



# County of Fairfax, Virginia

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September 14, 2016

## STAFF REPORT

**SPECIAL PERMIT SP 2016-DR-053  
VARIANCE VC 2016-DR-008**

### DRANESVILLE DISTRICT

**APPLICANT/OWNER:** Lubia E. Garcia Lopez

**SUBDIVISION:** Pimmit Hills

**STREET ADDRESS:** 7736 Lisle Avenue, Falls Church, 22043

**TAX MAP REFERENCE:** 39-2 ((6)) 2

**LOT SIZE:** 8,521 square feet

**ZONING DISTRICT:** R-4

**ZONING ORDINANCE PROVISIONS:** 8-923, 18-401

**SPECIAL PERMIT PROPOSAL:** To permit a fence greater than 4.0 ft. in height to remain in a front yard of a corner lot.

**VARIANCE PROPOSAL:** To permit a fence within a sight distance triangle in the front yard of a corner lot.

### STAFF RECOMMENDATION:

Staff recommends approval of SP 2016-DR-053 for a fence greater than 4.0 feet in height in a front yard with adoption of the proposed development conditions contained in Appendix 1.

Staff also recommends approval of VC 2016-DR-008 for a fence within a sight distance triangle in the front yard of a corner lot with adoption of the proposed development conditions contained in Appendix 2.

*Erin M. Haley*

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

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

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

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

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



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

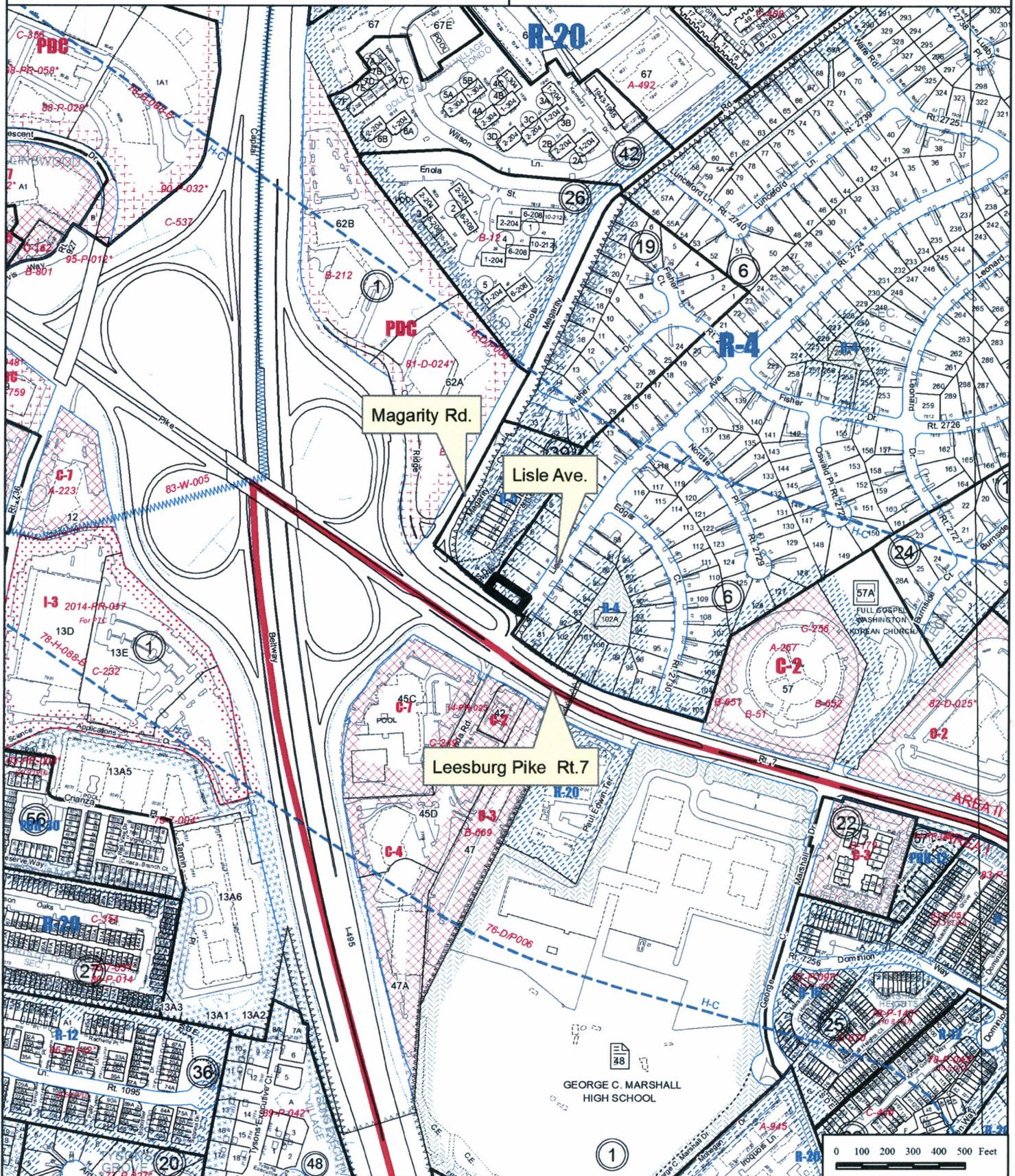
SP 2016-DR-053

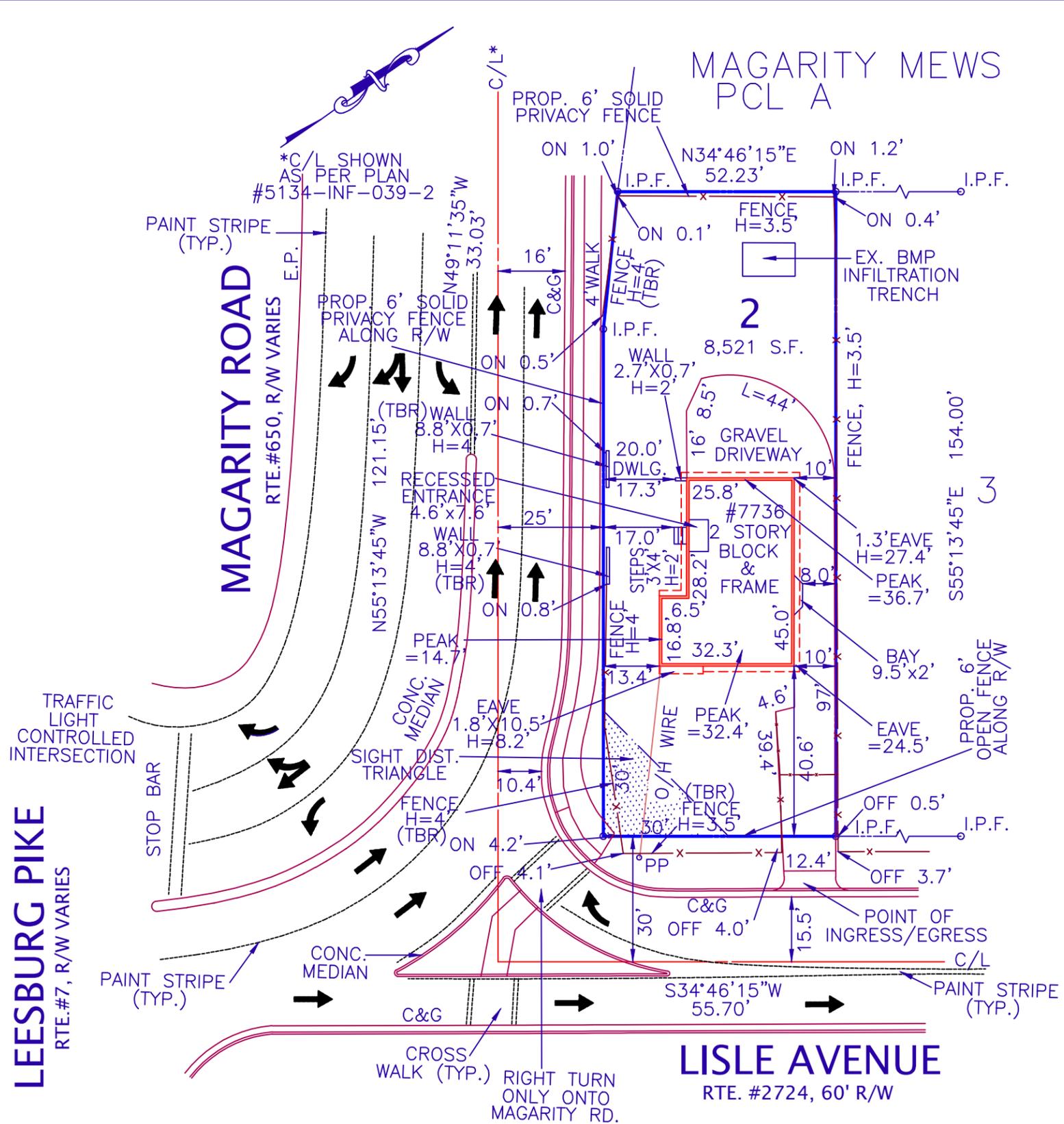
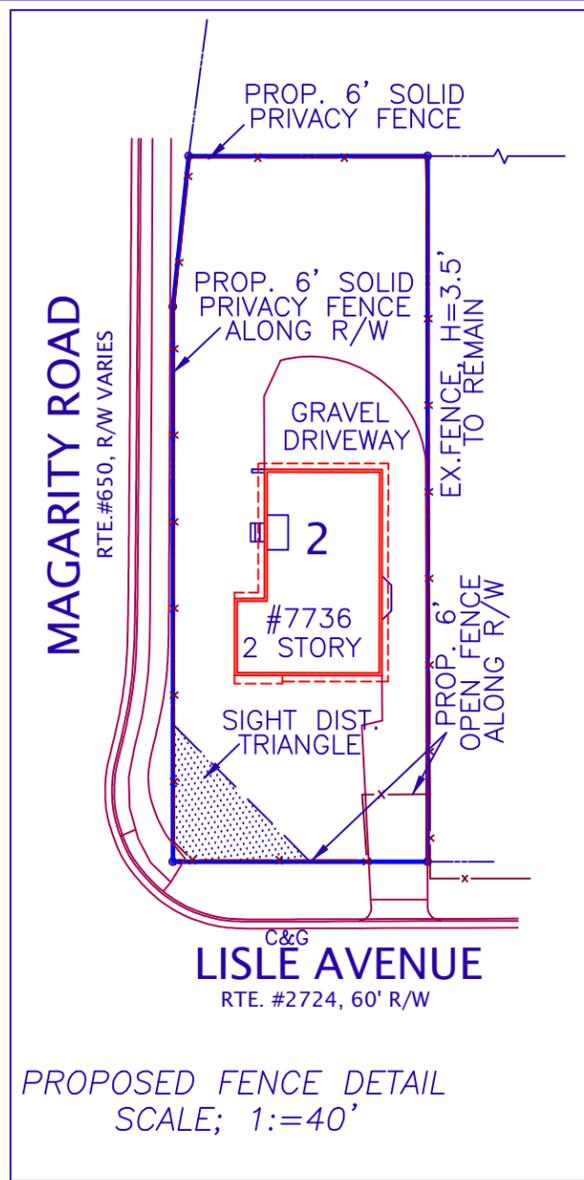
LUBIA E. GARCIA LOPEZ

# Variance Application

VC 2016-DR-008

LUBIA E. GARCIA LOPEZ



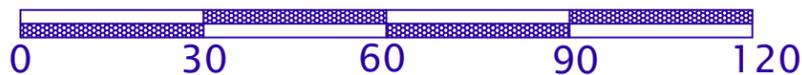


NOTES:

1. TM #039-2-06-0002.
2. ZONE: R-4
3. SETBACKS: FRONT = 30', SIDE = 10', REAR = 25'.
4. PROPERTY IS SERVED BY PUBLIC WATER AND SEWER.
5. THERE ARE NO KNOWN GRAVES OR STRUCTURES MARKING A PLACE OF BURIAL ON THIS SITE.
6. THERE ARE NO MAJOR UNDERGROUND UTILITIES OR EASEMENTS FOR SUCH UTILITIES HAVING A WIDTH OF 25 FEET OR GREATER LOCATED ON THIS SITE.
7. THIS SITE DOES NOT CONTAIN 100-YEAR FLOOD PLAIN OR RESOURCE PROTECTION AREA (RPA). SITE IS LOCATED ENTIRELY WITHIN THE RESOURCE MANAGEMENT AREA (RMA).
8. NO ADDITIONAL LANDSCAPING OR SCREENING IS PROPOSED WITH THIS PLAN.
9. FLOOR AREA CALCULATIONS: PER ZO SECTION 20-300 (DEFINITIONS) (DWELLING FRAME CONSTRUCTION, 6 INCH EXTERIOR WALLS. CALCULATED USING OUTSIDE DIMENSIONS OF DWELLING AS MEASURED IN THE FIELD.)  
 EX. LOT AREA = 8,521 SF  
 EX. GROSS FLOOR AREA, 2-STY. = 3,153 SF (INCLUDES BASEMENT)  
 PROP. GROSS FLOOR AREA = 0 SF  
 EX. & PROP. FAR = 3,153 / 8,521 = 0.37
10. A VARIANCE FOR FRONT SETBACK ALONG MAGARITY ROAD (VC 2006-DR-003) WAS APPROVED ON SEPT. 19, 2006.



GRAPHIC SCALE



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

SPECIAL PERMIT PLAT  
 LOT 6 SECTION 2  
 PIMMIT HILLS  
 DRANESVILLE DISTRICT  
 FAIRFAX COUNTY, VIRGINIA  
 SCALE 1"=30' DATE 01-13-16  
 REV. 08-29-16

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

## **SPECIAL PERMIT REQUEST**

The applicant is seeking a special permit to allow a fence greater than 4 feet in height in the front yard of a corner lot.

## **VARIANCE REQUEST**

The applicant is seeking a variance to allow a fence greater than 3.5 feet in height in a sight distance triangle of a corner lot.

A copy of the special permit plat titled, "Special Permit Plat, Lot 6, Section 2, Pimmit Hills," by Michael L. Flynn, Land Surveyor, of Alexandria Surveys, LLC, dated January 13, 2016, as revised through August 29, 2016, is included in the front of the staff report.

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

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

The application property is located at the corner of Lisle Avenue and Magarity Road. It is developed with a two-story single-family detached dwelling with a full basement. An asphalt and gravel driveway provides access from Lisle Avenue and runs along the northeastern (right) side of the house to an attached two car garage at the rear of the house. The front entrance to the house faces Magarity Road. A side door also allows access to the driveway facing Lisle Avenue. Chain link fencing 3.5 feet in height runs along the front, rear and northeastern side lot lines. A wood fence 4 feet in height runs along the southwestern side lot line adjacent to Magarity Road with a stone gate to allow access to the front door of the house. A gate is also located across the driveway set back 15 feet from Lisle Avenue.

The property is located just north of Leesburg Pike and just east of the Capital Beltway. The subject property and properties to the north and east are zoned R-4 and developed with single-family detached houses. Property to the northwest is zoned R-5 and is private open space for the Magarity Mews Homeowners Association.



Figure 1: Aerial of property and surrounding area, Pictometry 2016



Figure 2: Aerial of property and surrounding area, Pictometry 2015

## **BACKGROUND**

In 2006, the previous property owner obtained a variance approval from the Board of Zoning Appeals to construct an addition to an existing building 20 feet from the southern front lot line (Appendix 5). The existing building was a 340 square foot concrete structure that had been constructed in 1965, formerly used by AT&T, and then abandoned. The existing building was located 13.4 feet from the southern front lot line and was found to be grandfathered and therefore allowed to be in that location by-right. The original variance request was to locate the addition 15 feet from the front lot line, but during the public hearing process that request was modified to 20 feet from the front lot line, which was approved. Part of the previous owner's original request was to construct a fence over 4 feet in height in the front yard, however the applicant withdrew that request during the hearing to focus on receiving approval of the addition. The 2006 approved plat and Resolution are included in Appendix 5. The house was built in 2012. Building permit and setback certification information is included in Appendix 6. Fairfax County Tax Records indicate that the property was purchased by the applicant in 2012.

In response to a complaint, staff from the Department of Code Compliance (DCC) inspected the property on January 20, 2016, and found that the existing 4 foot wood fence is in disrepair in violation of the Virginia Maintenance Code (Part III of the Uniform Statewide Building Code, 2012 Edition). A Notice of Violation (NOV) was issued on January 21, 2016 (Appendix 7). The applicant filed these special permit and variance applications to attempt to bring the violation into conformance by constructing a new fence. The applications were filed in February 2016 and accepted on May 16, 2016.

Records indicate that no other similar special permit or variance applications for fences have been heard by the Board of Zoning Appeals (BZA) in the surrounding area.

## **DESCRIPTION OF THE PROPOSED USE**

### **Special Permit Request**

#### **Fence Greater Than 4 Feet In Height In A Front Yard of a Corner Lot**

Pursuant to Sect. 10-104 of the Zoning Ordinance, fences located in front yards are typically limited to a maximum height of 4 feet. However, Sect. 8-923 of the Zoning Ordinance states that the BZA may approve a special permit to allow an increase in fence and/or wall height not to exceed 6 feet. The applicant requests a special permit for a fence greater than 4.0 feet in height in the front yard of a corner lot. The fence would replace existing fences and be a 6 foot solid privacy fence along the southwestern property line adjacent to Magarity Road and along the northwestern property line.



**Figure 3: Proposed solid privacy fence, materials sample provided by the applicant**

Along the property line adjacent to Lisle Avenue, the applicant proposes an open picket-type fence 6 feet in height.



**Figure 4: Proposed open fence, materials sample provided by the applicant**

The applicant indicates that the existing 3.5 foot high chainlink fence along the northeastern side lot line would remain.

The applicant states that the increased fence height is warranted based upon concerns

about safety and noise due to living at a busy intersection of three major roadways. The fence would also help reduce the amount of trash that blows into the lot from the adjacent roadways. Finally, the fence would replace the existing fence that has been found to be in disrepair and is under NOV.

## **Variance Request**

### **Fence Located Within a Sight Distance Triangle**

The request also requires approval of a variance for a fence greater than 3.5 feet in height in a sight distance triangle of a front yard of a corner lot. During the applications acceptance process, a determination was requested from the Zoning Administrator as to the necessity of a variance for a fence greater than 3.5 feet in height within the sight distance triangle. A second determination was requested as to whether a fence up to 8 feet in height could be permitted by-right since the property is located adjacent to Magarity Road, which is a major thoroughfare. The Zoning Administrator determined that Sect. 2-505 of the Zoning Ordinance requires that fences within sight distance triangles are limited to a height of 3.5 feet but that approval of a variance by the BZA could permit an increase in height. The Zoning Administrator also determined that while the property abuts a major thoroughfare, to qualify for the 8 foot fence height Sect. 10-104 Par. 3B requires that the driveway entrance to the lot must be from a street other than the major thoroughfare (as it is on Lisle Avenue in this case) and that the principal entrance of the dwelling must face a street other than the major thoroughfare. Since the principal entrance of the house faces Magarity Road, this property does not qualify for the 8 foot fence height by-right. The Zoning Administrator Determination is included as Appendix 8.

The applicant states that the property is located at a busy intersection and that the roadway is divided so that drivers may only turn right from Lisle Avenue onto Magarity Road and that this prevents the fence from interfering with the sight distance requirements of drivers entering this intersection.

A small piece of the sidewalk bordering Magarity Road crosses the southeastern corner of the applicant's property where the sight distance triangle is located. The applicant has agreed to dedicate that piece of land to the Virginia Department of Transportation (VDOT) so that the entire sidewalk is located within the right-of-way.

## **ANALYSIS**

### **Comprehensive Plan Provisions**

**Plan Area:** Area II, McLean Planning District  
**Planning Sector:** Pimmit Community Planning Sector (M2)  
**Plan Map:** Residential, 3-4 du/ac

**Zoning District Standards**

<b>Bulk Standards (R-4)</b>		
<b>Standard</b>	<b>Required</b>	<b>Provided</b>
Lot Size	8,400 sf.	8,521 sf.
Lot Width	Corner: 90 feet	55.7 feet*
Building Height	35 feet	32.4 feet
Front Yard	30 feet	Southeastern: 40.6 feet Southwestern: 13.4 feet/20 feet**
Side Yard	10 feet	Northwestern: approx. 67 feet Northeastern: 10 feet

\* The subject parcel was legally created and developed prior to the adoption of the current Zoning Ordinance; therefore it is considered a legal, buildable lot under Sect. 2-405.1 of the Zoning Ordinance.

\*\* 13.4 foot distance was deemed grandfathered. 20 foot distance approved under variance VC 2006-DR-003 by the BZA on September 19, 2006.

**Zoning Ordinance Requirements (Appendix 9)**

- Sect. 8-006 General Special Permit Standards
- Sect. 8-923 Provisions for Increase in Fence and/or Wall Height in Any Front Yard

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

<b>Standards 1 and 2</b> Comprehensive Plan/ Zoning District	The Comprehensive Plan recommends residential uses and the property is developed with a residential use. The R-4 District permits a fence over 4 feet in height in a front yard with special permit approval.
<b>Standard 3</b> Adjacent Development	The new fence would replace an older fence in disrepair that was reported to the Department of Code Compliance. In staff’s opinion, the proposed use will not hinder or discourage use or development of neighboring properties or negatively affect value and would improve the visual appearance of the subject property.
<b>Standard 4</b> Pedestrian/Vehicular Traffic	No additional traffic is anticipated with the proposed use in the application.

<p><b>Standard 5</b> Landscaping/Screening</p>	<p>The proposed fences in the front yard would screen the property from the pedestrians and drivers along Magarity Road and Lisle Avenue as well as the heavy traffic on Leesburg Pike.</p>
<p><b>Standard 6</b> Open Space</p>	<p>There is no prescribed open space requirement for individual lots in the R-4 District.</p>
<p><b>Standard 7</b> Utilities, Drainage, Parking, and Loading</p>	<p>There are no changes to the utilities, drainage or parking serving the property or use.</p>
<p><b>Standard 8</b> Signs</p>	<p>No signage is proposed with the application.</p>

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

<p><b>Standard 1</b> Lot Size and Bulk Regulations</p>	<p>With the exception of lot width, the property conforms to the lot size regulations of the R-4 district. The subject parcel was created and developed prior to the adoption of the current Zoning Ordinance; therefore it is considered a legal, buildable lot under Sect. 2-405.1 of the Zoning Ordinance. With the approval of variance VC 2006-DR-003, the house is approved in its current location.</p>
<p><b>Standard 2</b> Performance Standards</p>	<p>The use will comply with the performance standards set forth in Article 14 of the Zoning Ordinance.</p>
<p><b>Standard 3</b> Site Plan</p>	<p>Fences in a front yard are not subject to the provisions of Article 17, Site Plans.</p>

**Standards for Increase in Fence Height in Any Front Yard (8-923)**

<p><b>Standard 1</b> Fence Shall Not Exceed 6 feet in Height</p>	<p>The proposed fences would be 6.0 feet in height.</p>
<p><b>Standard 2</b> Meet Sight Distance Requirements</p>	<p>The applicant is not proposing to change the chainlink fence 3.5 feet in height that runs along the northeastern property line adjacent to the driveway. The proposed fence adjacent to Lisle Avenue would be an open, picket-style fence. In addition, there are approximately 12 feet between the property line and the right-of-way. Staff believes that sight distance around the driveway's point of ingress and egress to the property would not be negatively impacted by the proposed fence. In addition, the corner where Lisle Avenue turns right onto Magarity Road curves in such a way as to provide pedestrians using the sidewalk along Magarity Road or the shoulder on Lisle Avenue sufficient sight distance at the corner, in staff's opinion. The applicant is requesting a</p>

	<p>variance to allow a fence greater than 3.5 feet in height within the formal sight distance triangle required under Sect. 2-505 of the Zoning Ordinance. The Virginia Department of Transportation has reviewed this application and determined to have no objection to the increase in fence height as sight distance is not needed to the right of the intersection of Magarity Road and Lisle Avenue because it is a divided roadway. Staff does not believe that the fence would be located in an area that will affect sight distance.</p>
<p><b>Standard 3</b> Proposed Fence Height is Warranted</p>	<p>The property is located adjacent to an intersection of three busy roads. The applicant has stated that there are safety, noise, and litter concerns due to the number of pedestrians and drivers that pass through the area. Staff believes that the fence is warranted to provide safety and screening to the property.</p>
<p><b>Standard 4</b> Fence is in Character with On-site and Off-site Uses</p>	<p>The property is adjacent to an area of private open space for a homeowners association along the northwestern lot line, adjacent to several lanes of traffic along the southwestern lot line, and adjacent to Lisle Avenue along the southeastern lot line. While there are no other similar fences on other nearby properties, staff believes that the property is in an unusual location with the potential for impacts from traffic that a fence would help mitigate. The property is also located at the end of the street, facing away from other adjacent residential lots and the applicant is not proposing to change the chainlink fence located between the subject property and the only adjacent neighbor. Staff believes this standard is met.</p>
<p><b>Standard 5</b> Fence Will Not Adversely Impact Other Properties</p>	<p>The applicant is not proposing to change the fence along the northeastern property line adjacent to the neighboring home. The applicant is also proposing an open fence for the lot line adjacent to Lisle Avenue. Staff believes the fence will not adversely impact other properties.</p>
<p><b>Standard 6</b> BZA May Impose Conditions</p>	<p>Proposed development conditions are included in Appendix 1.</p>
<p><b>Standard 7</b> Meet Submission Requirements</p>	<p>A copy of the plat is included in the beginning of this report.</p>
<p><b>Standard 8</b> Architectural Depictions Provided</p>	<p>Pictures of the proposed fence have been included earlier in the staff report and in Appendix 3.</p>

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## Variance Requirements (Appendix 10)

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 55 feet wide at the front and 52 feet wide at the rear, which is at least 35 feet narrower than is required for a corner lot in the R-4 district which provides less buffer area from the house to the right-of-way than a regular R-4 buildable lot would have. The property is located at the intersection of three busy roadways and directly adjacent to a major thoroughfare. These roadways have been expanded and realigned over the years that the property has existed. A former outlot served as a buffer along Magarity Road but was taken for road widening projects. A large amount of pedestrian and vehicular traffic flows past the subject property on a daily basis along both Magarity Road and Lisle Avenue. The existing fence is in disrepair and staff believes the proposed fence would mitigate impacts of noise, safety, and litter. The sight distance triangle covers approximately 450 square feet which is approximately 20 percent of the front yard. Excluding the portion of the front yard that is within the sight distance triangle would negate the benefits of allowing a 6 foot fence. Due to the past road widening projects, staff believes that requiring the fence to meet the maximum height limits of 3.5 feet would impose a hardship due to a physical condition relating to the property. Therefore, staff believes 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))*

Records from the Fairfax County Department of Tax Administration indicate that the applicant purchased the property in 2012. Therefore, staff believes the property was acquired in good faith. The hardship for which the fence in a sight distance triangle is being requested was not created by the applicant as the applicant did not cause the past road-widening or realignment projects and did not create the traffic, noise, or other impacts on her property. Staff believes 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 Virginia Department of Transportation has determined that a 6 foot fence in this sight distance triangle will not negatively impact sight distance at that corner due to the divided roadway which forces traffic to make only right turns at the intersection. A 6 foot fence in the sight distance triangle at this intersection would be set back a minimum of 12 feet from the right of way and adjacent to several lanes of roadway. Past road-widenings and realignments removed an outlot that provided buffering from Magarity Road. Staff does not believe granting the variance would be detrimental to adjacent properties.

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

The residential lots in the vicinity of the subject property are not generally similar to the subject property as they tend to meet their lot size requirements for their residential districts and very few are located at the intersection of such heavily traveled roadways. Staff does not believe there is any general or recurring need for properties in this area to allow a fence over 3.5 feet in height in a sight distance triangle. In staff's opinion this standard is 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 a fence over 3.5 feet in height to be located in a sight distance triangle would not result in a use that is otherwise permitted or cause a change in the zoning classification of the property.

*The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application (Sect. 15.2-2309.2(v))*

The variance application is the only mechanism to provide the relief requested.

## **CONCLUSION / RECOMMENDATION**

Staff believes that past road-widening and realignment projects have caused the property to be impacted by the effects of traffic, noise, and litter. Staff also believes that a taller fence as proposed would mitigate those impacts. The property is approximately 35 feet narrower than is required in the R-4 district for corner lots which has reduced the applicant's ability to buffer her house from the impacts of noise, litter and safety concerns due to being located at the intersection of heavily traveled roadways. Staff believes that allowing a fence 6 feet in height in the front yard of a corner lot would help mitigate those impacts. Staff recommends approval of SP 2016-DR-053 for a fence

greater than 4.0 feet in height in a front yard with adoption of the proposed development conditions contained in Appendix 1.

Locating a fence over 3.5 feet in the sight distance triangle would not cause a safety hazard at this corner due to the traffic pattern which funnels southbound traffic onto a divided Magarity Road in a one-way direction only. Additionally, disallowing the area of the sight distance triangle from being enclosed by the 6 foot fence would negate the benefits of allowing a taller fence in the front yard. The subject property is not generally the same as other properties in the area due to being directly impacted by road-widening projects, being undersized, and being located at this particularly busy intersection. Therefore, staff also recommends approval of VC 2016-DR-008 for a fence within a sight distance triangle in the front yard of a corner lot with adoption of the proposed development conditions contained in Appendix 2.

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

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

## **APPENDICES**

1. Proposed Special Permit Development Conditions
2. Proposed Variance Development Conditions
3. Applicant's Statement of Justification and Select File Photographs
4. Applicant's Affidavit
5. 2006 Approved Plat and Resolution
6. Building Permit and Setback Certification Information
7. Notice of Violation
8. Zoning Administrator Determination
9. Applicable Zoning Ordinance Provisions
10. Code of Virginia Sec. 15.2-2309, as amended

**PROPOSED DEVELOPMENT CONDITIONS****SP 2016-DR-053****September 14, 2016**

If it is the intent of the Board of Zoning Appeals to approve SP 2016-DR-053 located at Tax Map 39-2 ((6)) 2 to permit permit a fence greater than 4.0 ft. in height in a front yard of a corner lot pursuant to Section 8-923 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 fence as indicated on the plat titled, "Special Permit Plat, Lot 6, Section 2, Pimmit Hills," by Michael L. Flynn, Land Surveyor, of Alexandria Surveys, LLC, dated January 13, 2016, as revised through March 7, 2016, and approved with this application, as qualified by these development conditions.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall take effect upon adoption of a resolution of approval by the Board of Zoning Appeals.

**PROPOSED DEVELOPMENT CONDITIONS**

**VC 2016-DR-008**

**September 14, 2016**

1. This variance is approved for a fence within a sight distance triangle in the front yard of a corner lot as shown on the plat titled, "Special Permit Plat, Lot 6, Section 2, Pimmit Hills," by Michael L. Flynn, Land Surveyor, of Alexandria Surveys, LLC, dated January 13, 2016, as revised through March 7, 2016, as submitted with this application and is not transferable to other land.
2. The applicant shall dedicate the portion of the southeastern corner of the property that contains sidewalk to the Virginia Department of Transportation within 90 days of approval.

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

RECEIVED  
Department of Planning & Zoning

APR 29 2016

Zoning Evaluation Division

# Statement of Justification

## Special Permit & Variance

Re: 7736 Lisle Avenue, Falls Church Va. 22043

TM#039-2-06-0002

### SPECIAL PERMIT STATEMENT OF JUSTIFICATION:

The following is a statement of justification for the Special Permit on the project stated above. I attest to the following. The Special Permit is being requested to allow an the construction of a 6 foot solid fence along the public right-of-way of Magarity Road (Rte. #650) and to allow an 6 foot open fence along the public right-of-way of Lisle Avenue (Rte. #2724) as well as along the rear propertyline between my property and a common open space of Magarity mews Townhouses Below is the justification keyed to list provided within the Special Permit Application Package (page 15):

- A. Type of Operation: Existing residential lot.
- B. Hours of Operation: N/A, non-commercial use, private residence only.
- C. Estimated number of patrons / clients/ patients/ pupils etc.: N/A (only those associated with a single family residential use)
- D. Proposed number of employees / attendants / teachers etc.: N/A
- E. Estimate of traffic impact of the proposed use: There is no proposed change or increase in use or any estimated impact on traffic.
- F. Vicinity or general area to be served by the use: The intersection of Magarity Road, Lisle Avenue and Leesburg Pike in Falls Church Va.
- G. Description of building façade and architecture of proposed buildings or additions: N/A (no new construction)
- H. A listing, if known of all hazardous or toxic substances: N/A (no hazardous substances are currently used or proposed to be used on this site. Only those substances which are normally associated with a residential use, such as standard cleaning products, shall be used on-site and those are not considered hazardous. No commercial venture is existing or proposed on this site.)
- I. A statement of how the proposed use conforms to the provisions of all applicable ordinances:

Request to allow a fence 6 feet in height along a public right-of-way, front yard and within a corner lot sight distance triangle. I am requesting that I be allowed to replace the existing fence and wall segments along the Magarity Road right-of-way with a solid 6 foot tall privacy fence and to replace the fence along Lisle Avenue with a 6 foot tall open fence.

APR 29 2016

Zoning Evaluation Division

I am requested a variance / modification / Special Exception to the requirements of Section 2-505 of the Fairfax Zoning Ordinance. The Ordinance requires that ;

**"2-505 Use Limitations on Corner Lots**

1. On every corner lot within the triangle formed by the street lines of such lot and a line drawn between points on such lines as established below, there shall be no structure or planting of such nature and dimension as to obstruct sight distance other than a post, column or trunk of a tree (but not branches or foliage), which is not greater than one (1) foot in cross section or diameter. Such sight distance shall be maintained between two (2) horizontal planes, one of which is three and one-half (3 ½) feet, and the other ten (10) feet above the established grade of either street or, if no grade has been officially established, then above the average elevation of the existing surface of either street at the center line thereof:

A. For a lot having an interior angle of ninety (90) degrees or more at the street corner thereof: Points shall be 30 feet from the property lines extended.

B. For a lot having an interior angle of less than ninety (90) degrees at the street corner thereof: Points shall be 30 feet from the property lines extended, plus one (1) foot for every ten (10) degrees or major fraction thereof by which such interior angle is less than ninety (90) degrees."

The statement below notes how the proposed fence conforms with the applicable ordinances and what Special Permits are being requested.

I currently have a fence and wall segments on the corner of Lisle Avenue and along Magarity Road that is 3.5 feet to 4 feet tall and it is located within the 30 foot sight triangle. I would like to increase the size of the fence to 6 feet (by replacing it with a new fence, a solid privacy fence along Magarity Road and an open fence along Lisle Avenue) and allow the new fence to remain in place. While we do not dispute that the fence is / will be located within the triangle and sight line it is our contention that the fence does not / will not interfere with the traffic flow and needed sight lines for vehicles turning from Lisle Avenue to Magarity Road and vice versa. The intersection in question is controlled with the placement of concrete medians and traffic barriers that require vehicles turning from Lisle Avenue onto Magarity Road to make a right turn only. Therefore the traffic is only coming from the left towards the vehicles trying to turn onto Margarity Road from Lisle Avenue. Thus the drivers will need only look to the left while the fence is on the right hand side of the roadway. The traffic from Lisle Avenue is required to yield to traffic coming from the left. No traffic conflict is possible from the right as the traffic coming from the right is separated by a concrete median and is required to continue past the intersection towards Leesburg Pike. Traffic cannot turn from Magarity Road and make a left turn onto Lisle Avenue.

Pedestrian traffic does enter the crosswalk from the right. But the vehicles are required to stop at the crosswalk and pedestrians would be easily seen as they are not traveling at the speeds of vehicles. Bicyclist could also approach from the right, but they are required to dismount at the crosswalk and since the cars coming from Lisle Avenue and turning left on Magarity are required to yield to those in the crosswalk the same applies to any bicycle rider coming from the right across Lisle Avenue.

Another reason for requesting this Special Permit is a safety concern of my own as well as quality of life. Having a home at a busy intersection certainly creates some challenges. The lot I live on was originally not a corner lot. There was previously a lot adjacent to mine which was a buffer between me and Magarity Road. That lot, old lot 1 (I am on lot 2) was vacated and absorbed by the road widening and realignment of the Magarity Road, Lisle Avenue & Leesburg Pike intersection.

Furthermore I am providing information as to how my request conforms to Section 8-923 of the Zoning ordinance:

1. The maximum fence and / or wall height shall not exceed 6 feet in height and such fence and / or wall shall not be eligible for an increase in fence and / or wall height pursuant to Par. 31 of Sect. 10-104

I am not requesting a height any higher than 6 feet. A six foot high fence should be sufficient for my needs in shielding my property from Magarity Road, Leesburg Pike and Lisle Avenue traffic.

2. The fence and / or wall shall meet the requirements contained in Sect. 2-505.

I am requesting a variance / modification / Special Exception of Sect. 2-505 as stated and justified above.

3. The BZA shall determine that the proposed fence and / or wall height increase is warranted based upon such factors to include, but not limited to, the orientation and location of the principal structure on the lot, the orientation and location of nearby off-site structures, topography of the lot, presence of multiple front yards and concerns related to safety and / or noise.

The request for the six foot high fence is for concerns of safety and noise to shield my property from Lisle Avenue, Magarity Road and Leesburg Pike. My lot has two front yards at a major intersection of three intersecting roadways. The intersection is controlled in the movements of vehicles to reduce cross traffic and left hand turns at uncontrolled points so having a taller fence will not be a safety issue for others. In my case the taller fence will be a safety issue to provide a layer of protection for me and my family from the goings on at the intersection. As well as the items stated above it will also help reduce the amount of trash entering my lot from the roadway.

4. The BZA shall determine that the proposed fence and / or wall height increase will be in character with the existing on-site development and will be harmonious with surrounding off-site uses and structures in terms of location, height, bulk, scale and any historic designations.

I do not believe the proposed fence would be out of character for the area. My lot has an existing solid wood fence at this time that will be replaced with a taller fence. In terms of bulk and scale the only difference is the requested height increase. As stated above I feel the fence is harmonious with the surrounding areas and is not detrimental to the surrounding uses nor is the requested variance to allow the fence within the sight triangle detrimental to the safety of those who use the intersection, whether on foot, on a bicycle or in a vehicle. There are no historical issues that are known to me concerning my parcel. I am unique in my need for a taller fence as others near me do not have a house on such a small lot that is so close to the major intersection. I also believe the new fence will be more attractive than the existing solid wood fence.

5. The BZA shall determine that the proposed fence and / or wall height increase shall not adversely impact the use and / or enjoyment of other properties in the immediate vicinity.

As stated above in the Special Exception justification I do not feel the proposed fence will be detrimental to any properties in the immediate area. It may even be beneficial to some as it will provide a break from the intersection for them also. The location and size of the fence certainly does not limit, reduce or otherwise affect the use of the public right-of-way by those individuals who use it. I will be one of those individuals who uses the intersection to enter and exit Lisle Avenue. I certainly do not wish to install a structure that is detrimental to my safety, health and enjoyment.

6. The BZA may impose such conditions as it deems necessary to satisfy these criteria, including but not limited to imposition of landscaping or fence and / or wall design requirements.

I understand and accept this condition. I believe I have chosen a design that is suitable to not only my needs but the needs of the community.

7. Notwithstanding Par. 2 of Sect. 011 above.....(provide a plat).

A plat is being provided which meets the criteria requested.

8. Architectural depictions of the proposed fence and / or wall to include height, building materials and any associated landscaping shall be provided.

I have provided photos of the fence type and some detail drawings. More specific details shall be provided if more detail is needed or requested.

It is my opinion that granting this Special Permit would not incur upon us any privilege that would be detrimental to the health and safety of others and is not of such a nature that a general exception should be made for all the property owners in my area.

#### VARIANCE STATEMENT OF JUSTIFICATION:

The following is a statement of justification for the Variance on the project stated above. I attest to the following. The Variance is being requested to allow for the construction of a 6 foot solid fence along the public right-of-way of Magarity Road (Rte. #650) and to allow an 6 foot open fence along the public right-of-way of Lisle Avenue (Rte. #2724) within the 'sight distance triangle' at the intersection. The information below is keyed to the two parts of the Variance Application justification:

Part A; I believe the granting of the Variance would alleviate a hardship due to a physical condition related to the property and the improvements thereon at the effective date of the ordinance. The request is to allow a fence 6 feet in height along a public right-of-way, front yard and within a corner lot sight distance triangle. I am requesting that I be allowed to replace the existing fence and wall segments along the Magarity Road right-of-way with a solid 6 foot tall privacy fence and to replace the fence along Lisle Avenue with a 6 foot tall open fence. The reason for replacing the fences is their deteriorating condition. The taller fences are being requested to buffer my home, which is at the corner of a very busy

intersection of three roadways. Route #7 Leesburg Pike is a major thoroughfare, Magarity Road is a 5 lane feeder road and Lisle Avenue is a local subdivision road. All three converge at my lot corner. The request for the six foot high fence is for concerns of safety and noise to shield my property from Lisle Avenue, Magarity Road and Leesburg Pike. My lot has two front yards at a major intersection of three intersecting roadways. The intersection is controlled in the movements of vehicles to reduce cross traffic and left hand turns at uncontrolled points so having a taller fence will not be a safety issue for others. In my case the taller fence will be a safety issue to provide a layer of protection for me and my family from the goings on at the intersection. As well as the items stated above it will also help reduce the amount of trash entering my lot from the roadway.

Part B;

(i) The property was acquired by me in good faith (from George D'Angelo @ DB 22597 page 544) and the hardship was not created by me. The situation was created when the previous adjacent lot (Lot 1) was vacated and utilized for Magarity Road extension and widening of the intersection.

(ii) The granting of this variance will not be of substantial detriment to the adjacent properties and nearby properties in the area. The fence to be built will be of good grade material and shall help screen my neighbors to some extent from the major intersection. As stated above I feel the fence is harmonious with the surrounding areas and is not detrimental to the surrounding uses nor is the requested variance to allow the fence within the sight triangle detrimental to the safety of those who use the intersection, whether on foot, on a bicycle or in a vehicle. The fence does not / will not interfere with the traffic flow and needed sight lines for vehicles turning from Lisle Avenue to Magarity Road and vice versa. The intersection in question is controlled with the placement of concrete medians and traffic barriers that require vehicles turning from Lisle Avenue onto Magarity Road to make a right turn only. Therefore the traffic is only coming from the left towards the vehicles trying to turn onto Magarity Road from Lisle Avenue. Thus the drivers will need only look to the left while the fence is on the right hand side of the roadway. The traffic from Lisle Avenue is required to yield to traffic coming from the left. No traffic conflict is possible from the right as the traffic coming from the right is separated by a concrete median and is required to continue past the intersection towards Leesburg Pike. Traffic cannot turn from Magarity Road and make a left turn onto Lisle Avenue.

Pedestrian traffic does enter the crosswalk from the right. But the vehicles are required to stop at the crosswalk and pedestrians would be easily seen as they are not traveling at the speeds of vehicles. Bicyclist could also approach from the right, but they are required to dismount at the crosswalk and since the cars coming from Lisle Avenue and turning left on Magarity are required to yield to those in the crosswalk the same applies to any bicycle rider coming from the right across Lisle Avenue.

(iii) The condition or situation is not so general or recurring that a general regulation should be adopted. I am unique in my need for a taller fence as others near me do not have a house on such a small lot that is so close to the major intersection.

(iv) The granting of the variance does not result in a use that is not otherwise permitted on such property or change the zoning classification of the property. A fence is an allowable use and a fence is

allowable in the area of concern. I am simply requesting to make the fence taller than normally allowable within the sight distance triangle but not taller than allowable under other regulations.

(v) The relief or remedy sought by the variance is not available through a Special Permit or Special Exception. I am currently under the process of a Special Permit for fences outside of the sight triangle and staff has confirmed a variance is required for this fence within the sight triangle.

Sincerely,



Luvia E. Garcia Lopez

APR 29 2013

Zoning Evaluation Division

## PRIVACY GREEN LINE

Lakeland ↓ is proposed fence for Magarity Rd.



### GL Lakeland

- Std Heights: 4', 5', 6'
- Rails: 2" x 7" Deco Top & Bottom Rail
- Pickets: 7/8" x 7" T&G w/ side U Channel
- Posts: 5" x 5"
- Pool Code: 4', 5', 6'

	Almond	Gray	Adobe	Emboss	Streak	Str. & Emb.
Inlay	✓	✓	✓	✓	✓	✓
Rails	✓	✓	✓	✓	✓	✓

### GL Lakeland Concave

- Std Heights: 4', 5', 6'
- Rails: 2" x 7" Deco Bottom Rail, 1" x 6" each side
- Capstock: 1" x 2"
- Pickets: 7/8" x 7" T&G w/ side U Channel
- Posts: 5" x 5"
- Pool Code: 5', 6'

	Almond	Gray	Adobe	Emboss	Streak	Str. & Emb.
Inlay	✓	✓	✓	✓	✓	✓
Rails	✓	✓	✓	✓		

APR 29 2015

Zoning Evaluation Division

# PICKET GREEN LINE

## GL Spartan Straight\*

- Std Heights: 4', 5', 6'
- Rails: 2" x 3-1/2" Top Rail, 2" x 7" Deco Bottom Rail†
- Pickets: 7/8" x 3" w/ Dog Ear Cap††
- Picket Space: 1-3/4" & 3-1/4"
- Posts: 5" x 5"
- Pool Code: 4', 5', 6' @ 1-3/4" space & 5', 6' @ 3-1/4" space



←  
Proposed  
fence  
for  
Lisle  
Ave.

	Almond	Gray	Adobe	Emboss	Streak	Str. & Emb.
Pickets	✓	✓	✓	✓		
Rails	✓	✓	✓	✓		

## GL Viking Scallop\*

- Std Heights: 4', 5', 6'
- Rails: 2" x 3-1/2" Top Rail, 2" x 7" Deco Bottom Rail†
- Pickets: 1-1/2" x 1-1/2" w/ Pyramid Cap
- Picket Space: 1-3/4" or 3"
- Posts: 5" x 5"
- Pool Code: 5', 6' @ 1-3/4" space & 6' @ 3-1/4"



	Almond	Gray	Adobe	Emboss	Streak	Str. & Emb.
Pickets	✓	✓	✓			
Rails	✓	✓	✓	✓		



LONG FENCE



NO  
TRESPASSING

7736

AME  
703-3







LISLE AVE

Pimmit  
Hills  
1950











495 EXPRESS  
SOUTH  
NEXT LEFT

495 SOUTH  
Richmond  
Alexandria

495 NORTH  
Rockville  
Baltimore

20

Green traffic light



RIGHT  
TURN  
ONLY



YIELD  
TO PEDESTRIANS  
IN CROSSWALK  
\$100 - \$500  
VIOLATION FINE

NO  
LEFT  
TURN  
ON  
RED

ONE WAY



YIELD  
TO PEDESTRIANS  
IN CROSSWALK  
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VIOLATION FINE

ONE WAY

NO  
TURN  
ON  
RED

CHICAGO  
FESTIVAL  
CROSSWALK





LISLE AVE

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Application No.(s): SP 2016-DR-053 / VC 2016-DR-008  
 (county-assigned application number(s), to be entered by County Staff)

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 05-09-2016  
 (enter date affidavit is notarized)

135014

I, Roger K. Bohr, 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.)

<b>NAME</b> (enter first name, middle initial, and last name)	<b>ADDRESS</b> (enter number, street, city, state, and zip code)	<b>RELATIONSHIP(S)</b> (enter applicable relationships listed in <b>BOLD</b> above)
Lubia Garcia Lopez	7736 Lisle Avenue, Falls Church Va. 22043	OWNER / APPLICANT
Alexandria Surveys, LLC (Michael I. Flynn) (Roger K. Bohr)	1229 Garrisonville Rd. #104 Stafford Va. 22556	SURVEYOR/ ENGINEER/ AGENT

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

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

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

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

**SPECIAL PERMIT/VARIANCE AFFIDAVIT**

DATE: 05-09-2016  
(enter date affidavit is notarized)

135014

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)  
Alexandria Surveys, LLC

**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)  
Michael L. Flynn

(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: 05-09-2016  
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135014

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: 05-09-2016  
(enter date affidavit is notarized)

135014

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: 05-09-2016  
(enter date affidavit is notarized)

175014

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

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

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

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

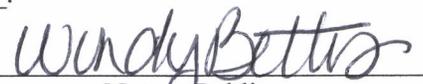
4. That the information contained in this affidavit is complete, that all partnerships, corporations, and trusts owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE\* of the land have been listed and broken down, and that prior to each and every public hearing on this matter,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

WITNESS the following signature:

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

ROGER K. BOHR  
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 9th day of May, 2016, in the State/Comm. of Virginia, County/City of Stafford.

  
Notary Public

My commission expires: 3/7/2020





Windy J. Bettis  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #7677114  
My Commission Expires  
March 7, 2020

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

GEORGE D'ANGELO, VC 2006-DR-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of a fence greater than 4.0 ft. in height in the front yard (**THE BZA DID NOT APPROVE THE FENCE**) and an addition 15.0 ft. from front lot line of a corner lot. Located at 7800 Magarity Rd. on approx. 8,521 sq. ft. of land zoned R-4 and HC. Dranesville District. Tax Map 39-2 ((6)) 2. (Continued from 7/18/06) Ms. Gibb 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 September 19, 2006; and

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

1. The applicant is the owner of the land.
2. After revising his application, the applicant has met the very difficult standard currently for a variance.
3. It is a close case, but based on the applicant's testimony that the proposed home is consistent with the very small homes in Pimmit Hills and the new plat showing a small, modest home on the very small lot, the applicant is asking for a much smaller reduction in the side yard than in the earlier application.
4. The applicant does not qualify for the new special permit because of the very small existing hut on the property.
5. The applicant is making the most of the subject property, for which the only use is residential.
6. This will be a harmonious use of the property and will be consistent with the neighborhood.
7. The applicant has met the required standard that to deny the application would be to deny all reasonable beneficial use of the property as a whole.
8. The applicant has met the other required standards for a variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property, or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property 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. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

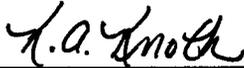
NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED-IN-PART** with the following limitations:

1. This variance is approved for the location of the addition and deck, as shown on the plat prepared by Alexandria Surveys, dated May 5, 2006, as revised through August 15, 2006, submitted with this application and is not transferable to other land. **(THE BZA DID NOT APPROVE THE FENCE.)**
2. A Building Permit shall be obtained prior to any construction and approval of final inspections shall be obtained.
3. The applicant may maintain the existing structure, in whole or in part, provided, that the said structure will be demolished if: 1) it does not meet all the applicable building codes for a residential use or, 2) at the time of construction of the main dwelling, it is determined by an architect or structural engineer that it is not feasible or safe to incorporate the said structure into the main dwelling. In the event that the existing structure is demolished, it shall not be rebuilt and only the proposed rectangular perimeter shown on the Variance Plat shall be constructed.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. 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.

Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was not present for the vote.

A Copy Teste:

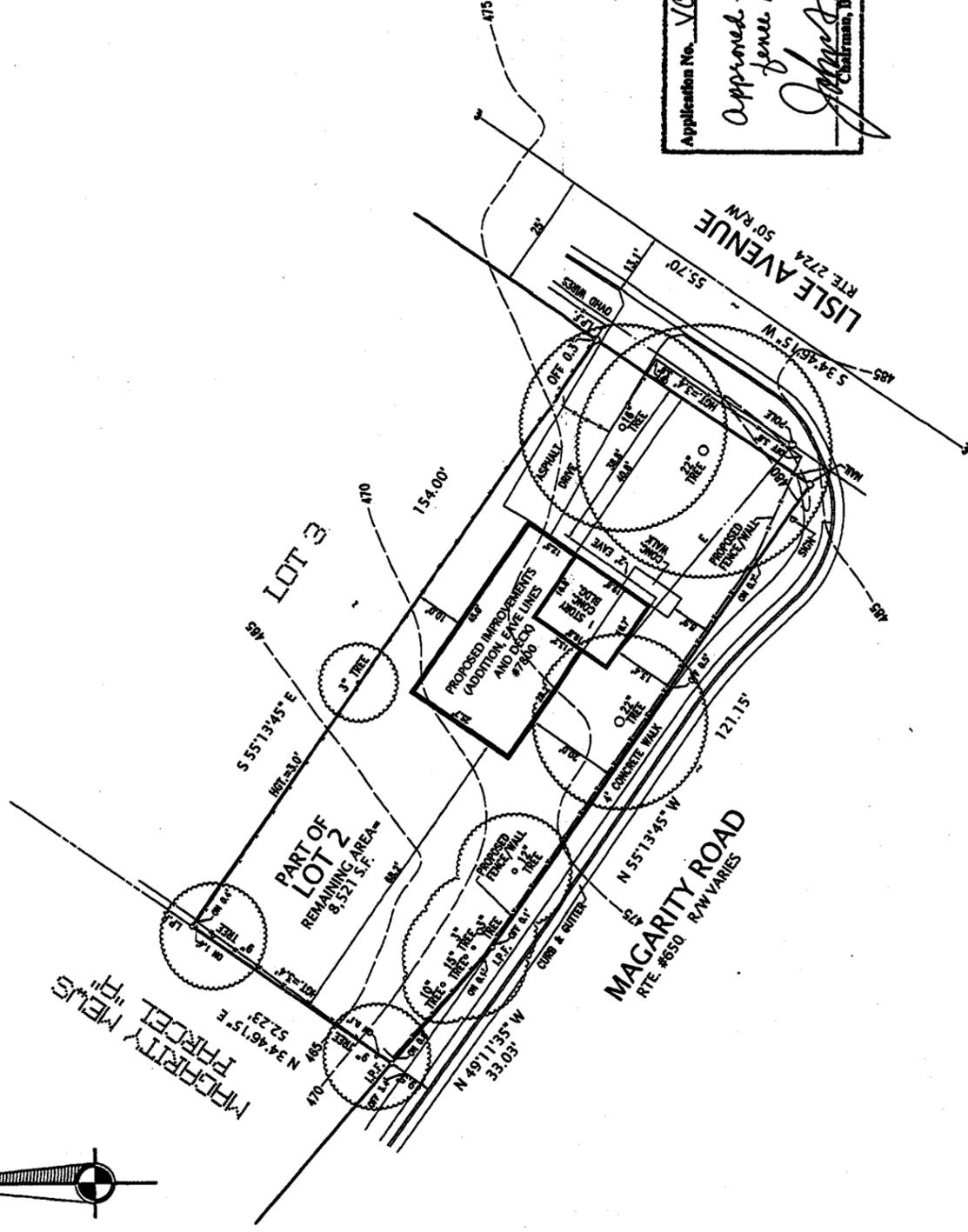


---

Kathleen A. Knoth  
Clerk to the Board of Zoning Appeals

**NOTES**

1. TAX MAP: 39-2-006-2
2. ZONE: R-4
3. LOT AREA: 8,521 SQUARE FEET
4. REQUIRED YARDS:
  - FRONT: - 30 FEET
  - SIDE: - 10 FEET
  - REAR: - 25 FEET
5. HEIGHTS:
  - DWELLING - 12.8 FEET
  - CHAIN LINK FENCES - AS NOTED
  - PROPOSED ADDITION - 30.0 FEET MAX.
  - PROPOSED FENCE/WALL - 7.0 FEET
6. THIS PROPERTY IS SERVED BY PUBLIC WATER AND SEWER.
7. THERE IS NO OBSERVABLE EVIDENCE OF GRAVE SITES OR BURIAL GROUNDS ON THIS PROPERTY.
8. ALL IMPROVEMENTS SHOWN ON THIS PLAT ARE EXISTING UNLESS DENOTED AS PROPOSED.
9. THE SURVEYOR IS NOT AWARE OF ANY UTILITY EASEMENTS 25 FEET IN WIDTH OR GREATER AFFECTING THIS PROPERTY.
10. THERE ARE NO FLOOD PLAINS, FLOOD HAZARD AREAS OR RESOURCE PROTECTION AREAS ON THIS PROPERTY.
11. CONTOUR LINES SHOWN ON PLAT WERE TAKEN FROM AVAILABLE FAIRFAX COUNTY TOPOGRAPHIC MAP.
12. PROPOSED IMPROVEMENTS DELINEATED ON THIS PLAT INCLUDES PROPOSED ADDITION, EAVE LINES AND DECK.



Application No. VC 2006-DR-003  
*Approved - in part -*  
*Gene NDI approved*  
*Patrick A. Eckert*  
 Chairman, Board of Zoning Appeals

PLAT  
 SHOWING THE IMPROVEMENTS ON ON  
 PART OF LOT 2 SECTION 6  
**PIMMIT HILLS**  
 DRANESVILLE DISTRICT  
 FAIRFAX COUNTY, VIRGINIA  
 SCALE: 1" = 20'  
 MAY 5, 2006 (REVISED)  
 MAY 31, 2006 (REVISED)  
 AUGUST 15, 2006 (REVISED)  
 Zoning Evaluation Division

RECEIVED  
 Department of Planning & Zoning  
 AUG 21 2008

CASE NAME: GEORGE D'ANGELO	GEORGE D'ANGELO
	REQUESTED BY: <b>GEORGE D'ANGELO</b> ALEXANDRIA SURVEYS INTERNATIONAL, LLC 8343 SOUTH KINGS HIGHWAY ALEXANDRIA, VIRGINIA 22306 TEL. NO. 703-660-6615 FAX NO. 703-768-7764



# BUILDING PERMIT APPLICATION

FAIRFAX COUNTY GOVERNMENT  
 PERMIT APPLICATION CENTER  
 12055 Government Center Parkway, 2nd Floor  
 Fairfax, Virginia 22035-5504  
 Telephone: 703-222-0801  
 Web site: <http://www.fairfaxcounty.gov/dpwes>

PERMIT # 102000238

FOR INSPECTIONS CALL 703-222-0455 (see back for more information)  
 OR VISIT US ON THE WEB AT  
[http://www.fairfaxcounty.gov/isisnet/inspection\\_sched.asp](http://www.fairfaxcounty.gov/isisnet/inspection_sched.asp)

FILL IN ALL APPROPRIATE INFORMATION IN THIS COLUMN  
 (PLEASE PRINT OR TYPE) Lisp Ave

**JOB LOCATION**  
 ADDRESS 7800 MAGARITY ROAD  
 LOT # 2, part of BUILDING Full  
 FLOOR \_\_\_\_\_ SUITE 1102CN  
 SUBDIVISION Pin mt Hill sub 22043  
 TENANT'S NAME Sec 6  
 EMAIL \_\_\_\_\_  
 CONTACT ID \_\_\_\_\_

**OWNER INFORMATION** OWNER  TENANT   
 NAME GEORGE D'ANGELO  
 ADDRESS 7422 HOWARD ST  
 CITY FALL CHURCH STATE VA ZIP 22043  
 TELEPHONE 202-835-0916  
 EMAIL DANGELO@AOL.COM  
 CONTACT ID \_\_\_\_\_

**CONTRACTOR INFORMATION** SAME AS OWNER   
 CONTRACTORS MUST PROVIDE THE FOLLOWING: 383202  
 COMPANY NAME FOX CONSTRUCTION LLC  
 ADDRESS \_\_\_\_\_  
 CITY 115 ADR STATE DC ZIP \_\_\_\_\_  
 TELEPHONE PERKINS VH 20166  
 EMAIL (703) 929-2722  
 STATE CONTRACTORS LICENSE # 0-AOL-604  
 COUNTY BPOL # Nor Va 7031510  
 CONTACT ID \_\_\_\_\_

**APPLICANT**  
 NAME GEORGE D'ANGELO  
 ADDRESS 7422 HOWARD ST  
 CITY FALL CHURCH STATE VA ZIP 22043  
 TELEPHONE 202-835-0916  
 EMAIL DANGELO@AOL.COM  
 CONTACT ID \_\_\_\_\_

**DESCRIPTION OF WORK**  
EXTENSION OF EXISTING SFH MORE THAN 10% OF EXISTING STRUCTURAL

HOUSE TYPE SFH  
 ESTIMATED COST OF CONSTRUCTION \$90,000  
 USE GROUP OF BUILDING \_\_\_\_\_  
 TYPE OF CONSTRUCTION \_\_\_\_\_

**DESIGNATED MECHANICS' LIEN AGENT**  
 (Residential Construction Only)  
 NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 NONE DESIGNATED  PHONE \_\_\_\_\_

DO NOT WRITE IN GRAY SPACES - COUNTY USE ONLY

PLAN # \_\_\_\_\_  
 TAX MAP # \_\_\_\_\_

ROUTING	DATE	APPROVED BY
LICENSING		
ZONING		
SITE PERMITS		
HEALTH DEPT		
BUILDING REVIEW		
SANITATION		
FIRE MARSHAL		
ASBESTOS		
PROFFERS		

FEE \_\_\_\_\_  
 FILING FEE \_\_\_\_\_  
 AMOUNT DUE = \$ \_\_\_\_\_

**BUILDING PLAN REVIEW**  
 REVIEWER SAJ # OF HOURS \_\_\_\_\_  
 REVISION FEES \$ 85  
 FIRE MARSHAL FEES \$ \_\_\_\_\_  
 FIXTURE UNITS \_\_\_\_\_ PLAN LOC

**APPROVED FOR ISSUANCE OF BUILDING PERMIT**  
 (LOG OUT)  
 BY \_\_\_\_\_ DATE \_\_\_\_\_

**ZONING REVIEW**  
 USE SFD  
 ZONING DISTRICT R-4 HISTORICAL DISTRICT N/A  
 ZONING CASE # VC 2006-DR-003  
 GROSS FLOOR AREA OF TENANT SPACE \_\_\_\_\_

YARDS: <u>45'</u>	GARAGE 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/>
FRONT <u>30'</u>	OPTIONS YES <input type="checkbox"/> NO <input type="checkbox"/>
FRONT <u>20'</u>	REMARKS <u>Build 2-story</u>
L SIDE <u>N/A</u>	<u>addition with finished</u>
R SIDE <u>10'</u>	<u>basement w/ bedroom</u>
REAR <u>63'</u>	<u>No wet bar No 2nd kitchen</u>

**REMARKS** Mezzanine is existing, 29.8' tall  
VARIANCE APPROVED FOR THIS LOCATION AND EXTENDED TO MARCH 19 2011. COPY ATTACHED TO GRADING PLAN  
15.5' setback for front stairs OK per S. Langdon letter  
Only one kitchen showing on plans post construction, which is the requirement  
Right side bay window is 10' wide per plans on 12-14-2010

Any and all information and/or stamps on the reverse side of this form are a part of this application and must be complied with. I hereby certify that I have authority of the owner to make this application, that the information is complete and correct, and that the construction and/or use will conform to the building code, the zoning ordinance and other applicable laws and regulations which relate to the property.

George D'Angelo 11/2/10  
 Signature of Owner or Agent Date  
George D'Angelo  
 Printed Name and Title

(Notarization of signature is required if owner is listed as the contractor and is not present at time of application)

**NOTARIZATION (if required)**

State (or territory or district) of \_\_\_\_\_  
 County (or city) of \_\_\_\_\_, to wit: I, \_\_\_\_\_  
 Notary Public in the State and County aforesaid, do certify that  
 whose name is signed to this application, appeared before me in the State and County aforesaid and executed this affidavit.  
 Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
 My commission expires the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
 \_\_\_\_\_  
 (Notary Signature)



# County of Fairfax, Virginia

## MEMORANDUM

**DATE:** June 20, 2011

**TO:** Distribution

**FROM:** Roger Marcy, Assistant to the Zoning Administrator *RM*

**SUBJECT:** Setback Certification: Application Permit No.: 103060238

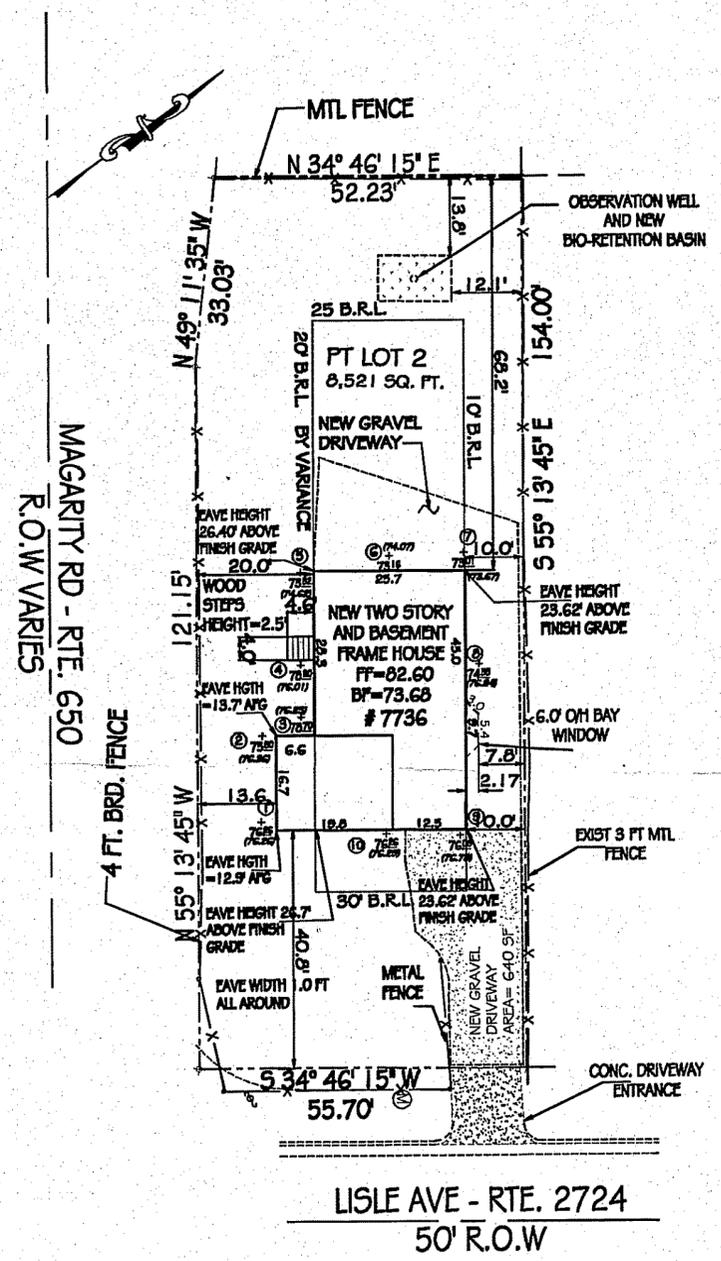
**RE:** 7737 Lisle Avenue  
Pimmit Hills, Section 6, Lot 2  
Tax Map Ref: 39-2 ((6)) 2  
Zoning District: R-4

Attached for your records is an approved Setback Certification for the referenced property. The yard in question is the 10 foot side yard to the right of the house and the 20 foot and 13.6 foot front yards to the left of the house. I note that the 20 foot and 13.6 foot front yards were previously approved pursuant to Variance VC 2006-DR-003.



**Distribution:**

George D'Angelo, 7422 Howard Court, Falls Church, VA 22043  
Charles O'Donnell, Residential Inspections Division, DPWES  
Jack W. Weyant, Director, Environmental and Facilities Inspections Division, DPWES  
✓ Diane Johnson-Quinn, Deputy Zoning Administrator for Zoning Permit Review Branch



FRONT YARD COVERAGE  
FRONT YARD AREA  
55.70 x 40.8' = 2273 SF  
COVERAGE = 640 SF  
PERCENTAGE = (640/2273) x 100 = 28%

SCALE = 1" = 20 FT.

HOUSE HEIGHT CALCULATIONS

ROOF TYPE : GABLE					
AVERAGE EXISTING GRADE ELEV	AVERAGE FINISH GRADE ELEV	ROOF EAVE ELEVATION	PEAK ROOF ELEVATION (HIGH RIDGE)	ROOF MIDPOINT ELEVATION	HOUSE HEIGHT MID-ROOF-A.E.G
475.65	476.08	499.75	509.43	504.64	28.99

EXISTING GRADE ELEVATION ON HOUSE PERIMETER	
#	Elev.
1	476.26
2	476.36
3	476.22
4	476.01
5	474.62
6	474.07
7	473.67
8	476.24
9	476.78
10	476.29
AVEG	475.65

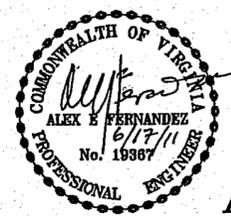
FINISH GRADE ELEVATION ON HOUSE PERIMETER	
#	Elev.
1	476.26
2	475.80
3	478.80
4	478.20
5	473.32
6	473.16
7	478.32
8	474.55
9	476.08
10	476.26
AVEG	476.08

CONTROLS

Setback Certification  
APPROVED  
RM 6-20-11  
*Eileen M. Melone*  
Zoning Administrator

SETBACK AND HEIGHT CERTIFICATION PLAT

PIMMIT HILLS  
PART OF LOT 2  
SECTION 6  
FAIRFAX COUNTY  
DRANESVILLE DISTRICT #1  
7736 LISLE AVE  
TAX MAP 039-2-06-0002  
Owner Of Record : GEORGE DANDELO  
Advance Engineering Group LLC.  
Civil, Structural & Geotechnical Engineers / Planners  
701 West Broad Street, Suite #306 Falls Church, VA 22046  
Phone: 703-533-1581 Fax: 703-533-1582  
www.aegcorp.net info@aegcorp.net





# County of Fairfax, Virginia

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

## NOTICE OF VIOLATION Virginia Maintenance Code

**DATE OF ISSUANCE:** January 21, 2016

**METHOD OF SERVICE:** OFFICE OF THE SHERIFF

**LEGAL NOTICE ISSUED TO:** Lubia E. Garcia Lopez  
**ADDRESS:** 7736 Lisle Avenue  
Falls Church, Virginia 22043

**LOCATION OF VIOLATION:** 7736 Lisle Avenue  
Falls Church, Virginia 22043-0000

**TAX MAP REF:** 0392 06 0002

**CASE #:** 201600078 **SR #:** 123779

**ISSUING INVESTIGATOR:** Michael Caudle, (703)324-9327

### POTENTIAL CIVIL PENALTIES PURSUANT TO FAIRFAX COUNTY

<b>CODE § 61-7-1(B):</b>	<b>Maintenance Code Violation(s)</b>	<b>First Offense</b>	<b>Each Subsequent Offense</b>
	§VMC 302.7	\$ 100.00	\$ 150.00
<b>TOTAL:</b>		<b>\$ 100.00</b>	<b>\$ 150.00</b>

Dear Responsible Party:

In accordance with the Virginia Maintenance Code (Part III of the Uniform Statewide Building Code-2012 Edition), an inspection on January 20, 2016 revealed violations as listed below at the referenced location. The cited violations must be corrected within 14 days from receipt of this notice unless otherwise indicated.

**Violation: ACCESSORY STRUCTURES VMC 302.7.** All accessory structures, including detached garages, fences and walls, shall be maintained structurally sound and in good repair.

**Location:** The wooden fence in disrepair.

**Department of Code Compliance**  
12055 Government Center Parkway, Suite 1016  
Fairfax, Virginia 22035-5508  
Phone 703-324-1300 Fax 703-653-9459 TTY 711  
[www.fairfaxcounty.gov/code](http://www.fairfaxcounty.gov/code)

Lubia E. Garcia Lopez  
January 21, 2016  
SR 123779  
Page 2

**Work to be performed:** Repair the wooden fence that is falling down and replace the missing sections of the fence.

All repairs, alterations, and/or additions must be made in accordance with applicable laws. Any additional violations that may appear as work progresses will require correction.

Information about obtaining any necessary permits required by other Fairfax County agencies may be obtained by calling (703)222-0801 and requesting the appropriate department. The owner of a building or structure, or the owner's agent or any other person involved in the use of the subject building or structure may appeal a decision of the Code Official concerning the application of the Virginia Maintenance Code to such building or structure and may also appeal a refusal by the Code Official to grant a modification to the provisions of this code pertaining to such building or structure. Applications for appeals shall be submitted in writing to the Fairfax County Board of Building and Fire Prevention Code Appeals within 14 calendar days of the decision being appealed. Appeal application forms may be obtained by contacting:

Fairfax County Board of Building and Fire Prevention Code Appeals  
Attention: Secretary to the Fairfax County Board of Building and Fire Prevention Code Appeals  
Department of Public Works and Environmental Services  
12055 Government Center Parkway, Suite 444  
Fairfax, VA 22035-5504  
Phone: (703)324-1780

Information and forms can also be obtained at:  
[http://www.fairfaxcounty.gov/dpwes/publications/codemods\\_appeals.htm](http://www.fairfaxcounty.gov/dpwes/publications/codemods_appeals.htm)

Failure to submit an application for appeal within the time limit established shall constitute acceptance of the Code Official's decision.

The Fairfax County Board of Building and Fire Prevention Code Appeals shall meet within 30 calendar days after the date of receipt of the application for appeal.

A follow-up inspection will be made at the expiration of the time period outlined in this Notice. Failure to comply with the Notice will result in the initiation of appropriate legal action to gain compliance with the Virginia Maintenance Code which can result in court ordered sanctions or civil penalties. Civil penalties may be ordered in the amount of \$100.00 for each violation cited herein for the first violation and \$150.00 for each subsequent violation cited herein per day totaling up to \$4,000.00 in accordance with Fairfax County Code § 61-7-1(B).

In accordance with the code, the owner or person to whom this notice of violation has been issued is responsible for contacting me within the time frame established for any re-inspections to assure the violations have been corrected.

Lubia E. Garcia Lopez  
January 21, 2016  
SR 123779  
Page 3

If you have any questions, would like to schedule an appointment to meet with an investigator, or schedule a follow up inspection, please contact me directly at (703)324-9327. For any other questions, contact our main office at (703)324-1300.

LEGAL NOTICE ISSUED BY:

---

Signature

Michael Caudle  
Code Compliance Investigator  
(703)324-9327  
Mike.Caudle@fairfaxcounty.gov

PERSONAL SERVICE \_\_\_\_\_

- Being unable to make personal service a copy was delivered in the following manner:
  - Delivered to a person found in charge of usual place of business or employment during business hours and giving information of its purport.
  - Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode or party named above after giving information its purport. List name, age of recipient, and relation of recipient to party named above.  


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  - Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).
- Served on a Secretary of the Commonwealth.
- Not found.

\_\_\_\_\_  
SERVING OFFICER  
for \_\_\_\_\_

\_\_\_\_\_  
DATE

PERSONAL SERVICE \_\_\_\_\_

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\_\_\_\_\_  
SERVING OFFICER  
for \_\_\_\_\_

\_\_\_\_\_  
DATE

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\_\_\_\_\_  
SERVING OFFICER  
for \_\_\_\_\_

\_\_\_\_\_  
DATE

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  - Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).
- Served on a Secretary of the Commonwealth.
- Not found.

\_\_\_\_\_  
SERVING OFFICER  
for \_\_\_\_\_

\_\_\_\_\_  
DATE



# County of Fairfax, Virginia

## MEMORANDUM

**DATE:** March 23, 2016

**TO:** Debbie Pemberton  
Applications Acceptance, Zoning Evaluation Division

**FROM:** Megan Duca, Senior Assistant to the Zoning Administrator *MD*  
Ordinance Administration Branch

**SUBJECT:** Yard / Fence Determination  
7736 Lisle Avenue  
Tax Map Ref. #: 39-2 ((6)) 2  
Zoning District: R-4, H-C

This is in response to your request dated March 9, 2016 regarding the maximum permitted fence heights for the referenced property. Specifically, you are requesting a delineation of the permitted fence heights for the referenced property and a determination as to whether a fence up to eight feet in height would be permitted along a portion of the property pursuant to Par. 3B of Sect. 10-104 of the Zoning Ordinance. You are also seeking clarification as to whether a variance can be pursued to permit a fence greater than 3.5 feet in height to be located within the sight distance triangle.

The referenced property is zoned R-4 (Residential District, Four Dwelling Units/Acre) and is currently developed with a single family detached dwelling. The property is a corner lot with front yards along Lisle Avenue and Magarity Road, which is a major thoroughfare. Pursuant to Sect. 10-104 of the Zoning Ordinance, fences located in front yards are typically limited to a maximum height of four feet. However, in certain situations, Par. 3B of Sect. 10-104 allows for a fence up to eight feet in height to be located in a front yard on a corner lot that abuts a major thoroughfare. Specifically, this provision states, in pertinent part, that to qualify for the 8-foot fence height, the driveway entrance to the lot must be from a street other than the major thoroughfare and the principal entrance of the dwelling must face a street other than the major thoroughfare. In the case of the referenced property, the driveway entrance to the property is from a street other than the major thoroughfare (Lisle Avenue); however, a review of the Special Permit plat and grading plan submitted with your request indicates that the principal entrance of the dwelling faces Magarity Road. Therefore, the subject property does not qualify for the 8-foot fence height under Par. 3B of Sect. 10-104. As such, fences in both front yards of the property are limited to a maximum height of four feet. Further, pursuant to the sight distance requirements of Sect. 2-505 of the Zoning Ordinance, fences within the sight distance triangle near the intersection of Lisle Avenue and Magarity Road are limited to a maximum height of 3.5 feet. Attached is a sketch that depicts the yards on the property and the associated maximum permitted fence heights.

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



Debbie Pemberton

March 23, 2016

Page 2

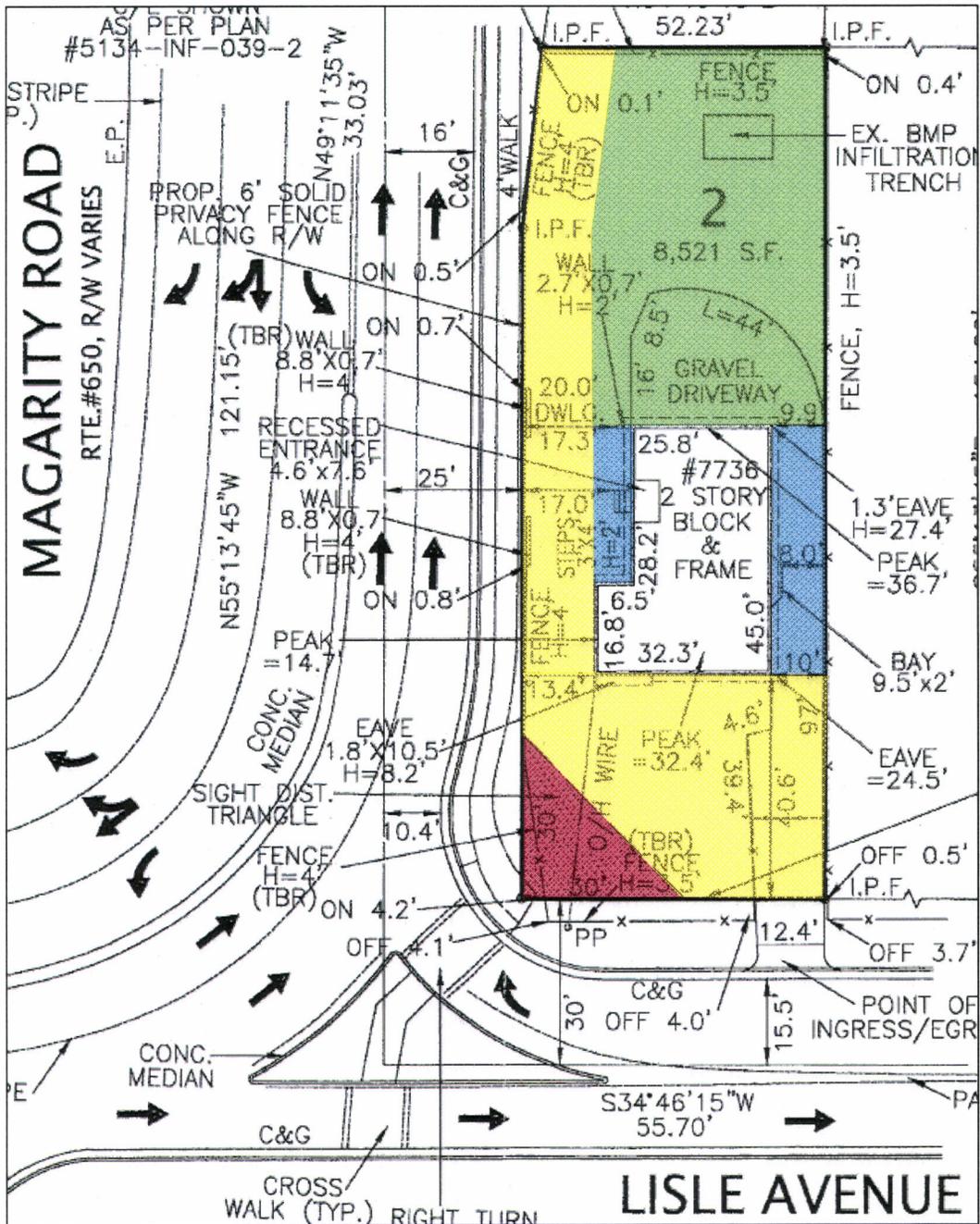
An increase in fence height in any front yard up to six feet may be permitted with the approval of a special permit by the Board of Zoning Appeals (BZA). However, the approval of a variance would be required to permit a fence greater than 3.5 feet in height to be located within the sight distance triangle.

MBD

Enclosure

cc: Diane Johnson-Quinn, Deputy Zoning Administrator for Zoning Permit Review Branch

# 7736 Lisle Avenue: Maximum Permitted Fence Heights



For Illustrative Purposes Only (Not to Scale)

Legend	
	= Front yard (4 ft. maximum fence height)
	= Side yard (7 ft. maximum fence height)
	= Rear yard (7 ft. maximum fence height)
	= Sight Distance Triangle (3.5 ft. maximum fence height)

## **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.

**8-923      *Provisions for Increase in Fence and/or Wall Height in Any Front Yard***

The BZA may approve a special permit to allow an increase in fence and/or wall height in any front yard subject to all of the following:

1. The maximum fence and/or wall height shall not exceed six (6) feet and such fence and/or wall shall not be eligible for an increase in fence and/or wall height pursuant to Par. 3I of Sect. 10-104.
2. The fence and/or wall shall meet the sight distance requirements contained in Sect. 2-505.
3. The BZA shall determine that the proposed fence and/or wall height increase is warranted based upon such factors to include, but not limited to, the orientation and location of the principal structure on the lot, the orientation and location of nearby off-site structures, topography of the lot, presence of multiple front yards, and concerns related to safety and/or noise.
4. The BZA shall determine that the proposed fence and/or wall height increase will be in character with the existing on-site development and will be harmonious with the surrounding off-site uses and structures in terms of location, height, bulk, scale and any historic designations.
5. The BZA shall determine that the proposed fence and/or wall height increase shall not adversely impact the use and/or enjoyment of other properties in the immediate vicinity.
6. The BZA may impose such conditions as it deems necessary to satisfy these criteria, including but not limited to imposition of landscaping or fence and/or wall design requirements.
7. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by fifteen (15) copies of a plat and such plat shall be presented on a sheet having a maximum size of 24" x 36", and one 8 ½" x 11" reduction of the plat. Such plat shall be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat shall be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia. Such plat shall contain the following information:
  - A. Boundaries of entire property, with bearings and distances of the perimeter property lines, and of each zoning district.

- B. Total area of the property and of each zoning district in square feet or acres.
  - C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.
  - D. The location, dimension and height of any building or structure, to include existing or proposed fences and/or walls.
  - E. All required minimum yards to include front, side and rear, a graphic depiction of the angle of bulk plane, if applicable, and the distances from all existing structures to lot lines.
  - F. Means of ingress and egress to the property from a public street(s).
  - G. For nonresidential uses, the location of parking spaces, indicating minimum distance from the nearest property line(s).
  - H. If applicable, the location of a well and/or septic field.
  - I. If applicable, existing gross floor area and floor area ratio.
  - J. Location of all existing utility easements having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.
  - K. The location, type and height of any existing and proposed landscaping and screening.
  - L. Approximate delineation of any floodplain designated by the Federal Insurance Administration, United States Geological Survey, or Fairfax County, the delineation of any Resource Protection Area and Resource Management Area, and the approximate delineation of any environmental quality corridor as defined in the adopted comprehensive plan, and, if applicable, the distance of any existing and proposed structures from the floodplain, Resource Protection Area and Resource Management Area, or environmental quality corridor.
  - M. Seal and signature of professional person certifying the plat.
8. Architectural depictions of the proposed fence and/or wall to include height, building materials and any associated landscaping shall be provided.

**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.