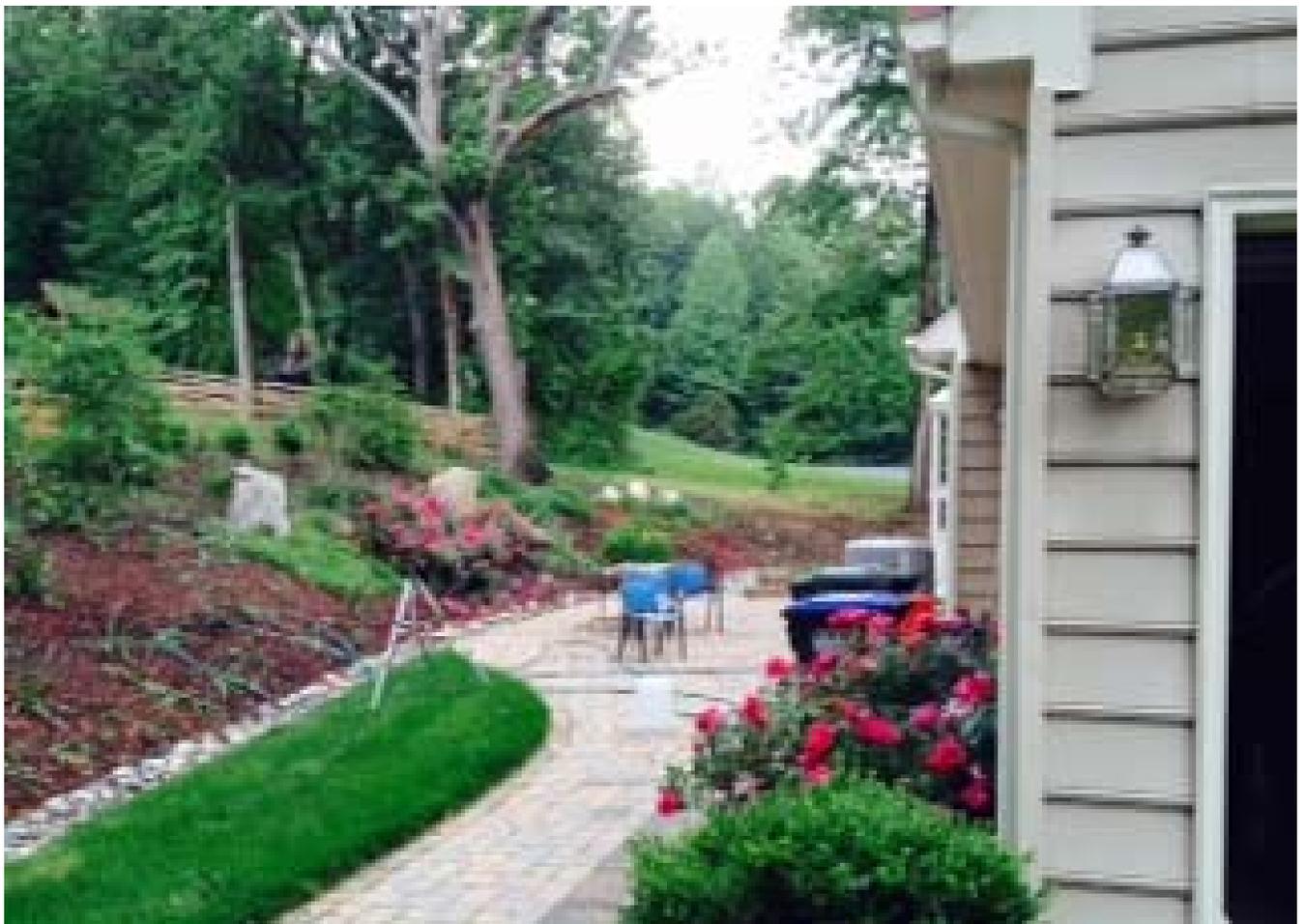
The new proposed structure is harmonious with off site structures because it will be built on a large lot, in the back of an existing dwelling, with no sight line to the new structure from adjacent lots or from the road as stated above. The removal of any vegetation will be minimal, if any at all, as the location for new construction will be done where an existing deck is now. No trees of any kind will be removed or destroyed.

Negative or adverse impact to adjacent properties will not be a factor here due to the sheer size and shape of, not only Lot-42, but of all the surrounding lots in area. Noise, light, air and safety will have no bearing here. As to erosion and stormwater runoff, the new disturbed area is less than 350 sq. ft.

The new foundation is the same as the ex. Dwelling ( a monolithic poured slab w/ trench footings and new drain piping around perimeter) to direct ground water as needed.

We ask for a special permit firmly based on house layout and available sites to build using existing architectural lay out; and the unique shape of the lot based on existing Sq. Footage. Basically, due to the Architectural layout and the topographical issues and the lots shape, we basically can't build the proposed structure at any other place.







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

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 6/4/15  
 (enter date affidavit is notarized)

129780

I, Alcira Juarez, 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 <b>BOLD</b> above)
Vijay Kohli	5615 Dogue Run Dr. Fairfax Station, VA 22039	Title owner/ applicant
Sushma Kohli	11 11	Co-title Owner
Alcira Juarez	4762 Cheswald Ct Woodbridge, VA 22192	Agent
Alfredo Esquivel	11 11	Agent
Vale Home Improvement LLC	11 11	

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

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

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

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

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 6/4/15  
(enter date affidavit is notarized)

129780

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)

Vale Home Improvement LLC  
4762 Cheswald Ct  
Woodbridge, VA 22192

**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)

Alfredo Esquivel  
alcira Juarez

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

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

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

Page Three

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 6/4/15  
(enter date affidavit is notarized)

129780

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

**PARTNERSHIP INFORMATION**

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

N/A

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

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

(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: 6/4/15  
(enter date affidavit is notarized)

129 780

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

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

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

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

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

NONE

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

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

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 6/4/15  
(enter date affidavit is notarized)

129780

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 Alira Joarez [X] Applicant's Authorized Agent

Alira Joarez  
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 04 day of June 20 15, in the State/Comm. of Virginia, County/City of Prince William

[Signature]  
Notary Public

My commission expires: 5/31/17





# County of Fairfax, Virginia

## MEMORANDUM

**DATE:** October 22, 2015

**TO:** Sharon Williams, Staff Coordinator  
Department of Planning and Zoning

**FROM:** Samantha Wangsgard, Urban Forester II  
Forest Conservation Branch, DPWES 

**SUBJECT:** Barton Place Section 2, Lot 41; SP 2015-SP-129

The Urban Forest Management Division (UFMD) has completed its review of the Application for a Special Permit, SP 2-15-SP-129 and Statement of Justification, both date stamped as received by the Department of Planning and Zoning on August 28, 2015. A site visit was conducted on October 22, 2015.

Based on this review no specific comments were generated. Should the construction of the proposed addition be approved, the UFMD recommends that the applicant take reasonable steps to maximize the preservation of existing vegetation by minimizing soil disturbance to only that necessary to access and construct the addition and by providing tree protection fencing along the proposed limits of disturbance to protect trees that may be impacted by these activities.

The UFMD also recommends that the applicant take all reasonable steps to transplant any of the saplings or shrubs that are within the limits of clearing and grading.

Please contact me should you have any questions.

SW/

UFMDID #: 204561

cc: DPZ File



FILED

VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY <sup>FILED</sup> 1983

JAMES E. HOOPRAGLE  
Clerk of the Circuit Court  
Fairfax County, Va.

FOSTER BROS., INC., )  
 )  
Complainant, )  
 )  
v. )  
 )  
BOARD OF SUPERVISORS OF )  
FAIRFAX COUNTY, VIRGINIA, )  
a body politic, )  
 )  
SERVE: David T. Stitt, Esq. )  
County Attorney )  
4100 Chain Bridge Road )  
Fairfax, VA )  
 )  
and )  
 )  
LARRY R. COONS, Director )  
Fairfax County Department of )  
Environmental Management )  
10555 Main Street )  
Fairfax, Virginia, )  
 )  
Defendants. )

IN CHANCERY NO. 80678

BILL OF COMPLAINT

TO THE HONORABLE JUDGES OF SAID COURT:

COMES NOW Complainant, Foster Bros., Inc., by counsel, and files this its Bill of Complaint for Declaratory Judgment and Ancillary Relief, representing to the Court as follows:

1. On October 4, 1982 Complainant filed an action in this Court against Defendants for the reasons set forth and the relief requested as specified in the Bill of Complaint in Chancery No. 78456 which Bill of Complaint is attached hereto as Exhibit A.
2. Paragraphs 1 through 33 of Exhibit A are adopted herein by reference.
3. As a result of actions taken by Defendants as set forth in Exhibit A, Defendant Coons wrote a letter to Complainant disapproving Complainant's proposed subdivision for the reasons set forth therein. Said letter is attached hereto as Exhibit B.
4. The due diligence standards of the Public Facilities Manual of Fairfax County provide that an approved preliminary plat may be updated or extended on a periodic basis to maintain grandfather status as defined in the Public Facilities Manual. This Manual was adopted by Defendant Board, and Defendant Coons,

HAZEL  
BECKHORN & HANES  
Attorneys at Law  
P. O. Box 547  
Fairfax, Virginia 22030

as Defendant Board's agent, is charged with the administration of the provisions thereof.

5. Complainant had no duty to request an extension of Complainant's preliminary plat approval to preserve its right to maintain its action as set forth in Exhibit A and seek the remedies set forth therein. The actions of Defendant Board and Defendant Coons, as set forth in Exhibits A and B, foretell that any request for extension after Defendant Coons' letter (Exhibit B) would be a futile effort.

6. Nevertheless, because of ambiguities contained in the due diligence standards, as set forth in said Public Facilities Manual, Complainant did, on January 7, 1983, tender its preliminary plat to Defendants and request an extension of the approval of this plat. Complainant also notified Defendant Coons of its request for extension by letter dated January 7, 1983. Said letter is attached hereto as Exhibit C.

7. Complainant's request for extension of plat approval was rejected by Defendant Coons in a letter dated January 17, 1983. Said letter is attached hereto as Exhibit D.

8. Defendant Coons' rejection of the request for extension of preliminary plat approval was not properly based on the Ordinances and statutes applicable thereto, and further, said rejection was arbitrary, capricious, discriminatory and confiscatory.

9. For the reasons stated herein and in Exhibit A, the actions of Defendant Board in adopting and applying the grandfathering provisions of the due diligence standards of the Public Facilities Manual are arbitrary, capricious, unreasonable, confiscatory, discriminatory and contrary to the Virginia Code and the Virginia and United States Constitutions.

10. An actual controversy exists between the parties and Complainant has no adequate remedy at law.

WHEREFORE, Complainant prays that this Court enter a Decree as follows:

A. Declaring that the pendency of Chancery No. 78456 obviates the need for Complainant to request an extension of preliminary plat approval subsequent to the commencement of said action; that the applicability of said due diligence standards and the provisions of Section 15.1-475 of the 1950 Code of Virginia, as amended, shall be determined in Chancery No. 78456.

B. Declaring that Complainant's request for extension of plat approval (Exhibit C) was not a prerequisite for maintenance of Complainant's grandfather status, since that issue will also be determined in Chancery No. 78456.

C. Awarding Complainant the costs of this action and such other and further relief as the Court may deem appropriate.

FOSTER BROS., INC.

By Robert A. Lawrence  
Counsel

HAZEL, BECKHORN AND HANES

By Robert A. Lawrence  
Robert A. Lawrence  
Counsel for Complainant  
P. O. Box 547  
Fairfax, Virginia 22030

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FOSTER BROS., INC.,  
3900 University Drive  
Fairfax, Virginia 22030,

Complainant,

v.

BOARD OF SUPERVISORS OF  
FAIRFAX COUNTY, VIRGINIA,  
a body politic,

SERVE: David T. Stitt, Esq.  
County Attorney  
4100 Chain Bridge Rd.  
Fairfax, Virginia

and

LARRY R. COONS, Director  
Fairfax County Department of  
Environmental Management  
The Fairfax Building  
10555 Main Street  
Fairfax, Virginia,

SERVE: David T. Stitt, Esq.  
County Attorney  
4100 Chain Bridge Rd.  
Fairfax, Virginia

ALSO SERVE:

JOHN F. HERRITY, CHAIRMAN  
Board of Supervisors  
4100 Chain Bridge Road  
Fairfax, Virginia

and

MARTHA V. PENNINO, Supervisor  
Centreville District  
246 Maple Avenue East  
Vienna, Virginia

and

Joseph Alexander, Supervisor  
Lee District  
6121 Franconia Road  
Alexandria, Virginia

and

THOMAS DAVIS, Supervisor  
Mason District  
6507 Columbia Pike  
Annandale, Virginia

and

SANDRA DUCKWORTH, Supervisor  
Mount Vernon District  
8101 Hinson Farm Road  
Alexandria, Virginia

IN CHANCERY NO. 78456

HAZEL,  
BECKHORN & HANES  
Attorneys at Law  
P. O. Box 547  
Fairfax, Virginia 22030

EXH.  
A

and )  
 )  
 NANCY FALCK, Supervisor )  
 Dranesville District )  
 1437 Balls Hill Road )  
 McLean, Virginia )  
 )  
 and )  
 )  
 AUDREY MOORE, Supervisor )  
 Annandale District )  
 9002 Fern Park Drive )  
 Burke, Virginia )  
 )  
 and )  
 )  
 JAMES M. SCOTT, Supervisor )  
 Providence District )  
 8739 Lee Highway )  
 Fairfax, Virginia )  
 )  
 and )  
 )  
 MARIE B. TRAVESKY, Supervisor )  
 Springfield District )  
 6140 Rolling Road )  
 Springfield, Virginia )  
 )  
 Defendants. )

BILL OF COMPLAINT FOR DECLARATORY  
 JUDGMENT AND INJUNCTIVE RELIEF

TO THE HONORABLE JUDGES OF SAID COURT:

COMES NOW Complainant, Foster Bros., Inc., by counsel,  
 and files this its Bill of Complaint for Declaratory Judgment  
 and Injunctive Relief, representing to the Court as follows:

1. The Defendant Board of Supervisors (hereinafter  
 "Defendant Board") is the legislative body of Fairfax County,  
 Virginia, charged with the responsibility of adopting, amending  
 and administering the Zoning Ordinances, Zoning Maps, and  
 Subdivision Ordinances of Fairfax County, and has the power of  
 eminent domain, all pursuant to the statutes and/or Constitution  
 of the Commonwealth of Virginia.

2. Defendant Coons (hereinafter "Coons") is, and at all  
 times pertinent hereto was, the Director of Fairfax County's  
 Department of Environmental Management charged as the agent  
 and employee of Defendant Board with responsibility, inter  
alia, for overseeing implementation of the Zoning Ordinance  
 and Subdivision Ordinance regarding the review and approval of  
 construction plans and subdivision plats and permits issued  
 pursuant thereto.

HAZEL,  
 BECKHORN & HANES  
 Attorneys at Law  
 P. O. Box 547  
 Fairfax, Virginia 22030

3. On May 20, 1980 Complainant, a Virginia corporation, entered into a contract to purchase 35.943 acres, more or less, located in the Springfield District of Fairfax County which is now identified on Fairfax County tax maps as Section 68-2-((1)), Parcels 47, 47G, 47H, 47J and D (the "subject property").

4. Since December 12, 1978, Complainant has been involved in the development and construction of a residential subdivision known as Barton Place, Section One, which development contains 39 lots. The sale of lots in this section is nearing completion. Complainant purchased the subject property because it was adjacent to Section One, zoned similarly R-1, and furnished a logical extension as the second section of Barton Place.

5. Complainant incurred substantial expenses in good faith reliance upon the existing R-1 zoning for acquisition, engineering, planning and Fairfax County reviewing fees to obtain approval of plans for development of the subject property.

6. On June 1, 1980 Complainant started soil testing on the subject property for location of septic fields. On July 31, 1980 the boundary survey and a topographic survey of the subject property was completed.

7. On September 29, 1980 Complainant's preliminary plan was submitted to Defendant Board's agents for review and approval.

8. On December 1, 1980 Complainant consummated the purchase of the property.

9. On March 23, 1981 Defendant Board's agents approved Complainant's preliminary plan calling for development of the property at the zoned R-1 density which provided for 36 lots. A revision to the preliminary plan was also approved by Defendant Board's agents on January 7, 1982.

10. On July 24, 1981 Complainant completed model homes for the new subdivision on Parcels 47H and 47J.

11. Based upon preliminary plat approval by Defendant Board's agents, Complainant expended large sums of money for the preparation of the completed design of final plans and

profiles and the grading plan for the subdivision so that the subdivision would be made ready for bond approval and record plat approval by Defendant Board's agents. Complainant submitted these final design plans to Defendant Board's agents and, at that time, paid substantial review fees to Defendant Board's agents. Review of Complainant's plans was completed when Defendant Board took the actions set forth hereinafter.

12. Despite Complainant's approved preliminary plan, the preparation, submission and review of Complainant's final plans, profiles, and drawings, and despite Complainant's substantial expenditures and reliance in good faith upon the then existing suburban-density zoning, the Defendant Board of its own motion and without the consent of Complainant did, on July 26, 1982 in RZ-82-W-054, downzone the subject property to the R-C "Rural Conservation" District, which District limits development to one dwelling unit per 5 acres.

13. The development of the subject property with 5 acre estates is not economically or practically feasible. Moreover, the character of the vicinity of the subject property and the availability of existing or planned public facilities and services is such that the R-1 zoning of the subject property was and is reasonable and suited to the property. The R-C zoning imposed by the Board in its downzoning action was not and is not reasonable nor suitable.

14. The Rural Conservation zoning of Complainant's property was enacted allegedly for the stated purpose of protecting the water supply of the residents of Fairfax County. The means employed by Defendant Board, i.e., the downzoning, was not reasonably necessary for the accomplishment of the stated purpose and is unduly oppressive on this Complainant and other property owners similarly situated.

15. Under the grandfathering provisions of Defendant Board's Public Facilities Manual that were in effect prior to July 26, 1982, Complainant was entitled by virtue of its approved preliminary plat to pursue development of its property

HAZEL,  
BECKHORN & HANES  
Attorneys at Law  
P. O. Box 547  
Fairfax, Virginia 22030

under R-1 District. Complainant has complied with, and remains ready to comply with all valid ordinances of Defendant Board pertaining to development of the subject property in R-1 District.

16. On July 26, 1982 Defendant Board illegally and without adequate public notice or hearing, purported to amend the referenced grandfathering provisions, as applied to Complainant's property, so as to deprive Complainant and those similarly situated of the protection and benefit of the Board's own grandfathering provisions.

17. Under the Board's selective treatment approach to the grandfathering provisions, Complainant could have only obtained grandfathering for the subject property if a final subdivision plat had been approved by Defendant's agents and recorded by Complainant prior to July 26, 1982. The onerous bonding requirements and costly reviewing fees imposed by Defendant Board made final record plat approval and recordation for the subject property economically unfeasible within the timeframe imposed by Defendant Board.

18. On August 5, 1982, Defendant Coons wrote a letter to Complainant attempting to disapprove the proposed subdivision of the subject property. The basis for the disapproval was the invalid Zoning Ordinance amendments and grandfathering provisions referred to herein.

19. Irrespective of any grandfathering provisions adopted by Defendant Board, Complainant's right to develop its property in accordance with R-1 District regulations is vested by virtue of Complainant's substantial expenditures in reliance on the R-1 zoning district in effect prior to Defendant Board's unwarranted and illegal actions.

20. If permitted to stand, the downzoning of the Complainant's property has resulted in a loss and taking by the Board from Complainant of valuable development rights as well as the loss of monies invested in acquisition, planning, engineering and review fees. The downzoning will also cause Complainant to incur additional carrying costs for taxes and

debt service, as well as additional monies for new planning, engineering and County review. The financial loss to Complainant as a result of this taking is substantial and severe in exchange for no substantial benefit to the public health, safety or welfare stemming from such treatment of Complainant's property.

21. Imposition of the Rural Conservation zoning on July 26, 1982 was also for the stated purpose of excluding substantial numbers of single-family dwelling units from the area so zoned. This action has the further discriminatory purpose and effect of raising the cost of housing and of excluding families from the opportunity to reside in Fairfax County. Specifically, it directly excludes all those who cannot afford so-called "estate" style residences.

22. On July 26, 1982, the Board also, on its own motion in RZ-82-W-051, further imposed upon Complainant's property certain building restrictions and requirements by enacting a Water Supply Protection Overlay District again for the stated purpose of protecting the public water supply. The regulatory measures enforced by this ordinance are not reasonably necessary to the accomplishment of the stated purpose and are unduly oppressive on this Complainant and other property owners similarly situated.

23. The Water Supply Protection Overlay District rezoning, and the Rural Conservation District rezoning were enacted by the Board without and not in accord with a validly adopted comprehensive plan.

24. The Water Supply Protection Overlay District rezoning, the Rural Conservation rezoning, the Public Facilities Manual amendments affected thereby, and the grandfathering provisions, (Arguendo "Subject Ordinances") are discriminatory in that they exempt from their effect similarly situated properties without any rational basis.

25. Enactment by the Defendant Board of the Subject Ordinances affecting Complainant's property was beyond and contrary to the delegated powers of said Defendant and in conflict with powers and duties reserved to the Commonwealth and its other agencies under the laws of Virginia.

26. The Subject Ordinances bear no reasonable or substantial relationship to the public health, safety, morals or general welfare.

27. Based on the facts and allegations stated herein, Defendant Board, under color of the Subject Ordinances, has violated and is violating Complainant's rights, privileges and immunities secured by the Equal Protection and Due Process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and by the Civil Rights Acts, 42 U.S.C. §§1981-1983.

28. The Subject Ordinances create non-uniform zoning within the zoning districts affected by said Ordinances.

29. The Subject Ordinances are contrary to and without reasonable relationship to the most suitable use of the property, especially in consideration of the trends of growth or change in the immediate vicinity, and the current and future requirements of the community; nor do they encourage economic development activities that will provide employment and enlarge the tax base.

30. The effect of the Subject Ordinances is to deprive Complainant of all legitimate reasonable uses of the property and said actions result in confiscation of the property without compensation and due process, all in violation of State and Federal Constitutions.

31. As a result of Defendants' actions and policies, Complainant is suffering and will continue to suffer irreparable harm since, inter alia, it is unable to make use of its property.

32. For the reasons stated herein, the actions of Defendant Board in adopting and applying each and all of the Subject Ordinances are arbitrary, capricious, unreasonable, confiscatory, discriminatory and contrary to the Virginia Code and the Virginia and United States Constitutions.

33. An actual controversy exists between the parties and Complainant has no adequate remedy at law.

HAZEL,  
BECKHORN & HANES  
Attorneys at Law  
P. O. Box 547  
Fairfax, Virginia 22030

WHEREFORE, Complainant prays that this Court enter a Decree as follows:

A. Declaring the actions of Defendant Board in RZ-82-W-054 downzoning the subject property to be null and void, as confiscatory, arbitrary, unreasonable, discriminatory, illegal and ultra vires, and enacted without due process and contrary to the requirements of the Virginia Code and Constitution and therefore unenforceable.

B. Declaring the actions of Defendant Board in RZ-82-W-051 imposing the Water Supply Protection Overlay District to be null and void, as confiscatory, arbitrary, unreasonable, discriminatory, illegal and ultra vires, and enacted without due process and contrary to the requirements of the Virginia Code and Constitution and therefore unenforceable.

C. Declaring the action of the Defendant Board in changing the applicability of its Public Facilities Manual as confiscatory, arbitrary, discriminatory, ultra vires, and otherwise illegal and a denial of vested rights.

D. Declaring the action of Defendant Board in imposing R-C zoning, the Water Supply Protection Overlay District and the attempted Public Facilities Manual amendments on the subject property to be a violation of the civil rights laws of the United States.

E. Declaring the prior subsisting zoning on the subject property, to-wit: the R-1 zone, to be the lawful and existing zoning on the property and that Complainant's right to R-1 use on the subject property to have vested.

F. Permanently enjoining the Defendant Board and its agents from interfering with the use of the subject property in the R-1 District.

G. Issue a mandatory injunction directing Defendants, their agents and employees, to continue to accept and process all plans, drawings and applications submitted by Complainant in compliance with Fairfax County Ordinances in furtherance of development of subject property in the R-1 District.

H. Awarding Complainant the costs of this action and such other and further relief as the Court may deem appropriate.

FOSTER BROS., INC.

By:

Robert A. Lawrence  
Counsel

HAZEL, BECKHORN AND HANES

By:

Robert A. Lawrence  
Robert A. Lawrence  
Counsel for Complainant  
P. O. Box 547  
Fairfax, Virginia 22030

HAZEL,  
BECKHORN & HANES  
Attorneys at Law  
P. O. Box 547  
Fairfax, Virginia 22030

COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX



August 5, 1982

CERTIFIED MAIL

703-691-2746

Charles Huntley  
Huntley, Logan & Nyce  
7202 Poplar Street  
Unit E  
Annandale, Virginia 22003

SUBJECT: Barton Place Section 2, 3524-PRV-04-1, TM 68-3((1))47 and  
68-3((1)) 47A, Springfield District

REFERENCE: Rezoning Cases: RZ-82-W-051 (WSP0D)  
RZ-82-W-052 (AN10D)  
RZ-82-W-053 (I-3)  
RZ-82-W-054 (R-C)

On July 26, 1982, the Board of Supervisors of Fairfax County, Virginia, adopted the above-referenced Zoning Ordinance amendments.

This is to advise that the proposed subdivision is not in conformance with the Fairfax County Zoning Ordinance as amended.

Therefore, your proposed subdivision cannot be approved as submitted and is hereby disapproved. If you wish to amend your proposal to comply with existing ordinance provisions, we will process your resubmission. If you do not wish to do so, please advise us in writing and if you are entitled to any refund of fees the refund will be processed promptly.

Larry R. Coons, Director of  
Environmental Management  
The Fairfax Building, 5th Floor  
10555 Main Street  
Fairfax, VA 22030

LRC:ssd

cc: Developer/owner  
County Attorney's Office  
Bonds and Agreements Branch  
Plan Control Section

EXH.  
B

BUILDERS 385-8900 REALTORS 385-9300 3900 University Drive Fairfax, Virginia 22030

January 7, 1983

Mr. Larry R. Coons  
Director Dept. of Environmental Management  
COUNTY OF FAIRFAX  
10555 Main Street  
Fairfax, Virginia, 22030

RE: BARTON PLACE, SEC. #2

Dear Mr. Coons:

We have this day tendered the preliminary plat on the above referenced subdivision to obtain an extension of the approval of this plat.

You are hereby notified that we are unable to make the time limitations of Fairfax County ordinances because you previously disapproved our preliminary plat (see your letter to our engineer dated August 5, 1981). This action made it impossible for us to further process our construction plans and final plat.

Request is hereby made that you extend the approval of this preliminary plat. We would appreciate receiving your response to this request for extension within five (5) days of your receipt of this letter.

Very truly yours,

FOSTER BROTHERS, INC.

  
DONALD E. FOSTER  
Vice President

DEF:nc

FOSTER 

EXH.

C



COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX

January 17, 1983



Mr. Donald E. Foster, Vice-President  
Foster Brothers  
3900 University Drive  
Fairfax, Virginia 22030

CERTIFIED MAIL

Subject: Barton Place, Section 2, 3524-PRD-01-1  
TM 68-3 ((1)) 47 and 68-3 ((1)) 47A, Springfield District

Reference: Rezoning Cases: RZ-82-W-051 (WSP0D), RZ-82-W-052 (ANI0D)  
RZ-82-W-053 (I-3), RZ-82-W-054 (R-C)

Dear Mr. Foster,

On July 26, 1982, the Board of Supervisors of Fairfax County, Virginia, adopted the above referenced Zoning Ordinance Amendments.

On August 5, 1982, this office sent the firm of Huntley, Logan and Nyce a letter advising that the preliminary plat of subdivision (Barton Place, Section 2, 3524-PRV-04-1) was not in conformance with the Fairfax County Zoning Ordinance as amended, and that the subdivision accordingly was disapproved.

On January 7, 1983, the County received your enclosed letter of request for extension of preliminary subdivision plat approval, accompanied by a copy of the plat (Barton Place, Section 2, 3524-PRD-01-1), which similarly is not in conformance with the Fairfax County Zoning Ordinance as amended.

Since the subdivision proposal which is the subject of your January 7, 1983, correspondence was disapproved by my letter of August 5, 1982 (attached) there is no longer an approved preliminary plat which can be extended at this time. If you wish to amend your proposal to comply with existing ordinance provisions, we will process a resubmission. If you do not wish to do so, please advise us in writing and if you are entitled to any refund of fee, the refund will be processed promptly.

Yours truly,

*/s/* LARRY R. COONS  
Larry R. Coons, Director, Department of  
Environmental Management  
The Fairfax Building, 5th Floor  
10555 Main Street  
Fairfax, Virginia 22030

LRC:HS:jd  
Attachments

cc: Huntley, Logan, Nyce  
D.E.M.-William Rucker  
Plan Control-Plan Processing

County Attorney's Office-Rich Tremaine  
Bonds & Agreements Branch-Inspection Services

EXH.  
D





not unreasonable, arbitrary, or capricious and said rezoning actions were constitutional and bear a reasonable and substantial relationship to the public health, safety, and general welfare;

4. The Board of Supervisors has produced evidence of a substantial change of circumstances occurring between August 1978, and July 26, 1982, which warranted the rezoning actions of July 26, 1982;

5. The action of the Board on July 26, 1982, which rezoned approximately 40,000 acres to the R-C District, was not exclusionary;

6. The action of the Board on July 26, 1982, which rezoned approximately 40,000 acres to the R-C District, was not confiscatory;

7. The sixty-day limitation period set forth in Va. Code § 15.1-493(G) applies to and has expired for any and all causes of action not filed within 60 days of July 1, 1984, regarding the July 26, 1982, rezoning actions of the Board of Supervisors;

8. Complainant has appeared and hereby releases and discharges for itself and its heirs, successors and assigns any and all claims, demands, suits, and actions it may have, whether legal or equitable in nature, against the County of Fairfax, its Board of Supervisors, both past and present, all individual members of Defendant Board of Supervisors, both past and present, its boards and commissions and members thereof, both past and present, its officers, agents and employees, both

past and present, all in both their official and individual capacities, arising out of or related to the subject property (Fairfax County 1985 Tax Map Nos. 68-3((1))47, 47G, 47H, 47J, 68-3((15))D and F, and 77-1((1))26; erroneously referred to in the Complaint as 68-2((1))47, 47G, 47H, 47J and D) or any of the issues raised or which could have been raised in this lawsuit or the rezoning actions of the Board of Supervisors on July 26, 1982;

9. Any claim submitted to the Defendant Board of Supervisors pursuant to Va. Code § 15.1-554 by Complainant, at its request, is hereby withdrawn with prejudice;

10. All parties to this cause have agreed not to appeal the decision of this Court as set forth in this Final Decree, as further evidenced by their endorsement of this Decree as "SEEN AND AGREED";

11. Complainant does not have any vested rights for development of the property which is the subject of this suit under its prior zoning categories;

12. Nothing in this Order or in the letter opinion of the Court is intended to preclude any party hereto from applying for approval of replanning and rezoning of the subject property under procedures and guidelines set forth in Title 15.1 of the Virginia Code and the applicable ordinances of Fairfax County, as amended. Because the Court has found the downzoning at issue in this case, as affected by developments which the Court found grandfathered or vested within the R-C zoned area, lawful, judicial review of any denial of such

future rezoning applications must proceed under standards established under Virginia law for review of denial of requests for zoning changes, and on the basis that the R-C zoning for the subject property, and all other properties zoned R-C on July 26, 1982, as affected by developments found grandfathered or vested, was lawful as of July 26, 1982, rather than those standards applicable to downzonings; and

13. Complainant is grandfathered to proceed with development of the features shown on the preliminary plat under prior ordinances and provisions, in accordance with the preliminary subdivision plat approval (January 7, 1982) under the conditions specified herein; now therefore, it is

ADJUDGED, ORDERED, and DECREED that the challenged rezoning actions of the Board of Supervisors on July 26, 1982, as drafted and as applied to the subject property, were lawful, constitutional, reasonable, and bore a substantial relationship to the public health, safety, and general welfare; and it is further

ADJUDGED, ORDERED, and DECREED that the challenged rezoning actions of the Board of Supervisors on July 26, 1982, were not unlawful, unreasonable, arbitrary, capricious, discriminatory, confiscatory, or exclusionary; and it is further

ADJUDGED, ORDERED, and DECREED that the Bill of Complaint challenging the legality, reasonableness, or constitutionality of the action of the Board of Supervisors on July 26, 1982, which rezoned approximately 40,000 acres, including the subject property, to the R-C District is hereby denied; and it is further

ADJUDGED, ORDERED, and DECREED that Complainant's preliminary subdivision plat (3524-PRV-04-1) (Fairfax County 1985 Tax Map Nos. 68-3((1))47, 47G, 47H, 47J and 68-3((15))D and F, 77-1((1))26; approximately 36 acres; showing 36 approved lots of which 5 were previously recorded: 30A through 30E) which received preliminary approval on January 7, 1982 is grandfathered for the features shown thereon under prior ordinances and provisions as a result of such preliminary plat approval. In no event shall any final subdivision plat be approved or recorded which shows more than a maximum of 31 lots. It is agreed by all parties that in order to maintain this grandfather status, Complainant must have all final subdivision plats (including all sections of multi-section projects) approved and recorded in the land records of Fairfax County within eighteen months of the date of entry of this decree, except as otherwise provided below. If this requirement is not met, grandfather status will be lost and all provisions of the R-C zoning district shall be applicable unless amended by the Board of Supervisors. In particular:

A. The only exception to the eighteen-month requirement is that the time period to retain grandfather status shall be extended for any period in excess of sixty days in which Defendants have accepted a plan for review and have not returned it; any period in excess of thirty days in which a second or subsequent submission of the same plan has been submitted and accepted for review and not returned; and any period in excess of thirty days during which all necessary

bonds and agreements and related forms have been prepared and submitted and no action has been taken by the Bonding Committee. For example, 1) if a plan is submitted and accepted for review and not returned to the engineer until ninety days after its submission, then thirty days shall be added to the eighteen-month deadline; 2) if a plan is resubmitted and accepted for review and not returned to the engineer until forty-five days after its submission, then fifteen days shall be added to the eighteen-month deadline; and 3) if all necessary bonds and agreements are submitted and the Bonding Committee fails to approve or disapprove the bonds and agreements until sixty days after submission, then thirty days shall be added to the eighteen-month deadline.

B. All subdivision plats and construction plans must comply with the BMP requirements adopted by the Board of Supervisors on July 26, 1982.

C. Either (1) the standards contained in the Public Facilities Manual effective July 25, 1982, or (2) the standards contained in the Public Facilities Manual adopted effective January 1, 1985, shall apply to the review and approval of all the subject grandfathered plans of Complainant; such election to be made by note on Complainant's first plan submission pursuant hereto, however if no such note is made on the first plan submission, then the standards effective January 1, 1985 shall apply; provided that in any event Complainant must comply with all requirements imposed by the Virginia Department of Highways and Transportation or other state agencies at the time of the final subdivision plat approval.

D. The subject property is properly and lawfully zoned in the R-C zoning district and has been so since July 26, 1982. After recordation of the final subdivision plat, if any, within the eighteen-month period (with extensions, if any) as provided above, all provisions of the R-C zoning district shall apply unless amended by the Board of Supervisors in which case the amended provisions shall apply.

E. The parties agree that the 1985 amendments to Va. Code § 15.1-466 do not apply to the eighteen-month time limit set forth above.

ADJUDGED, ORDERED and DECREED that the Court's letter opinion of January 7, 1985, is hereby incorporated herein by reference; and it is further

ADJUDGED, ORDERED and DECREED that Complainant hereby releases and discharges for itself and its heirs, successors and assigns any and all claims, demands, suits, and actions it may have, whether legal or equitable in nature, against the County of Fairfax, its Board of Supervisors, both past and present, all individual members of Defendant Board of Supervisors, both past and present, its boards and commissions and members thereof, both past and present, its officers, agents and employees, both past and present, all in both their official and individual capacities, arising out of or related to the subject property or any of the issues raised or which could have been raised in this lawsuit or the rezoning actions of the Board of Supervisors on July 26, 1982; and it is further

ADJUDGED, ORDERED and DECREED that the Bill of Complaint is dismissed with prejudice.

THIS DECREE IS FINAL.

ENTERED this 17<sup>th</sup> day of Sept., 1985.

*Johanna L. Fitzpatrick*  
JOHANNA L. FITZPATRICK, JUDGE  
FAIRFAX COUNTY CIRCUIT COURT

SEEN AND AGREED TO:

HAZEL, BECKHORN & HANES

FOSTER BROS., INC.

BY *Robert A. Lawrence*  
Robert A. Lawrence, Esq.  
4084 University Drive  
Fairfax, Virginia 22030  
Counsel for Complainant

BY *Arthur E. Foster, Pres.*  
Authorized Agent or  
Representative

DAVID T. STITT  
COUNTY ATTORNEY

BY *Robert Lyndon Howell*  
Robert Lyndon Howell  
Senior Assistant County Attorney

BY *George A. Symanski*  
George A. Symanski, Jr.  
Senior Assistant County Attorney  
4100 Chain Bridge Road  
Fairfax, Virginia 22030  
Counsel for Defendants

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
 FAIRFAX COUNTY, VIRGINIA  
 PERMIT APPLICATION CENTER  
 10555 MAIN STREET, 4TH FLOOR  
 FAIRFAX, VA. 22030 691-3031

**BUILDING  
 PERMIT APPLICATION**

APPLICATION NO

122-1937  
 Date

**JOB LOCATION**

Street 5615 DOGUE DUN DRIVE (LOT 41)  
 Building \_\_\_\_\_ Floor \_\_\_\_\_ Suite \_\_\_\_\_  
 Subdivision BARTON PLACE-SEC. 2  
 Tenants Name \_\_\_\_\_

**DO NOT WRITE IN THIS SPACE**

Permit No. 122-1937  
 Map Reference 077-1-18-0041  
 Building Permit No. \_\_\_\_\_ Control No. \_\_\_\_\_  
 Std. \_\_\_\_\_ Mag. \_\_\_\_\_ Plan \_\_\_\_\_ Census \_\_\_\_\_

**OWNER**  
 Name FOSTER BROTHERS, INC.  
 Address (Mailing) #200-3975 UNIVERSITY DRIVE  
 City FAIRFAX State VA Zip 22030  
 Telephone 395-8900

**CONTRACTOR**  
 Company Name FOSTER BROTHERS, INC.  
 Master \_\_\_\_\_  
 Address #200-3975 UNIVERSITY DRIVE  
 City FAIRFAX State VA Zip 22030  
 Telephone 395-8900 License No. VP014284  
 State Contractors License No. \_\_\_\_\_  
 County Business Account No. \_\_\_\_\_

For \_\_\_\_\_ Description TYPE "R" SINGLE FAMILY DWELLING  
 SPLIT LEVEL WITH DOUBLE GARAGE  
 BARTON PLACE-SEC. 2  
 FAIRFAX STATION, VA. 22030  
 Model/Use TYPE "R"

- Sewage: Public  Community  Septic Tank  None   
 WATER: Public  Individual Well  None   
 N-New  D-Demolish  
 R-Alter or Repair  M-Move  
 A-Add To  O-Other

**REMARKS:**

**BUILDING**

DESCRIPTION	QUANTITY
# Units	1
# Stories	2
# Rooms	8
# Bedrooms	4
# To be Added	0
# Baths	2 1/2
# Half Baths	1
# Kitchens	1
# Fireplaces	1
Basement	
% Basements to Finish	

BUILDING DIMENSIONS			
No. Stories	Width	Depth	Sq. Ft.
	X	=	
	X	=	
	X	=	
	X	=	

**ROUTING**

	Date	Approved By:
Health Review	2/19/01	[Signature]
Site Review	2/19/01	[Signature]
Zoning Review	2/13/01	[Signature]
Sanitation Review	2/1/01	[Signature]
Building Review	2/30/01	[Signature]
Fire Review		

Use Group of Building R1  
 Type of Construction 240  
 Building Area 2001  
 Estimated Const. Cost \$122,000

**ZONING REVIEW**

Zoning Proffers Building \_\_\_\_\_  
 Zoning Class R1C  
 Zoning Case # \_\_\_\_\_

**BUILDING CHARACTERISTICS**

Building Height 26  
 Exterior Walls WOOD & BRICK/ALUMINUM  
 Interior Walls DRYWALL  
 Roofing Material FIBERGLASS SHINGLES  
 Flooring Material 5/8 T&G PLYWOOD/CARPET  
 Heating Fuel GAS  
 Heating System GAS

**GRADING AND DRAINAGE REVIEW**

Soils \_\_\_\_\_  
 Historical \_\_\_\_\_  
 Plan # \_\_\_\_\_  
 Retaining Wall \_\_\_\_\_

**YARDS**

Front 33 Front 33 Left Side 56 Right Side 30 Rear 56

**REMARKS**

7.005/11

**FOR COUNTY USE ONLY:**

Date 3/30/01 By [Signature]  
 Approved for Issuance of Building Permit

Fee \_\_\_\_\_  
 Filing Fee 224.00  
 Amount Due 224.00

The request for and use of personal information on this form is subject to the provisions of the Privacy Protection Act of 1976 and the Freedom of Information Act.

I hereby certify that I have authority of the owner to make this application, that the information is complete and correct, and that if a permit is issued the construction and/or use will conform to the building code, the zoning ordinance and other applicable laws and regulations including private building restrictions, if any, which relate to the property. He/She and the company or organization named and represented herein is duly registered or exempt from registration in accord with the provisions of Chapter 7 of the Code of Virginia.

Signature of Owner or Agent

Date

Notary Signature

Date

### **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.

## 8-922 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 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 1/2" 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.