



APPLICATION ACCEPTED: December 9, 2015
BOARD OF ZONING APPEALS: March 9, 2016 @ 9:00 a.m.

County of Fairfax, Virginia

March 2, 2016

STAFF REPORT

**SPECIAL PERMIT SP 2015-MV-153
VARIANCE VC 2015-MV-013**

MOUNT VERNON DISTRICT

APPLICANT/OWNER: Larry Ferguson
Nicole Ferguson

STREET ADDRESS: 7892 Steadman Street, Alexandria, 22309

SUBDIVISION: Yates Village

TAX MAP REFERENCE: 101-1 ((5)) (24) 3

LOT SIZE: 8,400 square feet

ZONING DISTRICT: R-3C

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 an accessory storage structure (shed) to remain 0.8 feet from a rear lot line and 2.0 feet from the side lot line.

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

STAFF RECOMMENDATION:

Staff recommends denial of VC 2015-MV-013 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

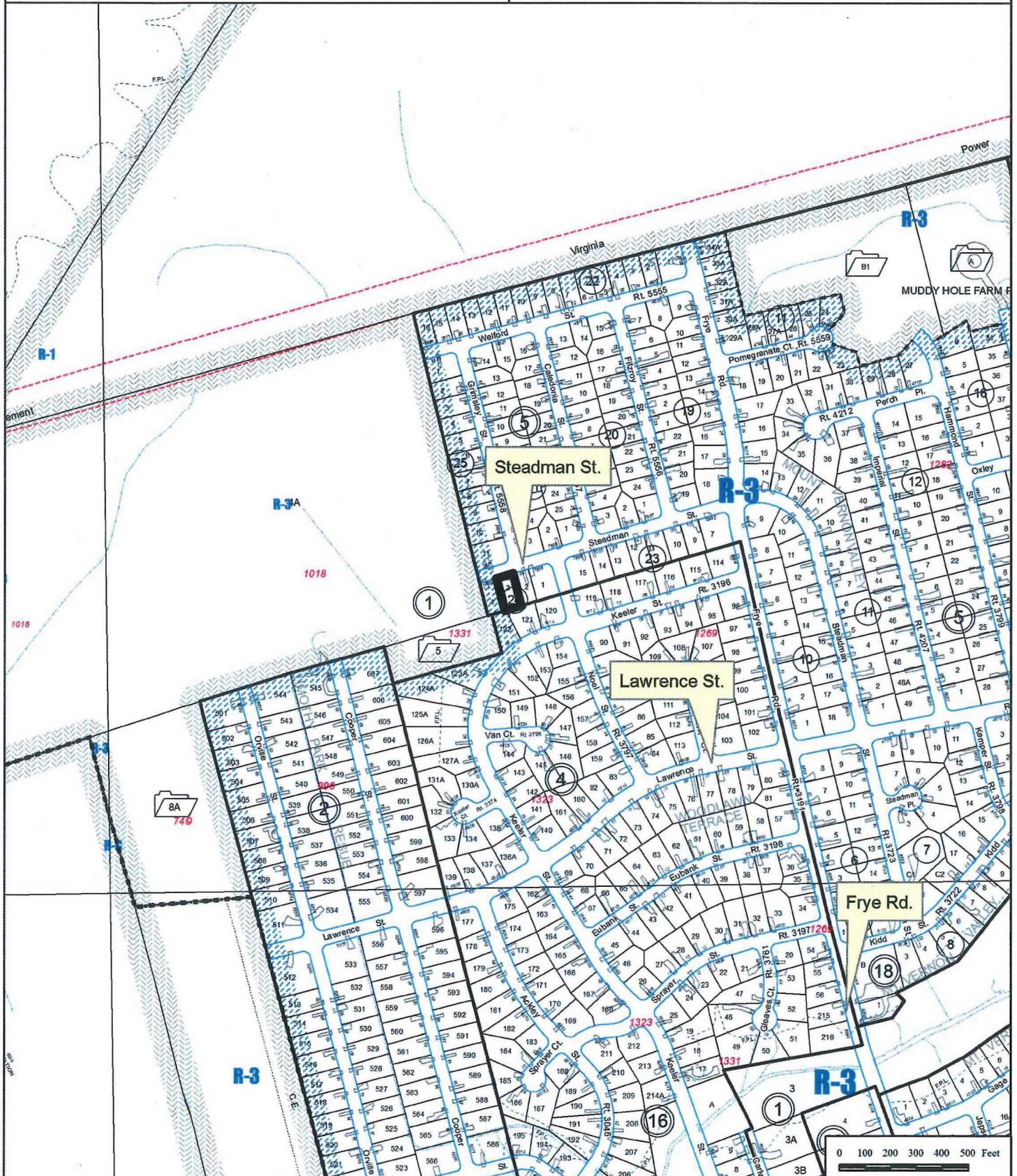
SP 2015-MV-153

LARRY FERGUSON AND NICOLE FERGUSON

Variance Application

VC 2015-MV-013

LARRY FERGUSON AND NICOLE FERGUSON



- NOTES: 1. FENCES ARE CHAIN LINK UNLESS NOTED.
 2. UTILITIES ARE UNDERGROUND.
 3. FRM SHED HEIGHT = 13.2'.

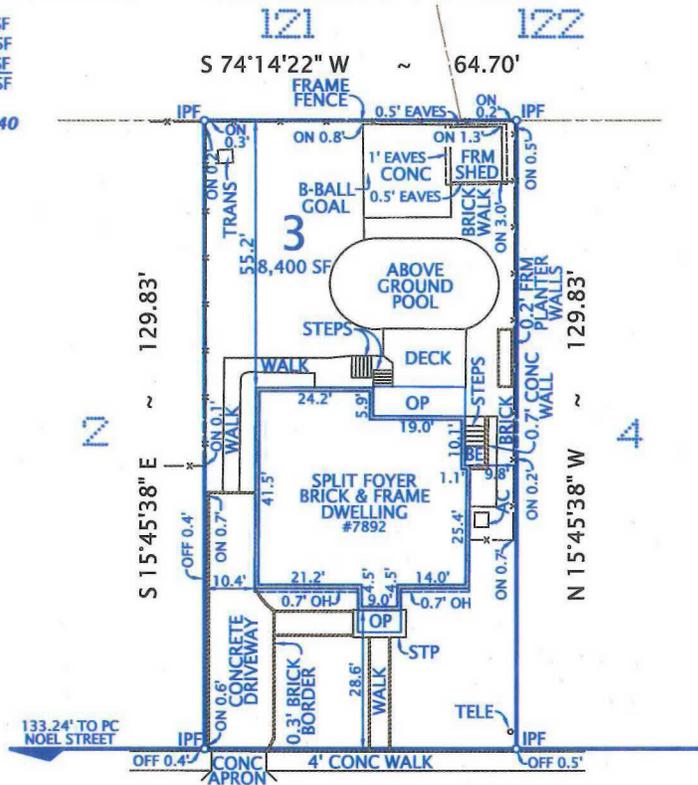
REAR YARD CVG. CALC.

REAR YARD: 1,617 SF (25.0 X 64.7)

SHED: 124 SF
 BRICK WALK: 240 SF
 CONC 347 SF
 TOTAL: 711 SF

711 / 1,617 = 0.440

WOODLAWN TERRACE
 SECTION FIVE



N 74°14'22" E ~ 64.70'

STEADMAN STREET
 50' R/W

PLAT
 SHOWING HOUSE LOCATION ON
 LOT 3, BLOCK 24, SECTION 11
MOUNT VERNON VALLEY

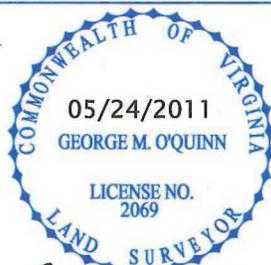
(DEED BOOK 3735, PAGE 701)
 FAIRFAX COUNTY, VIRGINIA
 MOUNT VERNON DISTRICT

SCALE: 1" = 30' MAY 24, 2011
 JUNE 1, 2011 (STAKED LOT)
 OCTOBER 07, 2015 (UPDATE PLAT)
 NOVEMBER 5, 2015 (SHED HEIGHT/CALCS)
 NOVEMBER 20, 2015 (REV. CALCS)

COPYRIGHT BY DOMINION SURVEYORS, INC. THE INFORMATION CONTAINED ON THIS DOCUMENT MAY NOT BE COPIED, REPRODUCED OR ALTERED IN ANY FORM WITHOUT PERMISSION IN WRITING FROM THE COPYRIGHT OWNER.

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.



ORDERED BY:
 NICOLE FERGUSON

DOMINION Surveyors Inc.
 8808-H PEAR TREE VILLAGE COURT
 ALEXANDRIA, VIRGINIA 22309
 703-619-6555
 FAX: 703-799-6412

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 shed to remain 0.8 feet from a rear lot line and 2.0 feet from the side lot line.

VARIANCE REQUEST

The applicants are requesting a variance to allow greater than 30 percent rear yard coverage for an existing brick walkway, concrete play area, and shed to remain. The applicant's minimum required rear yard currently has coverage of 44% due to the brick walkway, concrete play area, and shed.

A copy of the special permit plat, titled "Plat showing the House Location on Lot 3, Block 24, Section 11, Mount Vernon Valley," prepared by George M. O'Quinn on May 24, 2011, as revised on November 20, 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 8,400 square foot application property is developed with a split level single-family detached dwelling with a basement. A concrete driveway extends to Steadman Street, and a stoop provides access to the main entrance of the dwelling. A brick walkway connects the driveway to the rear yard. The rear yard contains an above-ground pool, a 5 foot tall swing set, a concrete play area that is used as a basketball court, a 13 foot, 2 inch tall shed, and 4 foot tall deck. The area around the pool is surrounded by brick pavers. The brick pavers extend from the fence line on the northwestern side lot line to the shed in the southwestern corner of the lot; the pavers continue around the pool to the eastern edge of the basketball court. A 6 foot tall cedar fence encloses the rear yard.



Figure 1: Aerial View

The property is located to the north of Lawrence Street and south of Huntley Meadows Park. The subject property and surrounding properties are zoned R-3 Cluster and are developed with single-family detached dwellings.

BACKGROUND AND HISTORY

Fairfax County Tax Records indicate that the single family dwelling was constructed in 1974 and purchased by the applicant in 1985.

County records indicate that the applicant was issued a building permit to replace an existing above-ground, pre-fabricated swimming pool with a new above-ground swimming pool on June 24, 2011 (Appendix 5). The building permit to build the pool also included the removal of 63 square feet of existing concrete pad from the basketball court to reduce the rear yard coverage from 33% to 29%. The pool received final inspections on February 7, 2012. After the pool received final inspection approval, the applicants added the brick pavers.

On November 19, 2014 the Board of Zoning Appeals approved SP 2014-MV-083 (Appendix 6) to permit a home child care facility for up to 12 children. The Board conditioned the home child care to require the applicant to bring the rear yard into conformance with Sect. 10-103 (3) of the Zoning Ordinance within 12 months of the special permit approval. In addition, the Board also conditioned the applicant to bring the accessory storage structure into conformance with Sect. 10-104 (10E) of the Ordinance within 12 months of the special permit approval or to seek special permit or variance approval. As such, the applicants submitted a Special Permit and Variance application to attempt to bring the rear yard coverage and shed into conformance on November 12, 2015.

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 storage structure (shed) to remain 0.8 feet from the rear lot line and 2.0 feet from the side lot line. The shed is 13 feet, 2 inches in height and 144 square feet.

The applicants built the shed themselves in 1995. They were unaware of Sect. 10-104 (10E) in the Ordinance when the shed was built.

	Structure	Yard	Minimum Yard Required	Proposed Location	Proposed Reduction	Percentage of Reduction Requested
Special Permit (Error)	Shed	Side Rear	8.0 feet 20 feet	2.0 feet 0.8 feet	6.0 feet 19.2 feet	75% 96%

Variance Request

Rear Yard Coverage

The applicants request a variance to allow greater than 30 percent of rear yard coverage for brick pavers, a concrete basketball court, and a shed. The brick pavers extend from the northwestern side lot line to the southwestern corner where the shed is located. The pavers continues around the pool and extend to the eastern edge of the basketball court. The area of the required rear yard is 1,617 square feet, of which 711 square feet is covered, or 44.0 percent. Therefore, the applicants are requesting an increase of 14.0 percent or 225.9 square feet over that permitted.

The yard was in conformance in February of 2012 when the final inspection for the pool was approved and then the applicants added additional coverage. The applicants state that the property is situated in an area with a high water table; as a result, whenever it rains water pools around the southern edge of the rear yard and causes damp and muddy conditions. The area where it becomes damp and muddy is the area where the children from the home child care play. According to the applicants, in order to allow for a safe play environment, they replaced the grass with the 240 square feet of brick pavers.

ANALYSIS

Comprehensive Plan Provisions

Plan Area: Area IV, Mount Vernon Planning District
Planning Sector: Woodlawn Community Planning Sector (MV8)
Plan Map: Residential, 2-3 dwelling units per acre

Zoning District Standards

Bulk Standards (R-3C)		
Standard	Required	Provided
Lot Size	8,500 sf.	8,400 sf.*
Lot Width	Interior: No Requirement	N/A
Building Height	35 feet max.	Not provided
Front Yard	Min. 20 feet	28.6 feet
Side Yard	Min. 8.0 feet (Total min. of 20 feet)	9.8 feet (Total min. of 20.2 feet)
Rear Yard	25.0 feet	55.2 feet

*Lot undersized but it is a legal buildable lot pursuant to Sect. 2-405 of the Zoning Ordinance

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 shed. According to the statement of justification, the applicants were unaware of the provisions in Sect. 10-104 (10E) when they built the shed.

Variance Requirements (Appendix 8)

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 or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance (Sect. 15.2-2309.2).

The subject property is located on a interior lot that is generally rectangular in shape with lot lines that are proportionately sized. The house is positioned in the middle of the lot and there is adequate room on the sides and the rear for usable yard area. In staff's opinion, the request for additional rear yard coverage for the concrete basketball court, brick pavers and shed is not driven by a physical characteristic of the property.

The applicant currently exceeds the allowed rear yard coverage by 14 percent; staff believes this amount could be eliminated or greatly lessened and a functional rear yard and play area would still be available for the applicant's use. The property is an interior lot and the required rear yard is 25 feet. This means that over half of the rear yard is outside of the minimum required rear yard area and staff believes the property contains sufficient space. 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

replaced the grass in the rear yard with brick pavers. 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 concrete pad and brick pavers could potentially help to channel stormwater into the adjacent lot 121 during significant rain events. Staff believes that the applicants could remove a portion of either the concrete play area, brick pavers or shed to bring the rear yard coverage within Zoning Ordinance standards and still have a usable rear yard. 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 an interior lot and are of a general and recurring nature. 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 concrete basketball court, brick pavers, and shed, 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 shed to remain 0.8 feet from the rear lot line and 2.0 feet from the side lot line, staff recommends that such approval be made subject to the development conditions contained in Appendix 1.

Staff recommends denial of VC 2015-MV-013 for rear yard coverage greater than 30 percent. Removal of a portion of either the concrete play area, brick pavers, or shed will not eliminate the ability to use a usable rear yard with customary activities and accessory uses. 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. Clerk's Letter and Resolution for SP 2014-MV-083
7. Applicable Zoning Ordinance Provisions
8. Code of Virginia Sect. 15.2-2309, as amended

PROPOSED DEVELOPMENT CONDITIONS**SP 2015-MV-153****March 2, 2016**

If it is the intent of the Board of Zoning Appeals to approve SP 2015-MV-153 located at Tax Map 101-1 ((5)) (24) 3 to permit a reduction in minimum yard requirements based on an error in building location to permit an accessory storage structure (shed) to remain 0.8 feet from a rear lot line and 2.0 feet from the side 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 storage structure (shed) as indicated on the plat titled, "Plat showing the House Location on Lot 3, Block 24, Section 11, Mount Vernon Valley," prepared by George M. O'Quinn on May 24, 2011, as revised on November 20, 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.

PROPOSED DEVELOPMENT CONDITIONS

VC 2015-MV-013

March 2, 2016

1. This variance is approved for rear yard coverage greater than 30 percent as shown on the plat titled, "Plat showing the House Location on Lot 3, Block 24, Section 11, Mount Vernon Valley," prepared by George M. O'Quinn on May 24, 2011, as revised on November 20, 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.

RECEIVED
Department of Planning & Zoning

NOV 12 2015

Zoning Evaluation Division

Larry Ferguson

7892 Steadman St.
Alexandria, VA 22309
703-362-9035

November 11, 2015

Fairfax County
Zoning Evaluation Division
12055 Government Center Parkway, Suite 801
Fairfax, VA 22035
Subject: Justification for a Variance and a Special Permit

To Whom it may concern:

Background. At its meeting on November 19, 2014, the Fairfax County Board of Zoning Appeals approved my wife Nicole Ferguson's application (SP 2014-MV-083) to permit a home child care facility in our residence at 7892 Steadman St., Alexandria, VA. We received notification of the approval in a letter dated November 24, 2014. She has operated a home child care at this residence for over 25 years, and this approved special permit allowed her to care for up to 12 children.

The BZA's approval was made with several limitations, one of which (# 12) required us to bring the percent coverage of the backyard into zoning ordinance conformance, i.e., not greater than 30% coverage. Another limitation (#13) required us to bring a backyard shed into zoning ordinance conformance. The shed has an error in building location, and it exceeds height limitations.

The purpose of this letter is to provide justification for the variance for item #12, and to provide justification for a special permit for item #13.

Summary Justification for Variance. Our property is situated in an area with a high water table. Whenever it rains, our sump pumps go on and off frequently. Our house sits on a rise, and the back yard slopes downward from the house to the back of the property. As a result, it was almost always either damp or sloppy/muddy in the grass that covered the back part of the backyard. This is an area where the daycare children play, or would play, if it were not so frequently wet and muddy. To alleviate this problem, we replaced the grass with a brick walk. Now, the children can play, ride their tricycles, bounce balls, etc., and stay dry and clean. By granting a variance to exceed the 30% backyard coverage limitation, we will be able to keep the brick wald coverage and enhance the play area for children within our fully fenced backyard.

Detailed Justification for Variance. Addressing the nine standards for requesting a variance:

1. Subject property was acquired in good faith: Larry Ferguson, the applicant, is the owner of 7892 Steadman St., Alexandria since 1975, and is the owner of the ground covering flagstones which is the subject of the variance application.
2. The subject property has an extraordinary situation or condition: if uncovered, the lower back area of the back yard stays either damp or soaked with water many days after rains have stopped, due to the high water table and downward slope of the yard from the back of the house to the back property line, a condition that inhibits or prevents play in that area by children in the child daycare.
3. The condition described in 2, above, is specific to this property and its intended use, and is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. The strict application of this ordinance would produce undue hardship, because the area that is now covered with a brick walk — which causes the excess in coverage that ordinance seeks to prevent — would, if uncovered, be frequently wet or muddy. This would, in turn, limit the effective backyard play area for the daycare children and expose them to the potential to get their shoes and clothes wet or soaked whenever they would wander into this area of the yard.
5. This undue hardship is not shared by the surrounding properties. Although the adjacent back areas of their yards are also frequently wet for the same reasons, the residents of the surrounding residential properties do not operate a daycare in their homes and thus are not beset by the same hardship.
6. A strict application of the zoning ordinance would effectively prohibit or unreasonably restrict the utilization of the backyard by our daycare operation, by making it essentially unusable for play by the children cared for.
7. Authorization of the variance will not detrimentally affect the adjacent properties. Rainwater seeps between the edges of each of the ground-covering bricks and the fine gravel under them, and does not run off into the adjacent properties.
8. The character of the zoning district will not be changed by the granting of the variance, as the affected area is a relatively small section of a fully fenced backyard.
9. The requested variance will be in harmony with the intended spirit and purposes of this Ordinance and will not be contrary to the public interest. The brick walk that provides the coverage in question is not permanently “cemented” to the ground, nor the individual bricks to each other; they can be easily picked up and removed should the next owner of the property so desire. The coverage in question is entirely contained within a fully fenced backyard and was professionally installed.

Summary Justification for Special Permit: We built a shed in our backyard in 1995, approximately 10 years after moving to our current residence from Canada. So, the shed has been in place for about 20 years. We built it ourselves without knowing we would need a building permit. It is situated close to a back corner of our yard. Although the shed is closer to the property line than the zoning ordinance section 8-914 defines, we have never had a complaint about the shed from neighbors. Two of the three neighbors also have sheds in the corners of their yards that are adjacent to the corner of our yard where the shed sits. By having the shed closer to the property line, more play area is available for the daycare children. By granting a special permit, we will be able to better serve the children cared for, and avoid having to tear down and rebuild a shed that will continue to serve us well for many years to come, and is no indication that it will disturb our neighbors in the future.

Detailed Justification for Special Permit: Providing the nine elements of pertinent data required:

- A. Type of Operation: The backyard shed is used to store a variety of items of personal use by the owners and also used in the Daycare operation. These include powered lawn equipment (mower, edger, weed whacker); a generator; lawn furniture, hand gardening tools (shovels, hoes, rakes, etc.); ladders; paint and paint supplies; swimming pool supplies; gasoline for power mower and generator; decorations for various holidays (Christmas, Halloween); sports equipment; bicycles; daycare toys.
- B. Hours of operation: the storage shed is used 24 hours per day, 365 days per year.
- C. Estimated number of users: only my wife and I enter the shed, but it holds toys that are used by up to 12 children cared for in the daycare operation. The shed is locked during daycare operating hours.
- D. Proposed number of attendants. My wife and I are the only "attendants" of the shed.
- E. Estimated traffic impact: my wife and I enter the shed from our house typically 3-4 times on weekends. There is no "public" traffic, as the shed is inside a fully fenced backyard of our principle residential residence.
- F. The shed holds the above mentioned items that are put to use to maintain and decorate our back and front yards, and to enable child's play in the back yard.
- G. The shed's facade is painted plywood, and the architecture is a simple single-room, four-wall framed shed with a storage attic accessible from the inside through an opening in the main room ceiling. The attic is the interior of a 45-degree angle roof. There is a single door in the front, and no windows.
- H. Hazardous or toxic substance listing:
 - * Gasoline in one or two-gallon containers, and inside the tanks of the lawn mower and generator

- Chlorine tablets for swimming pool use, stored in a closed-lid plastic container in which they are purchased.
- I. Although the shed is closer to the property line than the zoning ordinance section 8-914 defines and it has a height of 13'2" (exceeding the ordinance shed height limit), it has been the same structure in that same position for 20 years, surrounded by trees and overhung by tree branches. In that time we have never had a complaint about the shed from neighbors. By having the shed closer to the property line, more play area is available for the daycare children, and the additional height gives us more space available for storage. By granting a special permit, we will be able to better serve the children cared for, and avoid having to tear down and rebuild a shed that will continue to serve us well for many years to come. There is no indication that it will disturb our neighbors in the future. Therefore we request a special permit to allow the shed to remain as it is.

Sincerely yours,



Larry Ferguson







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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

132550

DATE: 10 November 2015
(enter date affidavit is notarized)

I, Larry Ferguson, do hereby state that I am an
(enter name of applicant or authorized agent)

(check one) applicant
 applicant's authorized agent listed in Par. 1(a) below

and that, to the best of my knowledge and belief, the following is true:

1(a). The following constitutes a listing of the names and addresses of all **APPLICANTS, TITLE OWNERS, CONTRACT PURCHASERS, and LESSEES** of the land described in the application,* and, if any of the foregoing is a **TRUSTEE,**** each **BENEFICIARY** of such trust, and all **ATTORNEYS** and **REAL ESTATE BROKERS**, and all **AGENTS** who have acted on behalf of any of the foregoing with respect to the application:

(NOTE: All relationships to the application listed above in **BOLD** print must be disclosed. Multiple relationships may be listed together, e.g., **Attorney/Agent, Contract Purchaser/Lessee, Applicant/Title Owner**, etc. For a multiparcel application, list the Tax Map Number(s) of the parcel(s) for each owner(s) in the Relationship column.)

NAME (enter first name, middle initial, and last name)	ADDRESS (enter number, street, city, state, and zip code)	RELATIONSHIP(S) (enter applicable relationships listed in BOLD above)
Larry Ferguson	7892 Steadman St., Alexandria, VA 22309	Applicant, Title Owner
Nicole Ferguson	same	Title Owner

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

* In the case of a condominium, the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium.
** List as follows: Name of trustee, Trustee for (name of trust, if applicable), for the benefit of: (state name of each beneficiary).



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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 10 November 2015
(enter date affidavit is notarized)

132550

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)

N/A

DESCRIPTION OF CORPORATION: (check one statement)

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

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

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

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

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 10 November 2015
(enter date affidavit is notarized)

132550

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)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 10 November 2015 132550
(enter date affidavit is notarized)

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: 10 November 2015
(enter date affidavit is notarized)

132550

3. That within the twelve-month period prior to the public hearing of this application, no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household, either directly or by way of partnership in which any of them is a partner, employee, agent, or attorney, or through a partner of any of them, or through a corporation in which any of them is an officer, director, employee, agent, or attorney or holds 10% or more of the outstanding bonds or shares of stock of a particular class, has, or has had any business or financial relationship, other than any ordinary depositor or customer relationship with or by a retail establishment, public utility, or bank, including any gift or donation having a value of more than \$100, singularly or in the aggregate, with any of those listed in Par. 1 above.

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

None.

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

(check if applicable) [] There are more disclosures to be listed and Par. 3 is continued on a "Special Permit/Variance Attachment to Par. 3" form.

4. That the information contained in this affidavit is complete, that all partnerships, corporations, and trusts owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE of the land have been listed and broken down, and that prior to each and every public hearing on this matter, I will reexamine this affidavit and provide any changed or supplemental information, including business or financial relationships of the type described in Paragraph 3 above, that arise on or after the date of this application.

WITNESS the following signature:

(check one)

Applicant [] Applicant's Authorized Agent

Larry N. Ferguson, Owner

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

Subscribed and sworn to before me this 10th day of November, 2015, in the State/County of Virginia, County/City of Fairfax.

Notary Public



My commission expires: 01-31-2018

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

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 10 November 2015
(enter date affidavit is notarized)

132557

I, Larry Ferguson, do hereby state that I am an
(enter name of applicant or authorized agent)

(check one) applicant
 applicant's authorized agent listed in Par. 1(a) below

and that, to the best of my knowledge and belief, the following is true:

1(a). The following constitutes a listing of the names and addresses of all **APPLICANTS, TITLE OWNERS, CONTRACT PURCHASERS, and LESSEES** of the land described in the application, and, if any of the foregoing is a **TRUSTEE***, each **BENEFICIARY** of such trust, and all **ATTORNEYS** and **REAL ESTATE BROKERS**, and all **AGENTS** who have acted on behalf of any of the foregoing with respect to the application:

(NOTE: All relationships to the application listed above in **BOLD** print must be disclosed. Multiple relationships may be listed together, e.g., **Attorney/Agent, Contract Purchaser/Lessee, Applicant/Title Owner**, etc. For a multiparcel application, list the Tax Map Number(s) of the parcel(s) for each owner(s) in the Relationship column.)

NAME (enter first name, middle initial, and last name)	ADDRESS (enter number, street, city, state, and zip code)	RELATIONSHIP(S) (enter applicable relationships listed in BOLD above)
Larry N. Ferguson	7882 Steadman St., Alexandria, VA 22309	Applicant / Title Owner
Nicole Ferguson	same	Title Owner

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

* 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: 10 November 2015
(enter date affidavit is notarized)

132557

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)

N/A

DESCRIPTION OF CORPORATION: (check one statement)

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

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

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

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

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

Page Three

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 10 November 2015
(enter date affidavit is notarized)

132557

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: 10 November 2015
(enter date affidavit is notarized)

132551

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: 10 November 2015 132551
(enter date affidavit is notarized)

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 Larry Ferguson [] Applicant's Authorized Agent

Larry N. Ferguson, Owner
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 10th day of November 20 15, in the State/Comm. of Virginia, County/City of Fairfax

[Signature]
Notary Public

My commission expires: 01-31-2018



[Signature]

Fairfax County Government
 12055 Government Center Parkway
 Fairfax, VA 22035

**Building Permit
 Zoning Review**

*This document does not reflect the final
 Building Permit approval.*

6/21/11 3:56:13PM

Bldg Permit #: **111330078**

MULTIPLE WORK PERMIT

Address: 7892 Steadman St Alexandria VA 22309-1039
 Bldg: N/A Floor: Suite: N/A
Subdiv: Mt Vernon Valley Lt 3 Blk 24 Sec 11 **Sub Census:** 217.01 **Lot Size:** 8,400.00
Tax Map: 1011 05240003
Owner: Ferguson Larry N
Phone Day: (703)780-2719 x **Evening:**

Contractor:
 OWNER IS CONTRACTOR
 (999) 999-9999

Type of Work: MULTI WORK
Description of Work: replace existing above ground prefab swimming pool with installation of new oval shaped
 prefab above ground swimming pool and build deck with stairs, no hot tub.and remove 63
 sq ft of existing concrete pad.

ZPRB Review:

Date		Status
06/21/11 15:55	ASABIN	Approved
Problem Recorded:	05/13/11	Problem Resolved: 05/27/11
Applicant needs to get a new plat - their plat (and the most recent plat we have in the file) has already been used for the addition that was permitted in 2009.		
05/27/11 14:41	LBOWES	Failed
Problem Recorded:	05/13/11	Problem Resolved: 05/27/11
Applicant needs to get a new plat - their plat (and the most recent plat we have in the file) has already been used for the addition that was permitted in 2009.		
05/13/11 15:57	LBOWES	Failed
Problem Recorded:	05/13/11	Problem Resolved:
Applicant needs to get a new plat - their plat (and the most recent plat we have in the file) has already been used for the addition that was permitted in 2009.		

Zoning Detail Review TAB:

Zoning Dist.	Cluster Subdiv	Parking Requirement	Exceeds 30%	Height	Wet Bar	2nd Kitchen	ADU Subdiv	Proffer	Setback
R-3	N	Y	Y	4.00	N	N	N	N	N
Zoning Use									
SFD									

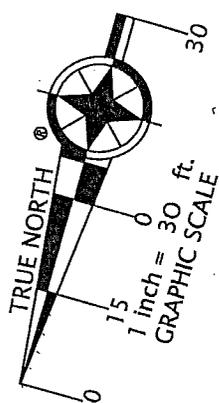
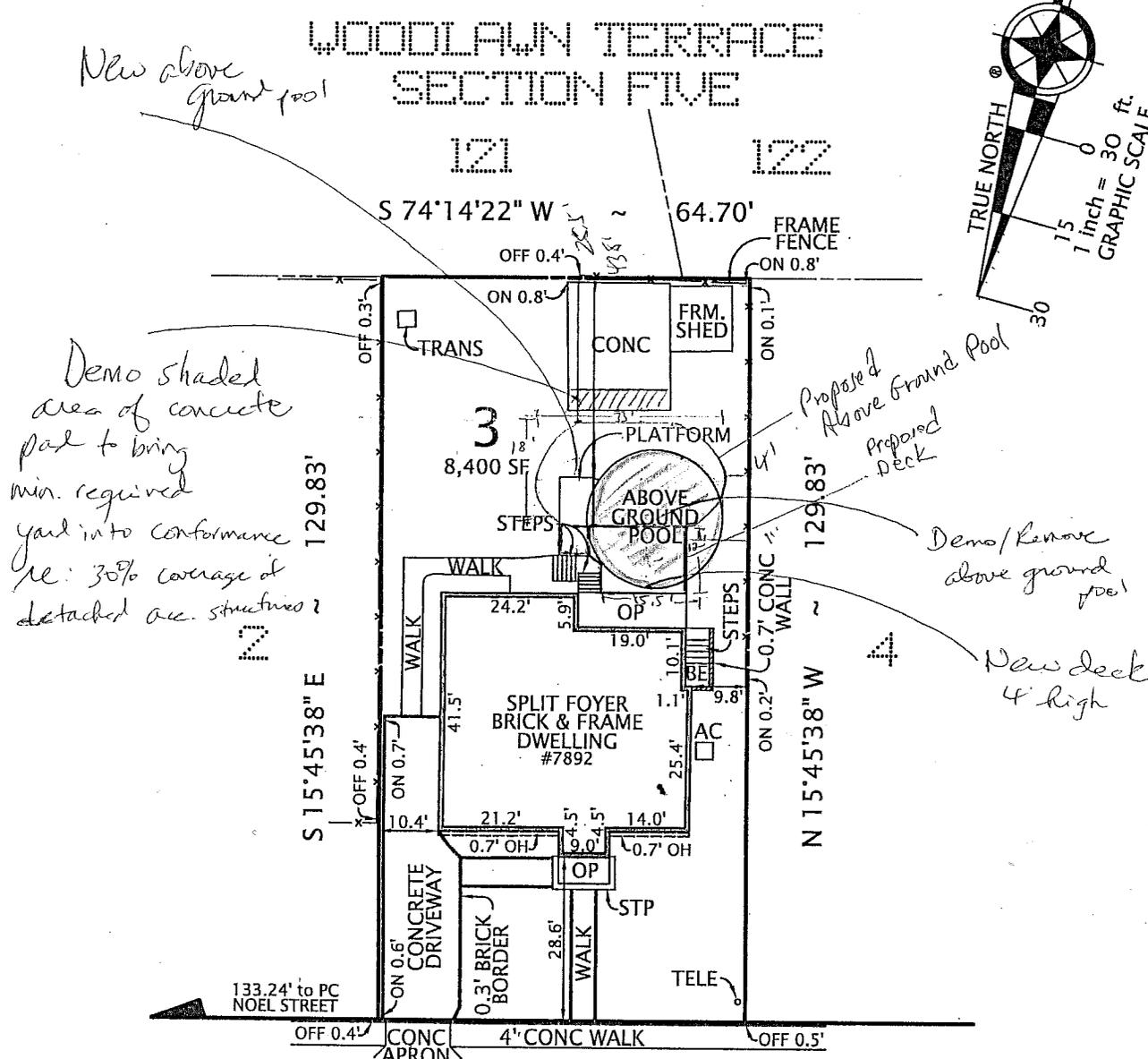
Yard/Setbacks:

Structure	Front (A)	Front (B)	Front (C)	Left	Right	Rear
above g pool	0.00	0.00	0.00	0.00	4.00	25.50
deck	0.00	0.00	0.00	0.00	11.00	43.80

DETAILS COMMENTS:
 Removing 63 square feet of concrete slab to conform to 30% limit of detached acc. structures in min. required yard. Wrote for Vested Rights determination but was denied so now doing this demo. to solve the problem so he can continue with this permit. Removing existing above ground pool and placing new one on lot and building new open deck as well. See plat for all details.

111330078 7.54.11

- NOTES: 1. FENCES ARE CHAIN LINK UNLESS NOTED.
- 2. UTILITIES ARE UNDERGROUND.



N 74°14'22" E ~ 64.70'
STEADMAN STREET
 50' R/W

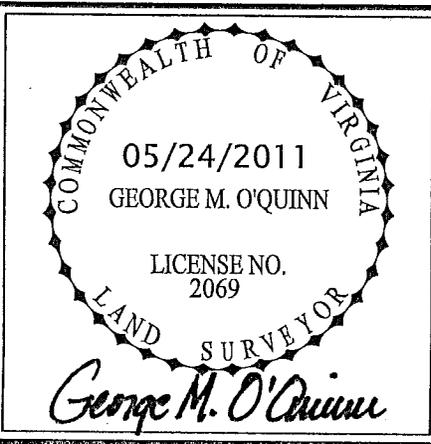
PLAT
 SHOWING HOUSE LOCATION ON
 LOT 3, BLOCK 24, SECTION 11
MOUNT VERNON VALLEY
 (DEED BOOK 3735, PAGE 701)
 FAIRFAX COUNTY, VIRGINIA
 MOUNT VERNON DISTRICT
 SCALE: 1" = 30' MAY 24, 2011

APPROVED
Eric M. Nelson
 Zoning Administrator

COPYRIGHT BY DOMINION SURVEYORS, INC. THE INFORMATION CONTAINED ON THIS DOCUMENT MAY NOT BE COPIED, REPRODUCED OR ALTERED IN ANY FORM WITHOUT PERMISSION IN WRITING FROM THE COPYRIGHT OWNER.

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:
 NICOLE FERGUSON

DOMINION Surveyors Inc.®
 8808-H PEAR TREE VILLAGE COURT
 ALEXANDRIA, VIRGINIA 22309
 703-619-6555
 FAX: 703-799-6412



County of Fairfax, Virginia

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

November 24, 2014

Nicole Ferguson
7892 Steadman Street
Alexandria, Virginia 22309

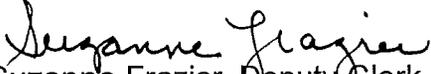
Re: Special Permit Application SP 2014-MV-083
Nicole Ferguson

Dear Ms. Ferguson:

At its November 19, 2014 meeting, the Board of Zoning Appeals took action to **APPROVE** the above-referenced application. A copy of the Resolution is attached.

This action does not constitute exemption from the various requirements of this County and State. The applicant is responsible for ascertaining if permits are required and for obtaining the necessary permits such as Building Permits, Residential Use Permits and Non-Residential Use Permits. Information concerning building permits may be obtained by calling 703-222-0801.

Sincerely,


Suzanne Frazier, Deputy Clerk
Board of Zoning Appeals

Enclosure: As stated

cc: Division of Licensing Programs
Virginia Department of Social Services
3701 Pender Drive, Suite 125
Fairfax, VA 22030

Department of Planning and Zoning
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035-5509
Phone 703 324-1280
FAX 703 324-1207
www.fairfaxcounty.gov/dpz/



COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

NICOLE FERGUSON, SP 2014-MV-083 Appl. under Sect(s). 8-305 of the Zoning Ordinance to permit a home child care facility. Located at 7892 Steadman St., Alexandria, 22309, on approx. 8,400 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 101-1 ((5)) (24) 3. (Decision deferred from 10/29/14.) Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 19, 2014; and

WHEREAS, the Board has made the following findings of fact:

1. The owner of the property is the applicant.
2. This was deferred to allow the applicant to provide security around the pool, which has been done.
3. There is a favorable staff recommendation, which the Board adopts generally.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant only, Nicole Ferguson, and is not transferable without further action of the Board, and is for the location indicated on the application, 7892 Steadman Street, Alexandria, and is not transferable to other land.
2. This Special Permit is granted only for the home child care use indicated on the plat titled "Plat Showing House Location On Lot 3, Block 24, Section 11 Mount Vernon Valley" prepared by Dominion Surveyors Inc., dated May 24, 2011, with annotations by the applicant dated May 19, 2014, and approved with this application, as qualified by these conditions.

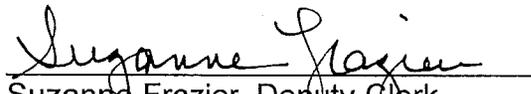
3. A copy of this Special Permit **shall be posted in a conspicuous place on the property of the use** and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The maximum hours of operation of the home child care facility shall be limited to 7:00 a.m. to 5:30 p.m., Monday through Friday.
5. The dwelling that contains the child care facility shall be the primary residence of the applicant.
6. The maximum number of children on site at any one time shall be twelve.
7. The maximum number of assistants for the home child care shall be two.
8. There shall be no signage associated with the home child care facility.
9. All pick-up and drop-off of children shall take place in the driveway.
10. The gates to the pool shall remain locked and the door alarm shall remain functioning during the hours of operation of the home child care.
11. With the exception of the room that has direct access to the side yard, the lower level shall not be used for sleeping or napping without the provision of emergency egress as demonstrated to the satisfaction of the Zoning Inspections Branch, Department of Planning and Zoning.
12. The applicant shall bring the rear yard into conformance with Sect. 10-103 (3) of the Zoning Ordinance within 12 months of this special permit approval.
13. The applicant shall bring the accessory storage structure into conformance with Sect. 10-104 (10E) of the Zoning Ordinance within 12 months of this special permit approval.
14. The fence surrounding and fixed to the pool shall remain in place and in good repair.
15. The shed in the backyard shall remain locked during all hours of the home child care facility operation.

This approval, contingent on 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.

Ms. Theodore seconded the motion, which carried by a vote of 5-0. Mr. Smith and Mr. Beard were absent from the meeting.

A Copy Teste:



Suzanne Frazier, Deputy Clerk
Board of Zoning Appeals

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.