



APPLICATION ACCEPTED: September 30, 2015  
BOARD OF ZONING APPEALS: February 24, 2016 @ 9:00 a.m.

# County of Fairfax, Virginia

---

January 20, 2016

## STAFF REPORT

### SPECIAL PERMIT SP 2015-LE-133 VARIANCE VC 2015-LE-010

#### LEE DISTRICT

**APPLICANT/OWNER:** Ernani G. Borja  
Marie J.V. Borja

**STREET ADDRESS:** 6000 Brandon Avenue, Springfield, 22150

**SUBDIVISION:** Yates Village

**TAX MAP REFERENCE:** 80-4 ((3)) (3) 30

**LOT SIZE:** 12,560 square feet

**ZONING DISTRICT:** R-4

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

**SPECIAL PERMIT PROPOSAL:** To permit a reduction in minimum yard requirements based on an error in building location to permit a patio to remain 2.1 feet from a side lot line and 1.5 feet from the rear lot line.

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

#### STAFF RECOMMENDATION:

Staff recommends denial of VC 2015-LE-010 for rear yard coverage greater than 30 percent. However, if it is the intent of the BZA to approve the Variance application, the BZA should condition its approval by requiring conformance with 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.

*Sharon E. Williams*

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

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

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

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



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

# Special Permit

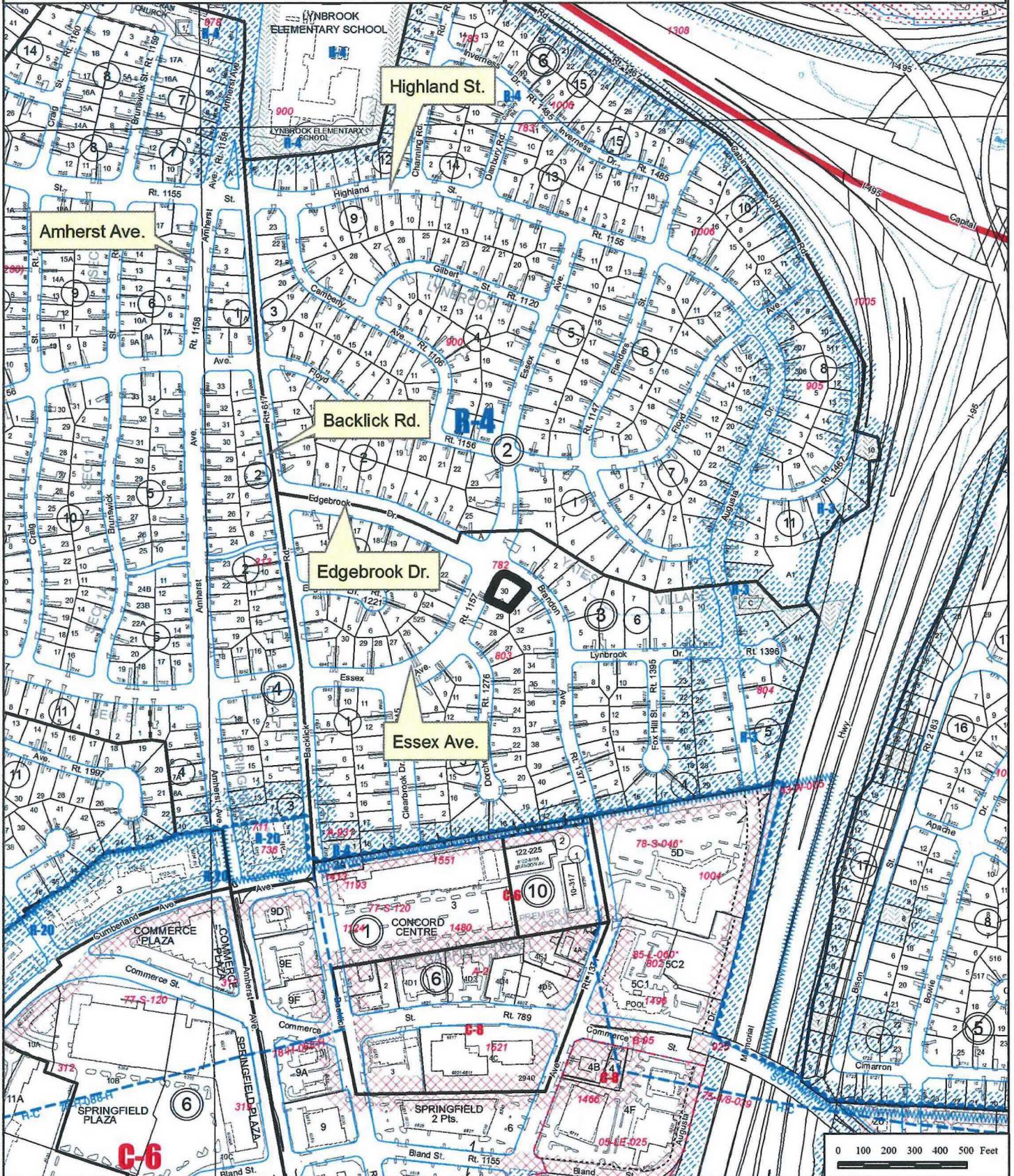
SP 2015-LE-133

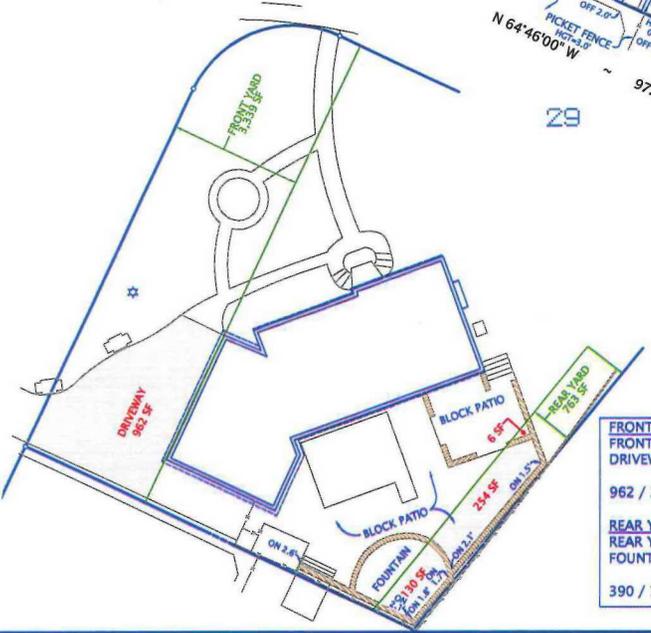
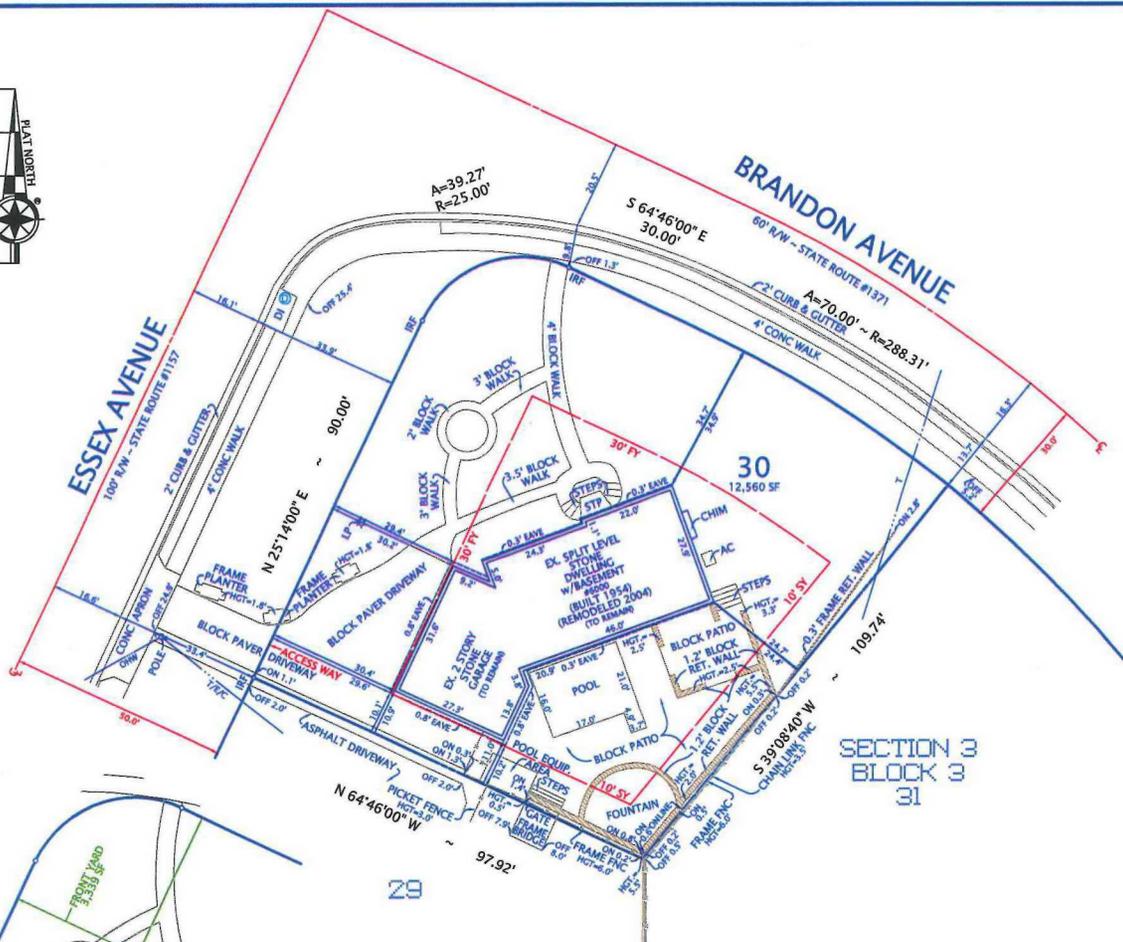
ERNANI G. BORJA, MARIE J.V. BORIA

# Variance Application

VC 2015-LE-010

ERNANI G. BORJA, MARIE J.V. BORJA





<b>FRONT YARD COVERAGE</b>	
FRONT YARD = 3,339 SF	
DRIVEWAY = 962 SF	
<b>962 / 3,339 = 0.288</b>	
<b>REAR YARD COVERAGE</b>	
REAR YARD = 763 SF	
FOUNTAIN & PATIOS = 390 SF	
<b>390 / 763 = 0.511</b>	

RECEIVED  
 Department of Planning & Zoning  
 SEP 21 2015  
 Zoning Evaluation Division

- NOTES:
- TAX MAP: 80-4-003-03-0030
  - ZONE: R-4 (RESIDENTIAL 4 DU/AC)
  - LOT AREA: 12,560 SF (0.2883 ACRE)
  - REQUIRED YARDS: (CORNER LOT)  
 FRONT: = 30 FEET  
 SIDE: = 10 FEET
  - HEIGHTS:  
 DWELLING = 23.8 FEET  
 WALLS = AS NOTED  
 FENCES = AS NOTED
  - THIS PROPERTY IS SERVED BY PUBLIC WATER AND SEWER.
  - THERE IS NO OBSERVABLE EVIDENCE OF GRAVE SITES OR BURIAL GROUNDS ON THIS PROPERTY.
  - ALL IMPROVEMENTS SHOWN ON THIS PLAT ARE EXISTING.
  - THE SURVEYOR IS NOT AWARE OF ANY UTILITY EASEMENTS 25 FEET IN WIDTH OR GREATER AFFECTING THIS PROPERTY.
  - THERE ARE NO FLOODPLAINS OR RESOURCE PROTECTION AREAS ON THIS PROPERTY.
  - AREAS:  
 BASEMENT = 651 SF  
 FIRST FLOOR = 1,146 SF  
 SECOND FLOOR = 1,183 SF  
 GROSS FLOOR AREA = 2,980 SF
- FLOOR AREA RATIO: GFA (2,980) / LOT AREA (12,560) = 0.237

OWNER: ERNANI G. & MARIE J.V. BORJA  
 6000 BRANDON AVENUE  
 SPRINGFIELD, VA 22150  
 (DB 10604, PG 1605)

PLAT  
 SHOWING HOUSE LOCATION ON  
 LOT 30, BLOCK 3, SECTION TWO  
**YATES VILLAGE**  
 (DEED BOOK 1097, PAGE 82)  
 FAIRFAX COUNTY, VIRGINIA  
 LEE DISTRICT  
 SCALE: 1" = 20'  
 JULY 16, 2015  
 AUGUST 24, 2015 (CALCS.)

I HEREBY CERTIFY THAT THE POSITIONS OF ALL THE EXISTING IMPROVEMENTS HAVE BEEN CAREFULLY ESTABLISHED BY A CURRENT FIELD SURVEY AND UNLESS SHOWN THERE ARE NO VISIBLE ENCROACHMENTS AS OF THIS DATE:  THIS PLAT IS SUBJECT TO RESTRICTIONS OF RECORD.  A TITLE REPORT WAS NOT FURNISHED.  NO CORNER MARKERS SET.		ORDERED BY: ERNANI G. BORJA MARIE JOY V. BORJA SOKOLJEFF GENERAL CONTRACTOR, LLC

## **SPECIAL PERMIT REQUEST**

The applicants are seeking a special permit to allow a reduction of minimum yard requirements based on an error in building location to permit a patio to remain 2.1 feet from a side lot line and 1.5 feet from the rear lot line.

## **VARIANCE REQUEST**

The applicants are requesting a variance to allow greater than 30 percent rear yard coverage for an existing stone patio to remain. The applicant's minimum required rear yard currently has coverage of 51.1% due to the stone patio and a fountain.

A copy of the special permit plat, titled "Plat showing the House Location on Lot 30, Block 3, Section two, Yates Village," prepared by George M. O'Quinn on July 16, 2015, as revised on August 24, 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 4, respectively.

## **CHARACTER OF THE SITE AND SURROUNDING AREA**

The 12,560 square foot application property is located at the corner of Essex Avenue and Brandon Avenue. The property is developed with a split level single-family detached dwelling with a basement. A block paver driveway extends from Essex Avenue to an attached two car garage. A block paver walkway leads from the driveway to a stoop in the front that provides access to the main entrance of the dwelling. The functional rear yard contains a pool and a large stone patio. The 360 square foot pool is located in the rear yard against the house and its foundation. A portion of the patio is elevated at 4.0 feet in height with stairs leading to the front yard (Brandon Avenue). A 1.2 foot tall retaining wall wraps around part of the southeastern and southwestern property boundary. A fountain is located in the southern corner of the rear yard. A fire pit is located in the southeastern portion of the rear yard. A grill area is located in the eastern portion of the rear yard on the edge of the stone patio. A set of wooden stairs is located on the southeastern property boundary. The stairs lead up to a gate and a wooden walkway that extends into the neighboring property which is owned by the applicant's daughter. A wood frame fence encloses the rear yard and runs along the eastern and western side lot lines; it varies in height from 5.0 feet to 6.0 feet. One storm drainage grate is located next to the grill area.

The property is located to the east of Backlick Road. The subject property and surrounding properties are zoned R-4 and are developed with single-family detached dwellings.



Figure 1: Aerial View

## BACKGROUND AND HISTORY

Fairfax County Tax Records indicate that the single family dwelling was constructed in 1954 and purchased by the applicant in 1995.

County records indicate that the applicant was issued a building permit to build a pool in the backyard on July 24, 2012 (Appendix 5). The permit specified that it was only for a pool with no decking and no spa.

In response to a complaint, staff from the Department of Code Compliance (DCC) inspected the property on October 23, 2012, and found that an elevated stone patio with a floor height measuring greater than 4.0 feet above grade, in part, covers the entire rear yard and is, in part, located within the minimum required rear and side yard and is attached and extends from the house. A Notice of Violation (NOV) was issued on November 27, 2012 (Appendix 6). The applicant filed the special permit and variance applications to attempt to bring the violations into conformance. The applications were filed in July 2013 and accepted September 2015. It took two years for the applications to be accepted due to multiple deficiencies in the plat submission.

## DESCRIPTION OF THE PROPOSED APPLICATIONS

### Special Permit Request

#### Error in Building Location

The applicant requests approval of a special permit for a reduction in yard requirements to allow an accessory structure (stone patio) to remain 2.1 feet from the western side lot line and 1.5 feet from the eastern side lot line (functional rear yard). The stone patio that covers the entire functional rear yard is over 4 feet in height in parts of the rear yard.

The applicants state that the stone patio was constructed by a contractor under the assumption that all the permits were obtained.

**Variance Request**

**Rear Yard Coverage**

The applicants request a variance to allow greater than 30 percent of rear yard coverage for a stone patio. The patio and other structures cover the entire area of the property to the rear of the house, except for the 360 square feet of pool area. The area of the required rear yard is 763 square feet, of which 390 square feet is covered, or 51.1 percent. Therefore, the applicant is requesting an increase of 21.1 percent or 160.9 square feet over that permitted.

The applicants state that they hired a contractor to renovate the front and rear yard and believed all the necessary permits were obtained.

**ANALYSIS**

**Comprehensive Plan Provisions**

**Plan Area:** Area IV, Springfield Planning District  
**Planning Sector:** Crestwoon Community Planning Sector (S2)  
**Plan Map:** Residential, 3-4 dwelling units per acre

**Zoning District Standards**

<b>Bulk Standards (R-4)</b>		
<b>Standard</b>	<b>Required</b>	<b>Provided</b>
Lot Size	8,400 sf.	12,560 sf.
Lot Width	Corner: 95 feet	115 feet
Building Height	35 feet max.	23.8 feet
Front Yard	Min. 30 feet	Eastern: 39.4 ft. Western: 30.2 ft.
Side Yard	Min. 10 feet	Western: 24.7 ft. Southern: 10.2 ft.

**Zoning Ordinance Requirements (Appendix 7)**

- Sect. 8-006 General Special Permit Standards
- Sect. 8-903 All Group 9 Uses
- Sect. 8-914 Provisions for Approval of Reduction to the Minimum Yard Requirements

### **Error in Building Locations (Sect. 8-914)**

Staff does not make recommendations on applications for errors in building location, which in this case includes the location of the stone patio. According to the statement of justification, the applicants were unaware that the contractor they hired did not obtain permits or zoning approval.

### **Variance Requirements (Appendix 8)**

- Code of Virginia Sec. 15.2-2309, as amended

In addition to meeting the definition of variance, 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:

*The evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property of 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).*

The subject property is located on a corner lot that is generally square in shape with lot lines that are proportionately sized. The house is positioned more to the eastern property boundary; however, there is adequate room on each side for usable yard area. In staff's opinion, the request for additional rear yard coverage for the patio, fountain, and grill area is not driven by a physical characteristic of the property.

The applicant currently exceeds the allowed rear yard coverage by 21.1 percent; staff believes this amount could be eliminated or greatly lessened and a functional patio would still be available for the applicant's use. Because the property is a corner lot, the required rear yard takes the side yard measurement of 10 feet; therefore, the required rear yard area is smaller than it would be on interior lots. This means that most of the area to the rear of the house is not within the required rear yard area and staff believes the property contains sufficient space for a by-right patio with other accessory structures. Therefore, staff does not believe the application satisfies this standard.

*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)).*

Staff believes that the property was acquired in good faith based on the information contained in the statement of justification. The hardship for which the rear yard coverage variance is being requested was created by the applicants when they renovated the rear yard to add the stone patio and fountain. Therefore, staff does not believe the application satisfies this standard.

*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)).*

The amount of paving currently on the property is inconsistent with other homes in the neighborhood and in staff's opinion it negatively affects adjacent properties. The elevated stone patio is visually imposing. Staff believes that the applicants could remove the excess portion of patio to bring the rear yard coverage within Zoning Ordinance standards and still have a functional patio area. Staff does not believe that this standard is met.



Figure 2: Aerial View showing surrounding properties

*The condition or situation of the property concerned is not of so general or recurring 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)).*

The residential lots in the vicinity of the subject property are similar in terms of area, width, depth, and shape and contain single family dwellings. No other applications to exceed rear yard coverage have been heard by the BZA on properties in this area. The conditions present at this site are typical for a corner lot and are of a general and recurring nature. If the Board of Supervisors wanted to adjust the limits for rear yard coverage, they could amend the ordinance as it applies to corner lots. In staff's opinion this standard is not met.

*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 the variance request for excess coverage in a rear yard would not result in a use this is otherwise permitted or cause a change in the zoning classification of the property. Staff believes this standard is satisfied.

*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 the § 15.2-2286 at the time of filing of the variance application (Sect. 15.2-2309.2(v)).*

Other than through the removal of the stone patio, the variance application is the only mechanism to provide the relief requested for the excess coverage in the rear yard.

## **CONCLUSION / RECOMMENDATION**

Staff does not make recommendations on errors in building location applications. However, if it is the intention of the Board of Zoning Appeals to approve the request for a special permit for an error in building location to allow the stone patio to remain 2.1 feet from the side lot line and 1.5 feet from the functional rear lot line, staff recommends that such approval be made subject to the development conditions contained in Appendix 1.

Staff recommends denial of VC 2015-LE-010 for rear yard coverage greater than 30 percent. Staff believes that the applicant could have a sufficiently sized patio without encroaching into the required rear yard. Removal of a portion of patio will not eliminate the option of having a patio altogether. However, if it is the intent of the BZA to approve the variance application, staff recommends the BZA condition its approval by requiring conformance with 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 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 Special Permit Development Conditions
2. Proposed Variance Development Conditions
3. Applicant's Statement of Justification
4. Applicant's Affidavit
5. Building Permit History
6. Notice of Violation
7. Applicable Zoning Ordinance Provisions
8. Code of Virginia Sect. 15.2-2309, as amended

**PROPOSED DEVELOPMENT CONDITIONS****SP 2015-LE-133****January 20, 2016**

If it is the intent of the Board of Zoning Appeals to approve SP 2015-LE-133 located at Tax Map 80-4 ((3)) (3) 30 to permit a reduction in minimum yard requirements based on an error in building location to permit a patio to remain 2.1 feet from a side lot line and 1.5 feet from the rear lot line pursuant to Section 8-914 of the Fairfax County Zoning Ordinance, staff recommends that the Board condition the approval by requiring conformance with the following development conditions.

1. This special permit is granted only for the location of the accessory structure (stone patio) as indicated on the plat titled, "Plat showing the House Location on Lot 30, Block 3, Section two, Yates Village," prepared by George M. O'Quinn on July 16, 2015, as revised on August 24, 2015, and approved with this application, as qualified by these development 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 take effect upon adoption of a resolution of approval by the Board of Zoning Appeals.

**PROPOSED DEVELOPMENT CONDITIONS**

**VC 2015-LE-010**

**January 20, 2016**

1. This variance is approved for the rear yard coverage greater than 30 percent as shown on the plat titled, "Plat showing the House Location on Lot 30, Block 3, Section two, Yates Village," prepared by George M. O'Quinn on July 16, 2015, as revised on August 24, 2015, as submitted with this application and is not transferable to other land.

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.

SEP 23 2015

Zoning Evaluation Division

**Statement of Justification**

The previous contractor who was hired by the owner to build the back patio, the driveway and a retaining wall. This same contractor completed the job without any building permits and zoning plans, the owner and Sokoleff General Contractor both did not know that the previous contractor finished the job without a building permit or zoning plans.

The property interested for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant of the variance, The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; the conditions 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; 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 the relief or remedy sought by the variance application is not available through a special exception (or special permit) or the process for modification of the zoning ordinance at the time of the filing of the variance application. All these above apply to this statement of justification.

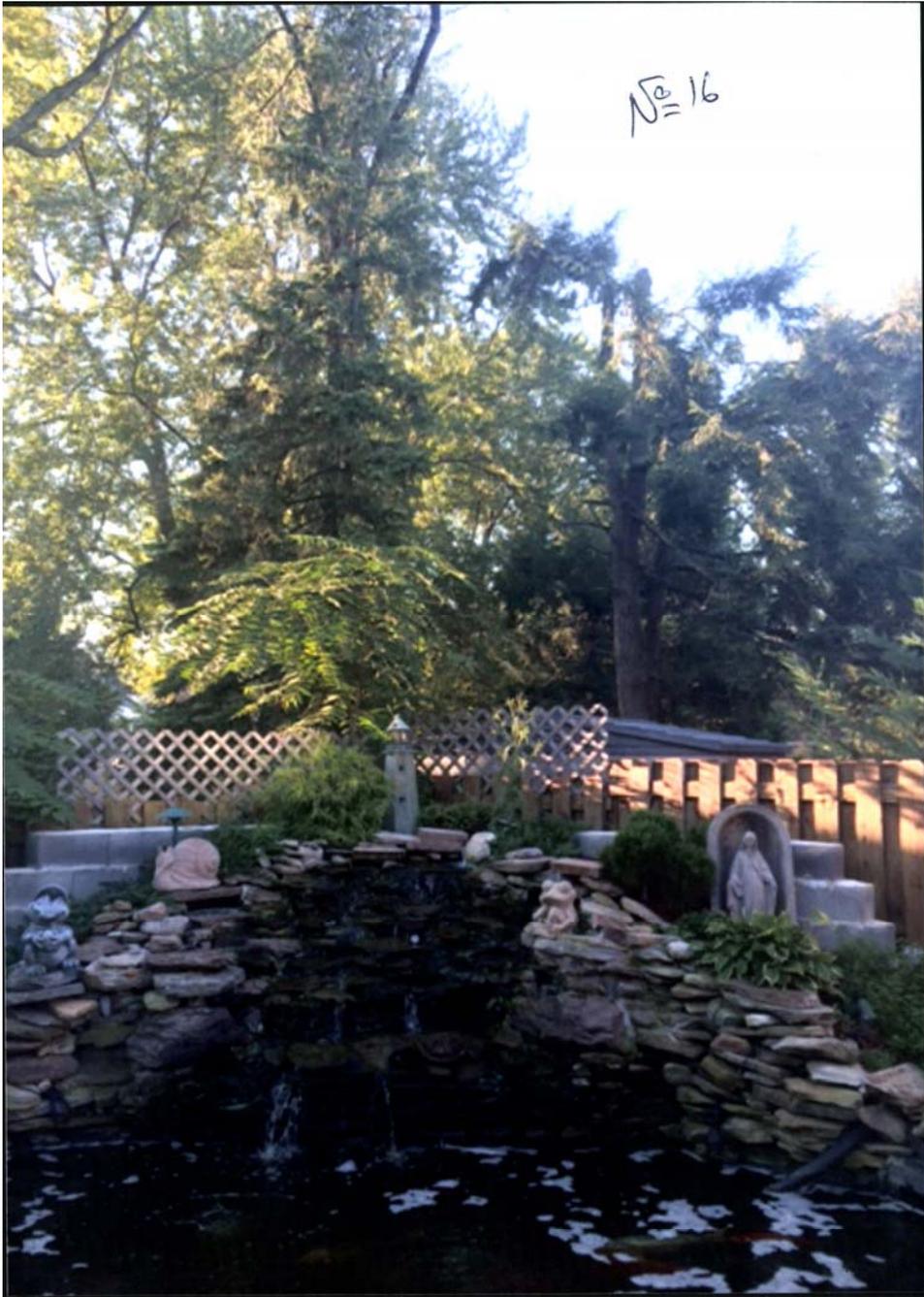
As we said before the previous contractor who was hired by the owner to build the back patio, the driveway and a retaining wall. This same contractor completed the job without any building permits and zoning plans, the owner and Sokoleff General Contractor both did not know that the previous contractor finished the job without a building permit or zoning plans.

The error exceeds ten percent of the measurement involved, or the error is up to ten percent of the measurement involved any such reduction or modification is requested in conjunction with the approval of a special permit for another use or application for variance on the property, or is in conjunction with another special permit for an error in building location on the property that exceeds ten percent of the measurement involved, and such reduction or modification will not impair the purpose and intent of this Ordinance, and it will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and it will not create an unsafe condition with respect to both other property and public streets, and to force compliance with the minimum yard requirements or location regulation would cause unreasonable hardship upon the owner. The reduction or modification will not result in an increase in density or floor are ratio from that permitted by the applicable zoning district regulation.

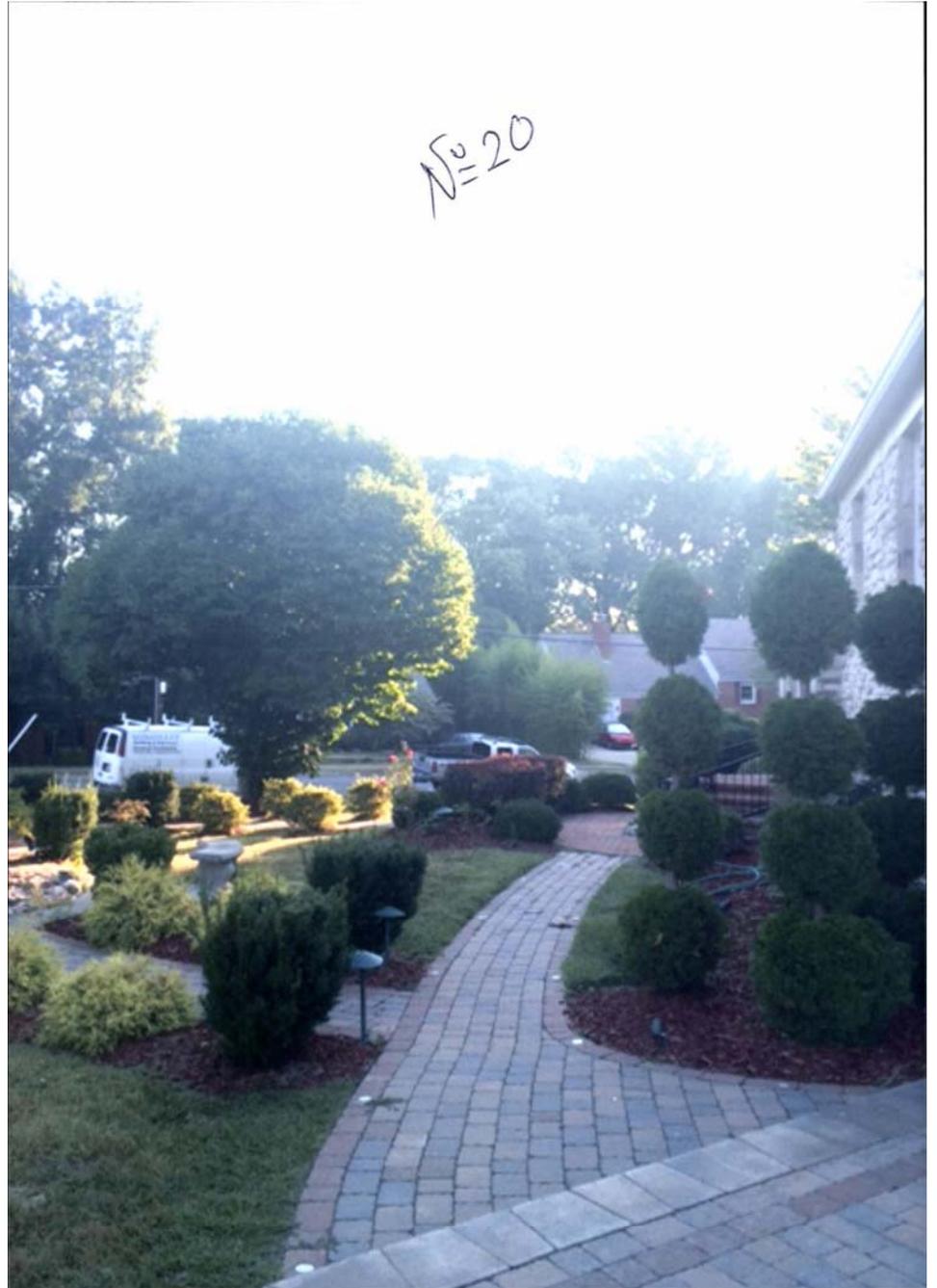
Sincerely

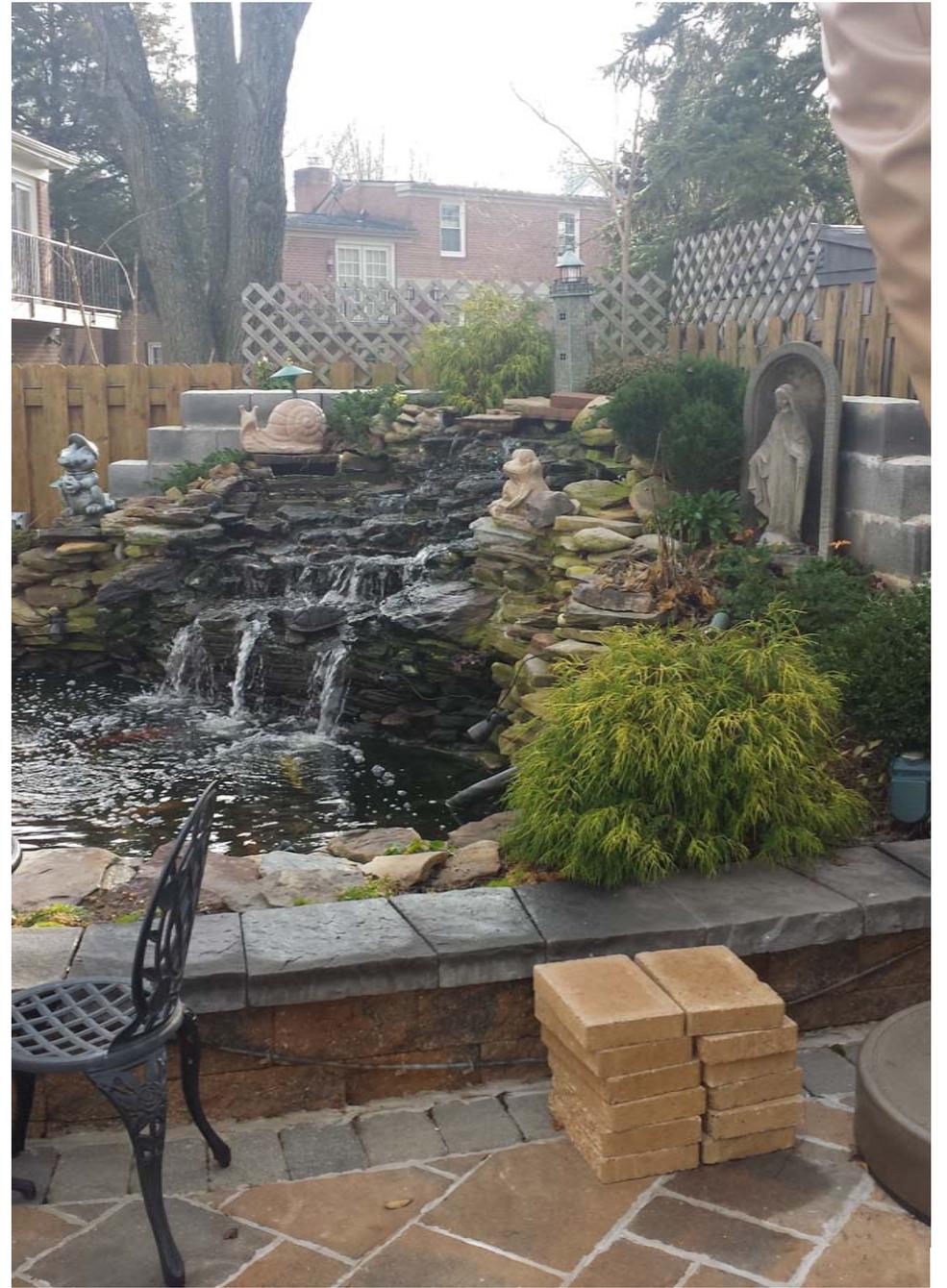
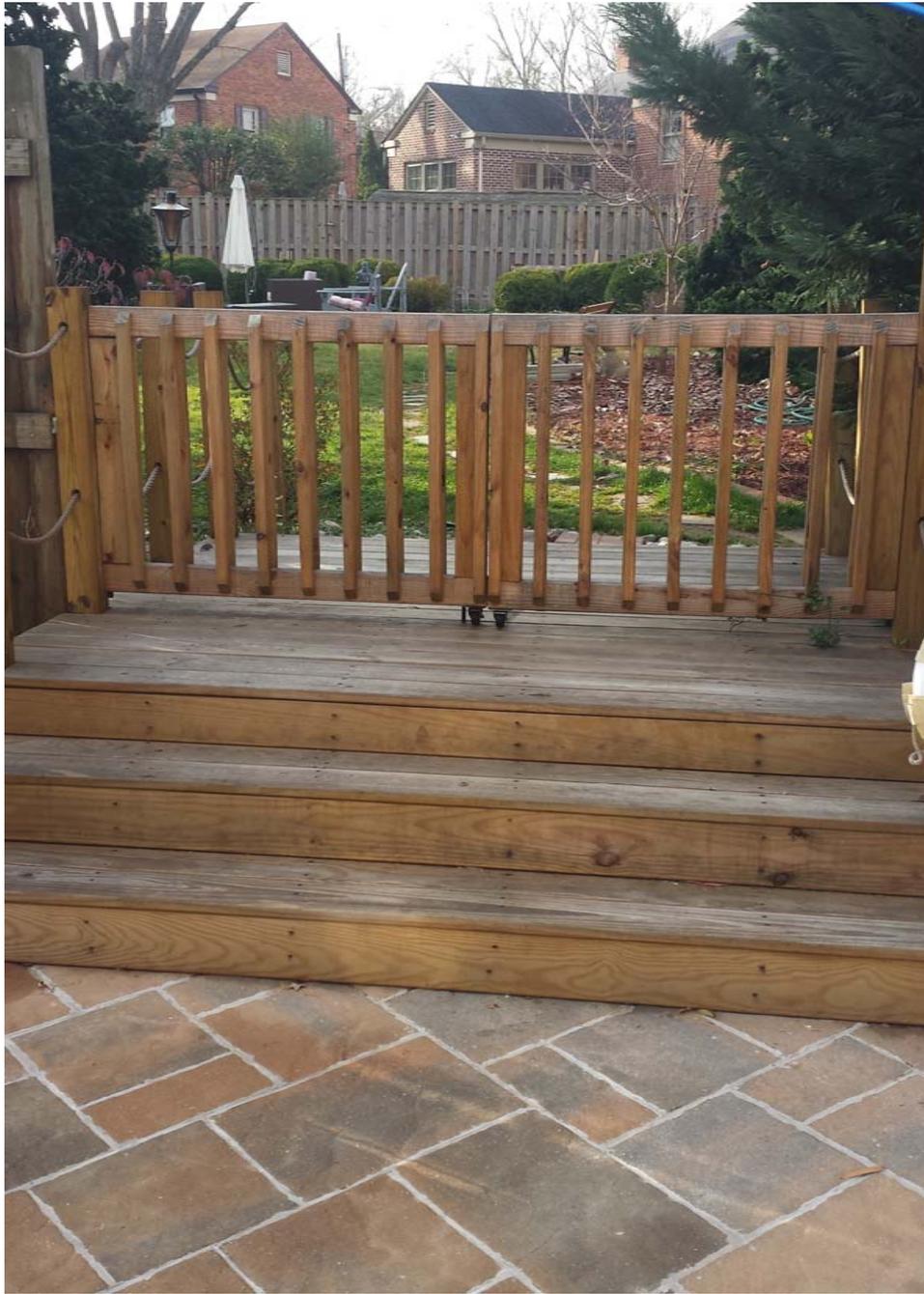
Miroslav Kolev

№=16



№=20

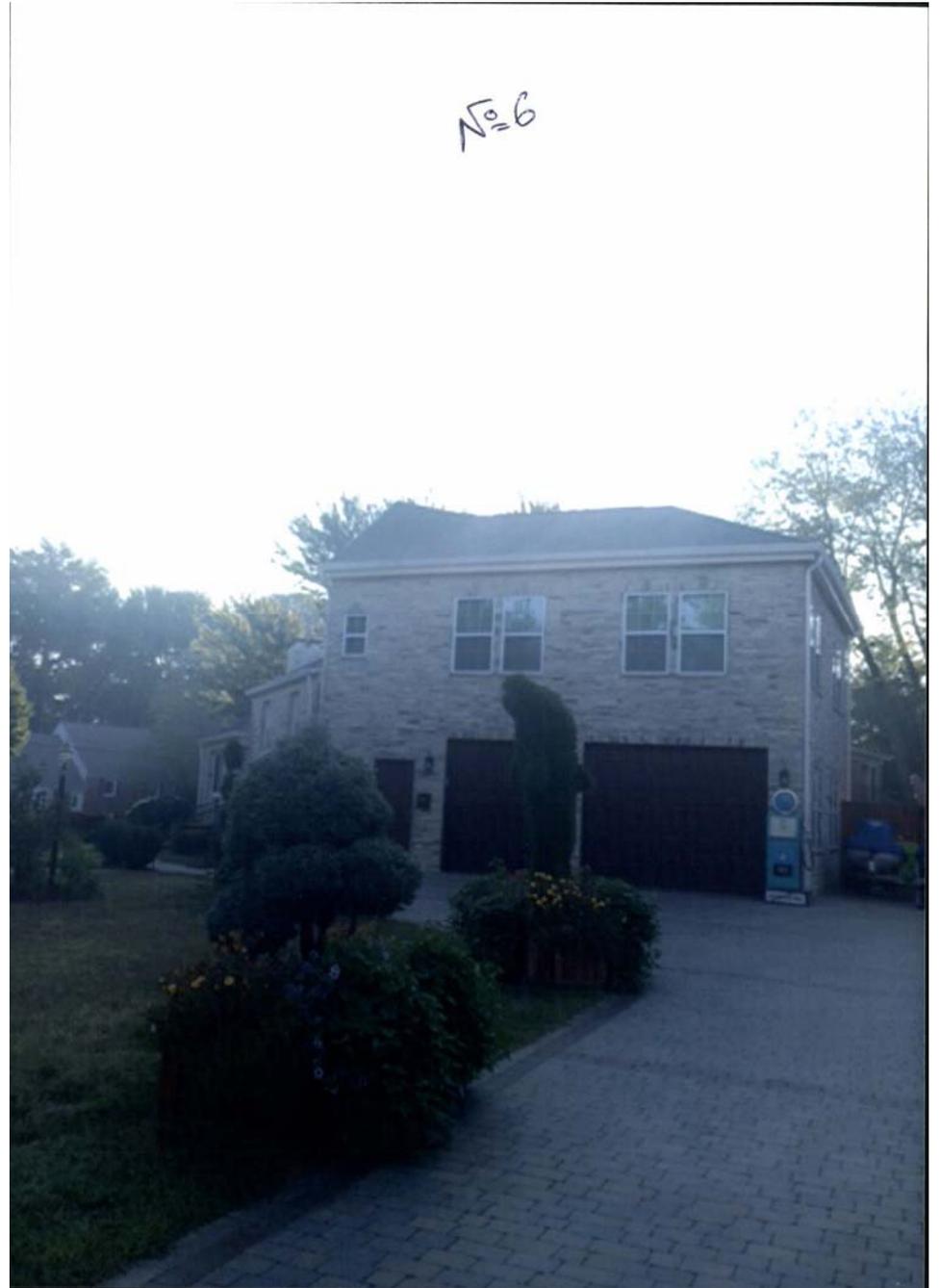




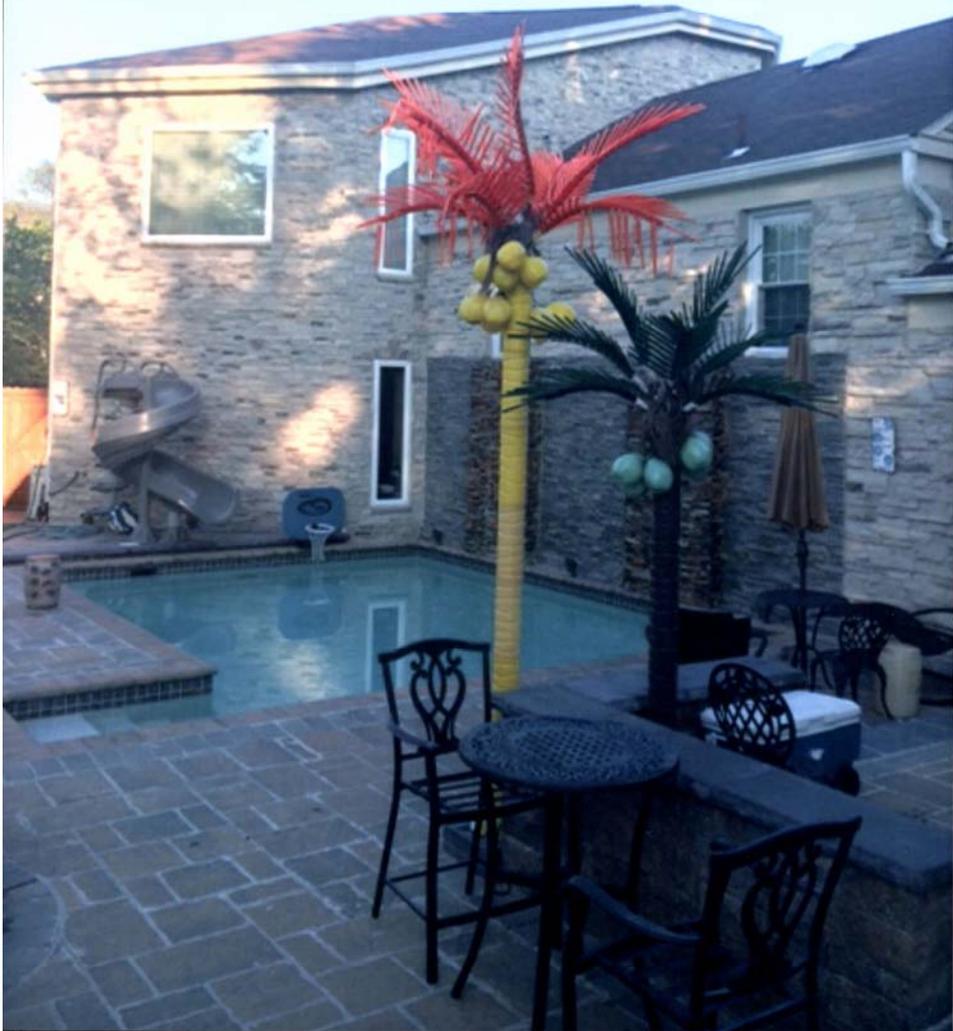
№ 5



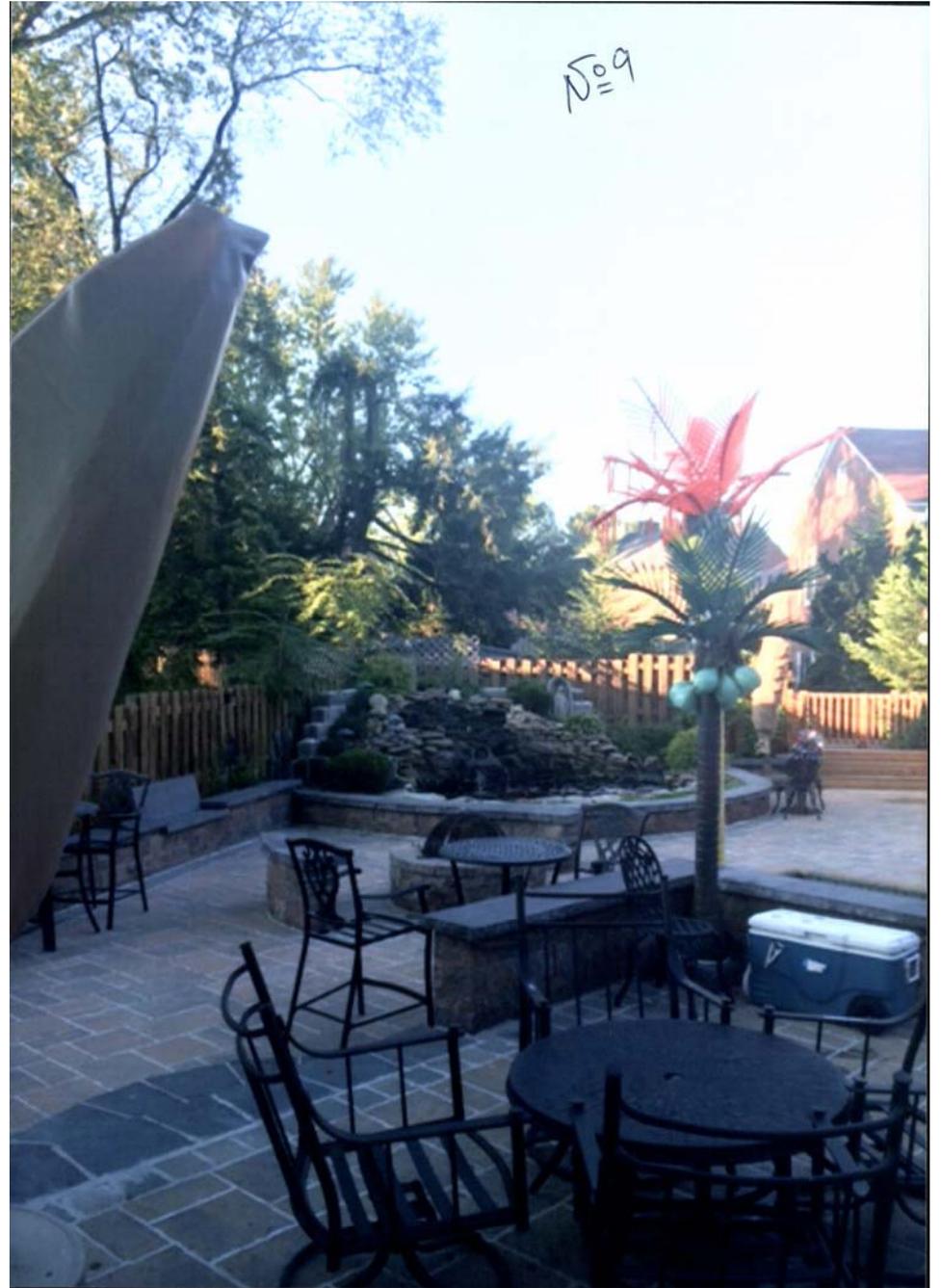
№ 6

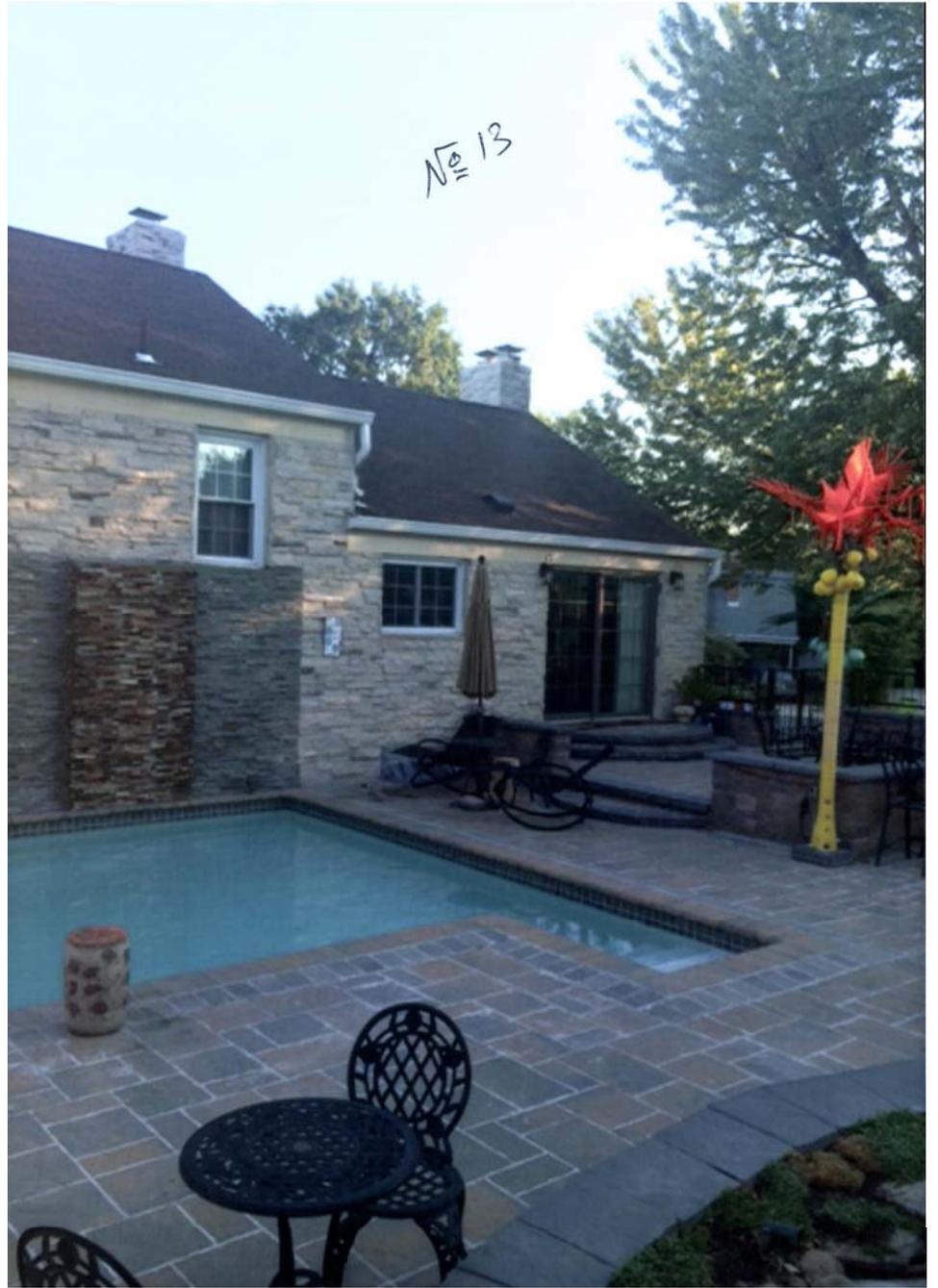


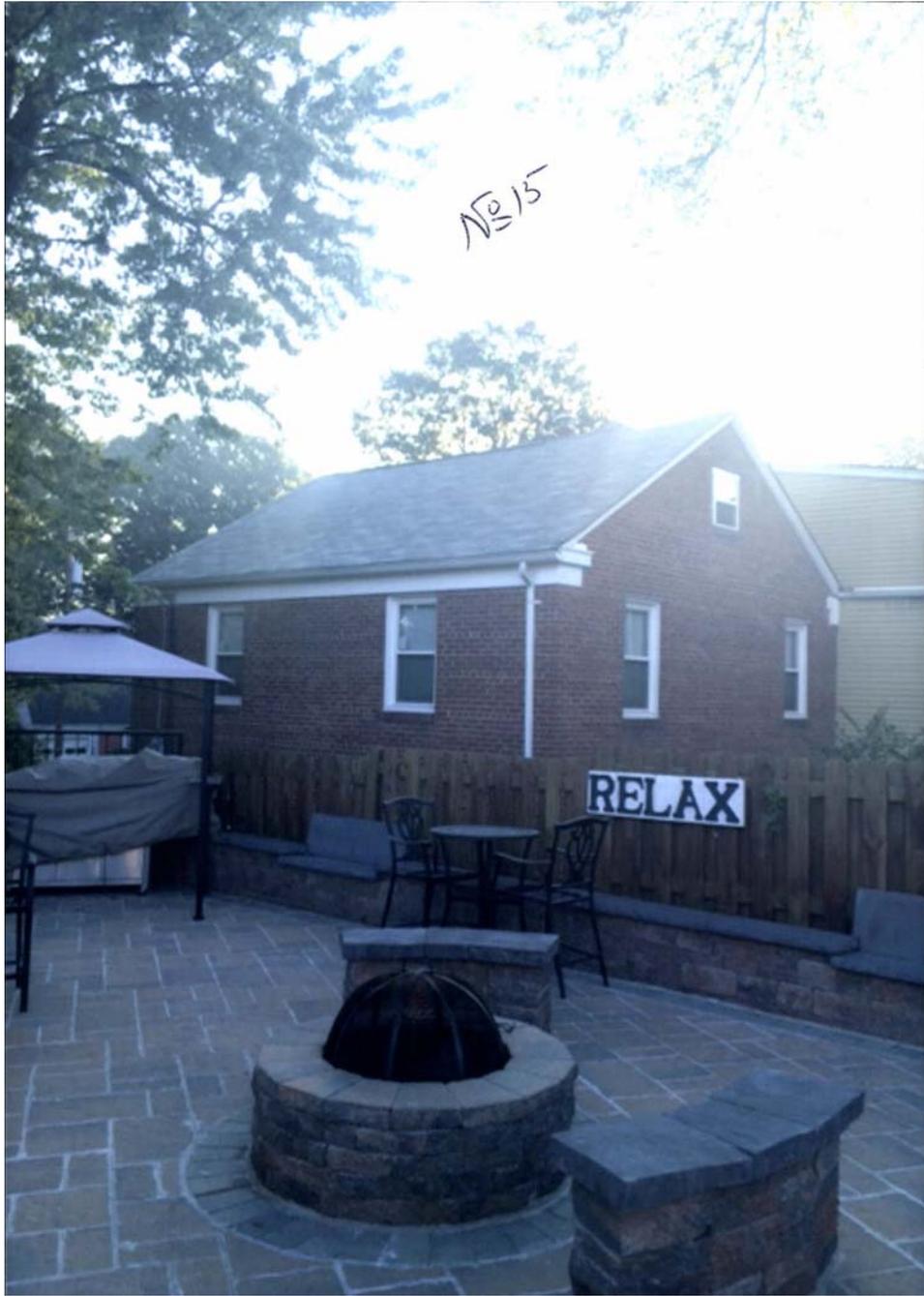
Nº 8



Nº 9







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

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: Sep. 09. 13  
 (enter date affidavit is notarized)

I, Miroslav Kolev, 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

121892

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.)

<b>NAME</b> (enter first name, middle initial, and last name)	<b>ADDRESS</b> (enter number, street, city, state, and zip code)	<b>RELATIONSHIP(S)</b> (enter applicable relationships listed in <b>BOLD</b> above)
Ernani G. Borja	6000 Brandon Ave., Springfield, VA 22150	Applicant/Title Owner
Marie J. V. Borja	6000 Brandon Ave., Springfield, VA 22150	Applicant/Title Owner
Sokoleff General Contractor, LLC	7657 Summerhill Ct., Lorton, VA 22079	Agent
Miroslav Kolev	7657 Summerhill Ct., Lorton, VA 22079	Agent

(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: Sep 09 13  
(enter date affidavit is notarized)

121892

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)

Sokoleff General Contactor, LLC  
7657 Summerhill Ct., Lorton, VA 22079

**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)

Miroslav Kolev

(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: Sep. 09.13  
(enter date affidavit is notarized)

121 892

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: Sep. 9. 13  
(enter date affidavit is notarized)

121892

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: Sep. 9, 13  
(enter date affidavit is notarized)

121892

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

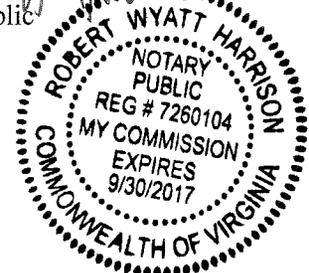
Miroslav Kolev, Agent

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

Subscribed and sworn to before me this 9 day of September 2013, in the State/Comm. of Virginia, County/City of Fairfax.

Robert Wyatt Harrison  
Notary Public

My commission expires: 9-30-2017





Home Living Here Doing Business Visiting Departments & Agencies

Search Site:  Go [Advanced Search](#)

[homepage](#) > [land development information history](#) > [search](#) > [fido - pool res - 122060095](#)

Links

- [< Back to Search](#)
- [My Neighborhood](#)
- [Real Estate Assessment](#)
- [Related Records:](#)  
[122060095](#)
- [Life Cycle](#)
- [Processed:](#) 2012-07-24
- [Issued:](#) 2012-07-24
- [Table of Contents](#)
- [Permit Information](#)
- [Owner Information](#)
- [Contractor Information](#)
- [Applicant Information](#)
- [Other Contact Information](#)
- [Inspections](#)
- [Inspection - R STRSTEEL - STRUCTURAL STEEL INSPECTION - 5754104](#)
- [Inspection - R STRSTEEL - STRUCTURAL STEEL INSPECTION - 5772590](#)
- [Inspection - R STRSTEEL - STRUCTURAL STEEL INSPECTION - 5774375](#)
- [Reviews](#)
- [Review - ZONING - \(ZONING REVIEW\) - 2141603](#)
- [Review - SITEPERMIT - \(SITE PERMITS REVIEW\) - 2141604](#)
- [Review - BUILDING - \(BUILDING REVIEW\) - 2148745](#)
- [Review - BUILDING - \(BUILDING REVIEW\) - 2148749](#)
- [Review - BUILDING - \(BUILDING REVIEW\) - 2141665](#)

**Land Development Information History: FIDO - POOL RES - 122060095**

[Printer Friendly](#) [A A A Text Size](#) [Text Only](#)

**Permit Information**

<b>Permit Number:</b>	122060095	<b>Application Date:</b>	
<b>Permit Type:</b>	RESIDENTIAL SWIMMING POOL/SPA	<b>Tax Map:</b>	080-4 ((03)) (03) 0030
<b>Job Address:</b>	006000 BRANDON AV SPRINGFIELD , VA 22150-2407	<b>Permit Status:</b>	Permit Issued
<b>Location:</b>	YATES VILLAGE	<b>Bldg:</b>	Floor: Suite:
<b>Subdivision:</b>	LEE	<b>Permit Fee:</b>	\$129.00
<b>Magisterial District:</b>	LEE		
<b>Subcensus Tract:</b>			
<b>AP (Tenant) Name:</b>			
<b>Work Description:</b>	BUILD INGROUND GUNITE POOL NO DECKING AND NO SPA INGROUND GUNITE POOL		
<b>Type of Work:</b>	SFD - SINGLE FAMILY DWELLING		
<b>Building Use:</b>	IR09 - IRC 2009		
<b>Standard:</b>			
<b>Plan Number:</b>	W-12-4482		
<b>Parent Permit:</b>			
<b>ISIS Permit:</b>			
<b>Type of Const:</b>	VB		
<b>Use Group:</b>	R5		
<b>Comments:</b>			
<b>Link to FIDO record :</b>	<a href="#">122060095</a>		

**Owner Information**

**Owner:** BORJA ERNANI G  
**Address:** 6000 BRANDON AV  
**City:** SPRINGFIELD State: VA Zip: 22150

**Contractor Information**

**Name:** ALPHA POOLS INC  
**Address:** 5024 LEEDS MANOR RD  
**City:** HUME State: VA Zip: 22639-0000  
**Trade Name:**

**BPOL License:**  
**State License:**  
**Trade Reg.:**

**Applicant Information**

**Applicant:** O'HARA  
**Address:** 9817 CREST HILL RD  
**City:** MARSHALL State: VA Zip: 20115

**Other Contact Information**

**Contact:**  
**Address:**  
**City:** State: Zip:

**Inspections**

**Inspection - R STRSTEEL - STRUCTURAL STEEL INSPECTION - 5754104**

Insp Type	Insp Date	Insp Name	Partial?	Insp Result	Re-Fee	Comments
R STRSTEEL	2012-08-13	CRAIG LEECH	N	Failed	NO	not ready

**Inspection - R STRSTEEL - STRUCTURAL STEEL INSPECTION - 5772590**

Insp Type	Insp Date	Insp Name	Partial?	Insp Result	Re-Fee	Comments
R STRSTEEL	2012-08-14	CRAIG LEECH	N	Failed	NO	need engineering on pool wall that is against house foundation have plan review approved plans with plat and detail showing pool wall depth in relation to house foundation wall elevation

**Inspection - R STRSTEEL - STRUCTURAL STEEL INSPECTION - 5774375**

Insp Type	Insp Date	Insp Name	Partial?	Insp Result	Re-Fee	Comments
R STRSTEEL	2012-08-16	GARY KENDRICK	N	Passed	NO	

**Reviews**

**Review - ZONING - (ZONING REVIEW) - 2141603**

Review Type	Review Date	Reviewer	Started	Status
ZONING	2012-07-24	KEVIN SHREINER	Y	Approved

**Review - SITEPERMIT - (SITE PERMITS REVIEW) - 2141604**

Review Type	Review Date	Reviewer	Started	Status
SITEPERMIT	2012-07-24	BRANDY DYER	Y	Approved

**Review - BUILDING - (BUILDING REVIEW) - 2148745**

Review Type	Review Date	Reviewer	Started	Status
BUILDING	2012-08-15	WILLIAM DOUGHERTY	Y	Failed

**Review - BUILDING - (BUILDING REVIEW) - 2148749**

Review Type	Review Date	Reviewer	Started	Status
BUILDING	2012-08-15	CHRISTIANNA RABER	Y	Approved

**Review - BUILDING - (BUILDING REVIEW) - 2141665**

Review Type	Review Date	Reviewer	Started	Status
BUILDING	2012-07-24	CHRISTIANNA RABER	Y	Approved

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

[ADA Accessibility/Website Accessibility](#)  
[Awards/FOIA/Mobile/Using this Site/Web Disclaimer & Privacy Policy/Get Adobe Reader](#)  
 Official site of the County of Fairfax, Virginia, © Copyright 2011

 [Website Survey](#)  [Language Translations](#)



# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County.

## NOTICE OF VIOLATION Fairfax County Zoning Ordinance

**DATE OF ISSUANCE:** November 27, 2012

### SHERIFF'S LETTER

**CASE #:** 201207287 **SR#:** 89195

**SERVE:** Ermani G. Borja  
Marie Joy V. Borja  
6000 Brandon Avenue  
Springfield, Virginia 22150

**LOCATION** 6000 Brandon Avenue  
Springfield, Virginia 22150  
Yates Village, Section 2, Block 3, Lot 30  
Tax Map #: 80-4 ((3)) (3) 30  
Zoning District: R-4

Dear Property Owners:

An investigation of the above referenced property on October 23, 2012 revealed the following violations of the Fairfax County Zoning Ordinance.

The investigation revealed that an elevated stone patio with a floor height measuring greater than four (4) feet above grade, in part, covers the entire rear yard and is, in part, located within the minimum required rear and side yard and is attached and extends from the house.

### **§ 2-307 (1) Bulk Regulations**

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

**Department of Code Compliance**  
12055 Government Center Parkway, Suite 1016  
Fairfax, Virginia 22035-5508  
Phone 703-324-1300 FAX 703-324-9346  
[www.fairfaxcounty.gov/code](http://www.fairfaxcounty.gov/code)

Ermani G. Borja  
Marie Joy V. Borja  
November 27, 2012

### **Violation: Deck at Single Family Detached Dwelling**

#### **2-412 Permitted Extensions into Minimum Required Yards**

Par. 2B (3) of Sect. 2-412 of the Zoning Ordinance provides that the following minimum yards shall apply to any open deck, greater than four (4) feet in height, for a single family detached dwelling:

(2) Side yard: No extension

(3) Rear yard: 12 feet, but not closer than 5 feet to any rear lot line and not closer than a distance equal to the minimum required side yard to the side lot line.

The elevated stone patio is a deck as defined in Part 2 of Sect. 20-300 Definitions which states;

DECK: Any patio, balcony, terrace, gallery, veranda, piazza, porch, portico or similar projection from an outer wall of a building, other than a carport as defined herein. A deck shall include any associated stairs. A deck shall have no enclosure, other than the side(s) of the principal building to which it is attached; provided, however, a deck may have an 'open-work' railing or wall, not over four (4) feet in height, with at least fifty (50) percent of the area thereof open in an evenly distributed pattern.

The property in which the structure is located on is zoned as an R-4 district and the minimum required rear yard in an R-4 District per Par. 2A (1) (c) of Sect. 3-407 of the Zoning Ordinance is 25 feet and the minimum required side yard is 10 feet. However in the case of a corner lot which this lot is, the rear yard dimension is the same as the minimum required side yard.

#### **§ 10-104 (12F) Accessory Structure Corner Lot**

This R-4 zoned property is a corner lot. Therefore the minimum required rear yard for a single family detached dwelling located on a corner lot must comply with the requirements of Par. 12F of Sect. 10-104 of the Zoning Ordinance which states in part:

On a corner lot, the rear lot line of which adjoins a side lot line of a lot to the rear, no accessory structure shall be located:

Nearer to any part of the rear lot line that adjoins the side yard on the lot to the rear than a distance equal to the minimum required side yard on such lot to the rear.

Therefore the elevated stone patio is in violation of Par. 1 of Sect. 2-307, Par. 2B of Sect. 2-412, and Par 12F of Sect. 10-104 of the Zoning Ordinance and in violation of Par. 6 of Sect. 2-302 of the Fairfax County Zoning Ordinance, which states:

Ermani G. Borja  
Marie Joy V. Borja  
November 27, 2012

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

You are hereby directed to clear this violation within thirty (30) days of the date of this Notice. Compliance can be accomplished by:

- Removing the deck structure from the property in its entirety; or
- Reducing the size of the structure to a distance from the rear lot line in accordance all requirements of the Zoning Ordinance as outlined above.

**Violation: Structures Less 30% Area**

**§ 10-103 (3) Use Limitations**

The investigation revealed that an elevated stone patio with a floor height measuring greater than four (4) feet above grade, in part, covers the entire rear yard of this corner lot to include the minimum required rear yard.

Par. 3 of Sect. 10-103 of the Fairfax County Zoning Ordinance provides that the following shall apply to all uses and accessory structures located in a minimum required rear yard for a single family detached dwelling:

All uses and accessory structures to single family detached dwellings, to include those extensions permitted by Sect. 2-412, shall cover no more than thirty (30) percent of the area of the minimum required rear yard.

Therefore, you are in violation of Par. 3 of Sect. 10-103 of the Fairfax County Zoning Ordinance and in violation of Par. 6 of Sect. 2-302 of the Fairfax County Zoning Ordinance, which states:

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

You are hereby directed to clear these violations within thirty (30) days of receipt of this Notice. Compliance can be accomplished by the following:

- Reducing the amount of coverage in the minimum required yard to 30% or less, or
- Making an application for and ultimately obtaining approval of a

Ernani G. Borja  
Marie Joy V. Borja  
November 27, 2012

Variance from the BZA to allow more than 30% of the minimum required rear yard to be covered.

A follow-up inspection will be made at the expiration of the time period outlined in this Notice. Failure to comply with the Notice will result in the initiation of appropriate legal action to gain compliance with the Zoning Ordinance which can result in court ordered sanctions.

You may have the right to appeal this Notice of Zoning Violation within thirty (30) days of the date of this letter in accordance with Sec. 15.2-2311 of the Code of Virginia. This decision shall be final and unappealable if it is not appealed within such thirty (30) days. Should you choose to appeal, the appeal must be filed with the Zoning Administrator and the Board of Zoning Appeals (BZA) in accordance with Part 3 of Article 18 of the Fairfax County Zoning Ordinance. Those provisions require the submission of an application form, a written statement setting forth the decision being appealed, the date of decision, the grounds for the appeal, how the appellant is an aggrieved party and any other information that you may wish to submit and a \$600.00 filing fee. Once an appeal application is accepted, it will be scheduled for public hearing and decision before the BZA. For information regarding an appeal contact the Zoning Administration Division at 12055 Government Center Parkway, Suite 807, Fairfax, Virginia 22035, Phone # (703) 324-1314 or obtain information and forms at <http://www.fairfaxcounty.gov/dpz/bza/appeals/>.

Should you have any questions or need additional information, please do not hesitate to contact me at (703) 324-4375 or (703) 324-1300.

Sincerely,

Al Sanchez  
Code Compliance Investigator

## **8-006 General Standards**

In addition to the specific standards set forth hereinafter with regard to particular special permit uses, all special permit uses shall satisfy the following general standards:

1. The proposed use at the specified location shall be in harmony with the adopted comprehensive plan.
2. The proposed use shall be in harmony with the general purpose and intent of the applicable zoning district regulations.
3. The proposed use shall be such that it will be harmonious with and will not adversely affect the use or development of neighboring properties in accordance with the applicable zoning district regulations and the adopted comprehensive plan. The location, size and height of buildings, structures, walls and fences, and the nature and extent of screening, buffering and landscaping shall be such that the use will not hinder or discourage the appropriate development and use of adjacent or nearby land and/or buildings or impair the value thereof.
4. The proposed use shall be such that pedestrian and vehicular traffic associated with such use will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood.
5. In addition to the standards which may be set forth in this Article for a particular group or use, the BZA shall require landscaping and screening in accordance with the provisions of Article 13.
6. Open space shall be provided in an amount equivalent to that specified for the zoning district in which the proposed use is located.
7. Adequate utility, drainage, parking, loading and other necessary facilities to serve the proposed use shall be provided. Parking and loading requirements shall be in accordance with the provisions of Article 11.
8. Signs shall be regulated by the provisions of Article 12; however, the BZA, under the authority presented in Sect. 007 below, may impose more strict requirements for a given use than those set forth in this Ordinance.

### **8-903 Standards for All Group 9 Uses**

In addition to the general standards set forth in Sect. 006 above, all Group 9 special permit uses shall satisfy the following standards:

1. All uses shall comply with the lot size and bulk regulations of the zoning district in which located, except as may be qualified below.
2. All uses shall comply with the performance standards specified for the zoning district in which located.
3. Before establishment, all uses, including modifications or alterations to existing uses, shall be subject to the provisions of Article 17, Site Plans, or other appropriate submission as determined by the Director.

### **8-914 Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location**

The BZA may approve a special permit to allow a reduction to the minimum yard requirements for any building existing or partially constructed which does not comply with such requirements applicable at the time such building was erected, but only in accordance with the following provisions:

1. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by ten (10) copies of a plat and such plat shall be presented on a sheet having a maximum size of 24" x 36", and one 8 ½" x 11" reduction of the plat. Such plat shall be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat shall be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia and such plat shall contain the following information:
  - A. Boundaries of entire property, with bearings and distances of the perimeter property lines and of each zoning district.
  - B. Total area of the property and of each zoning district in square feet or acres.
  - C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.
  - D. Location of all existing structures, with dimensions, including height of any structure and penthouse, and if known, the construction date(s) of all existing structures.
  - E. All required minimum yards to include front, side and rear, and a graphic depiction of the angle of bulk plane, if applicable, and the distances from all existing structures to lot lines.
  - F. Means of ingress and egress to the property from a public street(s).
  - G. For nonresidential uses, the location of parking spaces, indicating minimum distance from the nearest property line(s).
  - H. If applicable, the location of well and/or septic field.
  - I. For nonresidential uses, a statement setting forth the maximum gross floor area and FAR for all uses.
  - J. Location of all existing utility easements having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.

K. Seal and signature of professional person certifying the plat.

In addition, the application shall contain a statement of justification explaining how the error in building location occurred and any supportive material such as aerial photographs, Building Permit applications, County assessments records, a copy of the contract to build the structure which is in error, or a statement from a previous owner indicating how the error in building location occurred.

2. The BZA determines that:
  - A. The error exceeds ten (10) percent of the measurement involved, or
  - B. The error is up to ten (10) percent of the measurement involved and such reduction or modification is requested in conjunction with the approval of a special permit for another use or application for a variance on the property, or is in conjunction with another special permit for an error in building location on the property that exceeds ten (10) percent of the measurement involved, and
  - C. The noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the relocation of the building subsequent to the issuance of a Building Permit, if such was required, and
  - D. Such reduction or modification will not impair the purpose and intent of this Ordinance, and
  - E. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
  - F. It will not create an unsafe condition with respect to both other property and public streets, and
  - G. To force compliance with the minimum yard requirements or location regulations would cause unreasonable hardship upon the owner.
  - H. The reduction or modification will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
3. In granting such a reduction under the provisions of this Section, the BZA shall allow only a reduction necessary to provide reasonable relief and may, as deemed advisable, prescribe such conditions, to include landscaping and screening measures, to assure compliance with the intent of this Ordinance.
4. Upon the granting of a reduction for a particular building in accordance with the provisions of this Section, the same shall be deemed to be a lawful building.

5. The BZA shall have no power to waive or modify the standards necessary for approval as specified in this Section.

## 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.